

115TH CONGRESS
1ST SESSION

S. 395

To amend title 18, United States Code, to specify the circumstances in which a person may acquire geolocation information and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 15, 2017

Mr. WYDEN introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, to specify the circumstances in which a person may acquire geolocation information and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLES.**

4 This Act may be cited as the “Geolocational Privacy
5 and Surveillance Act” or the “GPS Act”.

6 **SEC. 2. PROTECTION OF GEOLOCATION INFORMATION.**

7 (a) IN GENERAL.—Part 1 of title 18, United States
8 Code, is amended by inserting after chapter 119 the fol-
9 lowing:

1 **“CHAPTER 120—GEOLOCATION**
 2 **INFORMATION**

“Sec.

“2601. Definitions.

“2602. Interception and disclosure of geolocation information.

“2603. Prohibition of use as evidence of acquired geolocation information.

“2604. Emergency situation exception.

“2605. Recovery of civil damages authorized.

3 **“§ 2601. Definitions**

4 “In this chapter:

5 “(1) COVERED SERVICE.—The term ‘covered
 6 service’ means an electronic communication service,
 7 a geolocation information service, or a remote com-
 8 puting service.

9 “(2) ELECTRONIC COMMUNICATION SERVICE.—
 10 The term ‘electronic communication service’ has the
 11 meaning given that term in section 2510.

12 “(3) ELECTRONIC SURVEILLANCE.—The term
 13 ‘electronic surveillance’ has the meaning given that
 14 term in section 101 of the Foreign Intelligence Sur-
 15 veillance Act of 1978 (50 U.S.C. 1801).

16 “(4) GEOLOCATION INFORMATION.—The term
 17 ‘geolocation information’ means, with respect to a
 18 person, any information, that is not the content of
 19 a communication, concerning the location of a wire-
 20 less communication device or tracking device (as
 21 that term is defined section 3117) that, in whole or
 22 in part, is generated by or derived from the oper-

1 ation of that device and that could be used to deter-
2 mine or infer information regarding the location of
3 the person.

4 “(5) GEOLOCATION INFORMATION SERVICE.—
5 The term ‘geolocation information service’ means the
6 provision of a global positioning service or other
7 mapping, locational, or directional information serv-
8 ice to the public, or to such class of users as to be
9 effectively available to the public, by or through the
10 operation of any wireless communication device, in-
11 cluding any mobile telephone, global positioning sys-
12 tem receiving device, mobile computer, or other simi-
13 lar or successor device.

14 “(6) INTERCEPT.—The term ‘intercept’ means
15 the acquisition of geolocation information through
16 the use of any electronic, mechanical, or other de-
17 vice.

18 “(7) INVESTIGATIVE OR LAW ENFORCEMENT
19 OFFICER.—The term ‘investigative or law enforce-
20 ment officer’ means any officer of the United States
21 or of a State or political subdivision thereof, who is
22 empowered by law to conduct investigations of, or to
23 make arrests for, offenses enumerated in this chap-
24 ter, and any attorney authorized by law to prosecute
25 or participate in the prosecution of such offenses.

1 “(8) PERSON.—The term ‘person’ means any
2 employee or agent of the United States, or any State
3 or political subdivision thereof, and any individual,
4 partnership, association, joint stock company, trust,
5 or corporation.

6 “(9) REMOTE COMPUTING SERVICE.—The term
7 ‘remote computing service’ has the meaning given
8 that term in section 2711.

9 “(10) STATE.—The term ‘State’ means any
10 State of the United States, the District of Columbia,
11 the Commonwealth of Puerto Rico, and any territory
12 or possession of the United States.

13 “(11) WIRELESS COMMUNICATION DEVICE.—
14 The term ‘wireless communication device’ means any
15 device that enables access to, or use of, an electronic
16 communication system or service or a covered serv-
17 ice, if that device utilizes a radio or other wireless
18 connection to access such system or service.

19 **“§ 2602. Interception and disclosure of geolocation in-**
20 **formation**

21 “(a) IN GENERAL.—

22 “(1) PROHIBITION ON DISCLOSURE OR USE.—
23 Except as otherwise specifically provided in this
24 chapter, it shall be unlawful for any person to—

1 “(A) intentionally intercept, endeavor to
2 intercept, or procure any other person to inter-
3 cept or endeavor to intercept, geolocation infor-
4 mation pertaining to another person;

5 “(B) intentionally disclose, or endeavor to
6 disclose, to any other person geolocation infor-
7 mation pertaining to another person, knowing
8 or having reason to know that the information
9 was obtained through the interception of such
10 information in violation of this paragraph;

11 “(C) intentionally use, or endeavor to use,
12 any geolocation information, knowing or having
13 reason to know that the information was ob-
14 tained through the interception of such infor-
15 mation in violation of this paragraph; or

16 “(D)(i) intentionally disclose, or endeavor
17 to disclose, to any other person the geolocation
18 information pertaining to another person inter-
19 cepted by means authorized by subsections (b)
20 through (h), except as provided in such sub-
21 sections;

22 “(ii) knowing or having reason to know
23 that the information was obtained through the
24 interception of such information in connection
25 with a criminal investigation;

1 “(iii) having obtained or received the infor-
2 mation in connection with a criminal investiga-
3 tion; and

4 “(iv) with intent to improperly obstruct,
5 impede, or interfere with a duly authorized
6 criminal investigation.

7 “(2) PENALTY.—Any person who violates para-
8 graph (1) shall be fined under this title, imprisoned
9 not more than five years, or both.

10 “(b) EXCEPTION FOR INFORMATION ACQUIRED IN
11 THE NORMAL COURSE OF BUSINESS.—It shall not be un-
12 lawful under this chapter for an officer, employee, or agent
13 of a provider of a covered service, whose facilities are used
14 in the transmission of geolocation information, to inter-
15 cept, disclose, or use that information in the normal course
16 of the officer, employee, or agent’s employment while en-
17 gaged in any activity which is a necessary incident to the
18 rendition of service or to the protection of the rights or
19 property of the provider of that service, except that a pro-
20 vider of a geolocation information service to the public
21 shall not utilize service observing or random monitoring
22 except for mechanical or service quality control checks.

23 “(c) EXCEPTION FOR CONDUCTING FOREIGN INTEL-
24 LIGENCE SURVEILLANCE.—Notwithstanding any other
25 provision of this chapter, it shall not be unlawful for an

1 officer, employee, or agent of the United States in the nor-
 2 mal course of the official duty of the officer, employee,
 3 or agent to conduct electronic surveillance, as authorized
 4 by the Foreign Intelligence Surveillance Act of 1978 (50
 5 U.S.C. 1801 et seq.).

6 “(d) EXCEPTION FOR CONSENT.—

7 “(1) IN GENERAL.—It shall not be unlawful
 8 under this chapter for a person to intercept
 9 geolocation information pertaining to another person
 10 if such other person has given prior consent to such
 11 interception unless such information is intercepted
 12 for the purpose of committing any criminal or
 13 tortious act in violation of the Constitution or laws
 14 of the United States or of any State.

15 “(2) CHILDREN.—The exception in paragraph
 16 (1) permits a parent or legal guardian of a child to
 17 intercept geolocation information pertaining to that
 18 child or to give consent for another person to inter-
 19 cept such information.

20 “(e) EXCEPTION FOR PUBLIC INFORMATION.—It
 21 shall not be unlawful under this chapter for any person
 22 to intercept or access geolocation information relating to
 23 another person through any system that is configured so
 24 that such information is readily accessible to the general
 25 public.

1 “(f) EXCEPTION FOR EMERGENCY INFORMATION.—

2 It shall not be unlawful under this chapter for any inves-
 3 tigative or law enforcement officer or other emergency re-
 4 sponder to intercept or access geolocation information re-
 5 lating to a person if such information is used—

6 “(1) to respond to a request made by such per-
 7 son for assistance; or

8 “(2) in circumstances in which it is reasonable
 9 to believe that the life or safety of the person is
 10 threatened, to assist the person.

11 “(g) EXCEPTION FOR THEFT OR FRAUD.—It shall
 12 not be unlawful under this chapter for a person acting
 13 under color of law to intercept geolocation information
 14 pertaining to the location of another person who has un-
 15 lawfully taken the device sending the geolocation informa-
 16 tion if—

17 “(1) the owner or operator of such device au-
 18 thorizes the interception of the person’s geolocation
 19 information;

20 “(2) the person acting under color of law is
 21 lawfully engaged in an investigation; and

22 “(3) the person acting under color of law has
 23 reasonable grounds to believe that the geolocation
 24 information of the other person will be relevant to
 25 the investigation.

1 “(h) EXCEPTION FOR WARRANT.—

2 “(1) DEFINITIONS.—In this subsection:

3 “(A) COURT OF COMPETENT JURISDIC-
4 TION.—The term ‘court of competent jurisdic-
5 tion’ includes—

6 “(i) any district court of the United
7 States (including a magistrate judge of
8 such a court) or any United States court
9 of appeals that—

10 “(I) has jurisdiction over the of-
11 fense being investigated;

12 “(II) is in or for a district in
13 which the provider of a geolocation in-
14 formation service is located or in
15 which the geolocation information is
16 stored; or

17 “(III) is acting on a request for
18 foreign assistance pursuant to section
19 3512; or

20 “(ii) a court of general criminal juris-
21 diction of a State authorized by the law of
22 that State to issue search warrants.

23 “(B) GOVERNMENTAL ENTITY.—The term
24 ‘governmental entity’ means a department or

1 agency of the United States or any State or po-
2 litical subdivision thereof.

3 “(2) WARRANT.—A governmental entity may
4 intercept geolocation information or require the dis-
5 closure by a provider of a covered service of
6 geolocation information only pursuant to a warrant
7 issued using the procedures described in the Federal
8 Rules of Criminal Procedure (or, in the case of a
9 State court, issued using State warrant procedures)
10 by a court of competent jurisdiction, or as otherwise
11 provided in this chapter or the Foreign Intelligence
12 Surveillance Act of 1978 (50 U.S.C. 1801 et seq.).

13 “(i) PROHIBITION ON DIVULGING GEOLOCATION IN-
14 FORMATION.—

15 “(1) IN GENERAL.—Except as provided in para-
16 graph (2), a person providing a covered service shall
17 not intentionally divulge geolocation information per-
18 taining to another person.

19 “(2) EXCEPTIONS.—A person providing a cov-
20 ered service may divulge geolocation information—

21 “(A) as otherwise authorized in subsections
22 (b) through (h);

23 “(B) with the lawful consent of such other
24 person;

1 “(C) to another person employed or au-
2 thorized, or whose facilities are used, to forward
3 such geolocation information to its destination;
4 or

5 “(D) which was inadvertently obtained by
6 the provider of the covered service and which
7 appears to pertain to the commission of a
8 crime, if such divulgence is made to a law en-
9 forcement agency.

10 **“§ 2603. Prohibition of use as evidence of acquired**
11 **geolocation information**

12 “Whenever any geolocation information has been ac-
13 quired, no part of such information and no evidence de-
14 rived therefrom may be received in evidence in any trial,
15 hearing, or other proceeding in or before any court, grand
16 jury, department, officer, agency, regulatory body, legisla-
17 tive committee, or other authority of the United States,
18 a State, or a political subdivision thereof if the disclosure
19 of that information would be in violation of this chapter.

20 **“§ 2604. Emergency situation exception**

21 “(a) EMERGENCY SITUATION EXCEPTION.—Not-
22 withstanding any other provision of this chapter, any in-
23 vestigative or law enforcement officer, specially designated
24 by the Attorney General, the Deputy Attorney General,
25 the Associate Attorney General, or by the principal pros-

1 ecuting attorney of any State or subdivision thereof acting
 2 pursuant to a statute of that State, may intercept
 3 geolocation information if—

4 “(1) such officer reasonably determines that an
 5 emergency situation exists that—

6 “(A) involves—

7 “(i) immediate danger of death or se-
 8 rious physical injury to any person;

9 “(ii) conspiratorial activities threat-
 10 ening the national security interest; or

11 “(iii) conspiratorial activities char-
 12 acteristic of organized crime; and

13 “(B) requires geolocation information be
 14 intercepted before an order authorizing such
 15 interception can, with due diligence, be ob-
 16 tained;

17 “(2) there are grounds upon which an order
 18 could be entered to authorize such interception; and

19 “(3) an application for an order approving such
 20 interception is made within 48 hours after the inter-
 21 ception has occurred or begins to occur.

22 “(b) FAILURE TO OBTAIN COURT ORDER.—

23 “(1) TERMINATION OF ACQUISITION.—In the
 24 absence of an order, an interception of geolocation
 25 information carried out under subsection (a) shall

1 immediately terminate when the information sought
 2 is obtained or when the application for the order is
 3 denied, whichever is earlier.

4 “(2) PROHIBITION ON USE AS EVIDENCE.—In
 5 the event such application for approval is denied, the
 6 geolocation information shall be treated as having
 7 been obtained in violation of this chapter and an in-
 8 ventory shall be served on the person named in the
 9 application.

10 **“§ 2605. Recovery of civil damages authorized**

11 “(a) IN GENERAL.—Any person whose geolocation
 12 information is intercepted, disclosed, or intentionally used
 13 in violation of this chapter may in a civil action recover
 14 from the person, other than the United States, which en-
 15 gaged in that violation such relief as may be appropriate.

16 “(b) RELIEF.—In an action under this section, ap-
 17 propriate relief includes—

18 “(1) such preliminary and other equitable or
 19 declaratory relief as may be appropriate;

20 “(2) damages under subsection (c) and punitive
 21 damages in appropriate cases; and

22 “(3) a reasonable attorney’s fee and other liti-
 23 gation costs reasonably incurred.

1 “(c) COMPUTATION OF DAMAGES.—The court may
2 assess as damages under this section whichever is the
3 greater of—

4 “(1) the sum of the actual damages suffered by
5 the plaintiff and any profits made by the violator as
6 a result of the violation; or

7 “(2) statutory damages of whichever is the
8 greater of \$100 a day for each day of violation or
9 \$10,000.

10 “(d) DEFENSE.—It is a complete defense against any
11 civil or criminal action brought against an individual for
12 conduct in violation of this chapter if such individual acted
13 in a good faith reliance on—

14 “(1) a court warrant or order, a grand jury
15 subpoena, a legislative authorization, or a statutory
16 authorization;

17 “(2) a request of an investigative or law en-
18 forcement officer under section 2604; or

19 “(3) a good-faith determination that an excep-
20 tion under section 2602 permitted the conduct com-
21 plained of.

22 “(e) LIMITATION.—A civil action under this section
23 may not be commenced later than two years after the date
24 upon which the claimant first has a reasonable oppor-
25 tunity to discover the violation.

1 “(f) ADMINISTRATIVE DISCIPLINE.—If a court or ap-
2 propriate department or agency determines that the
3 United States or any of its departments or agencies has
4 violated any provision of this chapter, and the court or
5 appropriate department or agency finds that the cir-
6 cumstances surrounding the violation raise serious ques-
7 tions about whether or not an officer or employee of the
8 United States acted willfully or intentionally with respect
9 to the violation, the department or agency shall, upon re-
10 ceipt of a true and correct copy of the decision and find-
11 ings of the court or appropriate department or agency
12 promptly initiate a proceeding to determine whether dis-
13 ciplinary action against the officer or employee is war-
14 ranted. If the head of the department or agency involved
15 determines that disciplinary action is not warranted, such
16 head shall notify the Inspector General with jurisdiction
17 over the department or agency concerned and shall provide
18 the Inspector General with the reasons for such deter-
19 mination.

20 “(g) IMPROPER DISCLOSURE IS VIOLATION.—Any
21 willful disclosure or use by an investigative or law enforce-
22 ment officer or governmental entity of information beyond
23 the extent permitted by this chapter is a violation of this
24 chapter for purposes of this section.”.

1 (b) CLERICAL AMENDMENT.—The table of chapters
 2 for part 1 of title 18, United States Code, is amended by
 3 inserting after the item relating to chapter 119 the fol-
 4 lowing:

“120. Geolocation information 2601”.

5 (c) CONFORMING AMENDMENTS.—Section 3512(a) of
 6 title 18, United States Code, is amended—

7 (1) in paragraph (2)—

8 (A) by redesignating subparagraphs (B),
 9 (C), and (D) as subparagraphs (C), (D), and
 10 (E), respectively; and

11 (B) by inserting after subparagraph (A)
 12 the following:

13 “(B) a warrant or order for geolocation in-
 14 formation or records related thereto, as pro-
 15 vided under section 2602 of this title;”.

16 **SEC. 3. REQUIREMENT FOR SEARCH WARRANTS TO AC-**
 17 **QUIRE GEOLOCATION INFORMATION.**

18 Rule 41(a) of the Federal Rules of Criminal Proce-
 19 dure is amended—

20 (1) in paragraph (2)(A), by striking the period
 21 at the end and inserting a comma and “including
 22 geolocation information.”; and

23 (2) by adding at the end the following:

1 “(F) ‘Geolocation information’ has the
 2 meaning given that term in section 2601 of title
 3 18, United States Code.”.

4 **SEC. 4. FRAUD AND RELATED ACTIVITY IN CONNECTION**
 5 **WITH OBTAINING GEOLOCATION INFORMA-**
 6 **TION.**

7 (a) CRIMINAL VIOLATION.—Section 1039(h) of title
 8 18, United States Code, is amended—

9 (1) in paragraph (2)—

10 (A) in subparagraph (A), by striking
 11 “and” at the end;

12 (B) in subparagraph (B), by striking the
 13 period at the end and inserting a semicolon and
 14 “and”; and

15 (C) by adding at the end the following:

16 “(C) includes any geolocation information
 17 service.”;

18 (2) by redesignating paragraph (4) as para-
 19 graph (5); and

20 (3) by inserting after paragraph (3) the fol-
 21 lowing:

22 “(4) GEOLOCATION INFORMATION SERVICE.—
 23 The term ‘geolocation information service’ has the
 24 meaning given that term in section 2601.”.

25 (b) CONFORMING AMENDMENTS.—

1 (1) DEFINITION AMENDMENTS.—Section
 2 1039(h)(1) of title 18, United States Code, is
 3 amended—

4 (A) in the paragraph heading, by inserting
 5 “OR GPS” after “PHONE”; and

6 (B) in the matter preceding subparagraph
 7 (A), by inserting “or GPS” after “phone”.

8 (2) CONFORMING AMENDMENTS.—Section 1039
 9 of title 18, United States Code, is amended—

10 (A) in the section heading by inserting “**or**
 11 **GPS**” after “**phone**”;

12 (B) in subsection (a)—

13 (i) in the matter preceding paragraph
 14 (1), by inserting “or GPS” after “phone”;
 15 and

16 (ii) in paragraph (4), by inserting “or
 17 GPS” after “phone”;

18 (C) in subsection (b)—

19 (i) in the subsection heading, by in-
 20 serting “OR GPS” after “PHONE”;

21 (ii) in paragraph (1), by inserting “or
 22 GPS” after “phone” both places that term
 23 appears; and

24 (iii) in paragraph (2), by inserting “or
 25 GPS” after “phone”; and

1 (D) in subsection (c)—

2 (i) in the subsection heading, by in-
3 serting “OR GPS” after “PHONE”;

4 (ii) in paragraph (1), by inserting “or
5 GPS” after “phone” both places that term
6 appears; and

7 (iii) in paragraph (2), by inserting “or
8 GPS” after “phone”.

9 (3) CHAPTER ANALYSIS.—The table of sections
10 for chapter 47 of title 18, United States Code, is
11 amended by striking the item relating to section
12 1039 and inserting the following:

“1039. Fraud and related activity in connection with obtaining confidential
phone or GPS records information of a covered entity.”.

13 (c) SENTENCING GUIDELINES.—

14 (1) REVIEW AND AMENDMENT.—Not later than
15 180 days after the date of enactment of this Act, the
16 United States Sentencing Commission, pursuant to
17 its authority under section 994 of title 28, United
18 States Code, and in accordance with this section,
19 shall review and, if appropriate, amend the Federal
20 sentencing guidelines and policy statements applica-
21 ble to persons convicted of any offense under section
22 1039 of title 18, United States Code, as amended by
23 this section.

1 (2) AUTHORIZATION.—The United States Sen-
 2 tencing Commission may amend the Federal sen-
 3 tencing guidelines in accordance with the procedures
 4 set forth in section 21(a) of the Sentencing Act of
 5 1987 (28 U.S.C. 994 note) as though the authority
 6 under that section had not expired.

7 **SEC. 5. STATEMENT OF EXCLUSIVE MEANS OF ACQUIRING**
 8 **GEOLOCATION INFORMATION.**

9 (a) IN GENERAL.—No person may acquire the
 10 geolocation information of a person for protective activities
 11 or law enforcement or intelligence purposes except pursu-
 12 ant to a warrant issued pursuant to rule 41 of the Federal
 13 Rules of Criminal Procedure, as amended by section 3,
 14 or the amendments made by this Act, or the Foreign Intel-
 15 ligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.).

16 (b) GEOLOCATION INFORMATION DEFINED.—In this
 17 section, the term “geolocation information” has the mean-
 18 ing given that term in section 2601 of title 18, United
 19 States Code, as added by section 2.

○