

112TH CONGRESS
1ST SESSION

H. R. 2168

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 HOUSE OF REPRESENTATIVES

JUNE 14, 2011

Mr. CHAFFETZ (for himself and Mr. GOODLATTE) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Select Committee on Intelligence (Permanent Select), for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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”.

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

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

5 **“CHAPTER 120—GEOLOCATION**
6 **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.

7 **“§ 2601. Definitions**

8 “In this chapter:

9 “(1) ELECTRONIC COMMUNICATION SERVICE.—

10 The term ‘electronic communication service’ has the
11 meaning given that term in section 2510.

12 “(2) 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 “(3) GEOLOCATION INFORMATION.—The term
17 ‘geolocation information’ means, with respect to a
18 person, any information that is not the content of a
19 communication, concerning the location of a wireless
20 communication device or tracking device (as that
21 term is defined section 3117) that, in whole or in
22 part, is generated by or derived from the operation

1 of that device and that could be used to determine
2 or infer information regarding the location of the
3 person.

4 “(4) 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 “(5) 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 “(6) 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 “(7) 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 “(8) REMOTE COMPUTING SERVICE.—The term
7 ‘remote computing service’ has the meaning given
8 that term in section 2711.

9 “(9) 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 “(10) 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, remote computing
17 service, or geolocation information service, if that de-
18 vice utilizes a radio or other wireless connection to
19 access such system or service.

20 “(11) COVERED SERVICE.—The term ‘covered
21 services’ means electronic communication service, re-
22 mote computing service, or of geolocation informa-
23 tion service.

1 **“§ 2602. Interception and disclosure of geolocation in-**
2 **formation**

3 “(a) IN GENERAL.—

4 “(1) PROHIBITION ON DISCLOSURE OR USE.—

5 Except as otherwise specifically provided in this
6 chapter, it shall be unlawful for any person to—

7 “(A) intentionally intercept, endeavor to
8 intercept, or procure any other person to inter-
9 cept or endeavor to intercept, geolocation infor-
10 mation pertaining to another person;

11 “(B) intentionally disclose, or endeavor to
12 disclose, to any other person geolocation infor-
13 mation pertaining to another person, knowing
14 or having reason to know that the information
15 was obtained through the interception of such
16 information in violation of this paragraph;

17 “(C) intentionally use, or endeavor to use,
18 any geolocation information, knowing or having
19 reason to know that the information was ob-
20 tained through the interception of such infor-
21 mation in violation of this paragraph; or

22 “(D)(i) intentionally disclose, or endeavor
23 to disclose, to any other person the geolocation
24 information pertaining to another person inter-
25 cepted by means authorized by subsections (b)

1 through (h), except as provided in such sub-
2 sections;

3 “(ii) knowing or having reason to know
4 that the information was obtained through the
5 interception of such information in connection
6 with a criminal investigation;

7 “(iii) having obtained or received the infor-
8 mation in connection with a criminal investiga-
9 tion; and

10 “(iv) with intent to improperly obstruct,
11 impede, or interfere with a duly authorized
12 criminal investigation.

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

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

1 vider of a geolocation information service to the public
2 shall not utilize service observing or random monitoring
3 except for mechanical or service quality control checks.

4 “(c) EXCEPTION FOR CONDUCTING FOREIGN INTEL-
5 LIGENCE SURVEILLANCE.—Notwithstanding any other
6 provision of this chapter, it shall not be unlawful for an
7 officer, employee, or agent of the United States in the nor-
8 mal course of the official duty of the officer, employee,
9 or agent to conduct electronic surveillance, as authorized
10 by the Foreign Intelligence Surveillance Act of 1978 (50
11 U.S.C. 1801 et seq.).

12 “(d) EXCEPTION FOR CONSENT.—

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

21 “(2) CHILDREN.—The exception in paragraph
22 (1) permits a parent or legal guardian of a child to
23 intercept geolocation information pertaining to that
24 child or to give consent for another person to inter-
25 cept such information.

1 “(e) EXCEPTION FOR PUBLIC INFORMATION.—It
2 shall not be unlawful under this chapter for any person
3 to intercept or access geolocation information relating to
4 another person through any system that is configured so
5 that such information is readily accessible to the general
6 public.

7 “(f) EXCEPTION FOR EMERGENCY INFORMATION.—
8 It shall not be unlawful under this chapter for any inves-
9 tigative or law enforcement officer or other emergency re-
10 sponder to intercept or access geolocation information re-
11 lating to a person if such information is used—

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

14 “(2) in circumstances in which it is reasonable
15 to believe that the life or safety of the person is
16 threatened, to assist the person.

17 “(g) EXCEPTION FOR THEFT OR FRAUD.—It shall
18 not be unlawful under this chapter for a person acting
19 under color of law to intercept geolocation information
20 pertaining to the location of another person who has un-
21 lawfully taken the device sending the geolocation informa-
22 tion if—

23 “(1) the owner or operator of such device au-
24 thorizes the interception of the person’s geolocation
25 information;

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

3 “(3) the person acting under color of law has
4 reasonable grounds to believe that the geolocation
5 information of the other person will be relevant to
6 the investigation.

7 “(h) EXCEPTION FOR WARRANT.—

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

9 “(A) COURT OF COMPETENT JURISDIC-
10 TION.—The term ‘court of competent jurisdic-
11 tion’ includes—

12 “(i) any district court of the United
13 States (including a magistrate judge of
14 such a court) or any United States court
15 of appeals that—

16 “(I) has jurisdiction over the of-
17 fense being investigated;

18 “(II) is in or for a district in
19 which the provider of a geolocation in-
20 formation service is located or in
21 which the geolocation information is
22 stored; or

23 “(III) is acting on a request for
24 foreign assistance pursuant to section
25 3512 of this title; or

1 “(ii) a court of general criminal juris-
2 diction of a State authorized by the law of
3 that State to issue search warrants.

4 “(B) GOVERNMENTAL ENTITY.—The term
5 ‘governmental entity’ means a department or
6 agency of the United States or any State or po-
7 litical subdivision thereof.

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

18 “(i) PROHIBITION ON DIVULGING GEOLOCATION IN-
19 FORMATION.—

20 “(1) IN GENERAL.—Except as provided in para-
21 graph (2), a person providing covered services shall
22 not intentionally divulge geolocation information per-
23 taining to another person.

24 “(2) EXCEPTIONS.—A person providing covered
25 services may divulge geolocation information—

1 “(A) as otherwise authorized in subsections
2 (b) through (h);

3 “(B) with the lawful consent of such other
4 person;

5 “(C) to another person employed or au-
6 thorized, or whose facilities are used, to forward
7 such geolocation information to its destination;
8 or

9 “(D) which was inadvertently obtained by
10 the service provider and which appears to per-
11 tain to the commission of a crime, if such divul-
12 gence is made to a law enforcement agency.

13 **“§ 2603. Prohibition of use as evidence of acquired**
14 **geolocation information**

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

23 **“§ 2604. Emergency situation exception**

24 “(a) EMERGENCY SITUATION EXCEPTION.—Not-
25 withstanding any other provision of this chapter, any in-

1 vestigative or law enforcement officer, specially designated
2 by the Attorney General, the Deputy Attorney General,
3 the Associate Attorney General, or by the principal pros-
4 ecuting attorney of any State or subdivision thereof acting
5 pursuant to a statute of that State, may intercept
6 geolocation information if—

7 “(1) such officer reasonably determines that an
8 emergency situation exists that—

9 “(A) involves—

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

12 “(ii) conspiratorial activities threat-
13 ening the national security interest; or

14 “(iii) conspiratorial activities char-
15 acteristic of organized crime; and

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

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

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

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

1 “(1) TERMINATION OF ACQUISITION.—In the
2 absence of an order, an interception of geolocation
3 information carried out under subsection (a) shall
4 immediately terminate when the information sought
5 is obtained or when the application for the order is
6 denied, whichever is earlier.

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

13 **“§ 2605. Recovery of civil damages authorized**

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

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

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

23 “(2) damages under subsection (c) and punitive
24 damages in appropriate cases; and

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

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

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

9 “(2) statutory damages of whichever is the
10 greater of \$100 a day for each day of violation or
11 \$10,000.

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

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

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

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

24 “(e) LIMITATION.—A civil action under this section
25 may not be commenced later than two years after the date

1 upon which the claimant first has a reasonable oppor-
2 tunity to discover the violation.

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

22 “(g) IMPROPER DISCLOSURE IS VIOLATION.—Any
23 willful disclosure or use by an investigative or law enforce-
24 ment officer or governmental entity of information beyond

1 the extent permitted by this chapter is a violation of this
2 chapter for purposes of this section.”.

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

“120. Geolocation information 2601”.

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

9 (1) in paragraph (2)—

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

13 (B) by inserting after subparagraph (A)
14 the following:

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

18 **SEC. 3. REQUIREMENT FOR SEARCH WARRANTS TO AC-**
19 **QUIRE GEOLOCATION INFORMATION.**

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

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

25 (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 new
16 subparagraph:

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

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

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

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

1 (b) CONFORMING AMENDMENTS.—

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

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

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

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

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

13 (B) in subsection (a)—

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

16 and

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

19 (C) in subsection (b)—

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

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

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

3 (D) in subsection (c)—

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

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

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

11 (3) CHAPTER ANALYSIS.—The table of sections
12 for chapter 47 of title 18, United States Code, is
13 amended by striking the item relating to section
14 1039 and inserting the following:

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

15 (c) SENTENCING GUIDELINES.—

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

1 1039 of title 18, United States Code, as amended by
2 this section.

3 (2) AUTHORIZATION.—The United States Sen-
4 tencing Commission may amend the Federal sen-
5 tencing guidelines in accordance with the procedures
6 set forth in section 21(a) of the Sentencing Act of
7 1987 (28 U.S.C. 994 note) as though the authority
8 under that section had not expired.

9 **SEC. 5. STATEMENT OF EXCLUSIVE MEANS OF ACQUIRING**
10 **GEOLOCATION INFORMATION.**

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

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

○