

## HB0128S01 compared with HB0128

~~deleted text~~ shows text that was in HB0128 but was deleted in HB0128S01.

inserted text shows text that was not in HB0128 but was inserted into HB0128S01.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Representative Ryan D. Wilcox proposes the following substitute bill:

### ELECTRONIC DEVICE LOCATION AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Ryan D. Wilcox**

Senate Sponsor: \_\_\_\_\_

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#### LONG TITLE

##### General Description:

This bill requires that a governmental entity obtain a search warrant before obtaining the location information of an electronic device.

##### Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires a search warrant before requesting disclosure of the location of an electronic device;
- ▶ provides exceptions for emergencies; and
- ▶ makes technical corrections.

##### Money Appropriated in this Bill:

None

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### Other Special Clauses:

~~{ None }~~ This bill coordinates with S.B. 46, Administrative Subpoena Requirement Modifications, by providing technical and substantive amendments.

### Utah Code Sections Affected:

ENACTS:

77-23c-101, Utah Code Annotated 1953

77-23c-102, Utah Code Annotated 1953

77-23c-103, Utah Code Annotated 1953

### Utah Code Sections Affected by Coordination Clause:

77-23c-102, Utah Code Annotated 1953

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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section 77-23c-101 is enacted to read:

#### **CHAPTER 23c. LOCATION PRIVACY FOR ELECTRONIC DEVICES**

##### **77-23c-101. Definitions.**

As used in this chapter:

(1) "Electronic communication service" means a service that provides to users of the service the ability to send or receive wire or electronic communications.

(2) "Electronic device" means a device that enables access to or use of an electronic communication service, remote computing service, or location information service.

(3) "Government entity" means the state, a county, a municipality, a higher education institution, a local district, a special service district, or any other political subdivision of the state or an administrative subunit of any political subdivision, including a law enforcement entity or any other investigative entity, agency, department, division, bureau, board, or commission, or an individual acting or purporting to act for or on behalf of a state or local agency.

(4) "Location information" means information concerning the location of an electronic device that, in whole or in part, is generated or derived from or obtained by the operation of an electronic device.

(5) "Location information service" means the provision of a global positioning service or other mapping, location, or directional information service.

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(6) "Remote computing service" means the provision of computer storage or processing services by means of an electronic communications system.

Section 2. Section 77-23c-102 is enacted to read:

### **77-23c-102. Location information privacy -- Warrant required for disclosure.**

(1) (a) Except as provided in Subsection (2), a government entity may not obtain the location information, stored data, or transmitted data of an electronic device without a search warrant issued by a court upon probable cause.

~~(b) ~~A warrant issued under~~ Except as provided in Subsection (1) ~~(a) is not valid for more than 10 days after its issuance. A judge or magistrate may grant an extension of the warrant upon a finding of continuing probable cause and a finding that the extension is necessary to achieve the objective of the initial warrant. An extension may not exceed 30 days.~~~~

~~(c) ~~A~~ ~~c~~~~. a government entity may not use, copy, or disclose, for any purpose, the location information, stored data, or transmitted data of an electronic device that is not the subject of the warrant that is collected as part of an effort to obtain the location information, stored data, or transmitted data of the electronic device that is the subject of the warrant in Subsection (1)(a).

~~(c) A government entity may use, copy, or disclose the transmitted data of an electronic device used to communicate with the electronic device that is the subject of the warrant if the government entity reasonably believes that the transmitted data is necessary to achieve the objective of the warrant.~~

(d) The data described in Subsection (1) ~~(c) ~~b~~~~ shall be destroyed in an unrecoverable manner by the government entity no later than 24 hours after the data is collected.

(2) A government entity may obtain location information without a warrant for an electronic device ~~{ only }.~~

~~(a) in accordance with Section 53-10-104.5 ~~{ and under the following circumstances }.~~~~  
~~(~~a~~ ~~b~~) if the device is reported stolen by the owner; ~~{ or }~~~~  
~~(~~b~~ ~~c~~) with the informed, affirmative consent of the owner or user of the electronic device ~~{ }.~~~~

~~{ ~~(3) Any evidence obtained in violation of this section is not admissible in a civil, criminal, or administrative proceeding and may not be used in an affidavit of probable cause in an effort to obtain a search warrant.~~~~

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~~(4)~~ (d) in accordance with judicially recognized exceptions to warrant requirements; or

(e) if the owner has voluntarily and publicly disclosed the location information.

(3) An electronic communication service provider, its officers, employees, agents, or other specified persons may not be held liable for providing information, facilities, or assistance in accordance with the terms of the warrant issued under this section.

Section 3. Section **77-23c-103** is enacted to read:

### **77-23c-103. Notification required -- Delayed notification.**

(1) Except as provided in Subsection (2), a government entity that executes a warrant pursuant to Subsection 77-23c-102(1)(a) shall, within 14 days after the day on which the operation commences, issue a notification to the owner of the electronic device specified in the warrant that states:

(a) that a warrant was applied for and granted;

(b) the kind of warrant issued;

(c) the period of time during which the collection of data from the electronic device was authorized;

(d) the offense specified in the application for the warrant;

(e) the identity of the government entity that filed the application; and

(f) the identity of the judge who issued the warrant.

(2) A government entity seeking a warrant pursuant to Subsection 77-23c-102(1)(a) may submit a request, and the court may grant permission, to delay the notification required by Subsection (1) for a period not to exceed 30 days, if the court determines that there is ~~reason~~ probable cause to believe that the notification may:

(a) endanger the life or physical safety of an individual;

(b) cause a person to flee from prosecution;

(c) lead to the destruction of or tampering with evidence;

(d) intimidate a potential witness; or

(e) otherwise seriously jeopardize an investigation or unduly delay a trial.

(3) When a delay of notification is granted under Subsection (2) and upon application by the government entity, the court may grant additional extensions of up to 30 days each.

(4) Upon expiration of the period of delayed notification granted under Subsection (2)

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or (3), the government entity shall serve upon or deliver by first-class mail to the owner of the electronic device a copy of the warrant together with notice that:

- (a) states with reasonable specificity the nature of the law enforcement inquiry; and
- (b) contains:
  - (i) the information described in Subsections (1)(a) through (f);
  - (ii) a statement that notification of the search was delayed;
  - (iii) the name of the court that authorized the delay of notification; and
  - (iv) a reference to the provision of this chapter that allowed the delay of notification.

‡

### Legislative Review Note

as of 2-10-14 6:14 AM

~~Office of Legislative Research and General Counsel;~~ (5) A government entity is not required to notify the owner of the electronic device if the owner is located outside of the United States.

### Section 4. Coordinating H.B. 128 with S.B. 46 -- Technical and substantive amendments.

If this H.B. 128 and S.B. 46, Administrative Subpoena Requirement Modifications, both pass and become law, it is the intent of the Legislature that Subsection 77-23c-102(2) be modified to read as follows:

"(2) (a) A government entity may obtain location information without a warrant for an electronic device:

- (i) in accordance with Section 53-10-104.5;
- (ii) if the device is reported stolen by the owner;
- (iii) with the informed, affirmative consent of the owner or user of the electronic device;
- (iv) in accordance with judicially recognized exceptions to warrant requirements; or
- (v) if the owner has voluntarily and publicly disclosed the location information.

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(b) A prosecutor may obtain a judicial order as defined in Section 77-22-2.5 for the purposes enumerated in Section 77-22-2.5."