

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: SB 298

INTRODUCER: Senator Evers

SUBJECT: Installation of Tracking Devices or Tracking Applications

DATE: October 19, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Pre-meeting
2.			ACJ	
3.			RC	

I. Summary:

SB 298 amends the law on tracking devices and tracking applications. The bill amends s. 934.425, F.S., to remove language that prohibits a private investigator from installing a trafficking device or trafficking application on behalf of another person unless such installation would otherwise be exempt under the statute if performed by the person engaging the private investigator. In place of this language, the bill prohibits a person who is acting on behalf of a business entity or an individual from installing or placing an electronic tracking device or application through intentionally deceptive means and without consent or installing or placing an electronic tracking device or application knowingly in the commission of a crime.

II. Present Situation:

The General Prohibition on Installation of Tracking Devices or Tracking Applications and Exceptions to This Prohibition

Section 934.425, F.S., was created by ch. 2015-137, L.O.F. Section 934.425(2), F.S., generally prohibits a person¹ from knowingly installing a tracking device² or tracking application³ on

¹ "Person" means an individual but does not include a business entity. Section 934.425(1)(d), F.S.

² "Tracking device" means any device whose primary purpose is to reveal its location or movement by the transmission of electronic signals. Section 934.425(1)(c), F.S.

³ "Tracking application" means any software program whose primary purpose is to track or identify the location or movement of an individual. Section 934.425(1)(b), F.S.

another person's property without the other person's consent.⁴ A person who violates s. 934.425, F.S., commits a second degree misdemeanor.⁵

Section 934.425(4), provides that the section does not apply to:

- A law enforcement officer (as defined in s. 943.10, F.S.) or any local, state, federal, or military law enforcement agency, that lawfully installs a tracking device or tracking application on another person's property as part of a criminal investigation.
- A parent or legal guardian of a minor child who installs a tracking device or tracking application on the minor child's property if:
 - The parents or legal guardians are lawfully married to each other and are not separated or otherwise living apart, and either parent or legal guardian consents to the installation of the tracking device or tracking application;
 - The parent or legal guardian is the sole surviving parent or legal guardian of the minor child;
 - The parent or legal guardian has sole custody of the minor child; or
 - The parents or legal guardians are divorced, separated, or otherwise living apart and both consent to the installation of the tracking device or tracking application.
- A caregiver of an elderly person or disabled adult (as those terms are defined in s. 825.101, F.S.), if the elderly person's or disabled adult's treating physician certifies that the installation of a tracking device or tracking application onto the elderly person's or disabled adult's property is necessary to ensure the safety of the elderly person or disabled adult.
- A person acting in good faith on behalf of a business entity⁶ for a legitimate business purpose. *However, relevant to the bill, this "good faith" exception does not apply to a person engaged in a private investigation (as defined in s. 493.6101, F.S.) on behalf of another person unless such activities would otherwise be exempt under subsection (4) if performed by the person engaging the private investigator.*
- An owner or lessee of a motor vehicle that installs, or directs the installation of, a tracking device or tracking application on such vehicle during the period of ownership or lease, provided that:
 - The tracking device or tracking application is removed before the vehicle's title is transferred or the vehicle's lease expires;
 - The new owner of the vehicle, in the case of a sale, or the lessor of the vehicle, in the case of an expired lease, consents in writing to the nonremoval of the tracking device or tracking application; or
 - The owner of the vehicle at the time of the installation of the tracking device or tracking application was the original manufacturer of the vehicle.

⁴ Section 943.425(3), F.S., provides that a person's consent is presumed to be revoked if: (a) The consenting person and the person to whom consent was given are lawfully married and one person files a petition for dissolution of marriage from the other; or (b) The consenting person or the person to whom consent was given files an injunction for protection against the other person pursuant to s. 741.30, F.S., s. 741.315, F.S., s. 784.046, F.S., or s. 784.0485, F.S.

⁵ Section 934.425(5), F.S. A second degree misdemeanor is punishable by up to 60 days in a county jail and a fine of up to \$500. Sections 775.082 and 775.083, F.S.

⁶ "Business entity" means any form of corporation, partnership, association, cooperative, joint venture, business trust, or sole proprietorship that conducts business in this state. Section 934.425(1)(a), F.S.

Grounds for Disciplinary Action

Section 493.6118, F.S., specifies grounds for which disciplinary action may be taken by the Department of Agriculture and Consumer Services against any licensee, agency, or applicant regulated by ch. 493, F.S. (private investigative, private security, and repossession services), or any unlicensed person engaged in activities regulated under this chapter. One of the grounds for disciplinary action is the installation of a tracking device or tracking application in violation of s. 934.425, F.S.⁷

III. Effect of Proposed Changes:

Section 934.425, F.S., generally prohibits a person from knowingly installing a tracking device or tracking application on another person's property without the other person's consent. This section also provides that the prohibition does not apply to certain persons. Relevant to the bill, this prohibition does not apply to a person "acting in good faith on behalf of a business entity for a legitimate business purpose." However, this "good faith" exception does not apply to a private investigator conducting an investigation on behalf of another person unless such activities would otherwise be exempt if performed by the person engaging the private investigator.

The bill amends s. 934.425, F.S., to remove the language relating to private investigators from the exclusion to the "good faith" exception and provide instead that the "good faith" exception does not apply to "a person who, on behalf of a business entity or an individual, installs or places an electronic tracking device or application through intentionally deceptive means and without consent or installs or places an electronic tracking device or application knowingly in the commission of a crime."

As a result of these changes, a "person" (which would include a private investigator) could install a tracking device or tracking application "on behalf of a business entity for a legitimate business purpose," e.g., install a tracking device for a business to track its goods in transit. However, since the new exclusion to the "good faith" exception applies to a "person" and a "person" would include a private investigator, a private investigator could not install or place an electronic tracking device or application "through intentionally deceptive means and without consent" or install or place an electronic tracking device or application "knowingly in the commission of a crime."

The bill also reenacts s. 493.6118(1)(y), F.S., for the purpose of incorporating the amendment made by this act to s. 934.425, F.S.

The effective date of the bill is July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁷ See ch. 2015-137, L.O.F.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None

VI. Technical Deficiencies:

The bill creates an exclusion from the “good faith” exception. The “good faith” exception does not apply to “a person who, on behalf of a business entity or an individual, installs or places an electronic tracking device or application through intentionally deceptive means and without consent or installs or places an electronic tracking device or application knowingly in the commission of a crime.”

The new exclusion from the “good faith” exception uses the words “on behalf of a business entity or *an individual*.” However, the “good faith” exception uses the words “on behalf of a business entity.” The definition of “business entity” in s. 934.425(1)(d), F.S., does not appear to include an individual.

The bill does not specify whether “with consent,” as used in the new exclusion from the “good faith” exception, means “with consent” of the person who will be tracked with the tracking device or “with consent” of the owner of the property on which the tracking device will be installed or placed. Section 934.425(2), F.S., generally prohibits a person from knowingly installing a tracking device or tracking application on another person’s property without the other person’s consent. Insofar as this general prohibition, consent means consent of the owner of the property on which the tracking device or tracking application is installed.

Depending on the situation, it may or may not be the case that the person being tracked with a tracking device is the owner of the property on which the tracking device is installed or placed. If the intent is that the words “with consent” mean with consent of the owner of the property on which the tracking device is installed or placed, the bill may need to be amended to indicate that the words “with consent” mean with consent of the owner of the property on which the tracking

device is installed or placed. If the property on which the tracking device is installed or placed is jointly owned, e.g., property owned by the private investigator's client and his or her spouse, consent from all owners of the property may arguably be required. The bill could clarify consent in the context of joint ownership of property.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 934.425 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.