

1 SB278
2 147358-2
3 By Senator Keahey
4 RFD: Judiciary
5 First Read: 23-JAN-14

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8 SYNOPSIS: This bill would provide that any judge
9 authorized to issue a search warrant pursuant to
10 the Alabama Rules of Criminal Procedure may issue a
11 warrant for the installation, removal, maintenance,
12 use, or monitoring of a tracking device.

13 This bill would also establish the crime of
14 unlawfully installing a tracking device if any
15 person installs a tracking device without following
16 the procedures of the act and would provide certain
17 exceptions.

18 Amendment 621 of the Constitution of Alabama
19 of 1901, now appearing as Section 111.05 of the
20 Official Recompilation of the Constitution of
21 Alabama of 1901, as amended, prohibits a general
22 law whose purpose or effect would be to require a
23 new or increased expenditure of local funds from
24 becoming effective with regard to a local
25 governmental entity without enactment by a 2/3 vote
26 unless: it comes within one of a number of
27 specified exceptions; it is approved by the

1 affected entity; or the Legislature appropriates
2 funds, or provides a local source of revenue, to
3 the entity for the purpose.

4 The purpose or effect of this bill would be
5 to require a new or increased expenditure of local
6 funds within the meaning of the amendment. However,
7 the bill does not require approval of a local
8 governmental entity or enactment by a 2/3 vote to
9 become effective because it comes within one of the
10 specified exceptions contained in the amendment.

11
12 A BILL
13 TO BE ENTITLED
14 AN ACT
15

16 Relating to criminal surveillance; to provide that
17 an authorized judge may issue a warrant for the installation,
18 removal, maintenance, use, and monitoring of a tracking
19 device; to provide for the crime of unlawfully installing a
20 tracking device; and in connection therewith would have as its
21 purpose or effect the requirement of a new or increased
22 expenditure of local funds within the meaning of Amendment 621
23 of the Constitution of Alabama of 1901, now appearing as
24 Section 111.05 of the Official Recompilation of the
25 Constitution of Alabama of 1901, as amended.
26 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. (a) Any judge authorized to issue a
2 search warrant pursuant to Rule 3.7 of the Alabama Rules of
3 Criminal Procedure is authorized to issue a warrant to install
4 a tracking device. The term tracking device means an
5 electronic or mechanical device which permits the tracking of
6 the movement of a person or object.

7 (b) Upon the written application, under oath, of any
8 law enforcement officer, district attorney, or Attorney
9 General of the state, including assistant and deputy district
10 attorneys and assistant and deputy attorneys general, any
11 authorized judge may issue a warrant for the installation,
12 removal, maintenance, use, or monitoring of a tracking device.
13 The warrant application shall do all of the following:

14 (1) State facts sufficient to show probable cause
15 that a crime is being, has been, or is about to be committed.

16 (2) Clearly identify the person, if reasonably
17 determinable, or object, or both, that is, was, or will be
18 involved in the commission of the alleged offense.

19 (3) Describe, with particularity, the item or
20 person, or both, to be tracked by use of a tracking device.

21 (c) A warrant for a tracking device shall clearly
22 identify the person, if reasonably determinable, or the object
23 to be tracked, or both, and specify a reasonable length of
24 time that the tracking device may be used, not to exceed 45
25 days from the date that the warrant was issued unless the
26 issuing judge grants one or more extensions for a reasonable
27 time not to exceed 45 days each, based on renewed or ongoing

1 probable cause, or both. The warrant shall include the
2 authorization for access to and into the object that will be
3 tracked and any building or structure in which the object is
4 located for the limited purpose of installing the tracking
5 device or for maintenance or retrieval of the tracking device.
6 The warrant shall state that the tracking device may be
7 installed, repaired, removed, and monitored at any time of the
8 day or night. The warrant shall command the officer to do all
9 of the following:

10 (1) Install the tracking device upon the person or
11 object to be tracked while the person or object is within the
12 jurisdiction of the judge issuing the warrant.

13 (2) Complete the installation within 10 days from
14 the date the warrant is issued.

15 (3) Require that the law enforcement officer make a
16 written return of the warrant to the judge issuing the warrant
17 or other authorized judge in the jurisdiction where the
18 warrant was issued if the issuing judge is not available.

19 (d) The law enforcement officer executing the
20 warrant shall:

21 (1) Enter on the warrant the exact date and time the
22 device was installed and the period during which it was used.

23 (2) Within 10 days after the use of the tracking
24 device has ended, return the warrant with a copy of the
25 inventory collected pursuant to the warrant to the issuing
26 judge or other authorized judge in the jurisdiction where the
27 warrant was issued if the issuing judge is not available, and

1 serve a copy of the warrant on the person who was tracked or
2 whose property was tracked. Service may be accomplished by
3 delivering a copy of the warrant to the person who was tracked
4 or whose property was tracked, leaving a copy at that person's
5 residence or usual place of abode with an individual of
6 suitable age and discretion who resides at that location, or
7 mailing a copy to the person's last known address. Upon
8 request of the state, the judge may delay notice as provided
9 in subsection (f).

10 (e) The law enforcement officers involved in the
11 investigation shall remove or cause to be removed the tracking
12 device as soon as it is practicable after the authorization
13 period expires. If removal is not practicable, monitoring of
14 the mobile tracking device shall cease on expiration of the
15 warrant.

16 (f) With respect to a warrant issued pursuant to
17 this act, notice to the person who was tracked or whose
18 property was tracked may be delayed upon the request of the
19 applicant if the following applies:

20 (1) The court finds reasonable cause to believe that
21 providing immediate notification of the execution of the
22 warrant may have an adverse result. An adverse result means:

23 a. Endangerment to the life or physical safety of an
24 individual.

25 b. Flight from prosecution.

26 c. Destruction of or tampering with evidence.

27 d. Intimidation of potential witnesses.

1 e. Any occurrence that would otherwise seriously
2 jeopardize an investigation or unduly delay a trial.

3 (2) The warrant provides that notice shall be given
4 within a reasonable period not to exceed 90 days after the
5 date the warrant was returned to the issuing judge or
6 authorized judge in the jurisdiction where the warrant was
7 issued if the issuing judge is not available. The delay may be
8 extended by the court if the court determines that there is a
9 continuous finding of an adverse result, subject to the
10 condition that an extension shall only be granted upon an
11 updated showing of the need for further delay. Each additional
12 delay shall be limited to a period of 90 days or less, unless
13 the facts of the case justify a longer period, provided,
14 however, that the delayed notification shall be no later than
15 the date of arrest of the individual who was tracked or whose
16 property was tracked, which is based wholly or in part upon
17 the results of the tracking device.

18 (g) The warrant shall direct that the affidavit,
19 application, warrant, inventory, and return be sealed until
20 notice is given to the person who was tracked or whose
21 property was tracked.

22 (h) If an authorized judge issues a warrant for a
23 tracking device in accordance with this act, the device shall
24 be installed in any county within the jurisdiction of the
25 issuing judge and may be monitored in any location in the
26 State of Alabama from any location within the State of
27 Alabama. Unless otherwise prohibited by federal law, the

1 device may be monitored from any location within the State of
2 Alabama even if the device is transported outside the State of
3 Alabama.

4 (i) Any person commits the crime of unlawfully
5 installing a tracking device if he or she intentionally
6 installs a tracking device without following the procedures
7 established in this act. The unlawful installation of a
8 tracking device is a Class A misdemeanor. Nothing in this act
9 shall be construed as limiting or affecting the ability of a
10 business entity to install or use a tracking device on a
11 vehicle, equipment, or device that the business entity owns,
12 leases, or operates. Nothing in this act shall be construed as
13 limiting or affecting the ability of an individual to install
14 or use a tracking device on a vehicle, equipment, or device
15 that the individual owns, leases, or operates.

16 Section 2. Although this bill would have as its
17 purpose or effect the requirement of a new or increased
18 expenditure of local funds, the bill is excluded from further
19 requirements and application under Amendment 621, now
20 appearing as Section 111.05 of the Official Recompilation of
21 the Constitution of Alabama of 1901, as amended, because the
22 bill defines a new crime or amends the definition of an
23 existing crime.

24 Section 3. This act shall become effective on the
25 first day of the third month following its passage and
26 approval by the Governor, or its otherwise becoming law.