

1 **H. B. 4331**

2
3 (By Delegates Frich, Butler, Cadle, R. Smith,
4 Canterbury, Faircloth, Kump, Householder, Manypenny,
5 Skinner and Sponaugle)
6

7 [Introduced January 24, 2014; referred to the
8 Committee on the Judiciary.]
9

10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new article, designated §62-1H-1 and
12 §62-1H-2, all relating to location information of an
13 electronic device; prohibiting a government entity from
14 obtaining the location information of an electronic device
15 without a search warrant issued; exceptions; admissibility of
16 evidence obtained in violation of the prohibition;
17 definitions; civil liability for obtaining location
18 information in violation of the prohibition; and defenses to
19 civil or criminal actions.

20 *Be it enacted by the Legislature of West Virginia:*

21 That the Code of West Virginia, 1931, as amended, be amended
22 by adding thereto a new article, designated §62-1H-1 and §62-1H-2,
23 all to read as follows:

24 **ARTICLE 1H. LOCATION INFORMATION OF AN ELECTRONIC DEVICE.**

25 **§62-1H-1. Location information of an electronic device;**

1 definitions.

2 (a) Except as provided in subdivision (b) of this section, a
3 government entity may not obtain the location information of an
4 electronic device without a valid search warrant issued.

5 (b) Notwithstanding any other provision of this code to the
6 contrary, a government entity may obtain location information of an
7 electronic device under any of the following circumstances:

8 (1) The device is reported stolen by the owner;

9 (2) In order to respond to the user's call for emergency
10 services;

11 (3) With the informed, affirmative consent of the owner or
12 user of the electronic device; or

13 (4) There exists a possible life-threatening situation.

14 (c) Evidence obtained in violation of this section is not
15 admissible in a civil, criminal or administrative proceeding and
16 may not be used in an affidavit of probable cause in an effort to
17 obtain a search warrant.

18 (d) As used in this article:

19 (1) "Electronic communication service" means a service that
20 provides to users of the service the ability to send or receive
21 wire or electronic communications;

22 (2) "Electronic device" means a device that enables access to
23 or use of an electronic communication service, remote computing
24 service or location information service;

1 (3) "Government entity" means a state or local agency,
2 including, but not limited to, a law-enforcement entity or any
3 other investigative entity, agency, department, division, bureau,
4 board or commission or an individual acting or purporting to act
5 for or on behalf of a state or local agency;

6 (4) "Location information" means information concerning the
7 location of an electronic device that, in whole or in part, is
8 generated or derived from or obtained by the operation of an
9 electronic device;

10 (5) "Location information service" means the provision of a
11 global positioning service or other mapping, locational or
12 directional information service;

13 (6) "Remote computing service" means the provision of computer
14 storage or processing services by means of an electronic
15 communications system.

16 **§62-1H-2. Civil liability; defense to civil or criminal action.**

17 (a) Any person whose location information is obtained in
18 violation of this article or whose wire, oral or electronic
19 communication is intercepted, disclosed, used or whose identity is
20 disclosed by the use of location information obtained in violation
21 of this article has a civil cause of action against any person who
22 so intercepts, discloses or uses or procures any other person to
23 intercept, disclose or use the communications, and may recover from
24 any such person or persons:

1 (1) Actual damages, but not less than \$100 for each day of
2 violation;

3 (2) Punitive damages, if found to be proper; and

4 (3) Reasonable attorney fees and reasonable costs of
5 litigation incurred.

6 (b) A good faith reliance by a provider of electronic or wire
7 communication services on a court order or legislative
8 authorization constitutes a complete defense to any civil or
9 criminal action brought under this article or any other law.

NOTE: The purpose of this bill is to prohibit a government entity from obtaining the location information of an electronic device without a search warrant issued; exceptions are provided in situations where the device is reported stolen by the owner, where necessary to respond to a user's call for emergency services, with the owner or user of the device, or there exists a possible life-threatening situation. The bill also provides for a civil cause of action for a violation of the provisions.

This article is new; therefore, it has been completely underscored.