

112TH CONGRESS
1ST SESSION

S. 1223

To address voluntary location tracking of electronic communications devices,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 16, 2011

Mr. FRANKEN (for himself and Mr. BLUMENTHAL) introduced the following
bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To address voluntary location tracking of electronic
communications devices, 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 TITLE.**

4 This Act may be cited as the “Location Privacy Pro-
5 tection Act of 2011”.

6 **SEC. 2. DEFINITION.**

7 In this Act, the term “geolocation information” has
8 the meaning given that term in section 2713 of title 18,
9 United States Code, as added by this Act.

1 **SEC. 3. VOLUNTARY LOCATION TRACKING OF ELECTRONIC**
2 **COMMUNICATIONS DEVICES.**

3 (a) IN GENERAL.—Chapter 121 of title 18, United
4 States Code, is amended by adding at the end the fol-
5 lowing:

6 **“§ 2713. Voluntary location tracking of electronic**
7 **communications devices**

8 “(a) DEFINITIONS.—In this section—

9 “(1) the term ‘covered entity’ means a non-
10 governmental individual or entity engaged in the
11 business, in or affecting interstate or foreign com-
12 merce, of offering or providing a service to electronic
13 communications devices, including, but not limited
14 to, offering or providing electronic communication
15 service, remote computing service, or geolocation in-
16 formation service;

17 “(2) the term ‘electronic communications de-
18 vice’ means any device that—

19 “(A) enables access to, or use of, an elec-
20 tronic communications system, electronic com-
21 munication service, remote computing service,
22 or geolocation information service; and

23 “(B) is designed or intended to be carried
24 by or on the person of an individual or travel
25 with the individual, including, but not limited
26 to, a vehicle the individual drives;

1 “(3) the term ‘express authorization’ means ex-
2 press affirmative consent after receiving clear and
3 prominent notice that—

4 “(A) is displayed by the electronic commu-
5 nications device, separate and apart from any
6 final end user license agreement, privacy policy,
7 terms of use page, or similar document; and

8 “(B) provides information regarding—

9 “(i) what geolocation information will
10 be collected; and

11 “(ii) the specific nongovernmental en-
12 tities to which the geolocation information
13 may be disclosed;

14 “(4) the term ‘geolocation information’—

15 “(A) means any information—

16 “(i) concerning the location of an elec-
17 tronic communications device that is in
18 whole or in part generated by or derived
19 from the operation or use of the electronic
20 communications device; and

21 “(ii) that may be used to identify or
22 approximate the location of the electronic
23 communications device or the individual
24 that is using the device; and

1 “(B) does not include any temporarily as-
2 signed network address or Internet protocol ad-
3 dress of the individual; and

4 “(5) the term ‘geolocation information service’
5 means the provision of a global positioning service or
6 other mapping, locational, or directional information
7 service.

8 “(b) COLLECTION OR DISCLOSURE OF GEOLOCATION
9 INFORMATION TO OR BY NONGOVERNMENTAL ENTI-
10 TIES.—

11 “(1) IN GENERAL.—Except as provided in para-
12 graph (2), a covered entity may not knowingly col-
13 lect, receive, record, obtain, or disclose to a non-
14 governmental individual or entity the geolocation in-
15 formation from an electronic communications device
16 without the express authorization of the individual
17 that is using the electronic communications device.

18 “(2) EXCEPTIONS.—A covered entity may
19 knowingly collect, receive, record, obtain, or disclose
20 to a nongovernmental individual or entity the
21 geolocation information from an electronic commu-
22 nication device without the express authorization of
23 the individual that is using the electronic commu-
24 nications device if the covered entity has a good

1 faith belief that the collection, receipt, recording, ob-
2 taining, or disclosure is—

3 “(A) necessary to locate a minor child or
4 provide fire, medical, public safety, or other
5 emergency services;

6 “(B) for the sole purpose of transmitting
7 the geolocation information to the individual or
8 another authorized recipient, including another
9 third party authorized under this subparagraph;
10 or

11 “(C) expressly required by statute, regula-
12 tion, or appropriate judicial process.

13 “(c) ANTI-CYBERSTALKING PROTECTION.—Not ear-
14 lier than 24 hours, and not later than 7 days, after the
15 time an individual provides express authorization to a cov-
16 ered entity providing a geolocation information service to
17 the individual for the express purpose of authorizing dis-
18 closure of geolocation information relating to the indi-
19 vidual to another individual, the covered entity shall pro-
20 vide the individual a verification displayed by the elec-
21 tronic communications device that informs the indi-
22 vidual—

23 “(1) that geolocation information relating to
24 the individual is being disclosed to another indi-
25 vidual; and

1 “(2) how the individual may revoke consent to
2 the collection, receipt, recording, obtaining, and dis-
3 closure of geolocation information relating to the in-
4 dividual.

5 “(d) CIVIL REMEDIES.—

6 “(1) ACTION BY ATTORNEY GENERAL OF THE
7 UNITED STATES.—If the Attorney General of the
8 United States has reasonable cause to believe that
9 an individual or entity is violating this section, the
10 Attorney General may bring a civil action in an ap-
11 propriate United States district court.

12 “(2) ACTION BY STATE ATTORNEYS GEN-
13 ERAL.—If the attorney general of a State has rea-
14 sonable cause to believe that an interest of the resi-
15 dents of the State has been or is threatened or ad-
16 versely affected by a violation of this section, the at-
17 torney general of the State may bring a civil action
18 on behalf of the residents of the State in an appro-
19 priate United States district court.

20 “(3) RIGHT OF ACTION.—Any individual ag-
21 grieved by any action of an individual or entity in
22 violation of this section may bring a civil action in
23 an appropriate United States district court.

24 “(4) PENDING PROCEEDINGS.—

1 “(A) FEDERAL ACTION.—If the Attorney
 2 General has brought a civil action alleging a
 3 violation of this section, an attorney general of
 4 a State or private person may not bring a civil
 5 action under this subsection against a defend-
 6 ant named in the civil action relating to a viola-
 7 tion of this section that is alleged in the civil
 8 action while the civil action is pending.

9 “(B) STATE ACTION.—If the attorney gen-
 10 eral of a State has brought a civil action alleg-
 11 ing a violation of this section, an individual may
 12 not bring a civil action under this subsection
 13 against a defendant named in the civil action
 14 for a violation of this section that is alleged in
 15 the civil action while the civil action is pending.

16 “(5) RELIEF.—In a civil action brought under
 17 this subsection, the court may award—

18 “(A) actual damages, but not less than
 19 damages in the amount of \$2,500;

20 “(B) punitive damages;

21 “(C) reasonable attorney’s fees and other
 22 litigation costs reasonably incurred; and

23 “(D) such other preliminary or equitable
 24 relief as the court determines to be appropriate.

1 “(6) PERIOD OF LIMITATIONS.—No civil action
2 may be brought under this subsection unless such
3 civil action is begun within 2 years from the date of
4 the act complained of or the date of discovery.

5 “(7) LIMITATION ON LIABILITY.—A civil action
6 may not be brought under this subsection relating to
7 any collection, receipt, recording, obtaining, or dis-
8 closure of geolocation information that is authorized
9 under any other provision of law or appropriate legal
10 process.

11 “(e) EFFECTS ON OTHER LAW.—

12 “(1) IN GENERAL.—This section shall super-
13 sede a provision of the law of a State or political
14 subdivision of a State that requires or allows collec-
15 tion or disclosure of geolocation information prohib-
16 ited by this section.

17 “(2) COMMON CARRIERS AND CABLE SERV-
18 ICES.—This section shall not apply to the activities
19 of an individual or entity to the extent the activities
20 are subject to section 222 or 631 of the Communica-
21 tions Act of 1934 (47 U.S.C. 222 and 551).”.

22 (b) TECHNICAL AND CONFORMING AMENDMENTS.—
23 Chapter 121 of title 18, United States Code, is amended—
24 (1) in the table of sections, by adding at the
25 end the following:

“2713. Voluntary location tracking of electronic communications devices.”;

1 and

2 (2) in section 2702—

3 (A) in subsection (b), by striking “A pro-
4 vider” and inserting “Except as provided under
5 section 2713, a provider”; and

6 (B) in subsection (c), by striking “A pro-
7 vider” and inserting “Except as provided under
8 section 2713, a provider”.

9 **SEC. 4. GEOLOCATION INFORMATION USED IN INTERSTATE**
10 **DOMESTIC VIOLENCE OR STALKING.**

11 (a) IN GENERAL.—Chapter 110A of title 18, United
12 States Code, is amended—

13 (1) by redesignating section 2266 as section
14 2267;

15 (2) by inserting after section 2265 the fol-
16 lowing:

17 **“§ 2266. Geolocation information used in interstate**
18 **domestic violence or stalking**

19 **“(a) OFFENSES; UNAUTHORIZED DISCLOSURE OF**
20 **GEOLOCATION INFORMATION IN AID OF INTERSTATE DO-**
21 **MESTIC VIOLENCE OR STALKING.—A covered entity**
22 **that—**

23 **“(1) knowingly and willfully discloses**
24 **geolocation information about an individual to an-**
25 **other individual;**

1 “(2) knew that a violation of section 2261,
 2 2261A, or 2262 would result from the disclosure;
 3 and

4 “(3) intends to aid in a violation of section
 5 2261, 2261A, or 2262 as a result of the disclosure,
 6 shall be punished as provided in subsection (b).

7 “(b) PENALTIES.—A covered entity that violates sub-
 8 section (a) shall be fined under this title, imprisoned for
 9 not more than 2 years, or both.”; and

10 (3) in section 2267, as so redesignated, by add-
 11 ing at the end the following:

12 “(11) COVERED ENTITY; GEOLOCATION INFOR-
 13 MATION.—The terms ‘covered entity’ and
 14 ‘geolocation information’ have the meanings given
 15 those terms in section 2713.”.

16 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

17 (1) TITLE 10.—Section 1561a(b) of title 10,
 18 United States Code, is amended by striking “section
 19 2266(5)” and inserting “section 2267(5)”.

20 (2) TITLE 18.—Title 18, United States Code, is
 21 amended—

22 (A) in section 1992(d)(14), by striking
 23 “section 2266” and inserting “section 2267”;
 24 and

25 (B) in chapter 110A—

1 (i) in the table of sections, by striking
 2 the item relating to section 2266 and in-
 3 serting the following:

“2266 Geolocation information used in interstate domestic violence or stalking.
 “2267. Definitions.”;

4 and

5 (ii) in section 2261(b)(6), by striking
 6 “section 2266 of title 18, United States
 7 Code,” and inserting “section 2267”.

8 (3) OMNIBUS CRIME CONTROL AND SAFE
 9 STREETS ACT OF 1968.—Section 2011(c) of title I of
 10 the Omnibus Crime Control and Safe Streets Act of
 11 1968 (42 U.S.C. 3796gg–5(c)) is amended by strik-
 12 ing “section 2266” and inserting “section 2267”.

13 **SEC. 5. SALE OF GEOLOCATION INFORMATION OF YOUNG**
 14 **CHILDREN.**

15 (a) IN GENERAL.—Chapter 110 of title 18, United
 16 States Code, is amended—

17 (1) by inserting after section 2252C the fol-
 18 lowing:

19 **“§ 2252D. Sale of geolocation information of young**
 20 **children**

21 “Any person who knowingly and willfully sells the
 22 geolocation information of not less than 1,000 children
 23 under 11 years of age shall be fined under this title, im-
 24 prisoned for not more 2 years, or both.”; and

1 (2) in section 2256—

2 (A) in paragraph (8), by striking the pe-
3 riod at the end and inserting a semicolon;

4 (B) in paragraph (9), by striking the pe-
5 riod at the end and inserting a semicolon;

6 (C) in paragraph (10), by striking “and”
7 at the end;

8 (D) in paragraph (11), by striking the pe-
9 riod at the end and inserting “; and”; and

10 (E) by adding at the end the following:

11 “(12) the term ‘geolocation information’ has the
12 meaning given that term in section 2713.”.

13 (b) TECHNICAL AND CONFORMING AMENDMENT.—

14 The table of sections for chapter 110 of title 18, United
15 States Code, is amended by inserting after the item relat-
16 ing to section 2252C the following:

“2252D. Sale of geolocation information of young children.”.

17 **SEC. 6. NATIONAL BASELINE STUDY OF USE OF**
18 **GEOLOCATION DATA IN VIOLENCE AGAINST**
19 **WOMEN.**

20 (a) IN GENERAL.—The National Institute of Justice,
21 in consultation with the Office on Violence Against
22 Women, shall conduct a national baseline study to examine
23 the role of geolocation information in violence against
24 women.

25 (b) SCOPE.—

1 (1) IN GENERAL.—The study conducted under
2 subsection (a) shall examine the role that various
3 new technologies that use geolocation information
4 may have in the facilitation of domestic violence,
5 dating violence, or stalking, including, but not lim-
6 ited to—

- 7 (A) global positioning system technology;
- 8 (B) smartphone mobile applications;
- 9 (C) in-car navigation devices; and
- 10 (D) geo-tagging technology.

11 (2) EVALUATION.—The study conducted under
12 subsection (a) shall evaluate the effectiveness of the
13 responses of Federal, State, tribal, and local law en-
14 forcement agencies to the conduct described in para-
15 graph (1).

16 (3) RECOMMENDATIONS.—The study conducted
17 under subsection (a) shall propose recommendations
18 to improve the effectiveness of the responses of Fed-
19 eral, State, tribal, and local law enforcement agen-
20 cies to the conduct described in paragraph (1).

21 (c) TASK FORCE.—

22 (1) IN GENERAL.—The Attorney General, act-
23 ing through the Director of the Office on Violence
24 Against Women, shall establish a task force to assist
25 in the development and implementation of the study

1 conducted under subsection (a) and guide implemen-
2 tation of the recommendations proposed under sub-
3 section (b)(3).

4 (2) MEMBERS.—The task force established
5 under paragraph (1) shall include—

6 (A) representatives from—

7 (i) the National Institute of Standards
8 and Technology; and

9 (ii) the Federal Trade Commission;
10 and

11 (B) representatives appointed by the Di-
12 rector of the Office on Violence Against Women
13 from—

14 (i) the offices of attorney generals of
15 States;

16 (ii) national violence against women
17 nonprofit organizations; and

18 (iii) the industries related to the tech-
19 nologies described in subsection (b)(1).

20 (d) REPORT.—Not later than 2 years after the date
21 of enactment of this Act, the Attorney General shall sub-
22 mit to the Committee on the Judiciary of the Senate and
23 the Committee on the Judiciary of the House of Rep-
24 resentatives a report that describes the results of the study
25 conducted under subsection (a).

1 **SEC. 7. GEOLOCATION CRIME REPORTING CENTER.**

2 (a) IN GENERAL.—The Attorney General, acting
3 through the Director of the Federal Bureau of Investiga-
4 tion, and in conjunction with the Director of the Bureau
5 of Justice Assistance, shall create a mechanism using the
6 Internet Crime Complaint Center to register complaints
7 of crimes the conduct of which was aided by use of
8 geolocation information.

9 (b) REPORT.—Not later than 18 months after the
10 date of enactment of this Act, the Attorney General, act-
11 ing through the Director of the Federal Bureau of Inves-
12 tigation, and in conjunction with the Director of the Bu-
13 reau of Justice Assistance, shall submit to the Committee
14 on the Judiciary of the Senate and the Committee on the
15 Judiciary of the House of Representatives a report that—

16 (1) discusses the information obtained using the
17 mechanism created under subsection (a);

18 (2) evaluates the potential risks that the wide-
19 spread availability of geolocation information poses
20 in increasing crimes against person and property;

21 (3) describes programs of State and municipal
22 governments intended to reduce these risks; and

23 (4) makes recommendations on measures that
24 could be undertaken by Congress to reduce or elimi-
25 nate these risks.

1 **SEC. 8. NATIONAL GEOLOCATION CURRICULUM DEVELOP-**
2 **MENT.**

3 The Attorney General shall develop a national edu-
4 cation curriculum for use by State and local law enforce-
5 ment agencies, judicial educators, and victim service pro-
6 viders to ensure that all courts, victim advocates, and
7 State and local law enforcement personnel have access to
8 information about relevant laws, practices, procedures,
9 and policies for investigating and prosecuting the misuse
10 of geolocation information.

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