

HB 384-FN - AS AMENDED BY THE HOUSE

8Apr2021... 0155h

2021 SESSION

21-0478

04/10

HOUSE BILL **384-FN**

AN ACT prohibiting the sharing of location data.

SPONSORS: Rep. Wuelper, Straf. 3; Rep. M. Smith, Straf. 6; Rep. Verville, Rock. 2; Rep. Gould, Hills. 7; Rep. T. Lekas, Hills. 37; Rep. Wallace, Rock. 12; Rep. Testerman, Merr. 2

COMMITTEE: Judiciary

ANALYSIS

This bill prohibits the sharing of location data by a mobile application developer, telecommunications carrier, or other person.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears ~~[in brackets and struck through.]~~
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT prohibiting the sharing of location data.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 New Section; Wiretapping and Eavesdropping; Sharing Location Data Prohibited. Amend
2 RSA 570-A by inserting after section 2-a the following new section:

3 570-A:2-b Sharing Location Data Prohibited.

4 I. In this section:

5 (a)(1) "Authorized use" means the sharing of a customer's location data:

6 (A) For the purpose of providing a service explicitly requested by such customer;

7 (B) Exclusively for the purpose of providing a service explicitly requested by such
8 customer; and

9 (C) Where such data is not collected, shared, stored, or otherwise used by a third
10 party for any purpose other than providing a service explicitly requested by such customer.

11 (2) "Authorized use" shall not include any instance in which a customer's location
12 data is shared in exchange for products or services.

13 (b) "Customer" means a current or former subscriber to a telecommunications carrier or
14 a current or former user of a mobile application.

15 (c) "Location data" means information related to the physical or geographical location of
16 a person or the person's mobile communications device, regardless of the particular technological
17 method used to obtain this information.

18 (d) "Mobile application" means a software program that runs on the operating system of
19 a mobile communications device.

20 (e) "Mobile application developer" means a person that owns, operates, or maintains a
21 mobile application and makes such application available for the use of customers for a fee or
22 otherwise.

23 (f) "Mobile communications device" means any portable wireless telecommunications
24 equipment that is utilized for the transmission or reception of data, including location data, and that
25 is or may be commonly carried by or on a person or commonly travels with a person, including in or
26 as part of a vehicle a person drives.

27 (g) "Share" means to make location data available to another person, for a fee or
28 otherwise.

29 (h) "Telecommunications carrier" means a service offered to the public for a fee that
30 transmits sounds, images, or data through wireless telecommunications technology.

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1 II(a) No mobile application developer or a telecommunications carrier shall share a
2 customer's location data, other than to fulfill an explicit request from such customer, unless the
3 customer has affirmatively waived such right after being properly informed. For purposes of this
4 section, continuing to use a service or website shall not be considered an affirmative waiver.

5 (b) No person who receives location data that is shared in violation of subparagraph (a)
6 shall share such data with another person.

7 III. A mobile application developer, telecommunications carrier, or other person who shares
8 a customer's location data with another person in a manner prohibited by this section shall be guilty
9 of a violation and subject to a fine of \$1,000. A mobile application developer, telecommunications
10 carrier, or other person who is convicted of multiple violations of this section shall be subject to a
11 maximum fine \$10,000 for each person whose location data was shared in violation of this section.

12 IV. This section shall not apply to:

13 (a) Information provided to a law enforcement agency in response to a lawful process;

14 (b) Information provided to an emergency service agency responding to an emergency
15 communication or any other communication reporting an imminent threat to life or property;

16 (c) Information required to be provided by a federal, state, or local law enforcement
17 agency; or

18 (d) A customer providing the customer's own location data to a mobile application.

19 V. Any customer whose location data has been shared in violation of this chapter may bring
20 a private action in a court of competent jurisdiction. If a court of competent jurisdiction finds that a
21 person has violated a provision of this section, the court may award actual damages and reasonable
22 attorney's fees and costs incurred in maintaining such civil action.

23 2 Effective Date. This act shall take effect 60 days after its passage.

HB 384-FN- FISCAL NOTE
AS AMENDED BY THE HOUSE (AMENDMENT #2021-0155h)

AN ACT prohibiting the sharing of location data.

FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2021	FY 2022	FY 2023	FY 2024
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Funding Source:	<input checked="" type="checkbox"/> General <input type="checkbox"/> Education <input type="checkbox"/> Highway <input checked="" type="checkbox"/> Other - Penalty Assessment Revenue			

METHODOLOGY:

This bill prohibits the sharing of data by a mobile application developer, telecommunications carrier, or other person. The Judicial Branch indicates the potential fiscal impact to the Branch from this bill is in the filing of additional violation offenses and civil actions for damages, costs and attorneys’ fees. The Branch does not have information on the number of additional violation level offenses that will result from the proposed bill and is unable to anticipate the additional costs or the amount of fine revenue that will be collected. Regarding private actions for sharing location data in violation of proposed RSA 570-A:2-b, including claims for damages, costs and reasonable attorneys’ fees, such cases would likely be classified as complex civil cases in the superior court. The Branch has no information on which to estimate how many new complex civil cases will be brought because of the proposed bill. The estimated average cost to Branch for both types of cases follows:

Judicial Branch	FY 2021	FY 2022
Violation Level Offense	\$53	\$53
Complex Civil Case	\$794	\$794
Appeals	Varies	Varies

It should be noted that these average case cost estimates are based on data that is more than ten years old and does not reflect changes to the courts over that same period of time or the impact these changes may have on processing the various case types. The Judicial Branch received an

appropriation in the operating budget to update its cost data in 2020, but due to the COVID state of emergency, this analysis has been delayed.

It is assumed any fiscal impact would occur after July 1, 2021.

AGENCIES CONTACTED:

Judicial Branch