

STATE OF OKLAHOMA

1st Session of the 54th Legislature (2013)

HOUSE BILL 1557

By: Wesselhoft

AS INTRODUCED

An Act relating to common carriers; creating the Geolocation Information Protection Act; providing definitions; making certain acts unlawful; providing penalties; stating acts that are deemed permissible; prohibiting acceptance of geolocation information into evidence under certain circumstances; authorizing interception of geolocation information under specified circumstances; providing procedures for interception order; authorizing persons to seek civil relief for violations; providing defense to civil or criminal actions; stating time limitation for filing suit; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 178 of Title 13, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Geolocation Information Protection Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 178.1 of Title 13, unless there is created a duplication in numbering, reads as follows:

1 As used in the Geolocation Information Protection Act:

2 1. "Covered services" means electronic communication service,
3 remote computing service, or a geolocation information service;

4 2. "Electronic communication" means any transfer of signs,
5 signals, writing, images, sounds, data, or intelligence of any
6 nature transmitted in whole or in part by a wire, radio,
7 electromagnetic, photoelectronic, or photooptical system that
8 affects interstate or foreign commerce, but does not include:

9 a. any wire or oral communication,

10 b. any communication made through a tone-only paging
11 device,

12 c. any communication from a tracking device, or

13 d. electronic funds transfer information stored by a
14 financial institution in a communications system used
15 for the electronic storage and transfer of funds;

16 3. "Electronic communication service" means any service which
17 provides to users of such service the ability to send or receive
18 wire or electronic communications;

19 4. "Electronic surveillance" means:

20 a. the acquisition by any electronic, mechanical, or
21 other surveillance device of the contents of any wire
22 or radio communication sent by or intended to be
23 received by a certain person who is in this state, if
24 the contents are acquired by intentionally targeting

- 1 that person, under circumstances in which a person has
2 a reasonable expectation of privacy and a warrant
3 would be required for law enforcement purposes,
- 4 b. the acquisition by any electronic, mechanical, or
5 other surveillance device of the contents of any wire
6 communication to or from a person in this state,
7 without the consent of any party thereto, if such
8 acquisition occurs in this state, but does not include
9 the acquisition of those communications of computer
10 trespassers that are otherwise authorized by law,
- 11 c. the intentional acquisition by any electronic,
12 mechanical, or other surveillance device of the
13 contents of any radio communication, under
14 circumstances in which a person has a reasonable
15 expectation of privacy and a warrant would be required
16 for law enforcement purposes, and if both the sender
17 and all intended recipients are located within this
18 state, or
- 19 d. the installation or use of any electronic, mechanical,
20 or other surveillance device in this state for
21 monitoring to acquire information, other than from a
22 wire or radio communication, under circumstances in
23 which a person has a reasonable expectation of privacy
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1 and a warrant would be required for law enforcement
2 purposes;

3 5. "Geolocation information" means, with respect to a person,
4 any information that is not the content of a communication,
5 concerning the location of a wireless communication device or
6 tracking device that, in whole or in part, is generated by or
7 derived from the operation of that device and that could be used to
8 determine or infer information regarding the location of the person;

9 6. "Geolocation information service" means the provision of a
10 global positioning service or other mapping, locational, or
11 directional information service to the public, or to such class of
12 users as to be effectively available to the public, by or through
13 the operation of any wireless communication device, including any
14 mobile telephone, global positioning system receiving device, mobile
15 computer, or other similar or successor device;

16 7. "Intercept" means the acquisition of geolocation information
17 through the use of any electronic, mechanical, or other device;

18 8. "Investigative or law enforcement officer" means any officer
19 of the United States or of this state or a political subdivision
20 thereof who is empowered by law to conduct investigations of, or to
21 make arrests for, offenses enumerated in this act;

22 9. "Person" means any employee or agent of the United States,
23 or of this state or a political subdivision thereof, and any
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1 individual, partnership, association, joint stock company, trust, or
2 corporation;

3 10. "Remote computing service" means the provision to the
4 public of computer storage or processing services by means of an
5 electronic communications system;

6 11. "Tracking device" means any electronic or mechanical device
7 which permits the tracking of the movement of a person or object;

8 12. "Wire communication" means any aural transfer made in whole
9 or in part through the use of facilities for the transmission of
10 communications by the aid of wire, cable, or other like connection
11 between the point of origin and the point of reception, including
12 the use of such connection in a switching station, furnished or
13 operated by any person engaged in providing or operating such
14 facilities for the transmission of interstate or foreign
15 communications or communications affecting interstate or foreign
16 commerce; and

17 13. "Wireless communication device" means any device that
18 enables access to, or use of, any electronic communication system or
19 service, remote computing service, or geolocation information
20 service, if that device utilizes a radio or other wireless
21 connection to access such system or service.

22 SECTION 3. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 178.2 of Title 13, unless there
24 is created a duplication in numbering, reads as follows:

1 Except as otherwise provided in this act, it shall be unlawful
2 for any person to:

3 1. Intentionally intercept, endeavor to intercept, or procure
4 any other person to intercept or endeavor to intercept geolocation
5 information pertaining to another person;

6 2. Intentionally disclose, or endeavor to disclose, to any
7 other person geolocation information pertaining to another person
8 knowing or having reason to know that the information was obtained
9 through the interception of such information in violation of this
10 act;

11 3. Intentionally use, or endeavor to use, any geolocation
12 information knowing or having reason to know that the information
13 was obtained through the interception of such information in
14 violation of this act; or

15 4. Intentionally disclose, or endeavor to disclose, to any
16 other person the geolocation information pertaining to another
17 person intercepted by means authorized by this act knowing or having
18 reason to know that the information was obtained through the
19 interception of such information in connection with a criminal
20 investigation and with intent to improperly obstruct, impede, or
21 interfere with a duly authorized criminal investigation.

22 Any person who violates any of the provisions of this section
23 shall, upon conviction, be guilty of a felony punishable by
24 imprisonment in the county jail for a term of not less than one (1)

1 year, or a fine of not less than One Thousand Dollars (\$1,000.00),
2 or by both such fine and imprisonment.

3 SECTION 4. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 178.3 of Title 13, unless there
5 is created a duplication in numbering, reads as follows:

6 A. It shall not be unlawful pursuant to the Geolocation
7 Information Protection Act:

8 1. For an officer, employee, or agent of a provider of covered
9 services, whose facilities are used in the transmission of
10 geolocation information, to intercept, disclose, or use that
11 information in the normal course of employment of the officer,
12 employee, or agent while engaged in any activity which is a
13 necessary incident to the rendition of service or to the protection
14 of the rights or property of the provider of that service, except
15 that a provider of a geolocation information service to the public
16 shall not utilize service observing or random monitoring except for
17 mechanical or service quality control checks;

18 2. For a person to intercept geolocation information pertaining
19 to another person if such other person has given prior consent to
20 such interception unless such information is intercepted for the
21 purpose of committing any criminal or tortious act in violation of
22 the laws of this state or of the United States;

23 3. For a parent or legal guardian of a child under eighteen
24 (18) years of age to intercept geolocation information pertaining to

1 that child or to give consent for another person to intercept such
2 information;

3 4. For any person to intercept or access geolocation
4 information relating to another person through any system that is
5 configured so that such information is readily accessible to the
6 general public;

7 5. For any investigative or law enforcement officer or other
8 emergency responder to intercept or access geolocation information
9 relating to a person if such information is used:

10 a. to respond to a request made by such person for
11 assistance, or

12 b. in circumstances in which it is reasonable to believe
13 that the life or safety of a person is threatened, to
14 assist such threatened person; or

15 6. For a person to intercept geolocation information pertaining
16 to the location of another person who has unlawfully taken the
17 device if the owner or operator of such device authorizes the
18 interception of the geolocation information and such person is
19 lawfully engaged in an investigation.

20 B. The provisions of the Geolocation Information Protection Act
21 shall not apply to any person obtaining information pursuant to a
22 warrant.

23 C. Any person providing covered services may divulge
24 geolocation information of another person:

1 1. With the lawful consent of such other person;

2 2. To another person employed or authorized, or whose
3 facilities are used, to forward such geolocation information to its
4 destination; or

5 3. When the geolocation information is inadvertently obtained
6 by a service provider and appears to pertain to the commission of a
7 crime, if such divulgence is made to a law enforcement agency.

8 SECTION 5. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 178.4 of Title 13, unless there
10 is created a duplication in numbering, reads as follows:

11 Whenever any geolocation information has been acquired, no part
12 of such information and no evidence derived therefrom may be
13 received in evidence in any trial, hearing, or other proceeding in
14 or before any court, grand jury, department, officer, agency,
15 regulatory body, or other authority of this state or a political
16 subdivision of this state if the disclosure of that information
17 would be in violation of the Geolocation Information Protection Act.

18 SECTION 6. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 178.5 of Title 13, unless there
20 is created a duplication in numbering, reads as follows:

21 A. Notwithstanding any other provision of this act, any
22 investigative or law enforcement officer, specially designated by
23 the Attorney General or a district attorney, may intercept
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1 geolocation information if such officer reasonably determines that
2 an emergency situation exists that involves:

3 1. Immediate danger of death or serious physical injury to any
4 person;

5 2. Conspiratorial activities threatening national or state
6 security interest; or

7 3. Conspiratorial activities characteristic of organized crime,
8 and requires geolocation information be intercepted before an order
9 authorizing such interception can, with due diligence, be obtained.

10 B. An application for an order approving such interception
11 shall be made within forty-eight (48) hours after the interception
12 has occurred or begins to occur. In the absence of an order, an
13 interception of geolocation information carried out under subsection
14 A of this section shall immediately terminate when the information
15 sought is obtained or when the application for the order is denied,
16 whichever is earlier. In the event such application for approval is
17 denied, the geolocation information shall not be admissible in any
18 civil or criminal proceeding.

19 SECTION 7. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 178.6 of Title 13, unless there
21 is created a duplication in numbering, reads as follows:

22 A. Any person whose geolocation information is intercepted,
23 disclosed, or intentionally used in violation of this act is
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1 authorized to, in a civil action, recover from the person who
2 engaged in that violation such relief as may be appropriate.

3 B. In an action under this section, appropriate relief
4 includes:

5 1. Such preliminary and other equitable or declaratory relief
6 as may be appropriate;

7 2. Damages, including punitive damages in appropriate cases;
8 and

9 3. Reasonable attorney fees and costs.

10 C. It is a complete defense against any civil or criminal
11 action brought against any person for conduct in violation of this
12 act if such person acted in good-faith reliance on:

13 1. A warrant or order issued by a court, a grand jury subpoena,
14 or statutory authorization;

15 2. A request of an investigative or law enforcement officer; or

16 3. A good-faith determination that an exception pursuant to
17 Section 4 of this act permitted the conduct complained of.

18 D. A civil action brought under this section shall not be
19 commenced later than one (1) year after the date upon which the
20 claimant first has a reasonable opportunity to discover the
21 violation.

22 SECTION 8. This act shall become effective November 1, 2013.

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24 54-1-5217 GRS 12/31/12