



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

SB1918

Introduced 2/15/2013, by Sen. Daniel Biss

SYNOPSIS AS INTRODUCED:

New Act

Creates the Freedom From Cell Phone Location Surveillance Act. Provides that a law enforcement agent may not obtain location information without a search warrant based on probable cause issued under the search warrant provisions of the Code of Criminal Procedure of 1963, except as otherwise provided in the Act. Provides that a law enforcement agent may obtain location information: (1) in order to respond to a user's call for emergency services; (2) with the express consent of the subscriber or user of the electronic communications device concerned; or (3) when a law enforcement agent reasonably believes that obtaining location information without delay is necessary to protect a person in an emergency situation involving a clear and present danger of imminent death or great bodily harm, and the request for disclosure of location is narrowly tailored to address the emergency situation, subject to certain limitations. Provides that except as proof of a violation of the Act, no evidence obtained in violation of the Act shall be admissible in any criminal, civil, administrative, or other proceeding, unless the State can prove that evidence obtained would inevitably have been discovered by lawful means as a part of the ongoing investigation.

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FISCAL NOTE ACT
MAY APPLY

STATE MANDATES
ACT MAY REQUIRE
REIMBURSEMENT

A BILL FOR

1 AN ACT concerning law enforcement.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Freedom From Cell Phone Location Surveillance Act.

6 Section 5. Definitions. For the purpose of this Act:

7 "Adverse result" means:

8 (1) endangering the life or physical safety of a
9 person;

10 (2) flight from prosecution;

11 (3) destruction of or tampering with evidence;

12 (4) intimidation of potential witnesses; or

13 (5) otherwise seriously jeopardizing an investigation
14 or unduly delaying a trial.

15 "Electronic communication service" means any service which
16 provides to users the ability to send or receive wire or
17 electronic communications.

18 "Electronic device" means any device that enables access
19 to, or use of an electronic communication service, remote
20 computing service, or location information service.

21 "Law enforcement agent" means any law enforcement officer
22 of the United States, or of the State or political subdivision
23 of the State, including, but not limited to, a law enforcement

1 entity or any other investigative entity, agency, department,
2 division, bureau, board, or commission, or any person acting or
3 purporting to act for or on behalf of a State or local agency.

4 "Location information" means any information concerning
5 the location of an electronic device that, in whole or in part,
6 is generated by or derived from the operation of that device.

7 "Location information service" means a global positioning
8 service or other mapping, locational, or directional
9 information service.

10 "Remote computing service" means the provision to the
11 public of computer storage or processing services by means of
12 an electronic communications system.

13 "Service provider" means the provider of an electronic
14 communication service, remote computing service, or location
15 information service.

16 Section 10. Warrant. Except as provided in Section 15, a
17 law enforcement agent may not obtain location information
18 without a search warrant based on probable cause issued under
19 Section 108-4 of the Code of Criminal Procedure of 1963.

20 Section 15. Emergency situation exceptions.
21 Notwithstanding any other provisions of this Act, any law
22 enforcement agent may obtain location information:

23 (1) in order to respond to a user's call for emergency
24 services;

1 (2) with the express consent of the subscriber or user
2 of the electronic communications device concerned; or

3 (3) when a law enforcement agent reasonably believes
4 that obtaining location information without delay is
5 necessary to protect a person in an emergency situation
6 involving a clear and present danger of imminent death or
7 great bodily harm, and the request for disclosure of
8 location is narrowly tailored to address the emergency
9 situation, subject to the following limitations:

10 (A) the request shall document the factual basis
11 for believing that an emergency involving clear and
12 present danger of imminent death or great bodily harm
13 requires obtaining the information relating to the
14 emergency without delay; and

15 (B) an application for location information shall
16 be submitted to the service provider and retained by
17 the lead agency for a minimum of 24 months. The
18 location request document must be provided to the
19 State's Attorney in the county in which the lead police
20 agency involved in the investigation is located within
21 48 hours of the time that the law enforcement agency
22 obtains access to records under this paragraph (3). If
23 an application for location is denied by the service
24 provider or the State's Attorney in the county in which
25 the lead police agency involved in the investigation is
26 located, or both, the requesting agency shall retain

1 the application and any documentation regarding its
2 denial for a minimum of 2 years.

3 (C) subsequent or ongoing use of location
4 information as described in subparagraph (B) of this
5 paragraph (3) beyond a 48-hour time span requires a
6 search warrant. If the application for the search
7 warrant is denied, the location information shall not
8 be admissible as evidence in a court of law, unless the
9 State can prove that evidence obtained would
10 inevitably have been discovered by lawful means as a
11 part of the ongoing investigation.

12 Section 20. Notice.

13 (a) Unless delayed notice is ordered under subsection (b),
14 not later than 3 days after a law enforcement agent receives
15 location information under Section 10 or 15 of this Act, the
16 lead law enforcement agency shall serve upon, or deliver by
17 registered or first-class mail, electronic mail, or other means
18 reasonably calculated to be effective to the electronic device
19 user or subscriber official notice that informs the electronic
20 device user or subscriber:

21 (1) of the nature of the law enforcement inquiry with
22 reasonable specificity;

23 (2) that location information maintained for the
24 electronic device user or subscriber was supplied to or
25 requested by that law enforcement agent and the date on

1 which the request was made or the information supplied;

2 (3) if the location information was obtained from a
3 service provider or other third party, the identity of
4 service provider or the third party from which the
5 information was obtained;

6 (4) whether notification to the electronic device user
7 or subscriber was delayed under subsection (b); and

8 (5) if applicable, the adverse result justifying the
9 order for delayed notification as defined in Section 5 of
10 this Act.

11 (b) A law enforcement agency, acting under Section 10 or 15
12 of this Act, may include in the application a request for an
13 order delaying the notification required under subsection (a)
14 for a period not to exceed 90 days, and the court shall issue
15 the order if the court determines that there is reason to
16 believe that notification of the existence of the warrant may
17 have an adverse result.

18 (c) Upon expiration of the period of delay granted under
19 this Section, the law enforcement agency shall provide the
20 electronic device user or subscriber with official notice
21 required under, and by the means described in, subsection (a).

22 (d) A law enforcement agency acting under Section 10 or 15
23 of this Act may include in the application a request for an
24 order directing a service provider to which the application or
25 order, or both, is directed not to notify any other person of
26 the existence of the application or order, or both, for a

1 period of not more than 90 days, and the court shall issue the
2 order if the court determines that there is reason to believe
3 that notification of the existence of the warrant may have an
4 adverse result.

5 (e) The court may, upon application, grant one or more
6 extensions of orders granted under subsections (b) and (d) for
7 an additional 90 days.

8 Section 25. Suppression.

9 (a) Except as proof of a violation of this Act, no evidence
10 obtained in violation of this Act shall be admissible in any
11 criminal, civil, administrative, or other proceeding, unless
12 the State can prove that evidence obtained would inevitably
13 have been discovered by lawful means as a part of the ongoing
14 investigation.

15 (b) Any location information obtained under subparagraph
16 (B) of paragraph (3) of Section 15 or evidence derived
17 therefrom shall not be received in evidence or otherwise
18 disclosed in any trial, hearing, or other proceeding in a
19 federal or State court unless each party, not less than 10 days
20 before the trial, hearing, or proceeding, has been furnished
21 with a copy of the application to the service provider under
22 which the information was obtained. This 10-day period may be
23 waived by the judge if he or she finds that it was not possible
24 to furnish the party with the above information 10 days before
25 the trial, hearing, or proceeding and that the party will not

1 be prejudiced by the delay in receiving the information.

2 (c) Any location information obtained under Section 10 or
3 subparagraph (C) of paragraph (3) of Section 15 of this Act or
4 evidence derived therefrom shall not be received in evidence or
5 otherwise disclosed in any trial, hearing, or other proceeding
6 in a federal or State court unless each party, not less than 10
7 days before the trial, hearing, or proceeding, has been
8 furnished with a copy of the warrant and accompanying
9 application under which the information was obtained. This
10 10-day period may be waived by the judge if he or she finds
11 that it was not possible to furnish the party with the above
12 information 10 days before the trial, hearing, or proceeding
13 and that the party will not be prejudiced by the delay in
14 receiving the information.