AN ACT relating to privacy; prohibiting a person from collecting, using, storing or disclosing geolocation information from a location-based application on an electronic communication device unless certain conditions are met; authorizing a private right of action; providing that such collection, use, storage or disclosure constitutes a deceptive trade practice; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:
This bill enacts provisions governing the collection, use, storage and disclosure of geolocation information from a location-based application on an electronic communication device.

Section 6 of this bill prohibits a person from collecting, using, storing or disclosing geolocation information from a location-based application on another person’s electronic communication device unless the other person has given his or her express consent after certain disclosures are made. Section 6 authorizes a person to collect, use, store or disclose geolocation information from a location-based application without express and informed consent to allow a parent or guardian to locate his or her child, to allow a guardian to locate his or her ward and for the provision of fire, medical, public safety or other emergency services.

Section 5 of this bill exempts certain health care providers, financial institutions and telecommunication providers from the requirements of this bill.

Section 7 of this bill authorizes a person aggrieved by a violation of the provisions of this bill to bring a civil action to recover certain damages or other legal or equitable relief. Section 7 further requires the court to award costs and reasonable attorney’s fees to a person who brings such an action and prevails.
Section 8 of this bill makes a violation of the provisions of this bill a deceptive trade practice under provisions of existing law. Section 9 provides that any provision of an agreement that seeks to modify or waive the provisions of this bill is void and unenforceable. Section 10 of this bill provides that the provisions of this bill apply only to a location-based application created or modified after the effective date of this bill, which is October 1, 2017.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 597 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 9, inclusive, of this act.

Sec. 2. As used in sections 2 to 9, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 and 4 of this act have the meanings ascribed to them in those sections.

Sec. 3. “Geolocation information” means information that:
1. Is not the contents of a communication;
2. Is generated by or derived from, in whole or in part, the operation of an electronic communication device, including, without limitation, a cellular telephone, personal digital assistant or laptop computer; and
3. Is sufficient to determine the geographic location of the device.

The term does not include an Internet protocol address.

Sec. 4. “Location-based application” means a software application that collects, uses or stores geolocation information.

Sec. 5. 1. Sections 2 to 9, inclusive, of this act do not apply to:
(a) A health care provider or other person subject to the provisions of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as amended, and any regulations adopted pursuant thereto.
(b) A financial institution or affiliate of a financial institution that is subject to the privacy and security provisions of the Gramm-Leach-Bliley Act, 15 U.S.C. §§ 6801 et seq.
(c) A telecommunication provider.

2. As used in this section, “telecommunication provider” has the meaning ascribed to it in NRS 711.131.

Sec. 6. 1. Except as otherwise provided in subsection 2 and section 5 of this act, a person shall not collect, use, store or disclose geolocation information from a location-based application on the electronic communication device of another person unless the person collecting, using, storing or disclosing
the geolocation information obtains the express consent of the other person after informing the other person in writing:

(a) That his or her geolocation information will be collected, used, stored or disclosed;

(b) Of the specific purposes for which his or her geolocation information will be collected, used, stored or disclosed; and

(c) Of a hyperlink or comparably easily accessible means to access the information specified in paragraphs (a) and (b).

2. A person may collect, use, store or disclose geolocation information from a location-based application on an electronic communication device of another person without express and informed consent from the other person if the collection, use, storage or disclosure is:

(a) To allow a parent or guardian to locate his or her child if the child is under 18 years of age and is not emancipated;

(b) To allow a guardian to locate his or her ward; or

(c) For the provision of fire, medical, public safety or other emergency services.

Sec. 7. 1. A person aggrieved by a violation of the provisions of sections 2 to 9, inclusive, of this act may bring a civil action against a person who violated those provisions to recover liquidated damages of $1,000 or actual damages, whichever is greater, and any other remedy available under the law or in equity appropriate to remedy any violation of the provisions of sections 2 to 9, inclusive, of this act.

2. If the person who brought an action pursuant to this section prevails in such an action, the court shall award the person costs and reasonable attorney’s fees.

Sec. 8. 1. A violation of sections 2 to 9, inclusive, of this act constitutes a deceptive trade practice for the purposes of NRS 598.0903 to 598.0999, inclusive.

2. In an action brought by the Attorney General pursuant to NRS 598.0903 to 598.0999, inclusive, to enforce the provisions of sections 2 to 9, inclusive, of this act the court may order the award of treble damages to any person aggrieved by a violation of the provisions of sections 2 to 9, inclusive, of this act.

Sec. 9. Any condition, stipulation or provision in a contract that seeks to waive or modify a right, obligation or liability set forth in the provisions of sections 2 to 9, inclusive, of this act or that in any way conflicts with the provisions of sections 2 to 9, inclusive, of this act is against public policy and is void and unenforceable.
Sec. 10. The provisions of this act apply only to a location-based application, as defined in section 4 of this act, which is created or modified on or after October 1, 2017.