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S.B. 100
135th General Assembly

Bill Analysis

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Version: As Passed by the Senate

Primary Sponsors: Sens. Manning and Antonio

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SUMMARY

- Prohibits a person from knowingly installing a tracking device or tracking application on another person's property without the other person's consent.
- Specifies that a violation of the prohibition is the offense of "illegal use of a tracking device or application," generally a first degree misdemeanor.
- Specifies that illegal use of a tracking device or application is a fourth degree felony in listed circumstances.
- Specifies circumstances in which previously granted consent to the installation of a tracking device or application is presumed to be revoked and situations that are exempt from the prohibition.

DETAILED ANALYSIS

Illegal use of a tracking device or application

The bill enacts a provision that, subject to the exceptions described below, prohibits a "person" (see "**Definitions**," below) from knowingly doing either of the following:¹

1. Installing a "tracking device" or "tracking application" (see "**Definitions**," below) on another person's property without the other person's consent or causing a tracking device or tracking application to track the position or movement of another person or another person's property without the other person's consent.
2. If the person installed a tracking device or tracking application on another's property with the other person's consent and the other person subsequently revokes that

¹ R.C. 2903.216(B).

consent, failing to remove or ensure removal of the device or application after the other person revokes the consent.

A violation of this prohibition is the offense of “illegal use of a tracking device or application,” generally a first degree misdemeanor.² Illegal use of a tracking device or application is a fourth degree felony if any of the following applies:³

- The offender previously has been convicted of or pleaded guilty to the offense of illegal use of a tracking device or application or menacing by stalking.
- At the time of the commission of the offense, the offender was the subject of a protection order, regardless of whether the person to be protected under the order is the victim of the offense or another person.
- Prior to committing the offense, the offender had been determined to represent a substantial risk of physical harm to others as manifested by evidence of then-recent homicidal or other violent behavior, evidence of then-recent threats that placed another in reasonable fear of violent behavior and serious physical harm, or other evidence of then-present dangerousness.
- The offender has a history of violence toward the victim or of other violent acts towards the victim.

Presumption of revocation of prior consent

The bill specifies that if a person has given consent for another to install a tracking device or application on the consenting person’s property, the consent is presumed to be revoked if any of the following applies:⁴

- The consenting person and the person to whom consent was given are lawfully married and one of them files a petition for divorce or dissolution of marriage from the other.
- The consenting person or the person to whom consent was given files a petition or motion requesting an “Ohio protection order” (see “**Definitions**,” below).
- An “Ohio protection order” is issued against the other person and the person to be protected under the order is the consenting person.

Revocation of consent under the above listed circumstances is effective upon the service of the petition or motion, or an Ohio protection order.⁵

² R.C. 2903.216(E)(1).

³ R.C. 2903.216(E)(2).

⁴ R.C. 2903.216(C)(1).

⁵ R.C. 2903.216(C)(2).

Exceptions

The bill provides exceptions to its general prohibition against knowingly installing a tracking device or application in the following situations:⁶

- A law enforcement officer, or any “law enforcement agency” (see “**Definitions**,” below), that installs a tracking device or application on another person’s property or causes a tracking device or tracking application to track the position or movement of another person or another person’s property as part of a criminal investigation, or a probation officer, parole officer, or employee of the Department of Rehabilitation and Correction, when engaged in the lawful performance of the officer’s or employee’s official duties.
- A parent or legal guardian of a minor child who installs or uses a tracking device or application to track the minor child if any of the following applies:
 - The child’s parents or legal guardians are lawfully married to each other and are not separated or otherwise living apart, and either of those parents or legal guardians consents to the installation of the tracking device or application;
 - The child’s parent or legal guardian is the sole surviving parent or legal guardian of the child;
 - The child’s parent or legal guardian has sole custody of the child;
 - The child’s parents or legal guardians are divorced, separated, or otherwise living apart and neither parent has sole custody of the child, and both consent to the installation of the tracking device or application.
 - The child’s parents or legal guardians are divorced, separated, or otherwise living apart, neither parent has sole custody of the child, and either only one parent consents to the installation of the tracking device or tracking application or one parent revokes consent, if the consenting parent only uses the tracking device or tracking application during that parent’s parenting or custodial time and disables or removes the tracking device or application during the nonconsenting parent’s parenting or custodial time.
- A caregiver of an “elderly person” or “disabled adult” (see “**Definitions**,” below), if the elderly person’s or disabled adult’s treating physician certifies that the installation of a tracking device or application onto the elderly person’s or disabled adult’s property is necessary to ensure the safety of the elderly person or disabled adult.
- A person acting in good faith on behalf of a “business entity” for a legitimate business purpose, with the exception that this does not apply to a “private investigator” engaged

⁶ R.C. 2903.216(D).

in the “business of private investigation” (see “**Definitions**,” below) on behalf of another person.

- A private investigator, or other person licensed as a private investigator under a class B license, as a security guard provider under a class C license, or as a private investigator and a security guard provider under a class A license, who is acting in the normal course of the investigator’s private investigation business on behalf of another person and who has the consent of the owner of the property upon which the tracking device or tracking application is installed for the purpose of obtaining information regarding any of the following:
 1. Criminal offenses committed, threatened, or suspected against the United States, a territory of the United States, a state, or any person or legal entity;
 2. Locating an individual known to be a fugitive from justice;
 3. Locating lost or stolen property or other assets that have been awarded by the court;
 4. Investigating claims related to worker’s compensation.
 - This exception does not apply if the person on whose behalf the private investigator is working is the subject of an Ohio protection order or a “protection order issued by a court of another state” (see “**Definitions**,” below), or if the private investigator knows or reasonably should know that the person on whose behalf the private investigator is working seeks the investigator’s services to aid in the commission of a crime.
- An owner or lessee of a motor vehicle who installs, or directs the installation of, a tracking device or application on the vehicle during the period of ownership or lease, if any of the following applies:
 - The tracking device or application is removed before the vehicle’s title is transferred or the lease expires;
 - The new owner of the vehicle, in the case of a sale, or the lessor of the vehicle, in the case of an expired lease, consents in writing to the nonremoval of the tracking device or application;
 - The owner of the vehicle at the time of the installation of the tracking device or application was the original manufacturer of the vehicle.
- A person who installs a tracking device or application on property in which the person has an ownership or contractual interest, unless the person is the subject of a protective order and the property is likely to be used by the person who obtained the protective order.
- A person or business entity that installs a tracking device or tracking application on any fixed wing aircraft or rotorcraft operated or managed by the person or business entity pursuant to 14 C.F.R. part 91 or part 135 to track the position or movement of the fixed wing aircraft or rotorcraft.

- A surety bail bond agent, or any employee or contractor of a surety bail bond agent; that installs a tracking device or tracking application on another person's property or causes a tracking device or tracking application to track the position or movement of another person or another person's property as part of the surety bail bond agent's, employee's, or contractor's official responsibilities or duties.

Definitions

The bill defines the following terms for purposes of its provisions described above:⁷

"Business entity" means any form of corporation, partnership, association, cooperative, joint venture, business trust, or sole proprietorship that conducts business in Ohio.

"Business of private investigation" means, except under specified circumstances, the conducting, for hire, in person or through a partner or employees, of any investigation relevant to any crime or wrong done or threatened, or to obtain information on the identity, habits, conduct, movements, whereabouts, affiliations, transactions, reputation, credibility, or character of any person, or to locate and recover lost or stolen property, or to determine the cause of or responsibility for any libel or slander, or any fire, accident, or damage to property, or to secure evidence for use in any legislative, administrative, or judicial investigation or proceeding.

"Private investigator" means any person who engages in the business of private investigation.

"Disabled adult" means a person who is 18 or older and has some impairment of body or mind that makes the person unable to work at any substantially remunerative employment that the person otherwise would be able to perform and that will, with reasonable probability, continue for a period of at least 12 months without any present indication of recovery from the impairment, or who is 18 or older and has been certified as permanently and totally disabled by an Ohio agency or the United States.

"Elderly person" means a person who is 65 or older.

"Law enforcement agency" means any organization or unit comprised of law enforcement officers, and also includes any federal or military law enforcement agency.

"Person" means an individual, but does not include a business entity.

"Ohio protection order" means a protection order issued or consent agreement approved upon a motion and hearing for a protection order, as part of a domestic violence hearing, or a no contact order issued as any of the following:

- As a part of a person's sentence under a community control sanction;

⁷ R.C. 2903.216(A), including by reference to R.C. 4749.01, 2913.01, and 2919.27, not in the bill.

- As a term or condition of a person’s release under sentence reduction through judicial release;
- As a post-release control sanction imposed as a condition of a person’s post-release control;
- As a term of supervision for a person transferred to transitional control;
- As a term or condition of the intervention plan of a person granted intervention in lieu of conviction.

“Protection order issued by a court of another state” means an injunction or another order issued by a criminal court of another state for the purpose of preventing violent or threatening acts or harassment against, contact or communication with, or physical proximity to another person, including a temporary order, and means an injunction or order of that nature issued by a civil court of another state, including a temporary order and a final order issued in an independent action or as a pendente lite order in a proceeding for other relief, if the court issued it in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection. “Protection order issued by a court of another state” does not include an order for support or for custody of a child issued pursuant to the divorce and child custody laws of another state, except to the extent that the order for support or for custody of a child is entitled to full faith and credit under the laws of the United States.

“Tracking application” means any software program that permits a person to remotely determine or track the position or movement of another person or another person’s property.

“Tracking device” means an electronic or mechanical device that permits a person to remotely determine or track the position or movement of another person or another person’s property.

HISTORY

Action	Date
Introduced	03-28-23
Reported, S. Financial Institutions & Technology	06-06-23
Passed Senate (31-0)	06-07-23