
THIRD READING

Bill No: AB 523
Author: Irwin (D)
Amended: 7/5/19 in Senate
Vote: 21

SENATE ENERGY, U. & C. COMMITTEE: 10-0, 7/2/19
AYES: Hueso, Bradford, Dodd, Hertzberg, Hill, McGuire, Rubio, Skinner, Stern,
Wiener
NO VOTE RECORDED: Moorlach, Chang, Stone

SENATE JUDICIARY COMMITTEE: 7-0, 7/9/19
AYES: Jackson, Durazo, Lena Gonzalez, Monning, Stern, Umberg, Wieckowski
NO VOTE RECORDED: Borgeas, Jones

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

ASSEMBLY FLOOR: 61-10, 5/28/19 - See last page for vote

SUBJECT: Telecommunications: customer right of privacy

SOURCE: Author

DIGEST: This bill prohibits mobile telephone service providers and their affiliates from disclosing subscribers' historical, current, or prospective cell site location information (CSLI) without obtaining express consent. This bill also establishes certain exemptions to this prohibition.

ANALYSIS:

Existing law:

- 1) Prohibits telephone corporations from disclosing certain subscriber information without first obtaining consent, including, but not limited to calling patterns,

demographic information, a subscriber's credit or other personal financial information, and services purchased by a subscriber. (Public Utilities Code §2891(a))

- 2) Establishes exemptions to the prohibition on telephone corporations' sharing of subscriber information, including, but not limited to, disclosures needed for 911 purposes and pursuant to a law enforcement lawful process. (Public Utilities Code §2891(d))
- 3) Prohibits wireless telecommunications providers and their affiliates from disclosing the name and telephone number of a subscriber unless the subscriber expressly provides consent for the disclosure. (Public Utilities Code §2891.1(b))
- 4) Allows a subscriber to revoke a prior authorization to disclose subscriber information at any time. Wireless telecommunications providers must comply with a revocation within 60 days. (Public Utilities Code §2891.1(d))
- 5) Exempts the following purposes from prohibitions on disclosing telecommunications subscribers' phone numbers:
 - a) Disclosures to a collection agency, exclusively for the collection of unpaid debts and subject to supervision by the California Public Utilities Commission (CPUC).
 - b) Disclosures to a law enforcement agency, fire protection agency, public health agency, public environmental health agency, city or county emergency services planning agency, or private for-profit agency contracting with one or more of these agencies, for the exclusive purpose of responding to a 911 call or communicating an imminent threat to life or property.
 - c) Disclosures pursuant to a lawful process issued under state or federal law.
 - d) Disclosures to a telephone corporation providing service between service areas for service in those areas or to third parties for the limited purpose of billing.
 - e) Disclosures to a telephone corporation to effectively transfer telephone service to a new provider.
 - f) Disclosures to the CPUC pursuant to its regulatory authority. (Public Utilities Code §2891.1(f)).

- 6) Specifies that any deliberate violation of prohibitions to disclosures of telecommunications subscriber information is grounds for a civil suit against the entity responsible for the violation. (Public Utilities Code §2891.1(g))

This bill:

- 1) Prohibits mobile telephone service providers from disclosing subscribers CSLI without first obtaining express consent.
- 2) Exempts the following purposes from the prohibition on disclosing CSLI:
 - a) Disclosures to any law enforcement agency, fire protection agency, public health agency, public environmental health agency, local public emergency services agency, or private for-profit agency contracting with one of these agencies for the sole purpose of responding to a 911 call, testing 911 systems, or communicating an imminent threat.
 - b) Disclosures pursuant to a particularized court-ordered warrant.
- 3) Establishes requirements for obtaining express consent, including the following:
 - a) The consent must be provided by a subscriber in one of the following forms:
 - i) A separate document signed and dated by the subscriber.
 - ii) A separate field on the provider's Internet Web site that meets certain requirements. The provider must send a confirmation notice to the subscriber's email or postal mail address.
 - b) The method of obtaining consent must be unambiguous, legible, and clearly disclose the following:
 - i) A notice that, by opting in, the subscriber is consenting to the disclosure of the subscriber's CSLI.
 - ii) A notice identifying the parties to whom the CSLI will be disclosed.

Background

The Bounty Hunting Issue. Wireless carriers have the capacity to obtain real-time data about the location of a subscriber's wireless device by accessing a phone's global positioning system (GPS) coordinates (if available) and through pinging a phone from a nearby cell tower. Information obtained by using cell tower

infrastructure to locate a specific subscriber's phone is also known as cell site location information (CSLI). Carriers can have legitimate reasons for maintaining contracts with third parties to offer geolocation services. For example, a carrier may have a contract to provide geolocation services to a company that provides automotive repair and assistance in the event that a customer's vehicle is disabled in a location where an address isn't readily available. Unlike GPS coordinates, CSLI data provides slightly less precise information that can identify the approximate location of an individual. However, this information is still considered highly sensitive and can pose a danger to a subscriber's privacy and safety if disclosed without consent and appropriate protections.

Between 2018 and 2019, several news reports revealed that Web sites offered to provide the real-time location of an individual's wireless device for a fee. Reports indicate that these online bounty hunters obtained real-time geolocation data through aggregators and data brokers that either had contracts with wireless telecommunications companies or subcontracts with those companies primary aggregators. Some bounty hunters were able to obtain location data through phones' GPS and carriers' cell-tower pings. The Federal Communications Commission (FCC) is investigating the carriers' disclosure of geolocation data; however, the status of the investigation is unclear. In May 2019, the carriers reported to FCC Commissioners that they had terminated most of their agreements with third-party companies that were facilitating the sale of subscribers' geolocation data.

Federal Customer Proprietary Network Information (CPNI) rules. Current federal requirements regarding CSLI privacy protections is not clear. The FCC has established rules limiting telecommunications providers' ability to disclose and sell subscribers personal information. These rules are known as CPNI restrictions. However, not all data are clearly covered by these rules, and the process for obtaining a customers' consent for disclosure is not strictly with the express consent of the consumer. For example, the FCC's CPNI rules strictly prohibits the disclosure of some personal data without express consent; however, other data may be shared with the telecommunications providers' affiliates unless the customer affirmatively opts-out of CPNI disclosure. Additionally, the FCC does not require all agreements regarding CPNI disclosure to be in writing; the FCC's guidance on subscriber approval for disclosure of CPNI permits both opt-in and opt-out options for obtaining consent and under certain circumstances, the guidance permits a carrier to obtain consent to disclose CPNI orally.

Federal statutes imply that the location of the telecommunications service is included in CPNI; however, CSLI is not expressly listed as CPNI. In a 2013 decision, the FCC determined that a wireless customer's location at the time of a call is CPNI and generally, the FCC has ruled that subscriber information is sensitive information; however, the FCC did not specify that geolocation obtained outside of a call is CPNI.

This bill establishes express requirements for disclosure of CSLI within California and a process for obtaining consumers' express consent. The consent process required by this bill does not include obtaining oral consent; however, it establishes requirements that are consistent with other consent standards in existing law.

Intersection of advanced telecommunications and privacy rights. While telecommunications technology has changed significantly, existing statutes governing telecommunications subscribers' privacy rights have not been commensurately updated. Consequently, the application of privacy rights to advanced telecommunications has relied on court interpretations. However, court opinions have largely focused on the specific facts of a case and have not resolved additional ambiguities that can impact consumers. In *Carpenter v. United States*, the United States Supreme Court held that historical CSLI queries constituted a search under the 4th Amendment and require a warrant; however, the court did not opine on real-time CSLI, and the court's evaluation of historical data was subject to the wireless carriers' retention policies. Generally, the wireless carriers maintain this information for up to five years.

Related/Prior Legislation

SB 697 (Hertzberg, Chapter 162, Statutes of 2015) removed a requirement to report on the helpfulness of allowing for lifeline customers disclosure for outreach purposes.

AB 3011 (Huffman, 2008) would have expanded CPNI protections from only residential land-lines to also include mobile phones, and provided for conforming definitions and exemptions with federal law relating to CPNI. The bill died in the Assembly.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

SUPPORT: (Verified 8/20/19)

Consumer Reports

Media Alliance
Oakland Privacy
Public Advocates Office (formerly Office of Ratepayer Advocates)

OPPOSITION: (Verified 8/20/19)

AT&T
CTIA
Sprint
T-Mobile
TracFone
Verizon

ARGUMENTS IN SUPPORT: According to the author:

The sale of your mobile phone's geo-location is a fundamental violation of a subscriber's privacy. Law enforcement must obtain a warrant under both state and federal law to access your geo-location from a telecommunications provider, an appropriate safeguard that recognizes the sensitive nature of a person's current and past location. The real-world implications for personal safety are frightening when this information is shared with non-law enforcement. We must provide Californians with the tools to protect themselves, especially as the Federal Communications Commission fails to enforce federal protections.

ARGUMENTS IN OPPOSITION: Opponents argue that the California Consumer Privacy Act (CCPA) already provides sufficient data protections for geolocation information and that additional requirements would result in consumer confusion. Opponents also claim that overlapping state and federal CPNI requirements would also create confusion. Opponents suggest that this bill should limit the degree to which it would require express consent from a consumer prior to any disclosure of CPNI. In opposition, CTIA states: "The CCPA applies equally to all businesses that meet its thresholds. Imposing different obligations that depend on the type of business holding the data would cause consumer confusion, distort competition, and create difficult implementation challenges."

ASSEMBLY FLOOR: 61-10, 5/28/19

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Berman, Bloom, Boerner Horvath, Bonta, Burke, Calderon, Carrillo, Cervantes, Chiu, Chu, Cooper, Cunningham, Daly, Diep, Eggman, Friedman, Gabriel, Gallagher, Cristina

Garcia, Gipson, Gloria, Gonzalez, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kamlager-Dove, Lackey, Levine, Limón, Low, Maienschein, Mayes, McCarty, Medina, Mullin, Muratsuchi, Nazarian, Obernolte, O'Donnell, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Smith, Mark Stone, Weber, Wicks, Wood, Rendon

NOES: Brough, Choi, Dahle, Fong, Kiley, Mathis, Melendez, Patterson, Voepel, Waldron

NO VOTE RECORDED: Bigelow, Chau, Chen, Cooley, Flora, Frazier, Eduardo Garcia, Gray, Ting

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8/21/19 16:12:12

**** END ****