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State of Minnesota

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HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 2288

- 02/25/2014 Authored by Atkins, Holberg, Paymar, Loeffler and Scott
The bill was read for the first time and referred to the Committee on Public Safety Finance and Policy
- 03/12/2014 Adoption of Report: Amended and re-referred to the Committee on Civil Law
- 03/19/2014 Adoption of Report: Amended and re-referred to the Committee on Judiciary Finance and Policy
- 03/21/2014 Adoption of Report: Amended and Placed on the General Register
Read Second Time

1.1 A bill for an act
1.2 relating to public safety; requiring law enforcement to secure a court order in
1.3 order to receive cell phone tracking data; amending Minnesota Statutes 2012,
1.4 section 626A.28, subdivision 3; proposing coding for new law in Minnesota
1.5 Statutes, chapter 626A.

1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7 Section 1. Minnesota Statutes 2012, section 626A.28, subdivision 3, is amended to read:

1.8 Subd. 3. **Records concerning electronic communication service or remote**
1.9 **computing service.** (a) Except as provided in paragraph (b) or chapter 325M, a provider
1.10 of electronic communication service or remote computing service may disclose a record
1.11 or other information pertaining to a subscriber to or customer of the service, not including
1.12 the contents of communications covered by subdivision 1 or 2, to any person other than a
1.13 governmental entity.

1.14 (b) Except as provided in section 626A.42, a provider of electronic communication
1.15 service or remote computing service may disclose a record or other information pertaining
1.16 to a subscriber to or customer of the service, not including the contents of communications
1.17 covered by subdivision 1 or 2, to a governmental entity only when the governmental entity:

- 1.18 (1) uses an administrative subpoena authorized by statute, or a grand jury subpoena;
- 1.19 (2) obtains a warrant;
- 1.20 (3) obtains a court order for such disclosure under subdivision 4; or
- 1.21 (4) has the consent of the subscriber or customer to the disclosure.

1.22 (c) A governmental entity receiving records or information under this subdivision is
1.23 not required to provide notice to a subscriber or customer.

1.24 Sec. 2. [626A.42] ELECTRONIC DEVICE LOCATION INFORMATION.

2.1 Subdivision 1. **Definitions.** (a) The definitions in this subdivision apply to this
2.2 section.

2.3 (b) An "adverse result" occurs when notification of the existence of a court order
2.4 results in:

2.5 (1) danger to the life or physical safety of an individual;

2.6 (2) a flight from prosecution;

2.7 (3) the destruction of or tampering with evidence;

2.8 (4) the intimidation of potential witnesses; or

2.9 (5) serious jeopardy to an investigation or undue delay of a trial.

2.10 (c) "Electronic communication service" has the meaning given in section 626A.01,
2.11 subdivision 17.

2.12 (d) "Electronic device" means a device that enables access to or use of an electronic
2.13 communication service, remote computing service, or location information service.

2.14 (e) "Government entity" means a state or local agency, including but not limited to a
2.15 law enforcement entity or any other investigative entity, agency, department, division,
2.16 bureau, board, or commission or an individual acting or purporting to act for or on behalf
2.17 of a state or local agency.

2.18 (f) "Location information" means information concerning the location of an
2.19 electronic device that, in whole or in part, is generated or derived from or obtained by the
2.20 operation of an electronic device.

2.21 (g) "Location information service" means the provision of a global positioning
2.22 service or other mapping, locational, or directional information service.

2.23 (h) "Remote computing service" has the meaning given in section 626A.34.

2.24 Subd. 2. **Court order required for location information.** (a) Except as provided in
2.25 paragraph (b), a government entity may not obtain the location information of an electronic
2.26 device without a court order. A court order granting access to location information must
2.27 be issued only if the government entity shows that there is probable cause the person who
2.28 possesses an electronic device is committing, has committed, or is about to commit a crime.

2.29 (b) A government entity may obtain location information without a court order:

2.30 (1) when the electronic device is reported lost or stolen by the owner;

2.31 (2) in order to respond to the user's call for emergency services;

2.32 (3) with the informed, affirmative, documented consent of the owner or user of the
2.33 electronic device;

2.34 (4) with the informed, affirmative consent of the legal guardian or next of kin of
2.35 the owner or user if the owner or user is believed to be deceased or reported missing and
2.36 unable to be contacted; or

3.1 (5) in an emergency situation that involves the risk of death or serious physical harm
3.2 to a person who possesses an electronic communications device pursuant to sections
3.3 237.82 and 237.83.

3.4 Subd. 3. **Time period and extensions.** (a) A court order issued under this section
3.5 must authorize the collection of location information for a period not to exceed 60 days, or
3.6 the period of time necessary to achieve the objective of the authorization, whichever is less.

3.7 (b) Extensions of a court order may be granted, but only upon an application for an
3.8 order and upon the judicial finding required by subdivision 2. The period of extension
3.9 must be for a period not to exceed 60 days, or the period of time necessary to achieve the
3.10 objective for which it is granted, whichever is less.

3.11 (c) Paragraphs (a) and (b) apply only to court orders issued for the contemporaneous
3.12 collection of electronic device location information.

3.13 Subd. 4. **Notice; temporary nondisclosure of order.** (a) Within a reasonable time
3.14 but not later than 90 days after the court unseals the order under this subdivision, the
3.15 issuing or denying judge shall cause to be served on the persons named in the order and
3.16 the application an inventory which shall include notice of:

3.17 (1) the fact of the issuance of the order or the application;

3.18 (2) the date of the issuance and the period of authorized, approved, or disapproved
3.19 collection of location information, or the denial of the application; and

3.20 (3) the fact that during the period location information was or was not intercepted.

3.21 (b) An order authorizing collection of location information must direct that:

3.22 (1) the order be sealed for a period of 90 days or until the objective of the order has
3.23 been accomplished, whichever is shorter; and

3.24 (2) the order be filed with the court administrator within ten days of the expiration of
3.25 the order.

3.26 (c) The prosecutor may request that the order, supporting affidavits, and any order
3.27 granting the request not be filed. An order must be issued granting the request in whole or
3.28 in part if, from affidavits, sworn testimony, or other evidence, the court finds reasonable
3.29 grounds exist to believe that filing the order may cause the search or a related search to
3.30 be unsuccessful, create a substantial risk of injury to an innocent person, or severely
3.31 hamper an ongoing investigation.

3.32 (d) The order must direct that following the commencement of any criminal
3.33 proceeding utilizing evidence obtained in or as a result of the search, the supporting
3.34 application or affidavit must be filed either immediately or at any other time as the court
3.35 directs. Until such filing, the documents and materials ordered withheld from filing must
3.36 be retained by the judge or the judge's designee.

4.1 Subd. 5. Report concerning collection of location information. (a) At the same
4.2 time as notice is provided under subdivision 4, the issuing or denying judge shall report
4.3 to the state court administrator:

4.4 (1) the fact that an order or extension was applied for;

4.5 (2) the fact that the order or extension was granted as applied for, was modified,
4.6 or was denied;

4.7 (3) the period of collection authorized by the order, and the number and duration
4.8 of any extensions of the order;

4.9 (4) the offense specified in the order or application, or extension of an order;

4.10 (5) whether the collection required contemporaneous monitoring of an electronic
4.11 device's location; and

4.12 (6) the identity of the applying investigative or law enforcement officer and agency
4.13 making the application and the person authorizing the application.

4.14 (b) On or before November 15 of each even-numbered year, the state court
4.15 administrator shall transmit to the legislature a report concerning: (1) all orders authorizing
4.16 the collection of location information during the two previous calendar years; and (2) all
4.17 applications that were denied during the two previous calendar years. Each report shall
4.18 include a summary and analysis of the data required to be filed under this subdivision. The
4.19 report is public and must be available for public inspection at the Legislative Reference
4.20 Library and the state court administrator's office and Web site.