

ACT No. 308

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

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 1318.

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 to his service or to the protection of the rights or property of the carrier of such
29 communication; however, such communications common carriers shall not utilize

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.

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
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 * * *

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 * * *

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.~~E. 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.

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored
are additions.

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 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.

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.

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.

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: _____