2016 Regular Session

HOUSE BILL NO. 254

BY REPRESENTATIVE HAVARD

1	AN ACT
2	To amend and reenact R.S. 15:1302(2) and 1316(C) and (D) and to enact R.S. 14:222.3 and
3	R.S. 15:1302(3.1) and (16.1), 1316(E), 1317, and 1318, relative to electronic
4	surveillance; to create the crime of unlawful use of a cellular tracking device; to
5	provide definitions; to provide criminal penalties; to provide exceptions; to provide
6	for applicability; to provide procedures for use of a cellular tracking device by law
7	enforcement officers and investigative officers; and to provide for related matters.
8	Be it enacted by the Legislature of Louisiana:
9	Section 1. R.S. 14:222.3 is hereby enacted to read as follows:
10	§222.3. Unlawful use of a cellular tracking device; penalty
11	A. It shall be unlawful for any person to possess a cellular tracking device
12	or to use a cellular tracking device for the purpose of collecting, intercepting,
13	accessing, transferring, or forwarding the data transmitted or received by the
14	communications device, or stored on the communications device of another without
15	the consent of a party to the communication and by intentionally deceptive means.
16	B. For the purposes of this Section:
17	(1) "Cellular tracking device" means a device that transmits or receives radio
18	waves to or from a communications device in a manner that interferes with the
19	normal functioning of the communications device or communications network and
20	that can be used to intercept, collect, access, transfer, or forward the data transmitted
21	or received by the communications device, or stored on the communications device;
22	includes an international mobile subscriber identity (IMSI) catcher or other cell
23	phone or telephone surveillance or eavesdropping device that mimics a cellular base
24	station and transmits radio waves that cause cell phones or other communications

Page 1 of 10

1	devices in the area to transmit or receive radio waves, electronic data, location data,
2	information used to calculate location, identifying information, communications
3	content, or metadata, or otherwise obtains this information through passive means,
4	such as through the use of a digital analyzer or other passive interception device; and
5	does not include any device used or installed by an electric utility solely to the extent
6	such device is used by that utility to measure electrical usage, to provide services to
7	customers, or to operate the electric grid.
8	(2) "Telecommunications device" means any type of instrument, device, or
9	machine that is capable of transmitting or receiving telephonic, electronic, radio,
10	text, or data communications, including but not limited to a cellular telephone, a text-
11	messaging device, a personal digital assistant, a computer, or any other similar
12	wireless device that is designed to engage in a call or communicate text or data. It
13	does not include citizens band radios, citizens band radio hybrids, commercial two-
14	way radio communication devices, or electronic communication devices with a push-
15	to-talk function.
16	C. The provisions of this Section shall not apply to any of the following:
17	(1) An investigative or law enforcement officer, judicial officer, probation
18	or parole officer, or employee of the Department of Public Safety and Corrections
19	using a cellular tracking device when that person is engaged in the lawful
20	performance of official duties and in accordance with other state or federal law,
21	including using a cellular tracking device in accordance with the Electronic
22	Surveillance Act and pursuant to a court order as provided for in R.S. 15:1317 and
23	<u>1318.</u>
24	(2) An operator of a switchboard, or any officer, employee, or agent of any
25	electronic communications carrier, whose facilities are used in the transmission of
26	a wire communication, to intercept, disclose, or use that communication in the
27	
	normal course of his employment while engaged in any activity which is necessary
28	normal course of his employment while engaged in any activity which is necessary to his service or to the protection of the rights or property of the carrier of such

Page 2 of 10

1	service observing or random monitoring, except for mechanical or service quality
2	control checks.
3	(3) An officer, employee, or agent of the Federal Communications
4	Commission, in the normal course of his employment and in discharge of the
5	monitoring responsibilities exercised by the commission in the enforcement of
6	Chapter 5 of Title 47 of the United States Code.
7	(4) The owner of a motor vehicle, including the owner of a vehicle available
8	for rent, who has consented to the use of the tracking device with respect to that
9	vehicle.
10	(5) The lessor or lessee of a motor vehicle and the person operating the
11	motor vehicle who have consented to the use of a tracking device with respect to that
12	vehicle.
13	(6) An automobile manufacturer, its affiliates, subsidiaries, or a related
14	telematics provider installing a feature that could be considered a tracking device
15	with respect to that vehicle.
16	(7)(a) A parent or legal guardian of a minor child whose location or
17	movements are being tracked by the parent or legal guardian.
18	(b) When the parents of the minor child are living separate and apart or are
19	divorced from one another, this exception shall apply only if both parents consent to
20	the tracking of the minor child's location and movements, unless one parent has been
21	granted sole custody, in which case consent of the noncustodial parent shall not be
22	required.
23	(8) The Department of Public Safety and Corrections tracking an offender
24	who is under its custody or supervision.
25	(9) Any provider of a commercial mobile radio service (CMRS), such as a
26	mobile telephone service or vehicle safety or security service, which allows the
27	provider of CMRS to determine the location or movement of a device provided to
28	a customer of such service.
29	(10) Any commercial motor carrier operation.

Page 3 of 10

1	(11) A provider of a mobile application or similar technology that a consumer
2	affirmatively chooses to download onto the consumer's wireless device, or any
3	technology used in conjunction with the mobile application or similar technology.
4	(12) Any use of technology provided by an entity based upon the prior
5	consent of a consumer for such use.
6	(13) A person acting in good faith on behalf of a business entity for a
7	legitimate business purpose.
8	(14) A law enforcement agency conducting training or calibration and
9	maintenance of tracking equipment on the cell phone of another law enforcement
10	officer who has given consent for his phone to be tracked for training or calibration
11	and maintenance purposes.
12	(15) Any person who has more than one cellular phone or similar wireless (15)
13	telecommunications device as part of a wireless service plan contract and who is
14	ascertaining or attempting to ascertain the location of any telecommunications device
15	that is part of that plan.
16	(16) Any person who has a cellular phone or similar wireless
17	telecommunications device and wireless service plan contract, or a wireless service
18	provider at the person's direction, who is ascertaining or attempting to ascertain the
19	location of any telecommunications device that is part of that plan and that has been
20	lost or stolen.
21	D. Whoever violates the provisions of this Section shall be fined not more
22	than three thousand dollars, imprisoned with or without hard labor for not more than
23	two years, or both.
24	Section 2. R.S. 15:1302(2) and 1316(C) and (D) are hereby amended and reenacted
25	and R.S. 15:1302(3.1) and (16.1), 1316(E), 1317, and 1318 are hereby enacted to read as
26	follows:
27	§1302. Definitions
28	As used in this Chapter:
29	* * *

Page 4 of 10

ENROLLED

1	(2) "Attorney for a governmental entity" means an attorney on the staff or
2	under the direct supervision of the district attorney authorized by law to prosecute
3	such offenses as are subject of the pen register, or a trap and trace device, or a
4	cellular tracking device.
5	* * *
6	(3.1) "Cellular tracking device" means a device that transmits or receives
7	radio waves to or from a communications device in a manner that interferes with the
8	normal functioning of the communications device or communications network and
9	that can be used to intercept, collect, access, transfer, or forward the data transmitted
10	or received by the communications device, or stored on the communications device;
11	includes an international mobile subscriber identity (IMSI) catcher or other cell
12	phone or telephone surveillance or eavesdropping device that mimics a cellular base
13	station and transmits radio waves that cause cell phones or other communications
14	devices in the area to transmit or receive radio waves, electronic data, location data,
15	information used to calculate location, identifying information, communications
16	content, or metadata, or otherwise obtains this information through passive means,
17	such as through the use of a digital analyzer or other passive interception device; and
18	does not include any device used or installed by an electric utility solely to the extent
19	such device is used by that utility to measure electrical usage, to provide services to
20	customers, or to operate the electric grid.
21	* * *
22	(16.1) "Telecommunications device" or "communications device" means any
23	type of instrument, device, or machine that is capable of transmitting or receiving
24	telephonic, electronic, radio, text, or data communications, including but not limited
25	to a cellular telephone, a text-messaging device, a personal digital assistant, a
26	computer, or any other similar wireless device that is designed to engage in a call or
27	communicate text or data. It does not include citizens band radios, citizens band
28	radio hybrids, commercial two-way radio communication devices, or electronic
29	communication devices with a push-to-talk function.
30	* * *

Page 5 of 10

1	§1316. Assistance in installation and use of pen register, or a trap and trace device,
2	or a cellular tracking device
3	* * *
4	C. Upon receipt of a court order issued pursuant to the request of an
5	investigative or law enforcement agency authorized to install and use a cellular
6	tracking device pursuant to this Part, a provider of a wire or electronic
7	communication service, landlord, custodian, or other person shall furnish such
8	investigative or law enforcement officer with all information, facilities, and technical
9	assistance necessary, if applicable, to accomplish the placement by the applicant of
10	a cellular tracking device unobtrusively and with minimal interference with the
11	services that the person so ordered by the court accords the party with respect to
12	whom the installation and use is to take place, if such assistance is directed by a
13	court order or investigative or law enforcement agency pursuant to the provisions of
14	R.S. 15:1317 and 1318.
15	C.D. A provider of a wire or electronic communication service, landlord,
16	custodian, or other person who furnishes facilities or technical assistance pursuant
17	to this Section shall be compensated for such reasonable expenses incurred in
18	providing such facilities and assistance.
19	D. <u>E.</u> No cause of action shall lie in any Louisiana court against any provider
20	of a wire or electronic communication service, its officers, employees, agents, or
21	other specified persons for providing information, facilities, or assistance in
22	accordance with the terms of a court order under pursuant to this Part.
23	§1317. Application for an order for use of a cellular tracking device
24	A. An investigative or law enforcement officer shall not use a cellular
25	tracking device unless either of the following occur:
26	(1) The investigative or law enforcement agency has obtained an order
27	issued by a court to use the tracking instrument.
28	(2) Exigent circumstances exist that necessitate using the tracking instrument
29	without first obtaining a court order.

Page 6 of 10

1	(3) If an investigative or law enforcement agency uses a cellular tracking
2	device based upon the existence of exigent circumstances, the investigative or law
3	enforcement agency shall seek to obtain an order issued by a court not later than
4	seventy-two hours after the initial use of the cellular tracking device.
5	B. An application made pursuant to this Section shall include:
6	(1) The identity of the investigative or law enforcement officer making the
7	application and the identity of the law enforcement agency conducting the
8	investigation.
9	(2) A certification by the applicant attesting that the information sought is
10	relevant to an ongoing felony criminal investigation being conducted by that agency,
11	and includes in that certification a recital of facts or information constituting the
12	reasonable suspicion upon which the application is based.
13	§1318. Issuance of an order for a cellular tracking device
14	A. Upon an application made pursuant to R.S. 15:1317, the court may enter
15	an ex parte order authorizing the use of the cellular tracking device if the court finds
16	that the investigative or law enforcement officer has certified to the court that the
17	information likely to be obtained by such use is relevant to an ongoing felony
18	criminal investigation, and that the certification does include reasonable suspicion
19	as required by R.S. 15:1317.
20	B. An order issued pursuant to the provisions of this Section shall specify,
21	if applicable:
22	(1) The telephone number or other unique subscriber account number
23	identifying the wire or electronic communications service account used by the device
24	to which the cellular tracking device is to be attached or used.
25	(2) The physical location, if known, of the device for which the cellular (2)
26	tracking device is to be attached or used.
27	(3) The type of device to which the cellular tracking device is to be attached
28	or used.

1	(4) All categories of metadata, data, or information to be collected by the
2	cellular tracking device from the targeted device including but not limited to
3	geolocation information.
4	(5) Whether or not the cellular tracking device will incidentally collect
5	metadata, data, or information from any parties or devices not specified in the court
6	order, and if so, what categories of information or metadata will be collected.
7	(6) Any disruptions to access or use of a communications or internet access
8	network that may be created by use of the cellular tracking device.
9	(7) A statement of the offense to which the information is likely to be
10	obtained by the cellular tracking device.
11	C. An order issued pursuant to the provisions of this Section shall direct,
12	upon request of the applicant, the furnishing of information, facilities, and technical
13	assistance necessary to accomplish the use of the cellular tracking device under R.S.
14	<u>15:1316 and 1317.</u>
15	D.(1) An order issued pursuant to the provisions of this Section shall
16	authorize the use of a cellular tracking device for a period not to exceed sixty days.
17	(2) Extensions of such an order may be granted, but only upon an application
18	for an order pursuant to R.S. 15:1317 and upon the judicial finding required by the
19	provisions of this Section. The period of extension shall be for a period not to
20	exceed sixty days.
21	E. An order authorizing or approving the use of a cellular tracking device
22	shall direct that:
23	(1) The order be sealed until otherwise ordered by the court.
24	(2) The person who has been ordered by the court to provide assistance to
25	the applicant may disclose the existence of the cellular tracking device to their own
26	legal counsel, but shall not disclose the existence of the cellular tracking device or
27	the existence of the investigation to the listed subscriber, or to any other person,
28	unless or until otherwise ordered by the court.

ENROLLED

1	F. The head of each law enforcement agency possessing or making
2	application for the use of a cellular tracking device shall establish and implement
3	procedures which shall provide for and ensure the following:
4	(1) That only the chief officer of the law enforcement agency or specifically (1)
5	authorized representative of the agency chief shall have the authority to authorize the
6	use of a cellular tracking device and only pursuant to this Section and R.S. 15:1317.
7	(2) That no cellular tracking device in the possession of the law enforcement
8	agency shall be subject to unauthorized use.
9	G. A law enforcement agency authorized to use a cellular tracking device in
10	accordance with this Part shall do all of the following, if applicable:
11	(1) Take all steps necessary to limit the collection of any information or
12	metadata to the target specified in the applicable court order.
13	(2) Take all steps necessary to permanently delete any information or
14	metadata collected from any party not specified in the applicable court order
15	immediately following such collection and shall not transmit, use, or retain such
16	information or metadata for any purpose whatsoever.
17	(3) Delete any information or metadata collected from the target specified
18	in the court order within thirty-five days if there is no probable cause to support the
19	belief that such information or metadata is evidence of a crime.
20	H. For the purposes of this Section and R.S. 15:1317, "investigative or law
21	enforcement officer" means:
22	(1) Any commissioned officer of the office of state police.
23	(2) Any full-time commissioned city police of a municipality of this
24	state.
25	(3) Any sheriff or deputy sheriff of a parish of this state who has been
26	specifically designated by the sheriff of that parish as responsible for preparation of
27	applications for use of cellular tracking devices.
28	(4) The attorney general, or any assistant attorney general or attorney
29	general's investigator who has been specifically designated by the attorney general
30	as responsible for preparation of applications for use of cellular tracking devices.

Page 9 of 10

 1
 (5) A federal law enforcement agent having the power to arrest for a

 2
 violation of federal law.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____