

112TH CONGRESS
1ST SESSION

S. _____

To address voluntary location tracking of electronic communications devices.

IN THE SENATE OF THE UNITED STATES

Mr. FRANKEN introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To address voluntary location tracking of electronic communications devices.

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”.

6 **SEC. 2. VOLUNTARY LOCATION TRACKING OF ELECTRONIC**
7 **COMMUNICATIONS DEVICES.**

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

1 **“§ 2713. Voluntary location tracking of electronic**
2 **communications devices**

3 “(a) DEFINITIONS.—In this section—

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

12 “(2) the term ‘customer’ means any individual
13 who uses an electronic communications device to ob-
14 tain or access an electronic communication service,
15 remote computing service, or geolocation information
16 service, regardless of whether the service was, or is,
17 being provided for a monetary fee;

18 “(3) the term ‘effective notice’ means clear and
19 prominent notice that—

20 “(A) is displayed on the electronic commu-
21 nications device, separate and apart from any
22 final end user license agreement, privacy policy,
23 terms of use page, or similar document;

24 “(B) is in a form appropriate to the me-
25 dium on which the notice is displayed;

26 “(C) provides information regarding—

1 “(i) what geolocation information will
2 be collected;

3 “(ii) the specific nongovernmental en-
4 tities to which the geolocation information
5 may be disclosed; and

6 “(D) provides through a hyperlink or other
7 readily-accessible means and through electronic
8 mail, if an electronic mail address is available—

9 “(i) how often geolocation information
10 will be collected;

11 “(ii) how geolocation information will
12 be used;

13 “(iii) how long the geolocation infor-
14 mation will be retained; and

15 “(iv) how the customer may subse-
16 quently revoke consent to the collection, re-
17 ceipt, recording, obtaining, and disclosure
18 of geolocation information;

19 “(4) the term ‘electronic communications de-
20 vice’ means any device that—

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

1 “(B) is carried by or on the person of a
2 customer or in some other way travels with the
3 customer, including but not limited to a vehicle
4 the customer drives;

5 “(5) the term ‘express authorization’ means ex-
6 press affirmative consent after receiving effective no-
7 tice;

8 “(6) the term ‘geolocation information’—

9 “(A) means any information—

10 “(i) concerning the location of an elec-
11 tronic communications device that is in
12 whole or in part generated by or derived
13 from the operation or use of the electronic
14 communications device; and

15 “(ii) that may be used to identify or
16 approximate the location of the electronic
17 communications device or the customer
18 that is using the device; and

19 “(B) does not include—

20 “(i) the name of the subscriber or
21 customer;

22 “(ii) the address of the subscriber or
23 customer;

24 “(iii) the local and long distance tele-
25 phone connection records, or records of

1 session times and durations, of the sub-
2 scribe or customer;

3 “(iv) the length of service (including,
4 but not limited to, start date) and types of
5 service used by the subscriber or customer;

6 “(v) a telephone or instrument num-
7 ber or other subscriber number or identity,
8 including, but not limited to, any tempo-
9 rarily assigned network address or Internet
10 protocol address, of the subscriber or cus-
11 tomer; or

12 “(vi) the means and source of pay-
13 ment for service (including, but not limited
14 to, any credit card or bank account num-
15 ber) of the subscriber or customer;

16 “(7) the term ‘geolocation information service’
17 means the provision of a global positioning service or
18 other mapping, locational, or directional information
19 service; and

20 “(8) the term ‘knowingly’ means having actual
21 knowledge.

22 “(b) COLLECTION OF GEOLOCATION INFORMATION
23 BY NONGOVERNMENTAL ENTITIES.—

24 “(1) IN GENERAL.—Except as provided in para-
25 graph (2), a covered entity may not knowingly col-

1 lect, receive, record, or obtain geolocation informa-
2 tion from an electronic communications device with-
3 out the express authorization of the customer that is
4 using the electronic communications device.

5 “(2) EXCEPTIONS.—A covered entity may
6 knowingly collect, receive, record, or obtain
7 geolocation information from an electronic commu-
8 nication device without the express authorization of
9 the customer that is using the electronic communica-
10 tions device if the collection, receipt, recording, or
11 obtaining is—

12 “(A) necessary to provide fire, medical,
13 public safety, or other emergency services;

14 “(B) necessary to inform the legal guard-
15 ian or immediate family of the customer of the
16 location of the customer in an emergency situa-
17 tion that involves the risk of death or serious
18 physical harm;

19 “(C) necessary to inform the legal guard-
20 ian or immediate family of a minor child of the
21 location of the minor child;

22 “(D) necessary to protect the rights or
23 property of the covered entity, or to protect
24 users of the services of the covered entity or
25 other covered entities from fraudulent, abusive,

1 or unlawful use of, or subscription to, such
2 services; or

3 “(E) explicitly required by statute, regula-
4 tion, or appropriate judicial process.

5 “(3) CHANGES IN BUSINESS PRACTICES.—A
6 covered entity that has obtained express authoriza-
7 tion from a customer to collect, receive, record, or
8 obtain geolocation information from an electronic
9 communications device shall obtain express author-
10 ization for any use or collection, receipt, recording,
11 or obtaining of geolocation information conducted in
12 a manner materially different from the practices for
13 which the customer provided the express authoriza-
14 tion.

15 “(c) DISCLOSURE OF GEOLOCATION INFORMATION
16 TO NONGOVERNMENTAL ENTITIES.—

17 “(1) IN GENERAL.—Except as provided in para-
18 graph (2), a covered entity that has knowingly col-
19 lected, received, recorded, or obtained geolocation in-
20 formation from an electronic communications device
21 may not knowingly disclose, or cause to be disclosed,
22 the geolocation information to a nongovernmental in-
23 dividual or entity without the express authorization
24 of the customer that is using the electronic commu-
25 nications device.

1 “(2) EXCEPTIONS.—A covered entity may
2 knowingly disclose, or cause to be disclosed,
3 geolocation information that the covered entity col-
4 lected, received, recorded, or obtained from an elec-
5 tronic communications device to a nongovernmental
6 individual or entity without the express authoriza-
7 tion of the customer that is using that device if the
8 disclosure is—

9 “(A) made to a third party—

10 “(i) for the sole purpose of transmit-
11 ting the geolocation information to the cus-
12 tomer or another authorized recipient, in-
13 cluding another third party authorized
14 under this subparagraph; and

15 “(ii) that does not retain a copy of the
16 geolocation information;

17 “(B) necessary to provide fire, medical,
18 public safety, or other emergency services;

19 “(C) necessary to inform the legal guard-
20 ian or immediate family of the customer of the
21 location of the customer in an emergency situa-
22 tion that involves the risk of death or serious
23 physical harm;

1 “(D) necessary to inform the legal guard-
2 ian or immediate family of a minor child of the
3 location of the minor child;

4 “(E) necessary to protect the rights or
5 property of the covered entity, or to protect
6 users of the services of the covered entity or
7 other covered entities from fraudulent, abusive,
8 or unlawful use of, or subscription to, such
9 services;

10 “(F) expressly required by statute, regula-
11 tion, or appropriate judicial process; or

12 “(G) of geolocation maintained in a form
13 such that the information cannot reasonably be
14 correlated with or used to identify a specific in-
15 dividual or used to identify a specific electronic
16 communications device.

17 “(3) CHANGES IN BUSINESS PRACTICES.—A
18 covered entity that has obtained express authoriza-
19 tion from a customer to disclose geolocation infor-
20 mation collected, received, recorded, or obtained
21 from an electronic communications device shall ob-
22 tain express authorization for any disclosure of
23 geolocation information conducted in a manner ma-
24 terially different from the practices for which the
25 customer provided the express authorization.

1 “(d) DELETION OF GEOLOCATION INFORMATION ON
2 USER REQUEST.—

3 “(1) ANONYMIZED INFORMATION.—For pur-
4 poses of this subsection, the term ‘geolocation infor-
5 mation’ does not include information that is main-
6 tained in a form such that the information cannot
7 reasonably be correlated with or used to identify a
8 specific individual or used to identify a specific elec-
9 tronic communications device.

10 “(2) DISCLOSURE OR DELETION.—A non-
11 governmental individual or entity that is in or af-
12 fects interstate commerce and knowingly possesses
13 geolocation information relating to 5,000 or more
14 electronic communications devices shall, upon writ-
15 ten request by an individual who is the owner of the
16 electronic communications device whose geolocation
17 information the individual or entity possesses—

18 “(A) confirm whether the nongovernmental
19 individual or entity possesses geolocation infor-
20 mation from a device owned by the requesting
21 individual; and

22 “(B) delete or destroy any geolocation in-
23 formation possessed by the nongovernmental in-
24 dividual or entity that relates to the device
25 owned by the requesting individual.

1 “(e) SECURITY OF GEOLOCATION INFORMATION.—

2 “(1) IN GENERAL.—A nongovernmental indi-
3 vidual or entity that is in or affects interstate com-
4 merce and that knowingly possesses geolocation in-
5 formation relating to 5,000 or more individuals shall
6 establish, implement, and maintain reasonable and
7 appropriate administrative, technical, and physical
8 safeguards to protect the security, integrity, and
9 confidentiality of the geolocation information against
10 reasonably foreseeable threats, vulnerabilities, and
11 hazards.

12 “(2) RULEMAKING.—The Attorney General of
13 the United States, or the head of an agency des-
14 ignated by the Attorney General, in consultation
15 with the Secretary of Commerce, the Federal Trade
16 Commission, and the Secretary of Homeland Secu-
17 rity, shall prescribe reasonable and appropriate safe-
18 guards for purposes of this subsection in a rule-
19 making under section 553 of title 5.

20 “(3) COMPLIANCE.—An individual or entity de-
21 scribed in paragraph (1) that complies with the rules
22 prescribed under paragraph (2) shall be deemed in
23 compliance with paragraph (1).

24 “(f) CIVIL REMEDIES.—

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

7 “(2) ACTION BY STATE ATTORNEYS GEN-
8 ERAL.—If the attorney general of a State has rea-
9 sonable cause to believe that an interest of the resi-
10 dents of the State has been or is threatened or ad-
11 versely affected by a violation of this section, the at-
12 torney general of the State may bring a civil action
13 on behalf of the residents of the State in an appro-
14 priate United States district court.

15 “(3) RIGHT OF ACTION.—Any individual ag-
16 grieved by any action of an individual or entity in
17 violation of this section may bring a civil action in
18 an appropriate United States district court.

19 “(4) PENDING PROCEEDINGS.—

20 “(A) FEDERAL ACTION.—If the Attorney
21 General has brought a civil action alleging a
22 violation of this section, an attorney general of
23 a State or private person may not bring a civil
24 action under this subsection against a defend-
25 ant named in the civil action relating to a viola-

1 tion of this section that is alleged in the civil
2 action while the civil action is pending.

3 “(B) STATE ACTION.—If the attorney gen-
4 eral of a State has brought a civil action alleg-
5 ing a violation of this section, an individual may
6 not bring a civil action under this subsection
7 against a defendant named in the civil action
8 for a violation of this section that is alleged in
9 the civil action while the civil action is pending.

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

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

14 “(B) punitive damages;

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

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

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

23 “(7) LIMITATION ON LIABILITY.—A civil action
24 may not be brought under this subsection relating to
25 any collection, receipt, recording, obtaining, or dis-

1 closure of geolocation information that is authorized
2 under any other provision of law or appropriate legal
3 process.

4 “(g) EFFECTS ON OTHER LAW.—

5 “(1) IN GENERAL.—This section shall super-
6 sede a provision of the law of a State or political
7 subdivision of a State that—

8 “(A) requires or allows the collection, re-
9 ceipt, recording, or obtaining of geolocation in-
10 formation that is prohibited under subsection
11 (b);

12 “(B) requires or allows the disclosure of
13 geolocation information that is prohibited under
14 subsection (c);

15 “(C) prohibits the disclosure or destruction
16 of geolocation information that is required
17 under subsection (d); or

18 “(D) imposes a lesser safeguard for data
19 security, integrity, or confidentiality than re-
20 quired under subsection (e).

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

1 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

2 Chapter 121 of title 18, United States Code, is amended—

3 (1) in the table of sections, by adding at the

4 end the following:

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

5 (2) in section 2702—

6 (A) in subsection (b), by striking “A pro-

7 vider” and inserting “Except as provided under

8 section 2713, a provider”; and

9 (B) in subsection (c), by striking “A pro-

10 vider” and inserting “Except as provided under

11 section 2713, a provider”.