



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 325 (as enacted)
Sponsor: Senator Raymond E. Basham
Senate Committee: Judiciary
House Committee: Judiciary

PUBLIC ACT 107 of 2010

Date Completed: 3-4-11

CONTENT

The bill amended the Michigan Penal Code to do the following:

- **Prohibit a person from installing or placing a tracking device on a motor vehicle without the knowledge and consent of the vehicle owner or lessee.**
- **Prohibit a person from tracking the location of a vehicle with a tracking device without the knowledge and consent of the owner or lessee or an authorized driver.**
- **Prohibit a person, while subject to a restraining order or while on probation or parole for an assaultive crime or domestic violence, from tracking a vehicle operated or occupied by the protected party or crime victim.**
- **Make exceptions to these prohibitions for certain devices and for the installation or use of tracking devices by certain individuals.**
- **Establish a misdemeanor penalty for a violation.**
- **Provide that a person who illegally installs or uses a tracking device, or a bail agent or professional investigator who installs or uses a tracking device, is liable for all damage incurred by the vehicle owner or lessee.**

Under the bill, a person who does any of the following is guilty of a misdemeanor punishable by imprisonment for up to one year, a maximum fine of \$1,000, or both:

- Installs or places a tracking device, or causes 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.
- Tracks 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.
- While being the restrained party under a protective order, tracks the location of a motor vehicle operated or occupied by an individual protected under that order with a tracking device.

The misdemeanor penalty also applies to a person who, while on probation or parole for an assaultive crime or a violation of Section 81(3), 81(4), 81a(2), or 81a(3) of the Code, tracks the location of a motor vehicle operated or occupied by a victim of that crime or by a family member of the victim without the knowledge and consent of the victim or family member. (Those sections prescribe criminal penalties for a person who commits domestic assault and has prior convictions and/or inflicts serious or aggravated injury.)

(The bill's definition of "protective order" includes a domestic personal protection order (PPO), a stalking PPO, and a protective condition ordered as a condition of the release of a defendant, a condition of

The bill took effect on August 1, 2010.

The bill defines "tracking device" as any electronic device that is designed or intended to be used to track the location of a motor vehicle, regardless of whether that information is recorded.

parole, a condition of probation, or for the protection of a juvenile; as well as a protective order issued by the court of another state, an Indian tribe, or a U.S. territory.)

The prohibitions do not apply to the installation or use of the following:

- Any device that provides vehicle tracking for purposes of providing mechanical, operational, directional, navigation, weather, or traffic information to the vehicle's operator.
- Any device for providing emergency assistance to the vehicle's operator or passengers under the terms and conditions of a subscription service, including any trial period of that service.
- Any device for providing missing vehicle assistance for the benefit of the vehicle's owner or operator.
- Any device to provide diagnostic services regarding the mechanical operation of a vehicle under the terms and conditions of a subscription service, including any trial period.

The prohibitions also do not apply to the installation or use of any device or service that gives the lessee of the vehicle clear notice that the vehicle may be tracked. For a lessor who installs a tracking device after the original vehicle manufacture, the notice must be given in writing with an acknowledgment signed by the lessee, regardless of whether the device is original equipment, a retrofit, or an aftermarket product. The requirement for written acknowledgment does not apply to the manufacturer of the tracking device or the manufacturer of the vehicle.

In addition, the prohibitions do not apply to the installation or use of a tracking device by the following:

- The parent or guardian of a minor (a person less than 18 years old) on any vehicle owned or leased by that parent or guardian or the minor, and operated by the minor.
- A police officer while lawfully performing his or her duties as a police officer.
- A court officer appointed by a judge to serve civil process, while lawfully performing his or her duties as a court officer.

- A person lawfully performing his or her duties as an authorized bail agent or an employee or contractor of that bail agent lawfully performing his or her duties in that capacity.

The prohibitions also do not apply to the installation or use of a tracking device by a professional investigator (a person licensed under the Professional Investigator Licensure Act) or an employee of a professional investigator lawfully performing his or her duties as a professional investigator or employee for the purpose of obtaining information with reference to any of the following:

- Securing evidence to be used before a court, board, officer, or investigating committee.
- Crimes or wrongs done, threatened, or suspected against the United States or a U.S. state or territory or any other person or legal entity.
- Locating an individual known to be a fugitive from justice.
- Locating lost or stolen property or other assets that have been awarded by the court.

This exemption does not apply if the investigator or employee is working on behalf of a client who is the restrained party under a protective order; or if the investigator or employee knows or has reason to know that the person seeking his or her investigative services, including the installation of a tracking device, is doing so to aid in the commission of a crime or wrong.

A person who illegally installs or uses a tracking device, or a bail agent or professional investigator or his or her employee or contractor who installs or uses a tracking device, is liable for all damages incurred by the owner or lessee of the vehicle caused by the installation or use of the tracking device.

MCL 750.539I

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill will have an indeterminate fiscal impact on local government. There are no data to indicate how many offenders will be

convicted of unlawfully installing or using a motor vehicle tracking device. Local governments will incur the costs of misdemeanor probation and incarceration in local facilities, which vary by county. Additional penal fine revenue will benefit public libraries.

Fiscal Analyst: Matthew Grabowski

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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.