



Sen. Daniel Biss

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1 AMENDMENT TO SENATE BILL 2808

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 2808 by replacing  
3 everything after the enacting clause with the following:

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:

1           (1) an electronic communication service that provides  
2           the ability to send or receive wire or electronic  
3           communications;

4           (2) a remote computing service that provides computer  
5           storage or processing services by means of an electronic  
6           communications system; or

7           (3) a location information service such as a global  
8           positioning service or other mapping, locational, or  
9           directional information service.

10          "Electronic device" does not mean devices used by a  
11          governmental agency or by a company operating under a contract  
12          with a governmental agency for toll collection, traffic  
13          enforcement, or license plate reading.

14          "Law enforcement agency" means any agency of this State or  
15          a political subdivision of this State which is vested by law  
16          with the duty to maintain public order or enforce criminal  
17          laws.

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

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

24          Section 10. Court authorization. Except as provided in  
25          Section 15, a law enforcement agency shall not obtain current

1 or future location information pertaining to a person or his or  
2 her effects without first obtaining a court order based on  
3 probable cause to believe that the person whose location  
4 information is sought has committed, is committing, or is about  
5 to commit a crime or the effect is evidence of a crime, or if  
6 the location information is authorized under an arrest warrant  
7 issued under Section 107-9 of the Code of Criminal Procedure of  
8 1963 to aid in the apprehension or the arrest of the person  
9 named in the arrest warrant. An order issued under a finding of  
10 probable cause under this Section must be limited to a period  
11 of 60 days, renewable by the judge upon a showing of good cause  
12 for subsequent periods of 60 days.

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

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

18 (2) with the lawful consent of the person in actual or  
19 constructive possession of the item being tracked by the  
20 electronic device;

21 (3) to lawfully obtain location information broadly  
22 available to the general public without a court order when the  
23 location information is posted on a social networking website,  
24 or is metadata attached to images and video, or to determine  
25 the location of an Internet Protocol (IP) address through a

1 publicly available service;

2 (4) to obtain location information generated by an  
3 electronic device used as a condition of release from a penal  
4 institution, as a condition of pre-trial release, probation,  
5 conditional discharge, parole, mandatory supervised release,  
6 or other sentencing order, or to monitor an individual released  
7 under the Sexually Violent Persons Commitment Act or the  
8 Sexually Dangerous Persons Act;

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

10 (6) in emergencies as follows:

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

21 (i) the use of the electronic device is necessary  
22 for the protection of the investigative or law  
23 enforcement officer or a person acting at the direction  
24 of law enforcement; or

25 (ii) the situation involves:

26 (I) a clear and present danger of imminent

1 death or great bodily harm to persons resulting  
2 from a kidnapping or the holding of a hostage by  
3 force or the threat of the imminent use of force,  
4 or the occupation by force or the threat of the  
5 imminent use of force of any premises, place,  
6 vehicle, vessel, or aircraft;

7 (II) an abduction investigation;

8 (III) conspiratorial activities characteristic  
9 of organized crime;

10 (IV) an immediate threat to national security  
11 interest; or

12 (V) an ongoing attack on a computer comprising  
13 a felony.

14 (B) In all emergency cases, an application for an order  
15 approving the previous or continuing obtaining of location  
16 information must be made within 72 hours of its  
17 commencement. In the absence of the order, or upon its  
18 denial, any continuing obtaining of location information  
19 gathering shall immediately terminate. In order to approve  
20 obtaining location information, the judge must make a  
21 determination (i) that he or she would have granted an  
22 order had the information been before the court prior to  
23 the obtaining of the location information and (ii) there  
24 was an emergency situation as defined in this paragraph  
25 (6).

26 (C) In the event that an application for approval under

1           this paragraph (6) is denied the location information  
2           obtained under this exception shall be inadmissible in  
3           accordance with Section 20 of this Act; or

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

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

22          Section 25. Providing location information to a law  
23          enforcement agency not required. Nothing in this Act shall be  
24          construed to require a person to provide current or future

1 location information to a law enforcement agency under Section  
2 15.

3 Section 30. Inapplicability. This Act does not apply to a  
4 law enforcement agency obtaining basic subscriber information  
5 from a service provider under a valid subpoena, court order, or  
6 search warrant.

7 Section 99. Effective date. This Act takes effect upon  
8 becoming law.".