

SENATE No. 148

The Commonwealth of Massachusetts

PRESENTED BY:

Cynthia Stone Creem

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act protecting reproductive health access, LGBTQ lives, religious liberty, and freedom of movement by banning the sale of cell phone location information.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Cynthia Stone Creem</i>	<i>Norfolk and Middlesex</i>	
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>1/31/2023</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>1/31/2023</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>1/31/2023</i>
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>	<i>2/7/2023</i>
<i>Rebecca L. Rausch</i>	<i>Norfolk, Worcester and Middlesex</i>	<i>2/7/2023</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>	<i>2/9/2023</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	<i>2/10/2023</i>
<i>Patrick M. O'Connor</i>	<i>First Plymouth and Norfolk</i>	<i>2/14/2023</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>2/16/2023</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>	<i>3/15/2023</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>	<i>6/26/2023</i>

SENATE No. 148

By Ms. Creem, a petition (accompanied by bill, Senate, No. 148) of Cynthia Stone Creem, Joanne M. Comerford, Michael J. Barrett, James B. Eldridge and other members of the Senate for legislation to protect reproductive health access, LGBTQ lives, religious liberty, and freedom of movement by banning the sale of cell phone location information. Consumer Protection and Professional Licensure.

The Commonwealth of Massachusetts

—————
**In the One Hundred and Ninety-Third General Court
(2023-2024)**
—————

An Act protecting reproductive health access, LGBTQ lives, religious liberty, and freedom of movement by banning the sale of cell phone location information.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. The General Laws, as appearing in the 2018 Official Edition, are hereby
2 amended by inserting after chapter 93K the following chapter:

3 CHAPTER 93L. Privacy Protections for Location Information Derived from Electronic
4 Devices

5 Section 1. Definitions

6 As used in this chapter, the following words shall, unless the context clearly requires
7 otherwise, have the following meanings:—

8 “Application”, a software program that runs on the operating system of a device.

9 “Collect”, to obtain, infer, generate, create, receive, or access an individual’s location
10 information.

11 “Consent”, freely given, specific, informed, unambiguous, opt-in consent. This term does
12 not include either of the following: (i) agreement secured without first providing to the individual
13 a clear and conspicuous disclosure of all information material to the provision of consent, apart
14 from any privacy policy, terms of service, terms of use, general release, user agreement, or other
15 similar document; or (ii) agreement obtained through the use of a user interface designed or
16 manipulated with the substantial effect of subverting or impairing user autonomy, decision
17 making, or choice.

18 “Covered entity”, any individual, partnership, corporation, limited liability company,
19 association, or other group, however organized. A covered entity does not include a state or local
20 government agency, or any court of Massachusetts, a clerk of the court, or a judge or justice
21 thereof. A covered entity does not include an individual acting in a non-commercial context. A
22 covered entity includes all agents of the entity.

23 “Device”, a mobile telephone, as defined in section 1 of chapter 90 of the general laws, or
24 any other electronic device that is or may commonly be carried by or on an individual and is
25 capable of connecting to a cellular, bluetooth, or other wireless network.

26 “Disclose”, to make location information available to a third party, including but not
27 limited to by sharing, publishing, releasing, transferring, disseminating, providing access to, or
28 otherwise communicating such location information orally, in writing, electronically, or by any
29 other means.

30 “Individual”, a person located in the Commonwealth of Massachusetts.

31 “Location information”, information derived from a device or from interactions between
32 devices, with or without the knowledge of the user and regardless of the technological method
33 used, that pertains to or directly or indirectly reveals the present or past geographical location of
34 an individual or device within the Commonwealth of Massachusetts with sufficient precision to
35 identify street-level location information within a range of 1,850 feet or less. Location
36 information includes but is not limited to (i) an internet protocol address capable of revealing the
37 physical or geographical location of an individual; (ii) Global Positioning System (GPS)
38 coordinates; and (iii) cell-site location information. This term does not include location
39 information identifiable or derived solely from the visual content of a legally obtained image,
40 including the location of the device that captured such image, or publicly posted words.

41 “Location Privacy Policy”, a description of the policies, practices, and procedures
42 controlling a covered entity’s collection, processing, management, storage, retention, and
43 deletion of location information.

44 “Monetize”, to collect, process, or disclose an individual’s location information for profit
45 or in exchange for monetary or other consideration. This term includes but is not limited to
46 selling, renting, trading, or leasing location information.

47 “Person”, any natural person.

48 “Permissible purpose”, one of the following purposes: (i) provision of a product, service,
49 or service feature to the individual to whom the location information pertains when that
50 individual requested the provision of such product, service, or service feature by subscribing to,
51 creating an account, or otherwise contracting with a covered entity; (ii) initiation, management,
52 execution, or completion of a financial or commercial transaction or fulfill an order for specific

53 products or services requested by an individual, including any associated routine administrative,
54 operational, and account-servicing activity such as billing, shipping, delivery, storage, and
55 accounting; (iii) compliance with an obligation under federal or state law; or (iv) Response to an
56 emergency service agency, an emergency alert, a 911 communication, or any other
57 communication reporting an imminent threat to human life.

58 “Process”, to perform any action or set of actions on or with location information,
59 including but not limited to collecting, accessing, using, storing, retaining, analyzing, creating,
60 generating, aggregating, altering, correlating, operating on, recording, modifying, organizing,
61 structuring, disposing of, destroying, de-identifying, or otherwise manipulating location
62 information. This term does not include disclosing location information.

63 “Reasonably understandable”, of length and complexity such that an individual with an
64 eighth-grade reading level, as established by the department of elementary and secondary
65 education, can read and comprehend.

66 “Service feature”, a discrete aspect of a service provided by a covered entity, including
67 but not limited to real-time directions, real-time weather, and identity authentication

68 "Service provider", an individual, partnership, corporation, limited liability company,
69 association, or other group, however organized, that collects, processes, or transfers location
70 information for the sole purpose of, and only to the extent that such service provider is,
71 conducting business activities on behalf of, for the benefit of, at the direction of, and under
72 contractual agreement with a covered entity.

73 “Third party”, any covered entity or person other than (i) a covered entity that collected
74 or processed location information in accordance with this chapter or its service providers, or (ii)

75 the individual to whom the location information pertains. This term does not include government
76 entities.

77 Section 2. Protection of location information

78 (a) It shall be unlawful for a covered entity to collect or process an individual's
79 location information except for a permissible purpose. Prior to collecting or processing an
80 individual's location information for one of those permissible purposes, a covered entity shall
81 provide the individual with a copy of the Location Privacy Policy and obtain consent from that
82 individual; provided, however, that this shall not be required when the collection and processing
83 is done in (1) compliance with an obligation under federal or state law or (2) in response to an
84 emergency service agency, an emergency alert, a 911 communication, or any other
85 communication reporting an imminent threat to human life.

86 (b) If a covered entity collects location information for the provision of multiple
87 permissible purposes, it should be mentioned in the Location Privacy Policy and individuals shall
88 provide discrete consent for each purpose; provided, however, that this shall not be required for
89 the purpose of collecting and processing location information to comply with an obligation under
90 federal or state law or to respond to an emergency service agency, an emergency alert, a 911
91 communication, or any other communication reporting an imminent threat to human life.

92 (c) A covered entity that directly delivers targeted advertisements as part of its
93 product or services shall provide individuals with a clear, conspicuous, and simple means to opt
94 out of the processing of their location information for purposes of selecting and delivering
95 targeted advertisements.

96 (d) Consent provided under this section shall expire (1) after one year, (2) when the
97 initial purpose for processing the information has been satisfied, or (3) when the individual
98 revokes consent, whichever occurs first, provided that consent may be renewed pursuant to the
99 same procedures. Upon expiration of consent, any location information possessed by a covered
100 entity must be permanently destroyed.

101 (e) It shall be unlawful for a covered entity or service provider that lawfully collects
102 and processes location information to:—

103 (1) collect more precise location information than necessary to carry out the
104 permissible purpose;

105 (2) retain location information longer than necessary to carry out the permissible
106 purpose;

107 (3) sell, rent, trade, or lease location information to third parties; or

108 (4) derive or infer from location information any data that is not necessary to carry
109 out a permissible purpose.

110 (5) disclose, cause to disclose, or assist with or facilitate the disclosure of an
111 individual's location information to third parties, unless such disclosure is (i) necessary to carry
112 out the permissible purpose for which the information was collected, or (ii) requested by the
113 individual to whom the location data pertains.

114 (f) It shall be unlawful for a covered entity or service providers to disclose location
115 information to any federal, state, or local government agency or official unless (1) the agency or
116 official serves the covered entity or service provider with a valid warrant or establishes the

117 existence of exigent circumstances that make it impracticable to obtain a warrant, (2) disclosure
118 is mandated under federal or state law, or (3) the data subject requests such disclosure.

119 (g) A covered entity shall maintain and make available to the data subject a Location
120 Privacy Policy, which shall include, at a minimum, the following:—

121 (1) the permissible purpose for which the covered entity is collecting, processing, or
122 disclosing any location information;

123 (2) the type of location information collected, including the precision of the data;

124 (3) the identities of service providers with which the covered entity contracts with
125 respect to location data;

126 (4) any disclosures of location data necessary to carry out a permissible purpose and
127 the identities of the third parties to whom the location information could be disclosed;

128 (5) whether the covered entity's practices include the internal use of location
129 information for purposes of targeted advertisement

130 (6) the data management and data security policies governing location information;

131 (7) the retention schedule and guidelines for permanently deleting location
132 information.

133 (h) A covered entity in lawful possession of location information shall provide notice
134 to individuals to whom that information pertains of any change to its Location Privacy Policy at
135 least 20 business days before the change goes into effect, and shall request and obtain consent

136 before collecting or processing location information in accordance with the new Location
137 Privacy Policy.

138 (i) It shall be unlawful for a government entity to monetize location information.

139 Section 3. Transparency

140 (a) A covered entity shall, on an annual basis, report to the attorney general aggregate
141 information pertaining to any warrants seeking location information collected and processed by
142 that covered entity that were received during the preceding calendar year by the entity and, if
143 known, by any service providers and third parties. The report shall disaggregate orders by
144 requesting agency, statutory offense under investigation, and source of authority.

145 (b) Covered entities that are required to regularly disclose location information as a
146 matter of law shall, on an annual basis, report to the attorney general aggregate information
147 related to such disclosures.

148 (c) The attorney general shall develop standardized reporting forms to comply with
149 this section and make the reports available to the general public online.

150 Section 4: Prohibition Against Retaliation

151 A covered entity shall not take adverse action against an individual because the
152 individual exercised or refused to waive any of such individual's rights under this chapter, unless
153 location data is essential to the provision of the good, service, or service feature that the
154 individual requests, and then only to the extent that such data is essential. This prohibition
155 includes but is not limited to:

156 (1) refusing to provide a good or service to the individual;

157 (2) charging different prices or rates for goods or services, including through the use
158 of discounts or other benefits or imposing penalties; or

159 (3) providing a different level or quality of goods or services to the individual.

160 Section 5. Enforcement

161 (a) A violation of this chapter or a regulation promulgated under this chapter
162 regarding an individual's location information constitutes an injury to that individual.

163 (b) Any individual alleging a violation of this chapter by a covered entity or service
164 provider may bring a civil action in the superior court or any court of competent jurisdiction;
165 provided that, venue in the superior court shall be proper in the county in which the plaintiff
166 resides or was located at the time of any violation.

167 (c) An individual protected by this chapter shall not be required, as a condition of
168 service or otherwise, to file an administrative complaint with the attorney general or to accept
169 mandatory arbitration of a claim arising under this chapter.

170 (d) In a civil action in which the plaintiff prevails, the court may award (1) actual
171 damages, including damages for emotional distress, or \$5,000 per violation, whichever is greater,
172 (2) punitive damages; and (3) any other relief, including but not limited to an injunction or
173 declaratory judgment, that the court deems to be appropriate. The court shall consider each
174 instance in which a covered entity or service provider collects, processes, or discloses location
175 information in a manner prohibited by this chapter or a regulation promulgated under this chapter
176 as constituting a separate violation of this chapter or regulation promulgated under this chapter.

177 In addition to any relief awarded, the court shall award reasonable attorney’s fees and costs to
178 any prevailing plaintiff.

179 (e) The attorney general may bring an action pursuant to section 4 of chapter 93A
180 against a covered entity or service provider to remedy violations of this chapter and for other
181 relief that may be appropriate.

182 (f) Any provision of a contract or agreement of any kind, including a covered entity’s
183 terms of service or policies, including but not limited to the Location Privacy Policy, that
184 purports to waive or limit in any way an individual’s rights under this chapter, including but not
185 limited to any right to a remedy or means of enforcement, shall be deemed contrary to state law
186 and shall be void and unenforceable.

187 (g) No private or government action brought pursuant to this chapter shall preclude
188 any other action under this chapter.

189 Section 6. Non-applicability

190 This chapter shall not apply to location information collected from a patient by a health
191 care provider or health care facility, or collected, processed, used, or stored exclusively for
192 medical education or research, public health or epidemiological purposes, health care treatment,
193 health insurance, payment, or operations, if the information is protected from disclosure under
194 the federal Health Insurance Portability and Accountability Act of 1996 or other applicable
195 federal and state laws and regulations.

196 Section 7. Regulations

197 The attorney general shall:—

198 (1) adopt, amend, or repeal regulations for the implementation, administration, and
199 enforcement of this chapter;

200 (2) gather facts and information applicable to the attorney general's obligation to
201 enforce this chapter and ensure its compliance;

202 (3) conduct investigations for possible violations of this chapter;

203 (4) refer cases for criminal prosecution to the appropriate federal, state, or local
204 authorities; and

205 (5) maintain an official internet website outlining the provisions of this chapter.

206 SECTION 2. Location Information Collected Before Effective Date

207 Within 6 months after the effective date of this Act, covered entities shall obtain consent
208 in accordance with the provisions of Section 2 of Chapter 93L for any location information
209 collected, processed, and stored before such effective date, and shall permanently destroy any
210 location information for which they have not obtained consent.

211 SECTION 3. Effective Date

212 This Act shall take effect 1 year after enactment.