

2015 Regular Session

SENATE BILL NO. 182

BY SENATOR THOMPSON AND REPRESENTATIVE THIERRY

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

TELECOMMUNICATIONS. Enacts the Kelsey Smith Act to require commercial mobile service device providers to provide device location information to law enforcement agencies in certain circumstances. (gov sig)

AN ACT

To enact Chapter 8-G-1 of Title 45 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 45:844.9 and 844.10, relative to wireless telecommunications devices; to provide relative to certain commercial mobile services; to provide for disclosure of device location information under certain circumstances to law enforcement agencies; to provide for immunity; to provide for definitions, terms, conditions, and procedures; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Chapter 8-G-1 of Title 45 of the Louisiana Revised Statutes of 1950, comprised of R.S. 45:844.9 and 844.10, is hereby enacted to read as follows:

CHAPTER 8-G-1. KELSEY SMITH ACT

§844.9. Commercial mobile service device location disclosure to law enforcement agencies; emergency situations

A. This Chapter shall be known and may be cited as the "Kelsey Smith Act".

B.(1) When acting in the course and scope of his official duties, a law enforcement agency supervisor shall have the authority to submit an electronic

1 or other written request to a provider of commercial mobile services, as defined
2 by 47 U.S.C. 332(d), for device location information of a commercial mobile
3 service device user if either of the following events has occurred:

4 (a) A call for emergency services initiated from the device of the user.

5 (b) An emergency situation that involves the risk of death or serious
6 bodily harm to the device user.

7 (2) Upon receipt of the request, the provider of commercial mobile
8 services shall disclose to the law enforcement agency the device location
9 information.

10 (3) The law enforcement agency when making the request shall also
11 search the National Crime Information Center system and similar databases to
12 identify if the device user or the person initiating the call for an emergency
13 situation involving the device user has any history of domestic violence or any
14 court order restricting contact.

15 (4) The information obtained by a law enforcement agency under the
16 provisions of this Subsection shall be used solely for the performance of official
17 duties.

18 (5) No device location information shall be released by the law
19 enforcement agency to a person who has a history of domestic violence, stalking,
20 or court order restricting contact with the device user.

21 C.(1) All providers of commercial mobile services registered to do
22 business in this state, or submitting to the jurisdiction thereof, shall submit
23 emergency contact information to the Department of Public Safety and
24 Corrections, office of state police, in order to facilitate requests from law
25 enforcement agencies for location information in accordance with the provisions
26 of this Chapter. The contact information shall be submitted by July first of
27 each year and immediately upon any change in contact information.

28 (2)(a) The office of state police shall maintain a database containing
29 emergency contact information for all providers of commercial mobile services

1 and shall make such information immediately available to all law enforcement
2 agencies in the state.

3 (b) The office of state police may adopt rules in accordance with the
4 Administrative Procedure Act to implement the provisions of this Chapter.

5 D. Notwithstanding any other provision of law to the contrary, nothing
6 in this Chapter shall prohibit a provider of commercial mobile services from
7 establishing protocols by which the provider voluntarily discloses device
8 location information.

9 E. No person shall file a report with knowledge of the falsity of the
10 information contained therein to a law enforcement agency for the purpose of
11 device location information being requested from a provider of commercial
12 mobile services. Whoever violates the provisions of this Subsection shall be
13 fined not more than five hundred dollars, or imprisoned for not more than six
14 months, or both.

15 §844.10. Immunity for providers of commercial mobile services

16 No person shall have a cause of action against any provider of
17 commercial mobile services, its officers, employees, agents, or other specified
18 persons for providing device location information while acting in good faith and
19 in accordance with the provisions of this Chapter. The provisions of this
20 Section shall not apply to damage or injury caused by gross negligence or willful
21 and wanton misconduct.

22 Section 2. This Act shall become effective upon signature by the governor or, if not
23 signed by the governor, upon expiration of the time for bills to become law without signature
24 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
25 vetoed by the governor and subsequently approved by the legislature, this Act shall become
26 effective on the day following such approval.

The original instrument was prepared by Michelle D. Ridge. The following digest, which does not constitute a part of the legislative instrument, was prepared by McHenry Lee.

DIGEST

SB 182 Reengrossed

2015 Regular Session

Thompson

Proposed law creates the "Kelsey Smith Act".

Proposed law provides that when acting in the course and scope of his official duties, a law enforcement agency supervisor will have the authority to submit an electronic or other written request to a provider of commercial mobile services, as defined by 47 U.S.C. 332(d), for device location information of a commercial mobile service device user if either of the following has occurred:

- (1) A call for emergency services initiated from device of the user.
- (2) An emergency situation that involves risk of death or serious bodily harm to the device user.

Proposed law provides that upon receipt of the request, the provider of commercial mobile services must disclose to the law enforcement agency the device location information.

Proposed law provides that when making the request, the law enforcement agency must search the National Crime Information Center system and similar databases to identify if the device user or the person initiating the call for an emergency situation involving the device user has any history of domestic violence or any court order restricting contact.

Proposed law provides that the information obtained by a law enforcement agency under proposed law may only be used for the performance of official duties.

Proposed law prohibits device location information from being released by the law enforcement agency to a person who has a history of domestic violence, stalking, or court order restricting contact with the device user.

Proposed law provides that all providers of commercial mobile services registered to do business in this state, or submitting to the jurisdiction thereof, shall submit emergency contact information to the Dept. of Public Safety and Corrections, office of state police, in order to facilitate requests from law enforcement agencies for location information. The contact information shall be submitted by July first of each year and immediately upon any change in contact information.

Proposed law provides that the office of state police shall maintain a database containing emergency contact information for all providers of commercial mobile services and shall make such information immediately available to all law enforcement agencies in the state.

Proposed law provides that the office of state police may adopt rules in accordance with the Administrative Procedure Act to implement the provisions of proposed law.

Proposed law provides that notwithstanding any other provision of law to the contrary, a provider of commercial mobile services may establish protocols by which the provider voluntarily discloses device location information.

Proposed law provides that no person may file a false report to a law enforcement agency for the purpose of device location being requested from a provider of commercial mobile service and provides a penalty for violating proposed law of not more than \$500, or imprisonment of not more than six months, or both.

Proposed law provides that no person shall have a cause of action against any provider of commercial mobile services, its officers, employees, agents, or other specified persons for providing device location information while acting in good faith and in accordance with the provisions of proposed law. Also provides that proposed law shall not apply to damage or injury caused by gross negligence or willful and wanton misconduct.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Adds R.S. 45:844.9 and 844.10)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Commerce, Consumer Protection, and International Affairs to the original bill

1. Replaces the term "wireless telecommunications device" with "commercial mobile service device"
2. Deletes the requirement that a provider respond immediately to a request made by law enforcement agencies.
3. Changes the written request of a law enforcement agency to include an electronic or other written request.
4. Provides that a release of requested information be made in a manner respectful to a person's right of privacy.

Senate Floor Amendments to engrossed bill

1. Changes authority provision for requests by a law enforcement agency of device location.
2. Adds requirement that provider shall disclose the device location to a request made by law enforcement agencies.
3. Adds certain database search requirement for law enforcement agencies making the request.
4. Restricts use of location information to official purposes and prohibits the information obtained in the request from being released to certain persons.
5. Adds violation for filing a false report and provides penalties.