

**STATE OF MICHIGAN
95TH LEGISLATURE
REGULAR SESSION OF 2010**

Introduced by Senators Basham, Birkholz, Anderson, Kuipers, Jacobs and Kahn

ENROLLED SENATE BILL No. 325

AN ACT to amend 1931 PA 328, entitled "An act to revise, consolidate, codify, and add to the statutes relating to crimes; to define crimes and prescribe the penalties and remedies; to provide for restitution under certain circumstances; to provide for the competency of evidence at the trial of persons accused of crime; to provide immunity from prosecution for certain witnesses appearing at such trials; and to repeal certain acts and parts of acts inconsistent with or contravening any of the provisions of this act," (MCL 750.1 to 750.568) by amending the title, as amended by 2005 PA 105, and by adding section 539I.

The People of the State of Michigan enact:

TITLE

An act to revise, consolidate, codify, and add to the statutes relating to crimes; to define crimes and prescribe the penalties and remedies; to provide for restitution under certain circumstances; to provide for the competency of evidence at the trial of persons accused of crime; to provide immunity from prosecution for certain witnesses appearing at criminal trials; to provide for liability for damages; and to repeal certain acts and parts of acts inconsistent with or contravening any of the provisions of this act.

Sec. 539I. (1) A person who does any of the following is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both:

(a) Installs or places a tracking device, or causes a tracking device to be installed or placed, in or on a motor vehicle without the knowledge and consent of the owner of that motor vehicle or, if the motor vehicle is leased, the lessee of that motor vehicle.

(b) Tracks the location of a motor vehicle with a tracking device without the knowledge and consent of either the owner or the authorized operator of that motor vehicle or, if the motor vehicle is leased, either the lessee or the authorized operator of that motor vehicle.

(c) While being the restrained party under a protective order, tracks the location of a motor vehicle operated or occupied by an individual protected under that order with a tracking device.

(d) While on probation or parole for an assaultive crime or a violation of section 81(3) or (4) or section 81a(2) or (3), tracks the location of a motor vehicle operated or occupied by a victim of that crime or by a family member of the victim of that crime without the knowledge and consent of that victim or family member.

(2) Subsection (1) does not apply to any of the following:

(a) The installation or use of any device that provides vehicle tracking for purposes of providing mechanical, operational, directional, navigation, weather, or traffic information to the operator of the vehicle.

(b) The installation or use of any device for providing emergency assistance to the operator or passengers of the vehicle under the terms and conditions of a subscription service, including any trial period of that subscription service.

(c) The installation or use of any device for providing missing vehicle assistance for the benefit of the owner or operator of the vehicle.

(d) The installation or use of any device to provide diagnostic services regarding the mechanical operation of a vehicle under the terms and conditions of a subscription service, including any trial period of the subscription service.

(e) The installation or use of any device or service that provides the lessee of the vehicle with clear notice that the vehicle may be tracked. For a lessor who installs a tracking device subsequent to the original vehicle manufacture, the notice shall be provided in writing with an acknowledgment signed by the lessee, regardless of whether the tracking device is original equipment, a retrofit, or an aftermarket product. The requirement for written acknowledgment placed upon the lessor is not imposed upon the manufacturer of the tracking device or the manufacturer of the vehicle.

(f) The installation or use of any tracking device by the parent or guardian of a minor on any vehicle owned or leased by that parent or guardian or the minor, and operated by the minor.

(g) The installation or use of a tracking device by a police officer while lawfully performing his or her duties as a police officer.

(h) The installation or use of a tracking device by a court officer appointed under section 8321 of the revised judicature act of 1961, 1961 PA 236, MCL 600.8321, while lawfully performing his or her duties as a court officer.

(i) The installation or use of a tracking device by a person lawfully performing his or her duties as a bail agent as authorized under section 167b or as an employee or contractor of that bail agent lawfully performing his or her duties as an employee or contractor of a bail agent.

(j) Except as provided in subsection (3), the installation or use of a tracking device by a professional investigator or an employee of a professional investigator lawfully performing his or her duties as a professional investigator or employee of a professional investigator for the purpose of obtaining information with reference to any of the following:

(i) Securing evidence to be used before a court, board, officer, or investigating committee.

(ii) Crimes or wrongs done, threatened, or suspected against the United States or a state or territory of the United States or any other person or legal entity.

(iii) Locating an individual known to be a fugitive from justice.

(iv) Locating lost or stolen property or other assets that have been awarded by the court.

(3) The exemption under subsection (2)(j) does not apply if either of the following applies:

(a) The professional investigator or the employee of the professional investigator is working on behalf of a client who is the restrained party under a protective order.

(b) The professional investigator or the employee of the professional investigator knows or has reason to know that the person seeking his or her investigative services, including the installation or use of a tracking device, is doing so to aid in the commission of a crime or wrong.

(4) A person who illegally installs or uses a tracking device or a person described in subsection (2)(i) or (j) who installs or uses a tracking device is liable for all damages incurred by the owner or lessee of the motor vehicle caused by the installation or use of the tracking device.

(5) As used in this section:

(a) "Assaultive crime" means that term as defined in section 9a of chapter X of the code of criminal procedure, 1927 PA 175, MCL 770.9a.

(b) "Minor" means an individual less than 18 years of age.

(c) "Motor vehicle" means that term as defined in section 412.

(d) "Professional investigator" means a person licensed under the professional investigator licensure act, 1965 PA 285, MCL 338.821 to 338.851.

(e) "Protective order" means both of the following:

(i) An order entered under section 2950, 2950a, or 2950h of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950, 600.2950a, and 600.2950h, or under section 6b of chapter V or section 3(2)(o) of chapter XI of the code of criminal procedure, 1927 PA 175, MCL 765.6b and 771.3, or under section 13a of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.13a, or under section 36(16) of the corrections code of 1953, 1953 PA 232, MCL 791.236.

(ii) A foreign protection order as defined in section 2950h of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950h.

(f) "Tracking device" means any electronic device that is designed or intended to be used to track the location of a motor vehicle regardless of whether that information is recorded.

Enacting section 1. This amendatory act takes effect August 1, 2010.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Richard J. Brown

Clerk of the House of Representatives

Approved

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Governor