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LAW/RWH

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 2841

STATE OF NEW JERSEY
213th LEGISLATURE

ADOPTED JUNE 15, 2009

Sponsored by:

Senator RAYMOND J. LESNIAK

District 20 (Union)

Senator JOHN A. GIRGENTI

District 35 (Bergen and Passaic)

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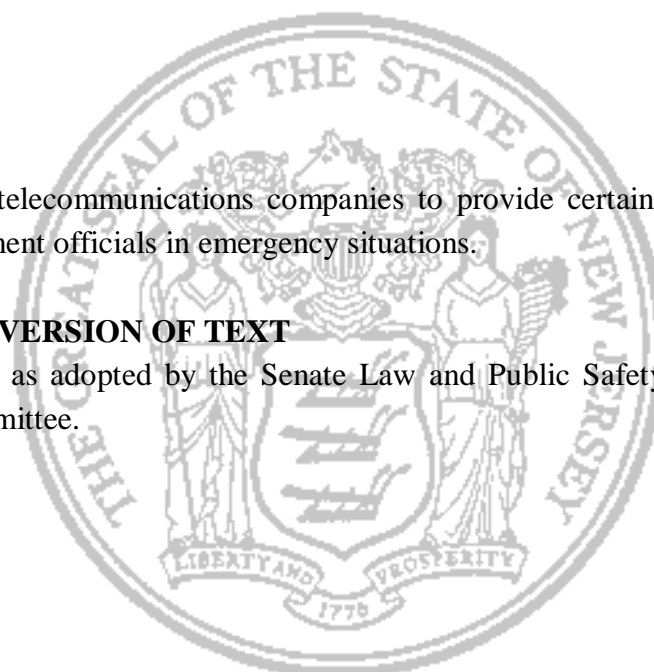
Assemblywoman Rodriguez

SYNOPSIS

Requires telecommunications companies to provide certain information to law enforcement officials in emergency situations.

CURRENT VERSION OF TEXT

Substitute as adopted by the Senate Law and Public Safety and Veterans' Affairs Committee.



(Sponsorship Updated As Of: 1/8/2010)

1 **AN ACT** concerning access to telecommunications information and
2 amending P.L.1968, c.409 and P.L.1993, c.29.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 2 of P.L.1968, c.409 (C.2A:156A-2) is amended to
8 read as follows:

9 2. As used in this act:

10 a. "Wire communication" means any aural transfer made in
11 whole or in part through the use of facilities for the transmission of
12 communications by the aid of wire, cable or other like connection
13 between the point of origin and the point of reception, including the
14 use of such connection in a switching station, furnished or operated
15 by any person engaged in providing or operating such facilities for
16 the transmission of intrastate, interstate or foreign communication.
17 "Wire communication" includes any electronic storage of such
18 communication, and the radio portion of a cordless telephone
19 communication that is transmitted between the cordless telephone
20 handset and the base unit;

21 b. "Oral communication" means any oral communication
22 uttered by a person exhibiting an expectation that such
23 communication is not subject to interception under circumstances
24 justifying such expectation, but does not include any electronic
25 communication;

26 c. "Intercept" means the aural or other acquisition of the
27 contents of any wire, electronic or oral communication through the
28 use of any electronic, mechanical, or other device;

29 d. "Electronic, mechanical or other device" means any device
30 or apparatus, including an induction coil, that can be used to
31 intercept a wire, electronic or oral communication other than:

32 (1) Any telephone or telegraph instrument, equipment or
33 facility, or any component thereof, furnished to the subscriber or
34 user by a provider of wire or electronic communication service in
35 the ordinary course of its business and being used by the subscriber
36 or user in the ordinary course of its business; or furnished by such
37 subscriber or user for connection to the facilities of such service and
38 used in the ordinary course of its business; or being used by a
39 provider of wire or electronic communication service in the
40 ordinary course of its business, or by an investigative or law
41 enforcement officer in the ordinary course of his duties; or

42 (2) A hearing aid or similar device being used to correct
43 subnormal hearing to not better than normal;

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

- 1 e. "Person" means that term as defined in R.S.1:1-2 and
2 includes any officer or employee of the State or of a political
3 subdivision thereof;
- 4 f. "Investigative or law enforcement officer" means any officer
5 of the State of New Jersey or of a political subdivision thereof who
6 is empowered by law to conduct investigations of, or to make
7 arrests for, any offense enumerated in section 8 of P.L.1968, c.409
8 (C.2A:156A-8) and any attorney authorized by law to prosecute or
9 participate in the prosecution of any such offense;
- 10 g. "Contents," when used with respect to any wire, electronic
11 or oral communication, includes any information concerning the
12 identity of the parties to such communication or the existence,
13 substance, purport, or meaning of that communication, except that
14 for purposes of sections 22, 23, 24 and 26 of P.L.1993, c.29
15 (C.2A:156A-28, C.2A:156A-29, C.2A:156A-30, and C.2A:156A-
16 32) contents, when used with respect to any wire, electronic, or oral
17 communication means any information concerning the substance,
18 purport or meaning of that communication;
- 19 h. "Court of competent jurisdiction" means the Superior Court;
- 20 i. "Judge," when referring to a judge authorized to receive
21 applications for, and to enter, orders authorizing interceptions of
22 wire, electronic or oral communications, means one of the several
23 judges of the Superior Court to be designated from time to time by
24 the Chief Justice of the Supreme Court to receive applications for,
25 and to enter, orders authorizing interceptions of wire, electronic or
26 oral communications pursuant to this act;
- 27 j. "Communication common carrier" means any person
28 engaged as a common carrier for hire, in intrastate, interstate or
29 foreign communication by wire or radio or in intrastate, interstate or
30 foreign radio transmission of energy; but a person engaged in radio
31 broadcasting shall not, while so engaged, be deemed a common
32 carrier;
- 33 k. "Aggrieved person" means a person who was a party to any
34 intercepted wire, electronic or oral communication or a person
35 against whom the interception was directed;
- 36 l. "In-progress trace" means the determination of the origin of
37 a telephonic communication to a known telephone during the
38 communication;
- 39 m. "Electronic communication" means any transfer of signs,
40 signals, writing, images, sounds, data, or intelligence of any nature
41 transmitted in whole or in part by a wire, radio, electromagnetic,
42 photoelectric or photo-optical system that affects interstate,
43 intrastate or foreign commerce, but does not include:
- 44 (1) Any wire or oral communication;
45 (2) Any communication made through a tone-only paging
46 device; or
47 (3) Any communication from a tracking device;

- 1 n. "User" means any person or entity who:
- 2 (1) Uses an electronic communication service; and
- 3 (2) Is duly authorized by the provider of such service to engage
- 4 in such use;
- 5 o. "Electronic communication system" means any wire, radio,
- 6 electromagnetic, photo-optical or photoelectronic facilities for the
- 7 transmission of electronic communications, and any computer
- 8 facilities or related electronic equipment for the electronic storage
- 9 of such communications;
- 10 p. "Electronic communication service" means any service
- 11 which provides to the users thereof the ability to send or receive
- 12 wire or electronic communications;
- 13 q. "Electronic storage" means:
- 14 (1) Any temporary, intermediate storage of a wire or electronic
- 15 communication incidental to the electronic transmission thereof;
- 16 and
- 17 (2) Any storage of such communication by an electronic
- 18 communication service for purpose of backup protection of the
- 19 communication;
- 20 r. "Readily accessible to the general public" means, with
- 21 respect to a radio communication, that such communication is not:
- 22 (1) Scrambled or encrypted;
- 23 (2) Transmitted using modulation techniques whose essential
- 24 parameters have been withheld from the public with the intention of
- 25 preserving the privacy of such communication;
- 26 (3) Carried on a subcarrier or other signal subsidiary to a radio
- 27 transmission;
- 28 (4) Transmitted over a communication system provided by a
- 29 common carrier, unless the communication is a tone-only paging
- 30 system communication; or
- 31 (5) Transmitted on frequencies allocated under part 25, subpart
- 32 D, E, or F of part 74, or part 94 of the Rules of the Federal
- 33 Communications Commission, unless, in the case of a
- 34 communication transmitted on a frequency allocated under part 74
- 35 that is not exclusively allocated to broadcast auxiliary services, the
- 36 communication is a two-way voice communication by radio;
- 37 s. "Remote computing service" means the provision to the
- 38 public of computer storage or processing services by means of an
- 39 electronic communication system;
- 40 t. "Aural transfer" means a transfer containing the human
- 41 voice at any point between and including the point of origin and the
- 42 point of reception;
- 43 u. "Tracking device" means an electronic or mechanical device
- 44 which permits the tracking of the movement of a person or device;
- 45 v. "Point of interception" means the site at which the
- 46 investigative or law enforcement officer is located at the time the
- 47 interception is made[.];

1 w. “Location information” means global positioning system
2 data, enhanced 9-1-1 data, cellular site information, and any other
3 information that would assist a law enforcement agency in tracking
4 the physical location of a cellular telephone or wireless mobile
5 device.

6 (cf: P.L.1999, c.151, s.2)

7
8 2. Section 23 of P.L.1993, c.29 (C.2A:156A-29) is amended to
9 read as follows:

10 23. Requirements for access.

11 a. A law enforcement agency, but no other governmental
12 entity, may require the disclosure by a provider of electronic
13 communication service or remote computing service of the contents
14 of an electronic communication without notice to the subscriber or
15 the customer if the law enforcement agency obtains a warrant.

16 b. Except as provided in subsection c. of this section, a
17 provider of electronic communication service or remote computing
18 service may disclose a record or other information pertaining to a
19 subscriber or customer of the service to any person other than a
20 governmental entity. This subsection shall not apply to the contents
21 covered by subsection a. of this section.

22 c. A provider of electronic communication service or remote
23 computing service or a communication common carrier shall
24 disclose a record , the location information for a subscriber’s or
25 customer’s mobile or wireless communications device, or other
26 information pertaining to a subscriber or customer of the service,
27 other than contents covered by subsections a. and f. of this section,
28 to a law enforcement agency under the following circumstances:

29 (1) the law enforcement agency has obtained a warrant;

30 (2) the law enforcement agency has obtained the consent of the
31 subscriber or customer to the disclosure; **[or]**

32 (3) the law enforcement agency has obtained a court order for
33 such disclosure under subsection e. of this section; or

34 (4) with respect to only the location information for a
35 subscriber’s or customer’s mobile or wireless communications
36 device and not to a record or other subscriber or customer
37 information, the law enforcement agency believes in good faith that
38 an emergency involving danger of death or serious bodily injury to
39 the subscriber or customer requires disclosure without delay of
40 information relating to the emergency.

41 A law enforcement agency receiving records or information
42 pursuant to this subsection is not required to provide notice to the
43 customer or subscriber.

44 d. Notwithstanding any other provision of law to the contrary,
45 no service provider, its officers, employees, agents or other
46 specified persons shall be liable in any civil action for damages as a
47 result of providing information, facilities or assistance in

1 accordance with the terms of a court order or warrant under this
2 section.

3 e. A court order for disclosure under subsection b. or c. may be
4 issued by a judge of competent jurisdiction and shall issue only if
5 the law enforcement agency offers specific and articulable facts
6 showing that there are reasonable grounds to believe that the record
7 or other information pertaining to a subscriber or customer of an
8 electronic communication service or remote computing service or
9 communication common carrier is relevant and material to an
10 ongoing criminal investigation. A judge who has issued an order
11 pursuant to this section, on a motion made promptly by the service
12 provider, may quash or modify such order, if the information or
13 records requested are unusually voluminous in nature or compliance
14 with such order otherwise would cause an undue burden on such
15 provider.

16 f. A provider of electronic communication service or remote
17 computing service shall disclose to a law enforcement agency or to
18 the State Commission of Investigation the:

19 (1) name;

20 (2) address;

21 (3) telephone or instrument number or other subscriber number
22 or identity, including any temporarily assigned network address;

23 (4) local and long distance telephone connection records or
24 records of session times and durations;

25 (5) length of service, including start date, and types of services
26 utilized; and

27 (6) means and source of payment for such service, including any
28 credit card or bank account number,

29 of a subscriber to or customer of such service when the law
30 enforcement agency obtains a grand jury or trial subpoena or when
31 the State Commission of Investigation issues a subpoena.

32 g. Upon the request of a law enforcement agency, a provider of
33 wire or electronic communication service or a remote computing
34 service shall take all necessary steps to preserve, for a period of 90
35 days, records and other evidence in its possession pending the
36 issuance of a court order or other legal process. The preservation
37 period shall be extended for an additional 90 days upon the request
38 of the law enforcement agency.

39 (cf: P.L.2005, c.270, s.1)

40

41 3. This act shall take effect immediately.

SENATE, No. 2841

STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED MAY 18, 2009

Sponsored by:

Senator RAYMOND J. LESNIAK

District 20 (Union)

Senator JOHN A. GIRGENTI

District 35 (Bergen and Passaic)

SYNOPSIS

Requires telecommunications companies to provide caller location information to law enforcement officials in emergency situations.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/16/2009)

1 AN ACT concerning access to telecommunications information and
2 supplementing Title 2A of the New Jersey Statutes.

3

4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6

7 1. a. For the purposes of this act:

8 “Call location information” means the physical location of a
9 user’s hand held wireless communication device.

10 “User” means any person or entity who:

11 (1) uses a hand held wireless communication device service; and

12 (2) is duly authorized to engage in such use;

13 “Wireless telecommunications carrier” means any common
14 carrier, private or otherwise, licensed by the federal
15 communications commission to provide two-way voice service in
16 this State which provides interconnection to the public switched
17 telephone network.

18 b. Upon the request of a law enforcement agency, a wireless
19 telecommunications carrier shall provide call location information
20 concerning the hand held wireless communication device of a user
21 to the requesting law enforcement agency in order to respond to:

22 (1) a call for emergency services, or an emergency situation
23 where there is a reasonable likelihood that death or serious harm
24 may occur; or

25 (2) a situation where the user of the wireless device is the victim
26 of a crime and consents to the release of the call location
27 information to the law enforcement agency and the release of that
28 information may contribute to the apprehension of an alleged
29 offender.

30 c. Notwithstanding any other provision of law to the contrary,
31 nothing in this section shall prohibit a wireless telecommunications
32 carrier from establishing protocols by the which the carrier may
33 voluntarily disclose call location information to a law enforcement
34 agency.

35 d. No cause of action shall exist against any wireless
36 telecommunications carrier, its officers, employees, or agents for
37 providing call location information while acting in good faith
38 pursuant to the provisions of this section.

39 e. Notwithstanding any other provision of law to the contrary, a
40 law enforcement agency shall not be required to obtain a search
41 warrant in order to request call location information in accordance
42 with subsection a. of this section.

43 f. Nothing in this act shall be construed to permit the release,
44 interception, or surveillance of the content of any oral
45 communication in violation of “New Jersey Wiretapping and
46 Electronic Surveillance Control Act,” P.L.1968, c.409 (C.2A:156A-
47 1 et seq.).

1 g. The Attorney General may promulgate guidelines to effectuate
2 the purposes of this act.

3

4 2. This act shall take effect immediately.

5

6

7

STATEMENT

8

9 This bill expedites the manner in which law enforcement officers
10 are able to collect information regarding the location of a cell phone
11 in an emergency situation. Specifically, the bill requires wireless
12 telecommunications carriers to provide information about the
13 location of a person's hand held wireless device, if requested by a
14 law enforcement agency in order to respond to a call for emergency
15 services, or to respond in an emergency situation that involves a
16 reasonable likelihood of resulting death or serious harm. In
17 addition, a telecommunications carrier would be required to provide
18 location information to assist police in situation where the user of
19 the wireless device is the victim of a crime and consents to the
20 release of the call location information to the law enforcement
21 agency.

SENATE LAW AND PUBLIC SAFETY AND VETERANS'
AFFAIRS COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 2841

STATE OF NEW JERSEY

DATED: JUNE 15, 2009

The Senate Law and Public Safety and Veterans' Affairs Committee reports favorably a Senate Committee Substitute for Senate Bill No. 2841.

This committee substitute amends the "New Jersey Wiretapping and Electronic Surveillance Control Act," P.L.1968, c.409 (C.2A:156A-1 et seq.), to expedite the manner in which law enforcement officers are able to collect information regarding the location of a cellular telephone or handheld wireless device in an emergency situation. Specifically, the substitute requires wireless telecommunications carriers to provide information about the location of a person's cellular telephone or hand held wireless device if requested by a law enforcement agency in order to respond to a call for emergency services, or to respond in an emergency situation that involves a reasonable likelihood of resulting death or serious bodily injury. In addition, a telecommunications carrier would be required to provide location information to assist law enforcement in situations where the user of the cellular telephone or hand held wireless device is the victim of a crime and consents to the release of the location information to the law enforcement agency.

ASSEMBLY REGULATED PROFESSIONS COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 2841**

STATE OF NEW JERSEY

DATED: JANUARY 4, 2010

The Assembly Regulated Professions Committee reports favorably Senate Bill No. 2841 (SCS).

This committee substitute amends the “New Jersey Wiretapping and Electronic Surveillance Control Act,” P.L.1968, c.409 (C.2A:156A-1 et seq.), to expedite the manner in which law enforcement officers are able to collect information regarding the location of a cellular telephone or handheld wireless device in an emergency situation. Specifically, the substitute requires wireless telecommunications carriers to provide information about the location of a person’s cellular telephone or hand held wireless device if requested by a law enforcement agency in order to respond to a call for emergency services, or to respond in an emergency situation that involves a reasonable likelihood of resulting death or serious bodily injury. In addition, a telecommunications carrier would be required to provide location information to assist law enforcement in situations where the user of the cellular telephone or hand held wireless device is the victim of a crime and consents to the release of the location information to the law enforcement agency.

This substitute is identical to the Assembly Committee Substitute for Assembly Bill No. 4060, also reported by the committee today.

ASSEMBLY, No. 4060

STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED JUNE 8, 2009

Sponsored by:

Assemblywoman ANNETTE QUIJANO

District 20 (Union)

Assemblyman UPENDRA J. CHIVUKULA

District 17 (Middlesex and Somerset)

Assemblyman RUBEN J. RAMOS, JR.

District 33 (Hudson)

Co-Sponsored by:

Assemblywoman Rodriguez

SYNOPSIS

Requires telecommunications companies to provide caller location information to law enforcement officials in emergency situations.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/26/2009)

1 AN ACT concerning access to telecommunications information and
2 supplementing Title 2A of the New Jersey Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. a. For the purposes of this act:

8 "Call location information" means the physical location of a
9 user's hand held wireless communication device.

10 "User" means any person or entity who:

11 (1) uses a hand held wireless communication device service; and

12 (2) is duly authorized to engage in such use;

13 "Wireless telecommunications carrier" means any common
14 carrier, private or otherwise, licensed by the Federal
15 Communications Commission to provide two-way voice service in
16 this State which provides interconnection to the public switched
17 telephone network.

18 b. Upon the request of a law enforcement agency, a wireless
19 telecommunications carrier shall provide call location information
20 concerning the hand held wireless communication device of a user
21 to the requesting law enforcement agency in order to respond to:

22 (1) a call for emergency services, or an emergency situation
23 where there is a reasonable likelihood that death or serious harm
24 may occur; or

25 (2) a situation where the user of the wireless device is the victim
26 of a crime and consents to the release of the call location
27 information to the law enforcement agency and the release of that
28 information may contribute to the apprehension of an alleged
29 offender.

30 c. Notwithstanding any other provision of law to the contrary,
31 nothing in this section shall prohibit a wireless telecommunications
32 carrier from establishing protocols by the which the carrier may
33 voluntarily disclose call location information to a law enforcement
34 agency.

35 d. No cause of action shall exist against any wireless
36 telecommunications carrier, its officers, employees, or agents for
37 providing call location information while acting in good faith
38 pursuant to the provisions of this section.

39 e. Notwithstanding any other provision of law to the contrary, a
40 law enforcement agency shall not be required to obtain a search
41 warrant in order to request call location information in accordance
42 with subsection a. of this section.

43 f. Nothing in this act shall be construed to permit the release,
44 interception, or surveillance of the content of any oral
45 communication in violation of the "New Jersey Wiretapping and
46 Electronic Surveillance Control Act," P.L.1968, c.409 (C.2A:156A-
47 1 et seq.).

1 g. The Attorney General may promulgate guidelines to
2 effectuate the purposes of this act.

3

4 2. This act shall take effect immediately.

5

6

7

STATEMENT

8

9 This bill expedites the manner in which law enforcement officers
10 are able to collect information regarding the location of a cell phone
11 in an emergency situation. Specifically, the bill requires wireless
12 telecommunications carriers to provide information about the
13 location of a person's hand held wireless device, if requested by a
14 law enforcement agency, in order to respond to a call for emergency
15 services, or to respond in an emergency situation that involves a
16 reasonable likelihood of resulting death or serious harm. In
17 addition, a telecommunications carrier would be required to provide
18 location information to assist police in a situation where the user of
19 the wireless device is the victim of a crime and consents to the
20 release of the call location information to the law enforcement
21 agency.

ASSEMBLY REGULATED PROFESSIONS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, No. 4060**

STATE OF NEW JERSEY

DATED: JANUARY 4, 2010

The Assembly Regulated Professions Committee reports favorably an Assembly Committee Substitute for Assembly Bill No. 4060.

This committee substitute amends the “New Jersey Wiretapping and Electronic Surveillance Control Act,” P.L.1968, c.409 (C.2A:156A-1 et seq.), to expedite the manner in which law enforcement officers are able to collect information regarding the location of a cellular telephone or handheld wireless device in an emergency situation. Specifically, the substitute requires wireless telecommunications carriers to provide information about the location of a person’s cellular telephone or hand held wireless device if requested by a law enforcement agency in order to respond to a call for emergency services, or to respond in an emergency situation that involves a reasonable likelihood of resulting death or serious bodily injury. In addition, a telecommunications carrier would be required to provide location information to assist law enforcement in situations where the user of the cellular telephone or hand held wireless device is the victim of a crime and consents to the release of the location information to the law enforcement agency.

This committee substitute is identical to the Senate Committee Substitute for Senate Bill No. 2841, also reported by the committee today.