

WIRELESS CARRIERS MUST PROVIDE LOCATION INFO TO LAW ENFORCEMENT IN EMERGENCIES

House Bill 4006 (Reported from committee as Substitute H-1)

Sponsor: Rep. Kurt Heise

Committee: Criminal Justice

Complete to 2-18-15

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<http://www.house.mi.gov/hfa>

Analysis available at

<http://www.legislature.mi.gov>

SUMMARY:

The bill would create a new act to:

- Require a wireless carrier to provide location information on a wireless device to a law enforcement officer upon request in certain emergency conditions.
- Provide civil and criminal immunity to a wireless carrier that responds to the request for device location information.
- Make it a misdemeanor offense for a law enforcement officer to use the new act to obtain device location information for personal use or gain.
- Define terms.

Detailed Summary

House Bill 4006 would create a new act to require a wireless carrier to provide the device location information concerning a wireless telecommunication device (e.g., a cell phone or tablet) to a police officer upon request if needed in an emergency situation involving the imminent risk of death or serious physical harm to the user of the device. (This could be done without first obtaining a search warrant.) A request for device location information would have to be written and signed by the requesting law enforcement officer's supervisor.

A law enforcement officer could not request, access, use, or disclose device location information from a wireless carrier more than 48 hours after the time of the initial request for the information unless the request, access, use, or disclosure was under a valid court order.

A wireless carrier could establish protocols for the disclosure of device location information in response to requests from law enforcement.

The bill would require the Department of State Police (MSP) to obtain contact information for all wireless carriers authorized to do business in the state in order to facilitate a request from an investigative or law enforcement officer for device location information. The MSP would have to disseminate the information on a quarterly basis, or immediately as changes occur, to all public safety answering points and law enforcement agencies.

A cause of action, whether civil or criminal, could not "lie" (be brought) in any court against a wireless carrier or its officers, employees, agents, or other specified persons for complying with a request from a law enforcement officer under the bill.

A law enforcement officer who uses the provisions of the bill to request, access, use, or disclose device location information for personal use or gain would be guilty of a misdemeanor punishable by imprisonment for not more than 93 days and/or a fine of not more than \$500.

"Law enforcement officer" would mean a police officer of a county, city, village, or township in the state; a public safety officer at a public university; a prosecuting attorney, assistant prosecuting attorney, or investigator for the office of prosecuting attorney; or any other person whose duty is to enforce the laws of Michigan or of the U.S.

"Public safety answering point" would mean a communications facility operated or answered on a 24-hour basis and assigned responsibility by a public safety agency or county to receive 9-1-1 calls and to dispatch public safety response. "Public safety agency" would mean a functional division of a public agency, county, or of the state that provides firefighting, law enforcement, ambulance, medical, or other emergency services.

"Law enforcement agency" means the Department of State Police; a police agency of a city, village, or township; a sheriff's department; a public safety department of a state university described in Section 4, 5, or 6 of Article VIII of the State Constitution; or any other governmental law enforcement agency in the state.

"Wireless carrier" would mean a provider of commercial mobile services, as that term is defined under federal law, and includes all broadband personal communications services, wireless radio services, and incumbent wide area specialized mobile radio licensees that offer real-time, 2-way voice or data service interconnected with the public switched telephone network, and that does business in Michigan.

The bill would take effect 90 days after enactment.

BACKGROUND INFORMATION:

The bill is similar to House Bill 5110 of the 2013-2014 legislative session. Several other states have adopted such "Kelsey Smith Laws," named for a Missouri case where a young woman from Missouri was murdered after being abducted from a store parking lot. After multiple requests over several days, her cell phone carrier eventually released information indicating the current location of her phone. Her body was located within an hour after the release of the information.

FISCAL IMPACT:

House Bill 4006 would have a nominal fiscal impact on the Michigan State Police (MSP) to the extent that the MSP would be required to obtain contact information for wireless carriers and quarterly disseminate such information to local law enforcement agencies and public safety answering points (i.e., emergency dispatches).

The bill could increase costs on local correctional systems. Information is not available on the number of persons that might be convicted under the provisions of the bill. New misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision. The costs of local incarceration in a county jail and local misdemeanor probation supervision vary by jurisdiction. The increase in penal fine revenue would increase funding for local libraries, which are the constitutionally-designated recipients of those revenues.

The bill could also increase costs on the judiciary and local court funding units. The fiscal impact would depend on how the provisions of the bill affected caseloads and related administrative costs.

POSITIONS:

A representative of the Department of State Police testified in support of the bill. (2-17-15)

Melissa Smith, the mother of Kelsey Smith, testified in support of the bill. (2-17-15)

Verizon Communications, Inc. indicated support for the bill. (2-17-15)

The Michigan Association of Chiefs of Police indicated support for the bill. (1-27 and 2-17-15)

The Michigan Sheriffs' Association indicated support for the bill. (2-17-15)

A representative of the Michigan Campaign for Liberty testified in opposition to the bill. (2-17-15)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.