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State of Minnesota

HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. **2288**

02/25/2014 Authored by Atkins, Holberg, Paymar and Loeffler

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

1.1 A bill for an act
1.2 relating to public safety; requiring law enforcement to secure a search warrant 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 search warrant
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. **Search warrant required for location information.** (a) Except as
2.25 provided in paragraph (b), a government entity may not obtain the location information of
2.26 an electronic device without a search warrant issued pursuant to chapter 626. A warrant
2.27 granting access to location information must be issued only if the government entity shows
2.28 that there is probable cause the person who possesses an electronic device is committing,
2.29 has committed, or is about to commit a felony level offense.

2.30 (b) A government entity may obtain location information without a search warrant:

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

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

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

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

3.4 (5) in an emergency situation that involves the risk of death or serious physical harm
3.5 to a person who possesses an electronic communications device pursuant to sections
3.6 237.82 and 237.83.

3.7 Subd. 3. **Time period and extensions.** (a) A search warrant issued under this section
3.8 must authorize the collection of location information for a period not to exceed 60 days, or
3.9 the period of time necessary to achieve the objective of the authorization, whichever is less.

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

3.14 (c) Paragraphs (a) and (b) apply only to search warrants issued for the
3.15 contemporaneous collection of electronic device location information.

3.16 Subd. 4. **Notice.** (a) Notice must be given to the owner or user of an electronic
3.17 device whose location information was obtained by a government entity.

3.18 (b) Unless delayed notice is ordered under paragraph (c), the government entity
3.19 shall provide notice to the owner or user that location information was obtained by the
3.20 government entity from the owner's or user's electronic device within three days of
3.21 obtaining the location information. The notice must be made by service or delivered by
3.22 registered or first-class mail. The notice must contain the following information:

3.23 (1) the nature of the government entity inquiry, with reasonable specificity;

3.24 (2) the location information of the owner or user that was obtained by, supplied to,
3.25 or requested by the government entity and the date on which it was obtained, provided,
3.26 or requested;

3.27 (3) if location information was obtained from a provider of electronic communication
3.28 service or other third party, the identity of the provider of electronic communication
3.29 service or the third party from whom the information was obtained; and

3.30 (4) whether the notification was delayed pursuant to paragraph (c) and, if so, the
3.31 court that granted the delay and the reasons for granting the delay.

3.32 (c) A government entity may include in the application for a warrant a request
3.33 for an order to delay the notification required under this subdivision for a period not to
3.34 exceed 90 days. The court shall issue the order if the court determines that there is reason
3.35 to believe that notification may have an adverse result. Upon expiration of the period of
3.36 delay granted under this subdivision and any extension granted under paragraph (e), the

4.1 government entity shall provide the owner or user a copy of the warrant together with a
4.2 notice pursuant to paragraph (b).

4.3 (d) A government entity may include in its application for a warrant a request for
4.4 an order directing a provider of electronic communication service to which a warrant is
4.5 directed not to notify any other person of the existence of the warrant for a period of not
4.6 more than 90 days. The court shall issue the order if the court determines that there is reason
4.7 to believe that notification of the existence of the warrant may have an adverse result.

4.8 (e) The court, upon application, may grant one or more extensions of orders granted
4.9 under paragraph (c) or (d) for up to an additional 90 days.

4.10 Subd. 5. **Reporting.** (a) Unless disclosure of information pertaining to a particular
4.11 request or set of requests is specifically prohibited by law, an electronic communication
4.12 service shall prepare a report including all of the following information, to the extent
4.13 it can be reasonably determined:

4.14 (1) the number of warrants for location information, the number of requests made
4.15 with the informed consent of the owner or user of an electronic device, and the number of
4.16 emergency requests received by the electronic communication service from January 1 to
4.17 December 31, inclusive, of the previous year;

4.18 (2) the total number of disclosures made by the electronic communication service
4.19 pursuant to this section from January 1 to December 31, inclusive, of the previous year; and

4.20 (3) for each category of demand or disclosure, the electronic communication service
4.21 shall include all of the following information:

4.22 (i) the number of times location information has been disclosed by the electronic
4.23 communication service;

4.24 (ii) the number of times no location information has been disclosed by the electronic
4.25 communication service;

4.26 (iii) the number of times the electronic communication service contests the demand;

4.27 and

4.28 (iv) the number of users whose location information was disclosed by the electronic
4.29 communication service.

4.30 (b) An electronic communication service must only report on cases that target
4.31 location information for a person located in the state or a resident of the state.

4.32 (c) Electronic communication services required to complete reports under this
4.33 subdivision shall submit the reports to the commissioner of public safety on or before
4.34 February 1 of each year. The commissioner shall make the reports publicly available on
4.35 the department's Web site, in a searchable format, on or before April 1 of each year.