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State of Minnesota

HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 2553

03/03/2014 Authored by Lesch, Paymar and Winkler

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: 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
1.3 in order to receive electronic device location information; amending Minnesota
1.4 Statutes 2012, section 626A.28, subdivision 3; proposing coding for new law
1.5 in Minnesota 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, or location information
1.13 covered by section 626A.42, to any person other than a governmental entity.

1.14 (b) A provider of electronic communication service or remote computing service
1.15 may disclose a record or other information pertaining to a subscriber to or customer of the
1.16 service, not including the contents of communications covered by subdivision 1 or 2, to a
1.17 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,  
2.15 a 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  
2.26 of an electronic device without a search warrant. A search warrant granting access to  
2.27 location information must be issued only if the government entity shows that there is  
2.28 probable cause that the person who possesses an electronic device is committing, has  
2.29 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 consent of the owner or user of the electronic  
2.34 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) when an emergency involving immediate danger of death or serious physical  
3.5 injury to any person requires obtaining information relating to the emergency without  
3.6 delay, and the search is narrowly tailored to address the emergency.

3.7 (c) A government entity exercising the warrantless emergency search authority under  
3.8 paragraph (b), clause (5), must document the basis for determining that an emergency  
3.9 involving immediate danger of death or serious physical injury to a person requires  
3.10 obtaining, without delay, location information relating to the emergency and, not later  
3.11 than 48 hours after the date on which the government entity obtains access to location  
3.12 information, the government entity shall file with the appropriate court a signed, sworn  
3.13 statement of a supervisory official setting forth the grounds for the emergency access.

3.14 Subd. 3. **Notice.** (a) Notice must be given to the owner or user of an electronic  
3.15 device whose location information was obtained by a government entity.

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

3.23 (1) the nature of the law enforcement 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 ten 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 ten days. The court shall issue the order if the court determines that there is  
4.7 reason 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 ten days.

4.10 Subd. 4. **Reporting requirements.** (a) By January 31 of each calendar year, any  
4.11 judge issuing or denying a warrant or receiving a report of emergency access to location  
4.12 information under subdivision 2 during the preceding calendar year shall report on each  
4.13 warrant or notice of emergency access to the state court administrator:

4.14 (1) the date the warrant was applied for or the notice was received;

4.15 (2) the agency making the application or notice;

4.16 (3) the offense, if any, specified in the warrant application, warrant, or notice;

4.17 (4) the nature of the facilities from which, the place where, or the technique by  
4.18 which location information was to be obtained;

4.19 (5) the expected number of devices about which location information was obtained;

4.20 (6) whether the warrant was granted as applied for, was modified, or was denied; and

4.21 (7) the period of disclosures authorized by the warrant, and the number and duration  
4.22 of any extensions of the warrant.

4.23 (b) In June of each year, beginning in 2014, the state court administrator shall  
4.24 transmit to the legislature a full and complete record concerning the number of applications  
4.25 for warrant authorizing or requiring the disclosure of location information, the number of  
4.26 times access to location information was obtained pursuant to subdivision 2, paragraph  
4.27 (b), clause (5), and the number of notices of emergency access received under subdivision  
4.28 2, paragraph (b), during the preceding calendar year. The report shall include a summary  
4.29 and analysis of the data required to be filed with the state court administrator by paragraph  
4.30 (a). The state court administrator is authorized to issue binding regulations dealing with  
4.31 the content and form of the reports required to be filed by paragraph (a).

4.32 (c) In June of each year, beginning in 2014, a nonclassified summary of the report  
4.33 shall be made publicly available on the Web site for the state court administrator.

4.34 Subd. 5. **Prohibition on use of evidence.** (a) Except as proof of a violation of  
4.35 this section, no evidence obtained in violation of this section shall be admissible in any  
4.36 criminal, civil, administrative, or other proceeding.

5.1           (b) Any location information obtained pursuant to this chapter or evidence derived  
5.2 therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing,  
5.3 or other proceeding in a federal or state court unless each party, not less than ten days  
5.4 before the trial, hearing, or proceeding, has been furnished with a copy of the warrant,  
5.5 and accompanying application, under which the information was obtained. This ten-day  
5.6 period may be waived by the judge if the judge finds that it was not possible to furnish a  
5.7 party with the required information ten days before the trial, hearing, or proceeding and  
5.8 that a party will not be prejudiced by the delay in receiving such information.