
SENATE BILL No. 360

DIGEST OF INTRODUCED BILL

Citations Affected: IC 24-4.3; IC 35-46-9.

Synopsis: Cell phone GPS tracking. Requires a person who sells a cellular telephone or provides wireless telephone service to inform a subscriber how to deactivate the device's GPS tracking function. Specifies that the failure to provide this information is a deceptive act that may be enforced by the attorney general. Makes it a Class A misdemeanor to track another person by GPS unless: (1) the person obtains a warrant; (2) the tracking is done in the normal course of business by a service provider; (3) the tracking is performed by the federal government under the Foreign Intelligence Surveillance Act; (4) the person consents to the tracking; (5) a parent has consented to the tracking of the parent's child; (6) the ability to track a specific person is offered to the general public; (7) the tracking is done by a law enforcement officer or emergency services provider to respond to a request for assistance by the person, or under circumstances in which the person's life or safety is threatened; or (8) the tracking is of a person who has stolen an item containing the GPS device.

Effective: July 1, 2012.

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January 9, 2012, read first time and referred to Committee on Judiciary.

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PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2011 Regular Session of the General Assembly.

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SENATE BILL No. 360



A BILL FOR AN ACT to amend the Indiana Code concerning commercial law.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 24-4.3 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,
3 2012]:

4 **ARTICLE 4.3. DEACTIVATION OF LOCATION BASED**
5 **SERVICES**

6 **Chapter 1. Definitions**

7 **Sec. 1. The definitions in this chapter apply throughout this**
8 **article.**

9 **Sec. 2. "Location based service" means a service provided by a**
10 **wireless communication service provider that uses the GPS of a**
11 **wireless communication device to track the physical location of**
12 **that wireless device. The term does not include location**
13 **information provided as part of enhanced 911 service.**

14 **Sec. 3. "Subscriber" means any person to whom wireless**
15 **telephone service is provided.**

16 **Sec. 4. "Wireless communication device" means a device that**
17 **enables access to, or use of, an electronic communication system or**



1 a covered service, if the device uses a radio or other wireless
2 connection to access the system or service.

3 Sec. 5. "Wireless communication service" means commercial
4 mobile service, as defined in 47 U.S.C. 332(d).

5 Sec. 6. "Wireless communication service provider" or
6 "provider" means a:

- 7 (1) person providing wireless communication service;
8 (2) salesperson employed by a provider; or
9 (3) direct or indirect affiliate or agent of a provider who sells
10 a wireless communication device to a subscriber.

11 **Chapter 2. Notification Requirements**

12 Sec. 1. Each wireless communication service provider shall
13 establish and maintain a separate telephone hotline and electronic
14 mail address in order to respond to inquiries from subscribers
15 regarding the provider's location based service technology. The
16 separate telephone hotline and electronic mail address must:

- 17 (A) provide subscribers with step-by-step instructions
18 describing the method by which the location based service can
19 be deactivated by a subscriber through the subscriber's
20 wireless communication device; and
21 (B) permit subscribers to request that the provider deactivate
22 the location based service.

23 Sec. 2. (a) A wireless telephone service provider who sells a
24 wireless communication device to a subscriber shall orally inform
25 the subscriber, at the time of the sale, that the location based
26 service capability of the wireless communication device may be
27 deactivated by the subscriber. The wireless telephone service
28 provider shall orally inform the subscriber of the telephone hotline
29 and electronic mail address established under section 1 of this
30 chapter from which the subscriber may receive step-by-step
31 instructions to deactivate, or request the provider to deactivate, the
32 location based service of the subscriber's wireless communication
33 device.

34 (b) In addition to the oral information provided under
35 subsection (a), a wireless telephone service provider shall submit
36 a written document to every subscriber who purchases a wireless
37 communication device. The document must inform the subscriber
38 that the wireless communication device may be disabled by the
39 subscriber. The document must meet the following requirements:

- 40 (1) The document must be a separate document that is not
41 attached to a contract for wireless communication service, or
42 to any other document.

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- 1 **(2) The document must be signed and dated by the subscriber.**
- 2 **(3) The document must list the telephone hotline and**
- 3 **electronic mail address described under section 1 of this**
- 4 **chapter that the subscriber may use to receive step-by-step**
- 5 **instructions to deactivate, or to request the provider to**
- 6 **deactivate, the location based service of the subscriber's**
- 7 **wireless communication device.**
- 8 **(4) The document must be unambiguous and legible, and shall**
- 9 **conspicuously disclose that, by signing the document, the**
- 10 **subscriber has been informed both orally and in writing that**
- 11 **the location based service capability of the subscriber's**
- 12 **wireless communication device may be deactivated by the**
- 13 **subscriber.**
- 14 **(c) Each subscriber shall be given a copy of the document, and**
- 15 **a separate copy may be retained by the wireless telephone service**
- 16 **provider.**
- 17 **Sec. 3. (a) If a subscriber purchases a wireless communication**
- 18 **device through the provider's Internet web site, the provider shall**
- 19 **inform the subscriber that the caller location technology of the**
- 20 **wireless communication device may be deactivated by the**
- 21 **subscriber and permit the subscriber to request deactivation**
- 22 **through the provider's Internet web site. This information must be**
- 23 **provided in an electronic document posted on a separate Internet**
- 24 **web page that becomes visible when the subscriber is purchasing**
- 25 **the wireless communication device. The electronic document must**
- 26 **meet the following requirements:**
- 27 **(1) The document must be designed to be completed**
- 28 **interactively and electronically signed and dated by the**
- 29 **subscriber.**
- 30 **(2) The document must list the telephone hotline and**
- 31 **electronic mail address established under section 1 of this**
- 32 **chapter that the subscriber may use to receive step-by-step**
- 33 **instructions to deactivate, or request deactivation of, the**
- 34 **location based service of subscriber's wireless communication**
- 35 **device.**
- 36 **(3) The document must provide a method for the subscriber**
- 37 **to request deactivation of the location based service by using**
- 38 **the provider's Internet web site.**
- 39 **(4) The document must be unambiguous and legible, and must**
- 40 **conspicuously disclose that, by electronically signing the**
- 41 **document, the subscriber has been informed in writing that**
- 42 **the caller location technology of that subscriber's wireless**

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1 communication device may be deactivated.

2 (5) The document must be available in a printable format and
3 may be printed by the subscriber after the subscriber
4 electronically signs the document.

5 (b) A subscriber may not be permitted to complete a cellular
6 telephone purchase through the provider's Internet web site unless
7 the subscriber confirms that the subscriber has read the document
8 and electronically signs and dates the document.

9 (c) A provider is not required to orally inform a subscriber that
10 the caller location technology may be deactivated if the subscriber
11 purchases the wireless communication device through the
12 provider's Internet web site.

13 Sec. 4. Each wireless communication service provider shall
14 inform subscribers who purchased a wireless communication
15 device before July 1, 2012, that the location based service
16 capability of the wireless communication device may be
17 deactivated by the subscriber. This information must be provided
18 in an electronic text message or electronic mail sent directly to the
19 subscriber's wireless communication device.

20 Sec. 5. (a) A wireless communication service provider who fails
21 to comply with the notification requirements of this article
22 commits a deceptive act that is actionable by the attorney general
23 under this chapter.

24 (b) The failure to make the required notification in connection
25 with a related series of sales constitutes one (1) deceptive act.

26 Sec. 6. The attorney general may bring an action under this
27 chapter to obtain any or all of the following:

28 (1) An injunction to enjoin future violations.

29 (2) A civil penalty of not more than ten thousand dollars
30 (\$10,000) per deceptive act.

31 (3) The attorney general's reasonable costs in:

32 (A) the investigation of the deceptive act; and

33 (B) maintaining the action.

34 SECTION 2. IC 35-46-9 IS ADDED TO THE INDIANA CODE AS
35 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
36 1, 2012]:

37 **Chapter 9. Unlawful GPS Tracking**

38 **Sec. 1. The following definitions apply throughout this chapter:**

39 (1) "Covered service" means an electronic communication
40 service, a geolocation information service, or a remote
41 computing service.

42 (2) "Electronic communication service" means a service that

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1 provides users with the ability to send or receive wire or
2 electronic communications.

3 (3) "Geolocation information" means data generated by an
4 electronic device that can be used to determine the location of
5 the device or the owner of the device. The term includes a
6 cellular telephone, wireless fidelity (wi-fi) equipped computer,
7 or a GPS navigation or tracking unit. The term does not
8 include the content of a communication.

9 (4) "Geolocation information service" means a person who
10 offers or provides GPS service or other mapping, locational,
11 or directional services to the public by means of an electronic
12 device, including a cellular telephone, wireless fidelity (wi-fi)
13 equipped computer, or a GPS navigation or tracking unit.

14 (5) "Intercept" means to acquire geolocation data through the
15 use of an electronic device, mechanical device, or other device.

16 (6) "Remote computing service" means the provision to the
17 public of computer storage or processing services by means of
18 an electronic communications system.

19 (7) "Wireless communication device" means a device that
20 enables access to, or use of, an electronic communication
21 system or a covered service, if the device uses a radio or other
22 wireless connection to access the system or service.

23 **Sec. 2. This chapter does not apply to the following:**

24 (1) Geolocation information obtained by means of a warrant.

25 (2) Geolocation information obtained or disclosed in the
26 normal course of business by an officer, employee, or agent of
27 an electronic communication service, a geolocation
28 information service while engaged in an activity that is a
29 necessary incident for the provision of service or the
30 protection of the rights or property of the service provider.

31 (3) Geolocation information obtained by an officer, employee,
32 or agent of the United States while lawfully conducting
33 electronic surveillance under the Federal Foreign Intelligence
34 Surveillance Act.

35 (4) Geolocation information relating to another person that is
36 intercepted or disclosed with the consent of the other person.

37 (5) Geolocation information relating to a child if the
38 information is intercepted or disclosed by or with the consent
39 of the child's parent, guardian, or custodian.

40 (6) Geolocation information relating to another person that is
41 available through a system that is configured to make the
42 information readily available to the general public.

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(7) Geolocation information relating to another person that is intercepted or disclosed by a law enforcement officer or emergency services provider if the information is used:

- (A) to respond to a request for assistance by the person; or**
- (B) to assist the person under circumstances in which it is reasonable to believe that the life or safety of the person is threatened.**

(8) Geolocation information relating to another person if the person intercepting or disclosing the information has a reasonable belief that the other person has unlawfully taken the device transmitting the geolocation information.

Sec. 3. A person who:

- (1) knowingly or intentionally intercepts geolocation information relating to another person;**
- (2) discloses geolocation information relating to another person, if the person knows or should have known that the information was obtained in violation of subdivision (1); or**
- (3) uses geolocation information relating to another person for any purpose, if the person knows or should have known that the information was obtained in violation of subdivision (1);**

commits unlawful GPS tracking, a Class A misdemeanor.

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