

1 AN ACT concerning location surveillance.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Freedom From Location Surveillance Act.

6 Section 5. Definitions. For the purpose of this Act:

7 "Basic subscriber information" means name, address, local
8 and long distance telephone connection records or records of
9 session time and durations; length of services, including start
10 dates, and types of services utilized; telephone or instrument
11 number or other subscriber number or identity, including any
12 temporarily assigned network address; and the means and source
13 of payment for the service, including the credit card or bank
14 account number.

15 "Electronic device" means any device that enables access
16 to, or use of:

17 (1) an electronic communication service that provides
18 the ability to send or receive wire or electronic
19 communications;

20 (2) a remote computing service that provides computer
21 storage or processing services by means of an electronic
22 communications system; or

23 (3) a location information service such as a global

1 positioning service or other mapping, locational, or
2 directional information service.

3 "Electronic device" does not mean devices used by a
4 governmental agency or by a company operating under a contract
5 with a governmental agency for toll collection, traffic
6 enforcement, or license plate reading.

7 "Law enforcement agency" means any agency of this State or
8 a political subdivision of this State which is vested by law
9 with the duty to maintain public order or enforce criminal
10 laws.

11 "Location information" means any information concerning
12 the location of an electronic device that, in whole or in part,
13 is generated by or derived from the operation of that device.

14 "Social networking website" has the same meaning ascribed
15 to the term in paragraph (4) of subsection (b) of Section 10 of
16 the Right to Privacy in the Workplace Act.

17 Section 10. Court authorization. Except as provided in
18 Section 15, a law enforcement agency shall not obtain current
19 or future location information pertaining to a person or his or
20 her effects without first obtaining a court order based on
21 probable cause to believe that the person whose location
22 information is sought has committed, is committing, or is about
23 to commit a crime or the effect is evidence of a crime, or if
24 the location information is authorized under an arrest warrant
25 issued under Section 107-9 of the Code of Criminal Procedure of

1 1963 to aid in the apprehension or the arrest of the person
2 named in the arrest warrant. An order issued under a finding of
3 probable cause under this Section must be limited to a period
4 of 60 days, renewable by the judge upon a showing of good cause
5 for subsequent periods of 60 days.

6 Section 15. Exceptions. This Act does not prohibit a law
7 enforcement agency from seeking to obtain current or future
8 location information:

9 (1) to respond to a call for emergency services concerning
10 the user or possessor of an electronic device;

11 (2) with the lawful consent of the person in actual or
12 constructive possession of the item being tracked by the
13 electronic device;

14 (3) to lawfully obtain location information broadly
15 available to the general public without a court order when the
16 location information is posted on a social networking website,
17 or is metadata attached to images and video, or to determine
18 the location of an Internet Protocol (IP) address through a
19 publicly available service;

20 (4) to obtain location information generated by an
21 electronic device used as a condition of release from a penal
22 institution, as a condition of pre-trial release, probation,
23 conditional discharge, parole, mandatory supervised release,
24 or other sentencing order, or to monitor an individual released
25 under the Sexually Violent Persons Commitment Act or the

1 Sexually Dangerous Persons Act;

2 (5) to aid in the location of a missing person;

3 (6) in emergencies as follows:

4 (A) Notwithstanding any other provisions of this Act,
5 any investigative or law enforcement officer may seek to
6 obtain location information in an emergency situation as
7 defined in this paragraph (6). This paragraph (6) applies
8 only when there was no previous notice of the emergency to
9 the investigative or law enforcement officer sufficient to
10 obtain prior judicial approval, and the officer reasonably
11 believes that an order permitting the obtaining of location
12 information would issue were there prior judicial review.
13 An emergency situation exists when:

14 (i) the use of the electronic device is necessary
15 for the protection of the investigative or law
16 enforcement officer or a person acting at the direction
17 of law enforcement; or

18 (ii) the situation involves:

19 (I) a clear and present danger of imminent
20 death or great bodily harm to persons resulting
21 from a kidnapping or the holding of a hostage by
22 force or the threat of the imminent use of force,
23 or the occupation by force or the threat of the
24 imminent use of force of any premises, place,
25 vehicle, vessel, or aircraft;

26 (II) an abduction investigation;

1 (III) conspiratorial activities characteristic
2 of organized crime;

3 (IV) an immediate threat to national security
4 interest; or

5 (V) an ongoing attack on a computer comprising
6 a felony.

7 (B) In all emergency cases, an application for an order
8 approving the previous or continuing obtaining of location
9 information must be made within 72 hours of its
10 commencement. In the absence of the order, or upon its
11 denial, any continuing obtaining of location information
12 gathering shall immediately terminate. In order to approve
13 obtaining location information, the judge must make a
14 determination (i) that he or she would have granted an
15 order had the information been before the court prior to
16 the obtaining of the location information and (ii) there
17 was an emergency situation as defined in this paragraph
18 (6).

19 (C) In the event that an application for approval under
20 this paragraph (6) is denied, the location information
21 obtained under this exception shall be inadmissible in
22 accordance with Section 20 of this Act; or

23 (7) to obtain location information relating to an
24 electronic device used to track a vehicle or an effect which is
25 owned or leased by that law enforcement agency.

1 Section 20. Admissibility. If the court finds by a
2 preponderance of the evidence that a law enforcement agency
3 obtained current or future location information pertaining to a
4 person or his or her effects in violation of Section 10 or 15
5 of this Act, then the information shall be presumed to be
6 inadmissible in any judicial or administrative proceeding. The
7 State may overcome this presumption by proving the
8 applicability of a judicially recognized exception to the
9 exclusionary rule of the Fourth Amendment to the United States
10 Constitution or Article I, Section 6 of the Illinois
11 Constitution, or by a preponderance of the evidence that the
12 law enforcement officer was acting in good faith and reasonably
13 believed that one or more of the exceptions identified in
14 Section 15 existed at the time the location information was
15 obtained.

16 Section 25. Providing location information to a law
17 enforcement agency not required. Nothing in this Act shall be
18 construed to require a person to provide current or future
19 location information to a law enforcement agency under Section
20 15.

21 Section 30. Inapplicability. This Act does not apply to a
22 law enforcement agency obtaining basic subscriber information
23 from a service provider under a valid subpoena, court order, or
24 search warrant.

1 Section 99. Effective date. This Act takes effect upon
2 becoming law.