



MEMORANDUM

DATE: December 11, 2024

TO: Chair Cruz-Perez and Members of the New Jersey Senate Economic Growth Committee
CC: Sponsor, Sen. Paul Moriarty

FROM: Jake Lestock, Director of State Legislative Affairs

RE: Opposition to New Jersey Senate Bill 3638

CTIA®, the trade association for the wireless communications industry, opposes New Jersey S3638.

- **This legislation is unnecessary. A privacy law just enacted in New Jersey already provides comprehensive protections for sensitive location information.**
- **Enacting a competing and narrower standard will only increase customer frustration without any discernable benefit.**
- **Moreover, there is robust Federal oversight, and it is working.**

To best protect consumers, privacy protections should apply consistently and should not be technology- or sector-specific

- New Jersey has already ensured comprehensive privacy protections with the passage of S.332 (P.L.2023, c.266). This law provides special protections for sensitive location information that is technologically derived, including requiring consumers' opt-in consent for all sensitive data processing.
- In contrast, S.3638 creates duplicative yet narrower requirements. The bill is unfairly limited to the collection of global positioning system data (GPS data) within the online ecosystem – something that consumers are unlikely to understand or expect and does not reflect the reality of modern data processing, in which online data flows seamlessly across the internet ecosystem among various companies and technologies.
- The bill also only applies to GPS data used by commercial mobile service providers and mobile device application developers. It would not apply to the collection of GPS data through other means, such as web browsing outside of mobile devices, connected vehicle technology, wearables, or other connected devices. Consumers are unlikely to understand, appreciate, or expect this outcome.
- The result will be a duplicative and confusing obligation on a certain subset of actors within the online ecosystem for a narrow subset of location data. That result is arbitrary, unfair, burdensome, and unnecessary.

The Legislation Will Require Companies to Collect More Data, Not Less

- Because of the way this bill is drafted to require communications providers to limit the collection and sharing of GPS data of individuals within New Jersey, it mandates anti-privacy outcomes because more data will have to be collected and linked to individuals to determine when they are located within New Jersey and when the obligations apply. It also creates an onerous requirement for carriers to set a geofence around the state and apply the bill's rules to consumers while they are present in the state and then maintain data on compliance in the event of potential litigation.
- To the extent the bill operationally requires carriers to apply its standards in other states, it likely violates the Dormant Commerce Clause of the United States Constitution.

This legislation could increase consumer frustration and make it difficult for businesses operating in New Jersey to provide important services to consumers

- This legislation would add to consumer frustration and notice fatigue in which consumers stop paying attention – but businesses would still be faced with the burden of presenting and recording the consent called for by the bill. It would also confuse consumers as they navigate one set of protections for location data set forth in the comprehensive privacy law that applies to nearly all businesses and another duplicative and narrower set of obligations that only applies to commercial mobile service providers and mobile device applications.
- The bill broadly limits any disclosure, not just the sale of GPS data. Yet many businesses use location information, including GPS data, to identify and combat fraud for the benefit of customers. This bill could impede these legitimate, important, and critical business operations. Notably, the new NJ comprehensive law recognizes this important balance by placing robust protections for sensitive location information while allowing routine and critical operational uses of personal data to continue.
- If this bill were to be enacted, bad actors would have a much easier time fraudulently using the identities of New Jersey citizens and committing other frauds and bad acts, and the potential for disruption in services to consumers would be greatly heightened. Simply put, bad actors will not consent to having their data used for these detection purposes.

Federal & state laws already exist to provide consumer protections

- The Federal Trade Commission's (FTC) Privacy Framework considers precise geolocation information to be sensitive, meaning that its collection must be subject to opt-in consent. The FTC has brought enforcement actions against companies that have misrepresented consumer control regarding the collection of geolocation data. Examples include actions against [Nomi Technologies](#) and [Goldenshores Technologies](#) (involving the flashlight app).
- The Federal Communications Commission (FCC) regulates wireless carriers' use of Customer Proprietary Network Information (CPNI), which includes certain location information.
- As noted above, New Jersey just enacted a new comprehensive privacy law that robustly protects the personal data of New Jersey residents, including the collection and use of their sensitive location information. It is an abuse of discretion to enact a duplicative standard before that law even goes into effect.

A private right of action would harm businesses with no benefit to consumers

- This bill allows for a private right of action, which will unfairly expose wireless providers in New Jersey to costly litigation that will benefit the plaintiff's bar while offering little relief to consumers.
- Instead of allowing for a private right of action, New Jersey's Attorney General (AG) should shape statewide policy with a holistic and experienced approach, which will best encourage compliance, support innovation, and prevent and remediate harm; consistent interpretation and application of the law by the AG will benefit both businesses and consumers.