

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 Appropriations Subcommittee on Criminal and Civil Justice

BILL: CS/SB 298

INTRODUCER: Criminal Justice Committee and Senator Evers

SUBJECT: Installation of Tracking Devices or Tracking Applications

DATE: December 2, 2015 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-------------------|-----------------|------------|--------------------|
| 1. | <u>Erickson</u> | <u>Cannon</u> | <u>CJ</u> | <u>Fav/CS</u> |
| 2. | <u>Clodfelter</u> | <u>Sadberry</u> | <u>ACJ</u> | <u>Pre-meeting</u> |
| 3. | _____ | _____ | <u>RC</u> | _____ |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 298 amends section 934.425, Florida Statutes, which generally prohibits the installation of tracking devices and tracking applications without the consent of the property owner. Currently, the law prohibits private investigators from installing tracking devices or tracking applications unless the law authorizes the investigator's client to perform such installation. The bill provides three additional circumstances in which the private investigator may perform such installation: pursuant to a court order; to locate a fugitive from justice; and to locate lost or stolen property or locate assets awarded by the court.

Unless one of these circumstances applies, the private investigator may not install a tracking device or tracking application. Additionally, a private investigator may not install a tracking device or tracking application on behalf of a client who is subject to a no contact order or an injunction for protection, or if the private investigator knows or has reason to know that the client is involved in the commission of a crime or an unlawful act.

The bill also authorizes the Department of Corrections and the Department of Juvenile Justice to install a tracking device or tracking application as part of a criminal investigation, and authorizes separated or divorced parents or legal guardians to install a tracking device or tracking application on their child's property if authorized by the separation or divorce decree.

The offense is a second degree misdemeanor. The amendments to current law will have no impact on the state prison population and no more than an insignificant fiscal impact on other aspects of the criminal justice system.

The bill has an effective date of July 1, 2016.

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 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.

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.

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.

- 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.

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” exemption 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 authorize private investigators to install a tracking device or tracking application in the following circumstances:

- If the client is already authorized to install the tracking device or tracking application under an existing exemption (current law);
- If authorized by an order issued by a court of this state;
- To locate a person who is a fugitive from justice; or
- To locate lost or stolen property or locate assets awarded by the court.

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.

⁷ See ch. 2015-137, L.O.F.

Unless one of these circumstances applies, the private investigator may not install a tracking device or tracking application. Additionally, a private investigator may not install a tracking device or tracking application on behalf of a client who is subject to a no contact order or an injunction for protection, or if the private investigator knows or has reason to know that the client is involved in the commission of a crime or an unlawful act.

The bill also authorizes the Department of Corrections and the Department of Juvenile Justice to install a tracking device or tracking application as part of a criminal investigation, and authorizes separated or divorced parents or legal guardians to install a tracking device or tracking application on their child's property if authorized by the separation or divorce decree.

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.

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:

Because the offense is a second degree misdemeanor, the Criminal Justice Impact Conference determined that CS/SB 298 as originally filed would have no impact on the state prison population. The amendments incorporated in the committee substitute would not change this determination. Any other fiscal impact on the criminal justice system would be insignificant.

VI. Technical Deficiencies:

None.

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.)

CS by Criminal Justice on November 2, 2015:

- Authorizes private investigators to install a tracking device or tracking application in the following circumstances:
 - If the client is already authorized to install the tracking device or tracking application under an existing exemption (current law);
 - If authorized by an order issued by a court of this state;
 - To locate a person who is a fugitive from justice; or
 - To locate lost or stolen property or locate assets awarded by the court.
- Prohibits a private investigator from installing a tracking device or tracking application on behalf of a client who is subject to a no contact order or an injunction for protection, or if the private investigator knows or has reason to know that the client is involved in the commission of a crime or an unlawful act.
- Authorizes the Department of Corrections and the Department of Juvenile Justice to install a tracking device or tracking application as part of a criminal investigation.
- Authorizes separated or divorced parents or legal guardians to install a tracking device or tracking application on their child's property if authorized by the separation or divorce decree.

B. Amendments:

None.