

AMENDED IN SENATE MAY 1, 2012
AMENDED IN SENATE APRIL 9, 2012

SENATE BILL

No. 1434

Introduced by Senator Leno

February 24, 2012

An act to add Chapter 3.6 (commencing with Section 1546) to Title 12 of Part 2 of the Penal Code, relating to location information.

LEGISLATIVE COUNSEL'S DIGEST

SB 1434, as amended, Leno. Location information: warrants.

Existing law authorizes a court or magistrate to issue a warrant for the search of a place and the seizure of property or things identified in the warrant where there is probable cause to believe that specified grounds exist. Existing law also provides for a warrant procedure for the acquisition of stored communications in the possession of a provider of electronic communication service or a remote computing service.

This bill would prohibit a government entity, as defined, from obtaining the location information of an electronic device without a *valid search* warrant issued by a duly authorized magistrate unless certain exceptions apply, including in an emergency or when requested by the owner of the device. The bill would prohibit the use of information obtained in violation of these provisions from being used in a civil or administrative hearing. The bill would require a provider to prepare and ~~publish~~ a report containing specified information relating to requests for location information *and make the report available to the public* on the Internet, in a searchable format, on or before March 1 of each year, *as provided. If the provider does not have an Internet Web site, the bill would require the provider to send the report to the Office of Privacy Protection.*

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 3.6 (commencing with Section 1546) is
2 added to Title 12 of Part 2 of the Penal Code, to read:

3
4 CHAPTER 3.6. LOCATION PRIVACY
5

6 1546. For purposes of this chapter, the following definitions
7 shall apply:

8 (a) “Electronic communication service” means a service that
9 provides to users thereof the ability to send or receive wire or
10 electronic communications.

11 (b) “Electronic device” means a device that enables access to,
12 or use of, an electronic communication service, remote computing
13 service, or location information service.

14 (c) “Government entity” means a state or local agency,
15 including, but not limited to, a law enforcement entity or any other
16 investigative entity, agency, department, division, bureau, board,
17 or commission, or an individual acting or purporting to act for or
18 on behalf of a state or local agency.

19 (d) “Location information” means information, concerning the
20 location of an electronic device, *including both the current location*
21 *and any prior location of the device*, that, in whole or in part, is
22 generated, derived from, or obtained by the operation of an
23 electronic device.

24 (e) “Location information service” means the provision of a
25 global positioning service or other mapping, locational, or
26 directional information service.

27 (f) “Owner” means the person or entity recognized by the law
28 as having ~~the ultimate control over, or having~~ the legal title, claim,
29 or right to, an electronic device.

30 (g) “Provider” means a commercial entity offering an electronic
31 communication service, remote computing service, or location
32 information service.

33 (h) “Remote computing service” means the provision of
34 computer storage or processing services by means of an electronic
35 communications system.

1 (i) “User” means a person or entity that uses an electronic
2 device.

3 1546.1. (a) No government entity shall obtain the location
4 information of an electronic device without a *valid search* warrant
5 issued by a duly authorized magistrate using procedures established
6 pursuant to Chapter 3 (commencing with Section 1523).

7 ~~(b) No warrant entered under this section shall authorize~~
8 ~~obtaining location information of an electronic device search~~
9 ~~warrant shall issue for the location of an electronic device pursuant~~
10 ~~to this section~~ for a period of time longer than is necessary to
11 achieve the objective of the authorization, nor in any event longer
12 than 30 days, commencing on the day of the initial obtaining of
13 location information, or 10 days after the issuance of the warrant,
14 whichever comes first. *Extensions of a warrant may be granted,*
15 *but only upon a finding of continuing probable cause by the judge*
16 *or magistrate, and that the extension is necessary to achieve the*
17 *objective of the authorization. Each extension granted for a*
18 *warrant pursuant to this subdivision shall be for no longer than*
19 *the authorizing judge or magistrate deems necessary to achieve*
20 *the purposes for which the warrant was originally granted, but in*
21 *any event, shall be for no longer than 30 days.*

22 (c) Notwithstanding subdivision (a), a government entity may
23 obtain location information *without a search warrant, as provided*
24 *in this section*, in any of the following circumstances:

25 (1) In order to respond to the user’s call for emergency services.

26 (2) With the informed, affirmative consent of the owner or user
27 of the electronic device concerned, *provided that the owner or*
28 *user may not consent to the disclosure of location information if*
29 *the device is known or believed to be in the possession of, or*
30 *attached to a possession of, a third party known to the owner or*
31 *user.*

32 (3) Pursuant to a request by a government entity that asserts
33 that the government entity reasonably believes that an emergency
34 involving immediate danger of death or serious physical injury to
35 the owner or user requires the immediate access to location
36 information and there is insufficient time to obtain a warrant. The
37 government entity seeking the location information pursuant to
38 this paragraph shall file with the appropriate court a written
39 statement setting forth the facts giving rise to the emergency no
40 later than 48 hours after seeking disclosure.

1 1546.2. (a) Unless disclosure of information pertaining to a
2 particular request or set of requests is specifically prohibited by
3 law, a provider shall prepare a report including all of the following
4 information, to the extent it can be reasonably determined:

5 (1) The number of federal and state warrants for location
6 information and the number of requests for location information
7 made with the informed consent of the user as described in
8 paragraph (2) of subdivision (c) of Section 1546.1 or emergency
9 requests received by the provider pursuant to paragraph (1) of
10 subdivision (c) of Section 1546.1 received by the provider from
11 January 1 to December 31, inclusive, of the previous year.

12 (2) The total number of disclosures made by the provider
13 pursuant to Section 1546.1, from January 1 to December 31,
14 inclusive, of the previous year.

15 (3) For each category of demand or disclosure, the provider
16 shall include all of the following information:

17 (A) The number of times location information has been disclosed
18 by the provider.

19 (B) The number of times no location information has been
20 disclosed by the provider.

21 (C) The number of times the provider contests the demand.

22 (D) The number of users whose location information was
23 disclosed by the provider.

24 ~~(b) A report containing all the information required by this~~
25 ~~section shall be made publicly available on the Internet, in a~~
26 ~~searchable format, on or before March 1 of each year.~~

27 *(b) Reports prepared pursuant to subdivision (a) shall be made*
28 *publicly available in an online, searchable format on or before*
29 *March 1 of each year. If the provider does not have an Internet*
30 *Web site, the provider shall send the reports to the Office of*
31 *Privacy Protection on or before March 1 of each year.*

32 *(c) On or before March 1 of each year, a provider subject to*
33 *Section 22575 of the Business and Professions Code shall complete*
34 *one of the of the following actions:*

35 *(1) Create a prominent hyperlink to its latest report prepared*
36 *pursuant to subdivision (a) in the disclosure section of its privacy*
37 *policy.*

38 *(2) Post the report prepared pursuant to subdivision (a) in the*
39 *section of its Internet Web site explaining the way in which user*
40 *information and privacy issues related to its service are addressed.*

1 1546.3. Except as proof of a violation of this section, no
2 evidence obtained in violation of this section shall be admissible
3 in a civil or administrative proceeding.

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