GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H

HOUSE BILL 804
PROPOSED SENATE COMMITTEE SUBSTITUTE H804-PCS30412-SA-84

Short Title: Kelsey Smith Act. (Public)

Sponsors:

Referred to:

April 15, 2015

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR WARRANTLESS ACCESS BY LAW ENFORCEMENT TO
TELECOMMUNICATIONS DEVICE LOCATION INFORMATION UNDER CERTAIN
CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

SECTION 1. This act shall be known as the Kelsey Smith Act.

SECTION 2. Chapter 15A of the General Statutes is amended by adding a new
Article to read:

"Article 16C.

"Provision of Wireless Call Location Information to Law Enforcement.

§ 15A-300.10. Provision of call location information by wireless service provider to law
enforcement.

(a) The following definitions apply in this section:

(1) Call location data. – Global positioning system, triangulation, and per-call
measurement data indicating the location of a telecommunications device.
Call location data does not include the contents of any communication made
using a telecommunications device.

(2) Imminent. – With respect to a risk of death or serious physical harm, means
that the length of time necessary to comply with otherwise applicable
provisions of law pertaining to obtaining authorization for electronic
surveillance would, in the professional judgment of the law enforcement
agency based upon generally accepted surveillance and investigation
protocols, significantly reduce the chance of preventing death or serious
physical harm.


(4) Wireless service provider. – A commercial mobile radio service provider, as
defined in G.S. 62A-40, including providers of subscription-based,
in-vehicle security service.

(b) Upon request of a law enforcement agency or a public safety answering point on
behalf of a law enforcement agency, a wireless service provider shall provide call location
information concerning the telecommunications device of a user to the requesting law
enforcement agency or public safety answering point. A law enforcement agency or public
safety answering point may request information under this section only in an emergency
situation that involves an imminent risk of death or serious physical harm.

(c) A wireless service provider may establish procedures for disclosure of call location
information.
(d) No cause of action shall lie in any court against a wireless service provider, its officers, directors, employees, agents, or other specified persons for providing mobile communications tracking information to a law enforcement agency or public safety answering point as required by this act.

(e) The State Bureau of Investigation shall maintain a database containing emergency contact information for all wireless telecommunications carriers registered to do business in the State and shall make the information readily available upon request to all public safety answering points located in the State."

SECTION 3.(a) Article 12 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"§ 15A-265. Warrantless use of pen register or trap and trace device.

(a) Notwithstanding any other provision of this Chapter, a law enforcement officer may have installed and use a pen register or trap and trace device if the law enforcement officer makes the following determinations:

(1) An emergency situation exists that involves immediate danger of death or serious bodily injury to any person that requires the installation and use of a pen register or a trap and trace device before an order authorizing such installation and use can, with due diligence, be obtained; and

(2) There are grounds upon which an order could be entered under this Chapter to authorize such installation and use.

(b) The law enforcement officer must seek an order approving the installation or use in accordance with G.S. 15A-263 within 48 hours after the installation has occurred, or begins to occur, under subsection (a) of this section.

(c) In the absence of an authorizing order under G.S. 15A-263, the use of a pen register or trap and trace device shall immediately terminate when the information sought is obtained, when the application for the order is denied, or when 48 hours have lapsed since the installation of the pen register or trap and trace device, whichever first occurs.

(d) The knowing installation or use by any law enforcement officer of a pen register or trap and trace device pursuant to subsection (a) of this section without application for the authorizing order within 48 hours of the installation shall constitute a violation of this Chapter.

(e) A provider of a wire or electronic service, landlord, custodian, or other person who furnished facilities or technical assistance pursuant to this section shall be reasonably compensated for such reasonable expenses incurred in providing such facilities and assistance."

SECTION 3.(b) G.S. 15A-261(b) reads as rewritten:

"(b) Exception. – The prohibition of subsection (a) of this section does not apply to the use of a pen register or a trap and trace device by a provider of wire or electronic communication service:

(1) Relating to the operation, maintenance, or testing of a wire or electronic communication service or to the protection of the rights or property of the provider, or to the protection of users of that service from abuse of service or unlawful use of service.

(2) To record the fact that a wire or electronic communication was initiated or completed in order to protect the provider, another provider furnishing service toward the completion of the wire communication, or a user of that service, from fraudulent, unlawful or abusive use of service.

(3) With the consent of the user of that service.

(4) Under emergency circumstances as set forth in G.S. 15A-265."