

HOUSE BILL No. 5449

March 1, 2012, Introduced by Reps. Irwin and McMillin and referred to the Committee on Judiciary.

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
by amending sections 539/ and 540 (MCL 750.539/ and 750.540),
section 539/ as added by 2010 PA 107 and section 540 as amended by
2006 PA 61.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

8 (b) Tracks the location of a motor vehicle with a tracking
9 device without the knowledge and consent of either the owner or the

1 authorized operator of that motor vehicle or, if the motor vehicle
2 is leased, either the lessee or the authorized operator of that
3 motor vehicle.

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

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

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

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

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

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

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

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

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

14 (g) The installation or use of a tracking device by a police
15 officer while lawfully performing his or her duties as a police
16 officer, **IF THE POLICE OFFICER FIRST OBTAINS A VALID SEARCH**
17 **WARRANT.**

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

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

27 (j) Except as provided in subsection (3), the installation or

1 use of a tracking device by a professional investigator or an
2 employee of a professional investigator lawfully performing his or
3 her duties as a professional investigator or employee of a
4 professional investigator for the purpose of obtaining information
5 with reference to any of the following:

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

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

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

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

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

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

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

25 (4) A person who illegally installs or uses a tracking device
26 or a person described in subsection (2)(i) or (j) who installs or
27 uses a tracking device is liable for all damages incurred by the

1 owner or lessee of the motor vehicle caused by the installation or
2 use of the tracking device.

3 (5) As used in this section:

4 (a) "Assaultive crime" means that term as defined in section
5 9a of chapter X of the code of criminal procedure, 1927 PA 175, MCL
6 770.9a.

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

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

9 (d) "Professional investigator" means a person licensed under
10 the professional investigator licensure act, 1965 PA 285, MCL
11 338.821 to 338.851.

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

13 (i) An order entered under section 2950, 2950a, or ~~2950h~~**2950K**
14 of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950,
15 600.2950a, and ~~600.2950h~~**600.2950K**, or under section 6b of chapter
16 V or section 3(2)(o) of chapter XI of the code of criminal
17 procedure, 1927 PA 175, MCL 765.6b and 771.3, or under section 13a
18 of chapter XIIIA of the probate code of 1939, 1939 PA 288, MCL
19 712A.13a, or under section 36(16) of the corrections code of 1953,
20 1953 PA 232, MCL 791.236.

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

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

26 Sec. 540. (1) A person shall not willfully and maliciously
27 cut, break, disconnect, interrupt, tap, or make any unauthorized

1 connection with any electronic medium of communication, including
2 the internet or a computer, computer program, computer system, or
3 computer network, or a telephone **OR CELLULAR TELEPHONE**.

4 (2) A person shall not willfully and maliciously read or copy
5 any message from any telegraph, telephone line, wire, cable,
6 computer network, computer program, or computer system, or
7 telephone or other electronic medium of communication that the
8 person accessed without authorization.

9 (3) A person shall not willfully and maliciously make
10 unauthorized use of any electronic medium of communication,
11 including the internet or a computer, computer program, computer
12 system, or computer network, or telephone **OR CELLULAR TELEPHONE**.

13 (4) A person shall not willfully and maliciously prevent,
14 obstruct, or delay by any means the sending, conveyance, or
15 delivery of any authorized communication, by or through any
16 telegraph or telephone line, cable, wire, or any electronic medium
17 of communication, including the internet or a computer, computer
18 program, computer system, or computer network.

19 **(5) A PERSON SHALL NOT TRACK OR OTHERWISE OBTAIN THE PHYSICAL**
20 **LOCATION OF ANOTHER PERSON BY MEANS OF A GLOBAL POSITIONING UNIT**
21 **EMBEDDED IN A CELLULAR TELEPHONE, OR DISCLOSE THE PHYSICAL LOCATION**
22 **OF ANOTHER PERSON ASCERTAINED BY EITHER OF THOSE MEANS, WITHOUT**
23 **FIRST OBTAINING THE OTHER PERSON'S CONSENT OR A VALID SEARCH**
24 **WARRANT TO DO SO.**

25 (6) ~~(5)~~ A person who violates this section is guilty of a
26 crime as follows:

27 (a) Except as provided in subdivision (b), the person is

1 guilty of a felony punishable by imprisonment for not more than 2
2 years or a fine of not more than \$1,000.00, or both.

3 (b) If the incident to be reported results in injury to or the
4 death of any person, the person violating this section is guilty of
5 a felony punishable by imprisonment for not more than 4 years or a
6 fine of not more than \$5,000.00, or both.

7 (7) ~~(6)~~ As used in this section:

8 (a) "Computer" means any connected, directly interoperable or
9 interactive device, equipment, or facility that uses a computer
10 program or other instructions to perform specific operations
11 including logical, arithmetic, or memory functions with or on
12 computer data or a computer program and that can store, retrieve,
13 alter, or communicate the results of the operations to a person,
14 computer program, computer, computer system, or computer network.

15 (b) "Computer network" means the interconnection of hardwire
16 or wireless communication lines with a computer through remote
17 terminals, or a complex consisting of 2 or more interconnected
18 computers.

19 (c) "Computer program" means a series of internal or external
20 instructions communicated in a form acceptable to a computer that
21 directs the functioning of a computer, computer system, or computer
22 network in a manner designed to provide or produce products or
23 results from the computer, computer system, or computer network.

24 (d) "Computer system" means a set of related, connected or
25 unconnected, computer equipment, devices, software, or hardware.

26 (e) "Internet" means that term as defined in section 230 of
27 ~~title II of the communications act of 1934, 47 USC 230, and~~

1 includes voice over internet protocol services.

2 (8) ~~(7)~~—This section does not prohibit a person from being
3 charged with, convicted of, or punished for any other violation of
4 law committed by that person while violating or attempting to
5 violate this section.