

Calendar No. 567

112TH CONGRESS
2D SESSION**S. 1223**

To address voluntary location tracking of electronic communications devices,
and for other purposes.

 IN THE SENATE OF THE UNITED STATES

JUNE 16, 2011

Mr. FRANKEN (for himself, Mr. BLUMENTHAL, Mr. COONS, Mr. SANDERS,
Mr. DURBIN, Mr. MENENDEZ, and Mrs. FEINSTEIN) introduced the fol-
lowing bill; which was read twice and referred to the Committee on the
Judiciary

DECEMBER 17, 2012

Reported by Mr. LEAHY, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To address voluntary location tracking of electronic
communications devices, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “~~Location Privacy Pro-~~
5 ~~tection Act of 2011~~”.

1 **SEC. 2. DEFINITION.**

2 In this Act, the term “geolocation information” has
3 the meaning given that term in section 2713 of title 18,
4 United States Code, as added by this Act.

5 **SEC. 3. VOLUNTARY LOCATION TRACKING OF ELECTRONIC**
6 **COMMUNICATIONS DEVICES.**

7 (a) IN GENERAL.—Chapter 121 of title 18, United
8 States Code, is amended by adding at the end the fol-
9 lowing:

10 **“§ 2713. Voluntary location tracking of electronic**
11 **communications devices**

12 **“(a) DEFINITIONS.—In this section—**

13 **“(1) the term ‘covered entity’ means a non-**
14 **governmental individual or entity engaged in the**
15 **business, in or affecting interstate or foreign com-**
16 **merce, of offering or providing a service to electronic**
17 **communications devices, including, but not limited**
18 **to, offering or providing electronic communication**
19 **service, remote computing service, or geolocation in-**
20 **formation service;**

21 **“(2) the term ‘electronic communications de-**
22 **vice’ means any device that—**

23 **“(A) enables access to, or use of, an elec-**
24 **tronic communications system, electronic com-**
25 **munication service, remote computing service,**
26 **or geolocation information service; and**

1 “(B) is designed or intended to be carried
2 by or on the person of an individual or travel
3 with the individual, including, but not limited
4 to, a vehicle the individual drives;

5 “(3) the term ‘express authorization’ means ex-
6 press affirmative consent after receiving clear and
7 prominent notice that—

8 “(A) is displayed by the electronic commu-
9 nications device, separate and apart from any
10 final end user license agreement, privacy policy,
11 terms of use page, or similar document; and

12 “(B) provides information regarding—

13 “(i) what geolocation information will
14 be collected; and

15 “(ii) the specific nongovernmental en-
16 tities to which the geolocation information
17 may be disclosed;

18 “(4) the term ‘geolocation information’—

19 “(A) means any information—

20 “(i) concerning the location of an elec-
21 tronic communications device that is in
22 whole or in part generated by or derived
23 from the operation or use of the electronic
24 communications device; and

1 “(ii) that may be used to identify or
2 approximate the location of the electronic
3 communications device or the individual
4 that is using the device; and

5 “(B) does not include any temporarily as-
6 signed network address or Internet protocol ad-
7 dress of the individual; and

8 “(5) the term ‘geolocation information service’
9 means the provision of a global positioning service or
10 other mapping, locational, or directional information
11 service.

12 “(b) COLLECTION OR DISCLOSURE OF GEOLOCATION
13 INFORMATION TO OR BY NONGOVERNMENTAL ENTI-
14 TIES.—

15 “(1) IN GENERAL.—Except as provided in para-
16 graph (2), a covered entity may not knowingly col-
17 lect, receive, record, obtain, or disclose to a non-
18 governmental individual or entity the geolocation in-
19 formation from an electronic communications device
20 without the express authorization of the individual
21 that is using the electronic communications device.

22 “(2) EXCEPTIONS.—A covered entity may
23 knowingly collect, receive, record, obtain, or disclose
24 to a nongovernmental individual or entity the
25 geolocation information from an electronic commu-

1 nication device without the express authorization of
2 the individual that is using the electronic commu-
3 nications device if the covered entity has a good
4 faith belief that the collection, receipt, recording, ob-
5 taining, or disclosure is—

6 “(A) necessary to locate a minor child or
7 provide fire, medical, public safety, or other
8 emergency services;

9 “(B) for the sole purpose of transmitting
10 the geolocation information to the individual or
11 another authorized recipient, including another
12 third party authorized under this subparagraph;
13 or

14 “(C) expressly required by statute, regula-
15 tion, or appropriate judicial process.

16 “(e) ANTI-CYBERSTALKING PROTECTION.—Not ear-
17 lier than 24 hours, and not later than 7 days, after the
18 time an individual provides express authorization to a cov-
19 ered entity providing a geolocation information service to
20 the individual for the express purpose of authorizing dis-
21 closure of geolocation information relating to the indi-
22 vidual to another individual, the covered entity shall pro-
23 vide the individual a verification displayed by the elec-
24 tronic communications device that informs the indi-
25 vidual—

1 “(1) that geolocation information relating to
2 the individual is being disclosed to another indi-
3 vidual; and

4 “(2) how the individual may revoke consent to
5 the collection, receipt, recording, obtaining, and dis-
6 closure of geolocation information relating to the in-
7 dividual.

8 “(d) CIVIL REMEDIES.—

9 “(1) ACTION BY ATTORNEY GENERAL OF THE
10 UNITED STATES.—If the Attorney General of the
11 United States has reasonable cause to believe that
12 an individual or entity is violating this section, the
13 Attorney General may bring a civil action in an ap-
14 propriate United States district court.

15 “(2) ACTION BY STATE ATTORNEYS GEN-
16 ERAL.—If the attorney general of a State has rea-
17 sonable cause to believe that an interest of the resi-
18 dents of the State has been or is threatened or ad-
19 versely affected by a violation of this section, the at-
20 torney general of the State may bring a civil action
21 on behalf of the residents of the State in an appro-
22 priate United States district court.

23 “(3) RIGHT OF ACTION.—Any individual ag-
24 grieved by any action of an individual or entity in

1 violation of this section may bring a civil action in
 2 an appropriate United States district court.

3 “(4) PENDING PROCEEDINGS.—

4 “(A) FEDERAL ACTION.—If the Attorney
 5 General has brought a civil action alleging a
 6 violation of this section, an attorney general of
 7 a State or private person may not bring a civil
 8 action under this subsection against a defend-
 9 ant named in the civil action relating to a viola-
 10 tion of this section that is alleged in the civil
 11 action while the civil action is pending.

12 “(B) STATE ACTION.—If the attorney gen-
 13 eral of a State has brought a civil action alleg-
 14 ing a violation of this section, an individual may
 15 not bring a civil action under this subsection
 16 against a defendant named in the civil action
 17 for a violation of this section that is alleged in
 18 the civil action while the civil action is pending.

19 “(5) RELIEF.—In a civil action brought under
 20 this subsection, the court may award—

21 “(A) actual damages, but not less than
 22 damages in the amount of \$2,500;

23 “(B) punitive damages;

24 “(C) reasonable attorney’s fees and other
 25 litigation costs reasonably incurred; and

1 “(D) such other preliminary or equitable
2 relief as the court determines to be appropriate.

3 “(6) PERIOD OF LIMITATIONS.—No civil action
4 may be brought under this subsection unless such
5 civil action is begun within 2 years from the date of
6 the act complained of or the date of discovery.

7 “(7) LIMITATION ON LIABILITY.—A civil action
8 may not be brought under this subsection relating to
9 any collection, receipt, recording, obtaining, or dis-
10 closure of geolocation information that is authorized
11 under any other provision of law or appropriate legal
12 process.

13 “(e) EFFECTS ON OTHER LAW.—

14 “(1) IN GENERAL.—This section shall super-
15 sede a provision of the law of a State or political
16 subdivision of a State that requires or allows collec-
17 tion or disclosure of geolocation information prohib-
18 ited by this section.

19 “(2) COMMON CARRIERS AND CABLE SERV-
20 ICES.—This section shall not apply to the activities
21 of an individual or entity to the extent the activities
22 are subject to section 222 or 631 of the Communica-
23 tions Act of 1934 (47 U.S.C. 222 and 551).”.

24 “(b) TECHNICAL AND CONFORMING AMENDMENTS.—
25 Chapter 121 of title 18, United States Code, is amended—

1 (1) in the table of sections, by adding at the
2 end the following:

“2713. Voluntary location tracking of electronic communications devices.”;

3 and

4 (2) in section 2702—

5 (A) in subsection (b), by striking “A pro-
6 vider” and inserting “Except as provided under
7 section 2713, a provider”; and

8 (B) in subsection (c), by striking “A pro-
9 vider” and inserting “Except as provided under
10 section 2713, a provider”.

11 **SEC. 4. GEOLOCATION INFORMATION USED IN INTERSTATE**
12 **DOMESTIC VIOLENCE OR STALKING.**

13 (a) **IN GENERAL.**—Chapter 110A of title 18, United
14 States Code, is amended—

15 (1) by redesignating section 2266 as section
16 2267;

17 (2) by inserting after section 2265 the fol-
18 lowing:

19 **“§ 2266. Geolocation information used in interstate**
20 **domestic violence or stalking**

21 “(a) **OFFENSES; UNAUTHORIZED DISCLOSURE OF**
22 **GEOLOCATION INFORMATION IN AID OF INTERSTATE DO-**
23 **MESTIC VIOLENCE OR STALKING.**—A covered entity
24 that—

1 “(1) knowingly and willfully discloses
2 geolocation information about an individual to an-
3 other individual;

4 “(2) knew that a violation of section 2261,
5 2261A, or 2262 would result from the disclosure;
6 and

7 “(3) intends to aid in a violation of section
8 2261, 2261A, or 2262 as a result of the disclosure;
9 shall be punished as provided in subsection (b).

10 “(b) PENALTIES.—A covered entity that violates sub-
11 section (a) shall be fined under this title, imprisoned for
12 not more than 2 years, or both.”; and

13 (3) in section 2267, as so redesignated, by add-
14 ing at the end the following:

15 “(11) COVERED ENTITY; GEOLOCATION INFOR-
16 MATION.—The terms ‘covered entity’ and
17 ‘geolocation information’ have the meanings given
18 those terms in section 2713.”.

19 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

20 (1) TITLE 10.—Section 1561a(b) of title 10,
21 United States Code, is amended by striking “section
22 2266(5)” and inserting “section 2267(5)”.

23 (2) TITLE 18.—Title 18, United States Code, is
24 amended—

1 (A) in section 1992(d)(14), by striking
 2 “section 2266” and inserting “section 2267”;
 3 and

4 (B) in chapter 110A—

5 (i) in the table of sections, by striking
 6 the item relating to section 2266 and in-
 7 serting the following:

“2266 Geolocation information used in interstate domestic violence or stalking.
 “2267. Definitions.”;

8 and

9 (ii) in section 2261(b)(6), by striking
 10 “section 2266 of title 18, United States
 11 Code,” and inserting “section 2267”.

12 (3) OMNIBUS CRIME CONTROL AND SAFE
 13 STREETS ACT OF 1968.—Section 2011(e) of title I of
 14 the Omnibus Crime Control and Safe Streets Act of
 15 1968 (42 U.S.C. 3796gg-5(e)) is amended by strik-
 16 ing “section 2266” and inserting “section 2267”.

17 **SEC. 5. SALE OF GEOLOCATION INFORMATION OF YOUNG**
 18 **CHILDREN.**

19 (a) IN GENERAL.—Chapter 110 of title 18, United
 20 States Code, is amended—

21 (1) by inserting after section 2252C the fol-
 22 lowing:

1 **“§ 2252D. Sale of geolocation information of young**
 2 **children**

3 “Any person who knowingly and willfully sells the
 4 geolocation information of not less than 1,000 children
 5 under 11 years of age shall be fined under this title, im-
 6 prisoned for not more 2 years, or both.”; and

7 ~~(2)~~ in section 2256—

8 (A) in paragraph (8), by striking the pe-
 9 riod at the end and inserting a semicolon;

10 (B) in paragraph (9), by striking the pe-
 11 riod at the end and inserting a semicolon;

12 (C) in paragraph (10), by striking “and”
 13 at the end;

14 (D) in paragraph (11), by striking the pe-
 15 riod at the end and inserting “; and”; and

16 (E) by adding at the end the following:

17 “(12) the term ‘geolocation information’ has the
 18 meaning given that term in section 2713.”.

19 (b) TECHNICAL AND CONFORMING AMENDMENT.—

20 The table of sections for chapter 110 of title 18, United
 21 States Code, is amended by inserting after the item relat-
 22 ing to section 2252C the following:

“2252D. Sale of geolocation information of young children.”.

1 **SEC. 6. NATIONAL BASELINE STUDY OF USE OF**
2 **GEOLOCATION DATA IN VIOLENCE AGAINST**
3 **WOMEN.**

4 (a) **IN GENERAL.**—The National Institute of Justice,
5 in consultation with the Office on Violence Against
6 Women, shall conduct a national baseline study to examine
7 the role of geolocation information in violence against
8 women.

9 (b) **SCOPE.**—

10 (1) **IN GENERAL.**—The study conducted under
11 subsection (a) shall examine the role that various
12 new technologies that use geolocation information
13 may have in the facilitation of domestic violence,
14 dating violence, or stalking, including, but not lim-
15 ited to—

- 16 (A) global positioning system technology;
- 17 (B) smartphone mobile applications;
- 18 (C) in-car navigation devices; and
- 19 (D) geo-tagging technology.

20 (2) **EVALUATION.**—The study conducted under
21 subsection (a) shall evaluate the effectiveness of the
22 responses of Federal, State, tribal, and local law en-
23 forcement agencies to the conduct described in para-
24 graph (1).

25 (3) **RECOMMENDATIONS.**—The study conducted
26 under subsection (a) shall propose recommendations

1 to improve the effectiveness of the responses of Fed-
2 eral, State, tribal, and local law enforcement agen-
3 cies to the conduct described in paragraph (1).

4 (c) TASK FORCE.—

5 (1) IN GENERAL.—The Attorney General, act-
6 ing through the Director of the Office on Violence
7 Against Women, shall establish a task force to assist
8 in the development and implementation of the study
9 conducted under subsection (a) and guide implemen-
10 tation of the recommendations proposed under sub-
11 section (b)(3).

12 (2) MEMBERS.—The task force established
13 under paragraph (1) shall include—

14 (A) representatives from—

15 (i) the National Institute of Standards
16 and Technology; and

17 (ii) the Federal Trade Commission;
18 and

19 (B) representatives appointed by the Di-
20 rector of the Office on Violence Against Women
21 from—

22 (i) the offices of attorney generals of
23 States;

24 (ii) national violence against women
25 nonprofit organizations; and

1 (iii) the industries related to the tech-
2 nologies described in subsection (b)(1):

3 (d) REPORT.—Not later than 2 years after the date
4 of enactment of this Act, the Attorney General shall sub-
5 mit to the Committee on the Judiciary of the Senate and
6 the Committee on the Judiciary of the House of Rep-
7 resentatives a report that describes the results of the study
8 conducted under subsection (a):

9 **SEC. 7. GEOLOCATION CRIME REPORTING CENTER.**

10 (a) IN GENERAL.—The Attorney General, acting
11 through the Director of the Federal Bureau of Investiga-
12 tion, and in conjunction with the Director of the Bureau
13 of Justice Assistance, shall create a mechanism using the
14 Internet Crime Complaint Center to register complaints
15 of crimes the conduct of which was aided by use of
16 geolocation information.

17 (b) REPORT.—Not later than 18 months after the
18 date of enactment of this Act, the Attorney General, act-
19 ing through the Director of the Federal Bureau of Inves-
20 tigation, and in conjunction with the Director of the Bu-
21 reau of Justice Assistance, shall submit to the Committee
22 on the Judiciary of the Senate and the Committee on the
23 Judiciary of the House of Representatives a report that—

24 (1) discusses the information obtained using the
25 mechanism created under subsection (a);

1 (2) evaluates the potential risks that the wide-
2 spread availability of geolocation information poses
3 in increasing crimes against person and property;

4 (3) describes programs of State and municipal
5 governments intended to reduce these risks; and

6 (4) makes recommendations on measures that
7 could be undertaken by Congress to reduce or elimi-
8 nate these risks.

9 **SEC. 8. NATIONAL GEOLOCATION CURRICULUM DEVELOP-**
10 **MENT.**

11 The Attorney General shall develop a national edu-
12 cation curriculum for use by State and local law enforce-
13 ment agencies, judicial educators, and victim service pro-
14 viders to ensure that all courts, victim advocates, and
15 State and local law enforcement personnel have access to
16 information about relevant laws, practices, procedures,
17 and policies for investigating and prosecuting the misuse
18 of geolocation information.

19 **SECTION 1. SHORT TITLE.**

20 *This Act may be cited as the “Location Privacy Pro-*
21 *tection Act of 2012”.*

22 **SEC. 2. DEFINITION.**

23 *In this Act, the term “geolocation information” has the*
24 *meaning given that term in section 2713 of title 18, United*
25 *States Code, as added by this Act.*

1 **SEC. 3. VOLUNTARY LOCATION TRACKING OF ELECTRONIC**
2 **COMMUNICATIONS DEVICES.**

3 (a) *IN GENERAL.*—Chapter 121 of title 18, United
4 States Code, is amended by adding at the end the following:

5 **“§2713. Voluntary location tracking of electronic**
6 **communications devices**

7 “(a) *DEFINITIONS.*—In this section—

8 “(1) the term ‘covered entity’ means a non-
9 governmental individual or entity engaged in the
10 business, in or affecting interstate or foreign com-
11 merce, of offering or providing a service to electronic
12 communications devices, including, but not limited
13 to, offering or providing an electronic communication
14 service, remote computing service, or geolocation in-
15 formation service;

16 “(2) the term ‘electronic communications device’
17 means any device that—

18 “(A) enables access to, or use of, an elec-
19 tronic communications system, electronic com-
20 munication service, remote computing service, or
21 geolocation information service; and

22 “(B) is designed or intended to be carried
23 by or on the person of an individual or travel
24 with the individual, including, but not limited
25 to, in or as part of a vehicle the individual
26 drives;

1 “(3) the term ‘express authorization’ means ex-
2 press affirmative consent after receiving clear and
3 prominent notice that—

4 “(A) is displayed by the electronic commu-
5 nications device, separate and apart from any
6 final end user license agreement, privacy policy,
7 terms of use page, or similar document; and

8 “(B) provides information regarding—

9 “(i) what geolocation information will
10 be collected, received, recorded, or obtained;

11 “(ii) the specific individuals or non-
12 governmental entities to which the
13 geolocation information may be disclosed by
14 the covered entity; and

15 “(iii) how the individual may elec-
16 tronically revoke consent to the collection,
17 receipt, recording, obtaining, and disclosure
18 of the geolocation information;

19 “(4) the term ‘geolocation information’—

20 “(A) means any information—

21 “(i) concerning the location of an elec-
22 tronic communications device that is in
23 whole or in part generated by or derived
24 from the operation or use of the electronic
25 communications device; and

1 “(i) that may be used to identify the
2 location of the individual that is using the
3 device;

4 “(B) includes, but is not limited to—

5 “(i) Global Positioning System data
6 and data from multilateration of cell anten-
7 nae signals, WiFi signals, or other tech-
8 nologies; and

9 “(ii) cellular antenna connection
10 records, including data regarding the geo-
11 graphic location, attributes, and sectors of
12 the antenna transmitting a wire or elec-
13 tronic communication to or from an elec-
14 tronic communications device; and

15 “(C) does not include—

16 “(i) the name of the individual;

17 “(ii) the home, business, or billing ad-
18 dress of the individual, or any of the compo-
19 nent parts of such an address;

20 “(iii) the local and long distance tele-
21 phone connection records, or records of ses-
22 sion times and durations, of the individual;

23 “(iv) the length of service (including
24 start date) and types of service utilized by
25 the individual;

1 “(v) the telephone or instrument num-
2 ber or other subscriber number or identity,
3 including any network or Internet Protocol
4 address, of the individual; and

5 “(vi) the means and source of payment
6 for a service (including any credit card or
7 bank account number) of the individual;

8 “(5) the term ‘geolocation information service’
9 means the provision of a global positioning service or
10 other mapping, locational, or directional information
11 service; and

12 “(6) the term ‘knowingly’ means having actual
13 knowledge.

14 “(b) *COLLECTION OR DISCLOSURE OF GEOLOCATION*
15 *INFORMATION TO OR BY NONGOVERNMENTAL ENTITIES.—*

16 “(1) *IN GENERAL.—*Except as provided in para-
17 graphs (2) and (3), a covered entity may not know-
18 ingly collect, receive, record, obtain, or disclose to a
19 nongovernmental individual or entity the geolocation
20 information from an electronic communications de-
21 vice without the express authorization of the indi-
22 vidual that is using the electronic communications de-
23 vice.

24 “(2) *EXCEPTIONS.—*A covered entity may know-
25 ingly collect, receive, record, obtain, or disclose to a

1 *nongovernmental individual or entity the geolocation*
2 *information from an electronic communications de-*
3 *vice without the express authorization of the indi-*
4 *vidual that is using the electronic communications de-*
5 *vice if the covered entity has a good faith belief that*
6 *the collection, receipt, recording, obtaining, or disclo-*
7 *sure is—*

8 *“(A) to allow a parent or legal guardian to*
9 *locate a minor child;*

10 *“(B) for the provision of fire, medical, pub-*
11 *lic safety, or other emergency services;*

12 *“(C) for the sole purpose of transmitting the*
13 *geolocation information to the individual or an-*
14 *other authorized recipient, including another*
15 *third party authorized under this subparagraph;*

16 *“(D) necessary to protect the rights or prop-*
17 *erty of the covered entity, or protect customers of*
18 *the covered entity or other covered entities from*
19 *fraudulent, abusive, or unlawful use of, or sub-*
20 *scription to, such services;*

21 *“(E) pursuant to a court order, in a civil*
22 *proceeding upon a showing of compelling need*
23 *for the information that cannot be accommodated*
24 *by any other means, if—*

1 “(i) the individual is given reasonable
2 notice, by the person seeking the disclosure,
3 of the court proceeding relevant to the
4 issuance of the court order; and

5 “(ii) the individual is afforded the op-
6 portunity to appear and contest the claim
7 of the person seeking the disclosure;

8 “(F) requested by a law enforcement or in-
9 telligence agency of the United States, a State, or
10 a political subdivision of a State pursuant to
11 any lawful authority or activity, including
12 under this chapter, chapter 119, the Foreign In-
13 telligence Surveillance Act of 1978 (50 U.S.C.
14 1801 et seq.), the Federal Rules of Criminal Pro-
15 cedure, or any other provision of Federal or
16 State law, if the covered entity uses the
17 geolocation information collected, received, re-
18 corded, or obtained in response to the request
19 solely for law enforcement or intelligence pur-
20 poses; or

21 “(G) a collection of geolocation information
22 that is necessary for network operation by an in-
23 dividual or entity that is subject to section 222
24 or 631 of the Communications Act of 1934, if the

1 *entity only uses the information solely for pur-*
2 *poses of network operation.*

3 *If an order is granted under subparagraph (E), the*
4 *court shall impose appropriate safeguards against un-*
5 *authorized disclosure.*

6 “(3) *RULES OF CONSTRUCTION.*—

7 “(A) *ONE TIME CONSENT.*—*A covered entity*
8 *shall not be required to obtain express authoriza-*
9 *tion for each individual collection, receipt, re-*
10 *ceiving, obtaining, or disclosure of geolocation*
11 *information for which an express authorization*
12 *is required under paragraphs (1) and (2) if—*

13 “(i) *an express authorization was ob-*
14 *tained before the initial collection, receipt,*
15 *recording, obtaining, or disclosure;*

16 “(ii) *the nature of the geolocation in-*
17 *formation being collected, received, recorded,*
18 *or obtained has not changed since the ex-*
19 *press authorization; and*

20 “(iii) *the geolocation information is*
21 *being disclosed to a nongovernmental indi-*
22 *vidual or entity specified at the time of the*
23 *express authorization.*

24 “(B) *FIRST PARTY RESPONSIBILITY.*—*A*
25 *covered entity that collects, receives, records, or*

1 *obtains geolocation information from the covered*
2 *entity that initially collected, received, recorded,*
3 *or obtained the geolocation information from the*
4 *electronic communications device shall not be re-*
5 *quired to obtain an express authorization for*
6 *that collection, receipt, recording, or obtaining or*
7 *any subsequent disclosures of the geolocation in-*
8 *formation.*

9 “(C) *LEGACY AND FUTURE DEVICES.*—A
10 *covered entity that has a reasonable belief that it*
11 *is impossible to communicate the information de-*
12 *scribed in subsection (a)(3)(B) by means of a*
13 *display on the electronic communications device,*
14 *as required under subsection (a)(3)(A), may*
15 *communicate the information and obtain the ex-*
16 *press affirmative consent required under para-*
17 *graph (1) orally or in writing.*

18 “(D) *SHARED DEVICES.*—A covered entity
19 *shall not be required to obtain an express author-*
20 *ization for the collection, receipt, recording, ob-*
21 *taining, or disclosure of geolocation information*
22 *from an individual if the covered entity—*

23 “(i) *does not have actual knowledge*
24 *that the electronic device from which the*
25 *covered entity is collecting, receiving, re-*

1 *ording, or obtaining geolocation informa-*
2 *tion is being used by an individual different*
3 *from the individual from whom the covered*
4 *entity obtained express authorization; and*

5 *“(ii) is not collecting, receiving, record-*
6 *ing, or obtaining the geolocation informa-*
7 *tion of the individual in a manner that the*
8 *covered entity knows and intends to be im-*
9 *perceptible to the individual.*

10 *“(c) ANTI-CYBERSTALKING PROTECTION.—Except for*
11 *an instance in which geolocation information is being col-*
12 *lected under the exception described in subsection (b)(2)(F),*
13 *if a covered entity collects, receives, records, or obtains the*
14 *geolocation information of an individual in a manner that*
15 *the covered entity knows and intends to be imperceptible*
16 *to the individual, not earlier than 24 hours and not later*
17 *than 7 days after the initial collection, receipt, recording,*
18 *or obtaining, the covered entity shall provide the individual*
19 *a notice that informs the individual—*

20 *“(1) what geolocation information relating to the*
21 *individual is being collected, received, recorded, or ob-*
22 *tained;*

23 *“(2) the nongovernmental individuals or entities*
24 *to which the geolocation information has been or is*
25 *being disclosed; and*

1 “(3) *how the individual may electronically re-*
2 *voke consent to the collection, receipt, recording, ob-*
3 *taining, and disclosure of the geolocation information.*

4 “(d) *CIVIL REMEDIES.—*

5 “(1) *ACTION BY ATTORNEY GENERAL OF THE*
6 *UNITED STATES.—If the Attorney General of the*
7 *United States has reasonable cause to believe that an*
8 *individual or entity is violating this section, the At-*
9 *torney General may bring a civil action in an appro-*
10 *priate United States district court.*

11 “(2) *ACTION BY STATE ATTORNEYS GENERAL.—*
12 *If the attorney general of a State has reasonable cause*
13 *to believe that an interest of the residents of the State*
14 *has been or is threatened or adversely affected by a*
15 *violation of this section, the attorney general of the*
16 *State may bring a civil action on behalf of the resi-*
17 *dents of the State in an appropriate United States*
18 *district court.*

19 “(3) *RIGHT OF ACTION.—Any individual ag-*
20 *grieved by any action of an individual or entity in*
21 *violation of this section may bring a civil action in*
22 *an appropriate United States district court.*

23 “(4) *EFFECT ON OTHER PROCEEDINGS.—*

24 “(A) *FEDERAL ACTION.—On and after the*
25 *date on which the Attorney General of the*

1 *United States files a civil action alleging a vio-*
2 *lation of this section, an attorney general of a*
3 *State or an individual may not bring a civil ac-*
4 *tion under this subsection against a defendant*
5 *named in the civil action relating to a violation*
6 *of this section that is alleged in the civil action.*

7 “(B) *STATE ACTION.*—*On and after the date*
8 *on which the attorney general of a State files a*
9 *civil action alleging a violation of this section,*
10 *an individual may not bring a civil action*
11 *under this subsection against a defendant named*
12 *in the civil action for a violation of this section*
13 *that is alleged in the civil action.*

14 “(5) *RELIEF.*—*In a civil action brought under*
15 *this subsection, the court may award—*

16 “(A) *actual damages, but not less than*
17 *damages in the amount of \$2,500;*

18 “(B) *punitive damages;*

19 “(C) *reasonable attorney’s fees and other*
20 *litigation costs reasonably incurred; and*

21 “(D) *such other preliminary or equitable re-*
22 *lief as the court determines to be appropriate.*

23 “(6) *PERIOD OF LIMITATIONS.*—

24 “(A) *IN GENERAL.*—*Subject to subpara-*
25 *graph (B), a civil action may not be brought*

1 *under this subsection unless the civil action is*
2 *filed not later than 2 years after the later of the*
3 *date of the act complained of or the date of dis-*
4 *covery of the act complained of.*

5 “(B) *LIMITATION.*—*In no instance may a*
6 *civil action be filed under this subsection after*
7 *the date that is 10 years after the date of the act*
8 *complained of.*

9 “(7) *LIMITATION ON LIABILITY.*—*A civil action*
10 *may not be brought under this subsection relating to*
11 *any collection, receipt, recording, obtaining, or disclo-*
12 *sure of geolocation information that is explicitly au-*
13 *thorized under another provision of Federal law.*

14 “(e) *EFFECTS ON OTHER LAW.*—

15 “(1) *IN GENERAL.*—*This section shall supersede*
16 *a provision of the law of a State or political subdivi-*
17 *sion of a State that requires or allows collection, re-*
18 *ceipt, recording, obtaining or disclosure of geolocation*
19 *information prohibited by this section.*

20 “(2) *STATE CONSUMER PROTECTION LAWS.*—
21 *Nothing in this section shall be construed to preempt*
22 *the law of a State that grants greater consumer pro-*
23 *tections relating to the collection, receipt, recording,*
24 *obtaining, or disclosure of geolocation information*
25 *from electronic communications devices.*

1 “(3) *RIGHTS AND REMEDIES.*—*Nothing in this*
 2 *section shall be construed to effect the rights and rem-*
 3 *edies of any individual under any other State or Fed-*
 4 *eral law.*”

5 “(4) *COMMON CARRIERS AND CABLE SERV-*
 6 *ICES.*—*This section shall not apply to the activities*
 7 *of an individual or entity to the extent the activities*
 8 *are subject to section 222 or 631 of the Communica-*
 9 *tions Act of 1934 (47 U.S.C. 222 and 551).”.*

10 (b) *TECHNICAL AND CONFORMING AMENDMENTS.*—
 11 *Chapter 121 of title 18, United States Code, is amended—*

12 (1) *in the table of sections, by adding at the end*
 13 *the following:*

 “2713. *Voluntary location tracking of electronic communications devices.*”;

14 *and*

15 (2) *in section 2702—*

16 (A) *in subsection (b), by striking “A pro-*
 17 *vider” and inserting “Except as provided under*
 18 *section 2713, a provider”;* *and*

19 (B) *in subsection (c), by striking “A pro-*
 20 *vider” and inserting “Except as provided under*
 21 *section 2713, a provider”.*

22 (c) *EFFECTIVE DATE.*—*This section and the amend-*
 23 *ments made by this section shall take effect 180 days after*
 24 *the date of enactment of this Act.*

1 **SEC. 4. GEOLOCATION INFORMATION USED IN INTERSTATE**
 2 **DOMESTIC VIOLENCE OR STALKING.**

3 (a) *IN GENERAL.*—Chapter 110A of title 18, United
 4 States Code, is amended—

5 (1) *by redesignating section 2266 as section*
 6 *2267;*

7 (2) *by inserting after section 2265 the following:*

8 **“§2266. Geolocation information used in interstate**
 9 **domestic violence or stalking**

10 *“(a) OFFENSES; UNAUTHORIZED DISCLOSURE OF*
 11 *GEOLOCATION INFORMATION IN AID OF INTERSTATE DO-*
 12 *MESTIC VIOLENCE OR STALKING.—A covered entity or an*
 13 *employee of a covered entity that—*

14 *“(1) knowingly and intentionally discloses*
 15 *geolocation information about an individual to an-*
 16 *other individual;*

17 *“(2) knew that a violation of section 2261,*
 18 *2261A, or 2262 could result from the disclosure; and*

19 *“(3) intends to aid in a violation of section*
 20 *2261, 2261A, or 2262 as a result of the disclosure,*
 21 *shall be punished as provided in subsection (b).*

22 *“(b) PENALTIES.—A covered entity or employee of a*
 23 *covered entity that violates subsection (a) shall be fined*
 24 *under this title, imprisoned for not more than 2 years, or*
 25 *both.”; and*

1 (3) *in section 2267, as so redesignated, by add-*
 2 *ing at the end the following:*

3 “(11) *COVERED ENTITY; GEOLOCATION INFORMA-*
 4 *TION.—The terms ‘covered entity’, ‘geolocation infor-*
 5 *mation’, and ‘knowingly’ have the meanings given*
 6 *those terms in section 2713.”.*

7 (b) *TECHNICAL AND CONFORMING AMENDMENTS.—*

8 (1) *TITLE 10.—Section 1561a(b) of title 10,*
 9 *United States Code, is amended by striking “section*
 10 *2266(5)” and inserting “section 2267(5)”.*

11 (2) *TITLE 18.—Title 18, United States Code, is*
 12 *amended—*

13 (A) *in section 1992(d)(14), by striking “sec-*
 14 *tion 2266” and inserting “section 2267”; and*

15 (B) *in chapter 110A—*

16 (i) *in the table of sections, by striking*
 17 *the item relating to section 2266 and insert-*
 18 *ing the following:*

“2266. *Geolocation information used in interstate domestic violence or stalking.*
 “2267. *Definitions.*”;

19 *and*

20 (ii) *in section 2261(b)(6), by striking*
 21 *“section 2266 of title 18, United States*
 22 *Code,” and inserting “section 2267”.*

23 (3) *OMNIBUS CRIME CONTROL AND SAFE*
 24 *STREETS ACT OF 1968.—Section 2011(c) of title I of*

1 (c) *CONSULTATION.*—*The Attorney General, acting*
2 *through the Director of the Office on Violence Against*
3 *Women and the Director of the National Institute of Justice,*
4 *shall consult with representatives from the Federal agencies,*
5 *offices of State attorneys general, national victim advocacy*
6 *organizations and the industries related to the technologies*
7 *described in subsection (b)(1) to assist in the development*
8 *and implementation of the study conducted under sub-*
9 *section (a) and guide implementation of the recommenda-*
10 *tions proposed under subsection (b)(3).*

11 (d) *REPORT.*—*Not later than 2 years after the date*
12 *of enactment of this Act, the Attorney General shall submit*
13 *to the Committee on the Judiciary of the Senate and the*
14 *Committee on the Judiciary of the House of Representatives*
15 *a report that describes the results of the study conducted*
16 *under subsection (a).*

17 **SEC. 6. GEOLOCATION CRIME INFORMATION AND REPORT-**
18 **ING.**

19 (a) *IMPLEMENTATION.*—*The Attorney General shall*
20 *direct the Internet Crime Complaint Center to provide edu-*
21 *cation and awareness information to the public and law*
22 *enforcement and register complaints regarding the abuse of*
23 *geolocation information to commit domestic violence, dat-*
24 *ing violence, sexual assault, stalking, or other related*
25 *crimes.*

1 (b) *CONSULTATIONS.*—*In determining what informa-*
2 *tion will be provided to the public and collected in com-*
3 *plaints under subsection (a), the Attorney General shall*
4 *consult with nongovernmental entities that have dem-*
5 *onstrated expertise relating to the abuse of the Internet or*
6 *geolocation information to commit stalking, domestic vio-*
7 *lence, dating violence, sexual assault, or other related*
8 *crimes.*

9 (c) *REPORT.*—*Not later than 18 months after the date*
10 *of enactment of this Act, the Attorney General shall submit*
11 *to the Committee on the Judiciary of the Senate and the*
12 *Committee on the Judiciary of the House of Representatives*
13 *a report that discusses and summarizes the information col-*
14 *lected in complaints filed under subsection (a).*

15 **SEC. 7. NATIONAL GEOLOCATION CURRICULUM TRAINING.**

16 (a) *IN GENERAL.*—*The Attorney General, through the*
17 *Director of the Office on Violence Against Women, may*
18 *make grants to entities to develop and provide training to*
19 *law enforcement officers, prosecutors, judges, and victim*
20 *service personnel throughout the United States regarding*
21 *relevant Federal, State, territorial, or local law and prom-*
22 *ising practices, procedures, and policies relating to inves-*
23 *tigating and prosecuting the misuse of geolocation informa-*
24 *tion in the commission of stalking, domestic violence, dating*
25 *violence, sexual assault, and other crimes.*

1 **(b) APPLICATION.**—*An eligible entity desiring a grant*
2 *under this section shall submit an application to the Attor-*
3 *ney General at such time, in such manner, and accom-*
4 *panied by such information as the Attorney General may*
5 *reasonably require.*

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112TH CONGRESS
2^D Session

S. 1223

A BILL

To address voluntary location tracking of electronic communications devices, and for other purposes.

DECEMBER 17, 2012

Reported with an amendment