

107TH CONGRESS  
1ST SESSION

# S. 1164

To provide for the enhanced protection of the privacy of location information of users of location-based services and applications, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JULY 11, 2001

Mr. EDWARDS introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## A BILL

To provide for the enhanced protection of the privacy of location information of users of location-based services and applications, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Location Privacy Pro-  
5       tection Act of 2001”.

6       **SEC. 2. FINDINGS.**

7       Congress makes the following findings:

8               (1) Location-based services and applications  
9       allow customers to receive services based on their ge-  
10       ographic location, position, or known presence.

1 Telematics devices, for instance, permit subscribers  
2 in vehicles to obtain emergency road assistance, driv-  
3 ing directions, or other information with the push of  
4 a button. Other devices, such as those with Internet  
5 access, support position commerce in which notifica-  
6 tion of points of interest or promotions can be pro-  
7 vided to customers based on their known presence or  
8 geographic location.

9 (2) There is a substantial Federal interest in  
10 safeguarding the privacy right of customers of loca-  
11 tion-based services or applications to control the col-  
12 lection, use, retention of, disclosure of, and access to  
13 their location information. Location information is  
14 nonpublic information that can be misused to com-  
15 mit fraud, to harass consumers with unwanted mes-  
16 sages, to draw embarrassing or inaccurate inferences  
17 about them, or to discriminate against them. Im-  
18 proper disclosure of or access to location information  
19 could also place a person in physical danger. For ex-  
20 ample, location information could be misused by  
21 stalkers or by domestic abusers.

22 (3) The collection or retention of unnecessary  
23 location information magnifies the risk of its misuse  
24 or improper disclosure.

1           (4) Congress has recognized the right to privacy  
2 of location information by classifying location infor-  
3 mation as customer proprietary network information  
4 subject to section 222 of the Communications Act of  
5 1934 (47 U.S.C. 222), thereby preventing use or  
6 disclosure of that information without a customer's  
7 express prior authorization.

8           (5) There is a substantial Federal interest in  
9 promoting fair competition in the provision of wire-  
10 less services and in ensuring the consumer con-  
11 fidence necessary to ensure continued growth in the  
12 use of wireless services. These goals can be attained  
13 by establishing a set of privacy rules that apply to  
14 wireless location information, regardless of tech-  
15 nology, and to all entities and services that generate  
16 or receive access to such information.

17           (6) It is in the public interest that the Federal  
18 Communications Commission establish comprehen-  
19 sive rules to protect the privacy of customers of loca-  
20 tion-based services and applications and thereby en-  
21 able customers to realize more fully the benefits of  
22 location services and applications.

1 **SEC. 3. PROTECTION OF LOCATION INFORMATION PRI-**  
2 **VACY.**

3 (a) **RULEMAKING REQUIRED.**—Not later than 180  
4 days after the date of the enactment of this Act, the Fed-  
5 eral Communications Commission shall complete a rule-  
6 making proceeding for purposes of further protecting the  
7 privacy of location information.

8 (b) **ELEMENTS.**—

9 (1) **IN GENERAL.**—Subject to the provisions of  
10 paragraph (2), the rules prescribed by the Commis-  
11 sion under subsection (a) shall—

12 (A) require providers of location-based  
13 services and applications to inform customers,  
14 with clear and conspicuous notice, about their  
15 policies on the collection, use, disclosure of, re-  
16 tention of, and access to customer location in-  
17 formation;

18 (B) require providers of location-based  
19 services and applications to obtain a customer’s  
20 express authorization before—

21 (i) collecting, using, or retaining the  
22 customer’s location information; or

23 (ii) disclosing or permitting access to  
24 the customer’s location information to any  
25 person who is not a party to, or who is not  
26 necessary to the performance of, the serv-

1           ice contract between the customer and  
2           such provider;

3           (C) require that all providers of location-  
4           based services or applications—

5                 (i) restrict any collection, use, disclo-  
6                 sure of, retention of, and access to cus-  
7                 tomer location information to the specific  
8                 purpose that is the subject of the express  
9                 authorization of the customer concerned;  
10                and

11               (ii) not subsequently release a cus-  
12               tomer's location information for any pur-  
13               pose beyond the purpose for which the cus-  
14               tomer provided express authorization;

15           (D) ensure the security and integrity of lo-  
16           cation data, and give customers reasonable ac-  
17           cess to their location data for purposes of  
18           verifying the accuracy of, or deleting, such data;

19           (E) be technology neutral to ensure uni-  
20           form privacy rules and expectations and provide  
21           the framework for fair competition among simi-  
22           lar services;

23           (F) require that aggregated location infor-  
24           mation not be disaggregated through any

1 means into individual location information for  
2 any commercial purpose; and

3 (G) not impede customers from readily uti-  
4 lizing location-based services or applications.

5 (2) PERMITTED USES.—The rules prescribed  
6 under subsection (a) may permit the collection, use,  
7 retention, disclosure of, or access to a customer’s lo-  
8 cation information without prior notice or consent to  
9 the extent necessary to—

10 (A) provide the service from which such in-  
11 formation is derived, or to provide the location-  
12 based service that the customer is accessing;

13 (B) initiate, render, bill, and collect for the  
14 location-based service or application;

15 (C) protect the rights or property of the  
16 provider of the location-based service or applica-  
17 tion, or protect customers of the service or ap-  
18 plication from fraudulent, abusive, or unlawful  
19 use of, or subscription to, the service or applica-  
20 tion;

21 (D) produce aggregate location informa-  
22 tion; and

23 (E) comply with an appropriate court  
24 order.

1           (3) ADDITIONAL REQUIREMENT.—Under the  
2 rules prescribed under subsection (a), any third  
3 party receiving, or receiving access to, a customer’s  
4 location information from a provider of location serv-  
5 ices or applications pursuant to the express author-  
6 ization of the customer, shall not disclose or permit  
7 access to such information to any other person with-  
8 out the express authorization of the customer.

9           (4) EXPRESS AUTHORIZATION.—

10           (A) FORM.—For purposes of the rules pre-  
11 scribed under subsection (a) and section 222(f)  
12 of the Communications Act of 1934 (47 U.S.C.  
13 222(f)), the Commission shall specify the ap-  
14 propriate methods, whether technological or  
15 otherwise, by which a customer may provide ex-  
16 press prior authorization. Such methods may  
17 include a written or electronically signed service  
18 agreement or other contractual instrument.

19           (B) MODIFICATION OR REVOCATION.—  
20 Under the rules prescribed under subsection  
21 (a), a customer shall have the power to modify  
22 or revoke at any time an express authorization  
23 given by the customer under the rules.

24           (c) APPLICATION OF RULES.—The rules prescribed  
25 by the Commission under subsection (a) shall apply to any

1 person that provides a location-based service or applica-  
2 tion, whether or not such person is also a provider of com-  
3 mercial mobile service (as that term is defined in section  
4 332(d) of the Communications Act of 1934 (47 U.S.C.  
5 332(d)).

6 (d) RELATIONSHIP TO WIRELESS COMMUNICATIONS  
7 AND PUBLIC SAFETY ACT OF 1999.—The rules prescribed  
8 by the Commission under subsection (a) shall be con-  
9 sistent with the amendments to section 222 of the Com-  
10 munications Act of 1934 (47 U.S.C. 222) made by section  
11 5 of the Wireless Communications and Public Safety Act  
12 of 1999 (Public Law 106–81; 113 Stat. 1288), including  
13 the provisions of section 222(d)(4) of the Communications  
14 Act of 1934, as so amended, permitting use, disclosure,  
15 and access to location information by public safety, fire  
16 services, and other emergency services providers for pur-  
17 poses specified in subparagraphs (A), (B), and (C) of such  
18 section 222(d)(4).

19 (e) STATE AND LOCAL REQUIREMENTS.—

20 (1) IN GENERAL.—No State or local govern-  
21 ment may adopt or enforce any law, regulation, or  
22 other legal requirement addressing the privacy of  
23 wireless location information that is inconsistent  
24 with the rules prescribed by the Commission under  
25 subsection (a).



1           (2) PREEMPTION.—Any law, regulation, or re-  
2           quirement referred to in paragraph (1) that is in ef-  
3           fect on the date of the enactment of this Act shall  
4           be preempted and superseded as of the effective date  
5           of the rules prescribed by the Commission under  
6           subsection (a).

7           (f) DEFINITIONS.—In this section:

8           (1) AGGREGATE LOCATION INFORMATION.—The  
9           term “aggregate location information” means a col-  
10          lection of location data relating to a group or cat-  
11          egory of customers from which individual customer  
12          identities have been removed.

13          (2) CUSTOMER.—The term “customer”, in the  
14          case of the provision of a location-based service or  
15          application with respect to a device, means the per-  
16          son entering into the contract or agreement with the  
17          provider of the location-based service or application  
18          for provision of the location-based service or applica-  
19          tion for the device.

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