

Senate Bill No. 1434

Passed the Senate August 23, 2012

Secretary of the Senate

Passed the Assembly August 22, 2012

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2012, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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, 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 these provisions from creating a cause of action against any foreign or California corporation, its officers, employees, agents, or other persons, for providing location information.

This bill would, with certain exceptions, prohibit the use of information obtained in violation of these provisions in a civil or administrative hearing.

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

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

CHAPTER 3.6. LOCATION PRIVACY

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

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

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

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

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

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

(f) “Owner” means the person or entity recognized by the law as having the legal title, claim, or right to an electronic device.

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

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

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

(b) No search warrant shall issue for the location of an electronic device pursuant to this section for a period of time longer than is necessary to achieve the objective of the authorization, nor in any event longer than 30 days, commencing on the day of the initial obtaining of location information, or 10 days after the issuance of the warrant, whichever comes first. Extensions of a warrant may be granted, but only upon a judge or magistrate finding continuing probable cause and that the extension is necessary to achieve the objective of the authorization. Each extension granted for a warrant pursuant to this subdivision shall be for no longer than the

authorizing judge or magistrate deems necessary to achieve the purposes for which the warrant was originally granted, but in any event, shall be for no longer than 30 days.

(c) Notwithstanding subdivision (a), a government entity may obtain location information without a search warrant, as provided in this section, where disclosure of the location information is not prohibited by federal law, in any of the following circumstances:

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

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

(3) With the informed, affirmative consent of the legal guardian or next of kin of the electronic device's user, if the user is deceased or reported missing and unable to be contacted.

(4) If the government entity reasonably believes that an emergency involving immediate danger of death or serious physical injury to any person requires the disclosure, without delay, of location information concerning a specific person or persons and that a warrant cannot be obtained in time to prevent the identified danger and the possessor of the location information, in good faith, believes that an emergency involving danger of death or serious physical injury to a person requires the disclosure without delay.

(d) The government entity seeking the location information pursuant to paragraph (4) of subdivision (c) shall file with the appropriate court a written statement setting forth the facts giving rise to the emergency and the facts as to why the person or persons whose location information was sought are believed to be important in addressing the emergency, no later than 48 hours after seeking disclosure.

(e) This section shall not be construed to create a cause of action against any foreign or California corporation, its officers, employees, agents, or other specified persons, for providing location information.

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

Approved _____, 2012

Governor