



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

SB2808

Introduced 1/30/2014, by Sen. Daniel Biss

SYNOPSIS AS INTRODUCED:

New Act

Creates the Freedom From Location Surveillance Act. Provides that a law enforcement agency shall not obtain current or future location information pertaining to a person or his or her effects without first obtaining a court order based on probable cause to believe that the person whose location information is sought has committed, is committing, or is about to commit a crime or the effect is evidence of a crime, or if the location information is authorized under an arrest warrant issued under the Code of Criminal Procedure of 1963 to aid in the apprehension or the arrest of the person named in the arrest warrant. An order issued under a finding of probable cause must be limited to a period of 60 days, renewable by the judge upon a showing of good cause for subsequent periods of 60 days. Provides exemptions. Provides that if the court finds by a preponderance of the evidence that a law enforcement agency obtained current or future location information pertaining to a person or his or her effects in violation of the Act, then the information shall be presumed to be inadmissible in any judicial or administrative proceeding. Provides that the State may overcome this presumption by proving the applicability of a judicially recognized exception to the exclusionary rule of the Fourth Amendment to the United States Constitution or Article I, Section 6 of the Illinois Constitution, or by a preponderance of the evidence that the law enforcement officer was acting in good faith and reasonably believed that one or more of the exceptions existed at the time the location information was obtained. Effective immediately.

LRB098 15865 RLC 50908 b

1 AN ACT concerning location surveillance.

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 Location Surveillance Act.

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

7 "Electronic device" means any device that enables access
8 to, or use of:

9 (1) an electronic communication service that provides
10 the ability to send or receive wire or electronic
11 communications;

12 (2) a remote computing service that provides computer
13 storage or processing services by means of an electronic
14 communications system; or

15 (3) a location information service such as a global
16 positioning service or other mapping, locational, or
17 directional information service.

18 "Electronic device" does not mean devices used by a
19 governmental agency or by a company operating under a contract
20 with a governmental agency for toll collection, traffic
21 enforcement, or license plate reading.

22 "Law enforcement agency" means any agency of this State or
23 a political subdivision of this State which is vested by law

1 with the duty to maintain public order or enforce criminal
2 laws.

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

6 "Social networking website" has the same meaning ascribed
7 to the term in paragraph (4) of subsection (b) of Section 10 of
8 the Right to Privacy in the Workplace Act.

9 Section 10. Court Authorization. Except as provided in
10 Section 15, a law enforcement agency shall not obtain current
11 or future location information pertaining to a person or his or
12 her effects without first obtaining a court order based on
13 probable cause to believe that the person whose location
14 information is sought has committed, is committing, or is about
15 to commit a crime or the effect is evidence of a crime, or if
16 the location information is authorized under an arrest warrant
17 issued under Section 107-9 of the Code of Criminal Procedure of
18 1963 to aid in the apprehension or the arrest of the person
19 named in the arrest warrant. An order issued under a finding of
20 probable cause under this Section must be limited to a period
21 of 60 days, renewable by the judge upon a showing of good cause
22 for subsequent periods of 60 days.

23 Section 15. Exceptions. This Act does not prohibit a law
24 enforcement agency from obtaining current or future location

1 information:

2 (1) to respond to a call for emergency services concerning
3 the user or possessor of an electronic device;

4 (2) with the lawful consent of the person in actual or
5 constructive possession of the item being tracked by the
6 electronic device;

7 (3) to lawfully obtain location information broadly
8 available to the general public without a court order and the
9 location information is posted on a social networking website,
10 or is metadata attached to images and video, or to determine
11 the location of an Internet Protocol (IP) address through a
12 publicly available service;

13 (4) to obtain location information generated by an
14 electronic device used as a condition of release from a penal
15 institution or as a condition of pre-trial release;

16 (5) to aid in the location of a missing person; or

17 (6) in emergencies as follows:

18 (A) Notwithstanding any other provisions of this Act,
19 any investigative or law enforcement officer may obtain
20 location information in an emergency situation as defined
21 in this paragraph (6). The emergency obtaining of location
22 information must be in accordance with the provisions of
23 this paragraph (6), and is allowed only when there was not
24 previous notice of the emergency to the law enforcement
25 officer sufficient to obtain prior judicial approval, and
26 the officer reasonably believes that an order permitting

1 the obtaining of location information would issue were
2 there prior judicial review. An emergency situation exists
3 when:

4 (i) the use of the electronic device is necessary
5 for the protection of the investigative or law
6 enforcement officer or a person acting at the direction
7 of law enforcement; or

8 (ii) the situation involves:

9 (I) a clear and present danger of imminent
10 death or great bodily harm to persons resulting
11 from a kidnapping or the holding of a hostage by
12 force or the threat of the imminent use of force,
13 or the occupation by force or the threat of the
14 imminent use of force of any premises, place,
15 vehicle, vessel, or aircraft;

16 (II) an abduction investigation;

17 (III) conspiratorial activities characteristic
18 of organized crime;

19 (IV) an immediate threat to national security
20 interest; or

21 (V) an ongoing attack on a computer comprising
22 a felony.

23 (B) In all emergency cases, an application for an order
24 approving the previous or continuing obtaining of location
25 information must be made within 72 hours of its
26 commencement. In the absence of the order, or upon its

1 denial, any continuing obtaining of location information
2 shall immediately terminate. In order to approve obtaining
3 location information, the judge must make a determination
4 (i) that he or she would have granted an order had the
5 information been before the court prior to the obtaining of
6 the location information and (ii) there was an emergency
7 situation as defined in this paragraph (6).

8 (C) In the event that an application for approval under
9 this paragraph (6) is denied the location information
10 obtained under this exception shall be treated as having
11 been obtained in violation of this Act.

12 Section 20. Admissibility. If the court finds by a
13 preponderance of the evidence that a law enforcement agency
14 obtained current or future location information pertaining to a
15 person or his or her effects in violation of Section 10 or 15
16 of this Act, then the information shall be presumed to be
17 inadmissible in any judicial or administrative proceeding. The
18 State may overcome this presumption by proving the
19 applicability of a judicially recognized exception to the
20 exclusionary rule of the Fourth Amendment to the United States
21 Constitution or Article I, Section 6 of the Illinois
22 Constitution, or by a preponderance of the evidence that the
23 law enforcement officer was acting in good faith and reasonably
24 believed that one or more of the exceptions identified in
25 Section 15 existed at the time the location information was

1 obtained.

2 Section 99. Effective date. This Act takes effect upon
3 becoming law.