

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 2654

2015 Carryover

(BY DELEGATES FRICH, CADLE , SKINNER AND BUTLER, J.

NELSON, FAIRCLOTH, AMBLER, COOPER, R. SMITH,

MC GEEHAN AND IHLE)

[Introduced January 13, 2016; referred to the

Committee on the Judiciary.]

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1H. LOCATION INFORMATION OF AN ELECTRONIC DEVICE.

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

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

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

- 5 (1) The device is reported stolen by the owner;
- 6 (2) In order to respond to the user's call for emergency services;
- 7 (3) With the informed, affirmative consent of the owner or user of the electronic device; or
- 8 (4) There exists a possible life-threatening situation.

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

12 (d) As used in this article:

13 (1) "Electronic communication service" means a service that provides to users of the

14 service the ability to send or receive wire or electronic communications;

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

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

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

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

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

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

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

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

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

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

9 (b) A good faith reliance by a provider of electronic or wire communication services on a
10 court order or legislative authorization constitutes a complete defense to any civil or criminal

11 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.