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BILL



ANALYSIS

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Senate Bill 325 (as reported without amendment)
Sponsor: Senator Raymond E. Basham
Committee: Judiciary

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RATIONALE

There is no prohibition in Michigan law against installing a tracking device on another person's vehicle, or tracking a vehicle with such a device, without the consent of the vehicle owner or operator. This came to light after an incident in which, reportedly, an elected official took her car in for service because of a rattling sound, and the automotive repair workers found that a tracking device had been attached to the exhaust system on the underside of the car. Evidently, thinking she was being stalked, the woman reported the incident to the State Police but was told that the unauthorized installation and use of a tracking device are not illegal. It has been suggested that those activities should be prohibited and subject to a criminal penalty.

CONTENT

The bill would amend the Michigan Penal Code to prohibit and prescribe a criminal penalty for installing or placing a tracking device on a motor vehicle without the knowledge and consent of the owner or lessee of the vehicle, and for tracking the location of a motor vehicle with a tracking device without the knowledge and consent of the owner or lessee or an authorized driver. The bill also would make exceptions to these prohibitions.

Under the bill, a person could not do either of the following:

- Install or place a tracking device, or cause a tracking device to be installed or placed, in or on a motor vehicle without the knowledge and consent of the

vehicle's owner or, in the case of a leased vehicle, the lessee.

- Track the location of a motor vehicle with a tracking device without the knowledge and consent of either the owner or the authorized operator of that vehicle or, in the case of a leased vehicle, the lessee or authorized operator.

A violation would be a misdemeanor punishable by up to one year's imprisonment, a maximum fine of \$1,000, or both.

The prohibitions would not apply to any of the following:

- The use of any device that provided vehicle tracking only for purposes of providing mechanical, directional, weather, or traffic information to the vehicle's operator.
- The use of any device for providing emergency assistance to the vehicle's operator or passengers through a subscription service, including any trial period of that service.
- The use of any device only for providing stolen vehicle assistance for the benefit of the vehicle's owner under terms and conditions of a subscription service, including any trial period.
- The use of any device only to provide diagnostic services regarding the mechanical operation of a vehicle under the terms and conditions of a subscription service, including any trial period.
- A police officer, while performing his or her duties as a police officer.
- A person lawfully performing his or her duties as a bail agent or an employee or contractor of that bail agent.

The prohibitions also would not apply to a person licensed under the Professional Investigator Licensure Act, while performing his or her duties as a professional investigator. This exemption would not be available if the investigator were working on behalf of a person who was the subject of a court order for the protection of another person, and knew of the existence of the order or failed to use due diligence to determine whether the order existed, and the investigator's services were to provide information to the person who was the subject of the protection order about the location of any other person named in the order

"Tracking device" would mean any electronic device that is designed or intended to be used to track the location of a motor vehicle on a Michigan street or highway, regardless of whether that information is recorded.

Proposed MCL 750.539I

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Use of an electronic tracking device to keep tabs on the location of a person's vehicle, without the knowledge of the owner or lessee of the vehicle, or of its operator, could be viewed as a form of stalking. The elected official who discovered a tracking device on her car when she took it in for maintenance evidently feared she was being stalked, but was informed by police that no law prohibits someone from placing a tracking device on another person's car or using it to locate the vehicle. In another incident, reportedly, a woman had obtained a personal protection order against her estranged husband, but the man hired an unlicensed investigator to track her vehicle and the husband later detained the woman and held her against her will. In that situation, the use of the tracking device contributed to the man's criminal activity and put the woman in a very dangerous situation. While there may be legitimate law enforcement, investigatory, or safety reasons for using vehicle-tracking technology, the practice should be prohibited absent those circumstances.

Response: The bill could be insufficient to prevent the use of tracking devices in potential stalking situations. For instance, one spouse may legally be the owner or lessee of a vehicle solely used by the other spouse, even after they divorce. Under the bill, which would require the consent of the owner or the authorized operator, the owner would not be prohibited from using a tracking device to keep tabs on his or her spouse or former spouse. Indeed, the vehicle owner probably could obtain information tracking the vehicle's location at different times from equipment that would be exempted under the bill and that generally is used for safety or convenience, such as an On-Star system or GPS device.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on local government. There are no data to indicate how many offenders would be convicted of unlawfully installing or using a motor vehicle tracking device. Local governments would incur the costs of misdemeanor probation and incarceration in local facilities, which vary by county. Additional penal fine revenue would benefit public libraries.

Fiscal Analyst: Lindsay Hollander

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.