

2016 Regular Session

HOUSE BILL NO. 254

BY REPRESENTATIVE HAVARD

CRIMINAL/PROCEDURE: Provides with respect to certain electronic tracking devices

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 use a cellular tracking device for the
12 purpose of collecting, intercepting, accessing, transferring, or forwarding the data
13 transmitted or received by the communications device, or stored on the
14 communications device of another without the consent of a party to the
15 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

1 that can be used to intercept, collect, access, transfer, or forward the data transmitted
2 or received by the communications device, or stored on the communications device;
3 includes an international mobile subscriber identity (IMSI) catcher or other cell
4 phone or telephone surveillance or eavesdropping device that mimics a cellular base
5 station and transmits radio waves that cause cell phones or other communications
6 devices in the area to transmit or receive radio waves, electronic data, location data,
7 information used to calculate location, identifying information, communications
8 content, or metadata, or otherwise obtains this information through passive means,
9 such as through the use of a digital analyzer or other passive interception device; and
10 does not include any device used or installed by an electric utility solely to the extent
11 such device is used by that utility to measure electrical usage, to provide services to
12 customers, or to operate the electric grid.

13 (2) "Telecommunications device" means any type of instrument, device, or
14 machine that is capable of transmitting or receiving telephonic, electronic, radio,
15 text, or data communications, including but not limited to a cellular telephone, a text-
16 messaging device, a personal digital assistant, a computer, or any other similar
17 wireless device that is designed to engage in a call or communicate text or data. It
18 does not include citizens band radios, citizens band radio hybrids, commercial two-
19 way radio communication devices, or electronic communication devices with a push-
20 to-talk function.

21 C. The provisions of this Section shall not apply to any of the following:

22 (1) An investigative or law enforcement officer, judicial officer, probation
23 or parole officer, or employee of the Department of Public Safety and Corrections
24 using a cellular tracking device when that person is engaged in the lawful
25 performance of official duties and in accordance with other state or federal law,
26 including using a cellular tracking device in accordance with the Electronic
27 Surveillance Act and pursuant to a court order as provided for in R.S. 15:1317 and
28 1318.

1 (2) An operator of a switchboard, or any officer, employee, or agent of any
2 electronic communications carrier, whose facilities are used in the transmission of
3 a wire communication, to intercept, disclose, or use that communication in the
4 normal course of his employment while engaged in any activity which is necessary
5 to his service or to the protection of the rights or property of the carrier of such
6 communication; however, such communications common carriers shall not utilize
7 service observing or random monitoring, except for mechanical or service quality
8 control checks.

9 (3) An officer, employee, or agent of the Federal Communications
10 Commission, in the normal course of his employment and in discharge of the
11 monitoring responsibilities exercised by the commission in the enforcement of
12 Chapter 5 of Title 47 of the United States Code.

13 (4) The owner of a motor vehicle, including the owner of a vehicle available
14 for rent, who has consented to the use of the tracking device with respect to that
15 vehicle.

16 (5) The lessor or lessee of a motor vehicle and the person operating the
17 motor vehicle who have consented to the use of a tracking device with respect to that
18 vehicle.

19 (6) An automobile manufacturer, its affiliates, subsidiaries, or a related
20 telematics provider installing a feature that could be considered a tracking device
21 with respect to that vehicle.

22 (7)(a) A parent or legal guardian of a minor child whose location or
23 movements are being tracked by the parent or legal guardian.

24 (b) When the parents of the minor child are living separate and apart or are
25 divorced from one another, this exception shall apply only if both parents consent to
26 the tracking of the minor child's location and movements, unless one parent has been
27 granted sole custody, in which case consent of the noncustodial parent shall not be
28 required.

1 such offenses as are subject of the pen register, ~~or~~ a trap and trace device, or a
2 cellular tracking device.

3 * * *

4 (3.1) "Cellular tracking device" means a device that transmits or receives
5 radio waves to or from a communications device in a manner that interferes with the
6 normal functioning of the communications device or communications network and
7 that can be used to intercept, collect, access, transfer, or forward the data transmitted
8 or received by the communications device, or stored on the communications device;
9 includes an international mobile subscriber identity (IMSI) catcher or other cell
10 phone or telephone surveillance or eavesdropping device that mimics a cellular base
11 station and transmits radio waves that cause cell phones or other communications
12 devices in the area to transmit or receive radio waves, electronic data, location data,
13 information used to calculate location, identifying information, communications
14 content, or metadata, or otherwise obtains this information through passive means,
15 such as through the use of a digital analyzer or other passive interception device; and
16 does not include any device used or installed by an electric utility solely to the extent
17 such device is used by that utility to measure electrical usage, to provide services to
18 customers, or to operate the electric grid.

19 * * *

20 (16.1) "Telecommunications device" or "communications device" means any
21 type of instrument, device, or machine that is capable of transmitting or receiving
22 telephonic, electronic, radio, text, or data communications, including but not limited
23 to a cellular telephone, a text-messaging device, a personal digital assistant, a
24 computer, or any other similar wireless device that is designed to engage in a call or
25 communicate text or data. It does not include citizens band radios, citizens band
26 radio hybrids, commercial two-way radio communication devices, or electronic
27 communication devices with a push-to-talk function.

28 * * *

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
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 15:1316 and 1317.

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 not disclose the existence of the cellular tracking device or the
26 existence of the investigation to the listed subscriber, or to any other person, unless
27 or until otherwise ordered by the court.

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
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 officer 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.

1 (4) The attorney general, or any assistant attorney general or attorney
 2 general's investigator who has been specifically designated by the attorney general
 3 as responsible for preparation of applications for use of cellular tracking devices.

4 (5) A federal law enforcement agent having the power to arrest for a
 5 violation of federal law.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 254 Reengrossed

2016 Regular Session

Havard

Abstract: Creates the crime of unlawful use of a cellular tracking device and provides for procedures for law enforcement and investigative officers to use such devices.

Proposed law creates the crime of unlawful use of a cellular tracking device. Provides exceptions for law enforcement and investigative officers, telecommunications employees, providers of devices consented to by the consumer, good faith actors on behalf of a business entity, mobile applications consented to by the consumer, law enforcement training exercises, and FCC employees in the performance of their duties.

Proposed law provides penalties of a fine of not more than \$3,000, imprisonment with or without hard labor for not more than two years, or both.

Present law provides procedures for law enforcement and investigative officers to obtain warrants from the court to use a trap and trace device or pen register (wire tapping equipment).

Proposed law retains present law and adds similar provisions for the use of cellular tracking devices.

(Amends R.S. 15:1302(2) and 1316(C) and (D); Adds R.S. 14:222.3 and R.S. 15:1302(3.1) and (16.1), 1316(E), 1317, and 1318)

Summary of Amendments Adopted by House

The House Floor Amendments to the engrossed bill:

1. Changes the definition of "cellular tracking device".
2. Adds an exception for technology which has been consented to by the consumer including mobile applications.
3. Adds an exception for a good faith actor on behalf of a business entity for a legitimate business purpose.
4. Adds an exception for use of devices by law enforcement agencies for certain purposes.
5. Adds federal law enforcement officers to the definition of an "investigative or law enforcement officer" for purposes of proposed law.