

1 HB292
2 165373-1
3 By Representative England
4 RFD: Judiciary
5 First Read: 17-MAR-15

2
3
4
5
6
7
8 SYNOPSIS: This bill would provide that a circuit or
9 district judge may issue a warrant for the
10 installation, removal, maintenance, use, or
11 monitoring of a tracking device.

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

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

1 funds, or provides a local source of revenue, to
2 the entity for the purpose.

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

10
11 A BILL
12 TO BE ENTITLED
13 AN ACT
14

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

25 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

26 Section 1. (a) Any circuit or district court judge
27 in this state is authorized to issue a warrant to install a

1 tracking device. The term tracking device means an electronic
2 or mechanical device which permits the tracking of the
3 movement of a person or object.

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

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

14 (2) Identify the person, if reasonably determinable,
15 or object, or both, that is, was, or will be involved in the
16 commission of the alleged offense.

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

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

1 building, dwelling, structure, or curtilage in which the
2 object is located for the limited purpose of installing the
3 tracking device or for maintenance, repair, or retrieval of
4 the tracking device. The warrant shall state that the tracking
5 device may be installed, repaired, maintained, or retrieved at
6 any time during the day or night. However, access to and into
7 any building, dwelling, structure, or curtilage in which the
8 object is located shall be limited to the daytime unless the
9 affidavit sets out that the purpose of the tracking device is
10 to investigate a crime involving a controlled substance, an
11 explosive device or material used or to be used in creating an
12 explosive device, or chemical, biological, or nuclear
13 materials used or to be used in creating an explosive device
14 or a weapon of mass destruction, or an emergency situation
15 involving danger to a person, at which point access to and
16 into any building, dwelling, structure, or curtilage in which
17 the object is located may be allowed at any time of the day or
18 night. The time of day for access to and into any building,
19 dwelling, structure, or curtilage shall be set out in the
20 warrant. The device may be monitored at any time of the day or
21 night. The warrant shall command the officer to do all of the
22 following:

23 (1) Install the tracking device upon the person or
24 object to be tracked while the person or object is within the
25 jurisdiction of the judge issuing the warrant.

26 (2) Complete the installation within 10 days from
27 the date the warrant is issued.

1 (3) Require that the law enforcement officer make a
2 written return of the warrant within 10 days after the use of
3 the tracking device has ended to the judge issuing the warrant
4 or other authorized judge in the jurisdiction where the
5 warrant was issued if the issuing judge is not available
6 setting out the time period or time periods that surveillance
7 occurred.

8 (d) The law enforcement officer executing the
9 warrant shall do all of the following:

10 (1) Enter on the warrant the date and time the
11 device was installed and the period during which it was used.

12 (2) Within 10 days after the use of the tracking
13 device has ended, return the warrant with a copy of the
14 inventory collected pursuant to the warrant to the issuing
15 judge or other authorized judge in the jurisdiction where the
16 warrant was issued if the issuing judge is not available, and
17 serve a copy of the warrant on the person who was tracked or
18 whose property was tracked. Service may be accomplished by
19 delivering a copy of the warrant to the person who was tracked
20 or whose property was tracked, leaving a copy at that person's
21 residence or usual place of abode with an individual of
22 suitable age and discretion who resides at that location, or
23 mailing a copy to the person's last known address. Upon
24 request of the state, the judge may delay notice as provided
25 in subsection (f).

26 (e) The law enforcement officers involved in the
27 investigation shall retrieve or cause to be retrieved the

1 tracking device as soon as it is practicable after the
2 authorization period expires. If retrieval is not practicable,
3 monitoring of the mobile tracking device shall cease on
4 expiration of the warrant.

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

9 (1) The court finds reasonable cause to believe that
10 providing immediate notification of the execution of the
11 warrant may have an adverse result. An adverse result means
12 any of the following:

13 a. Endangerment to the life or physical safety of an
14 individual.

15 b. Flight from prosecution.

16 c. Destruction of or tampering with evidence.

17 d. Intimidation of potential witnesses.

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

20 (2) The warrant provides that notice shall be given
21 within a reasonable period not to exceed 90 days after the
22 date the warrant was returned to the issuing judge or
23 authorized judge in the jurisdiction where the warrant was
24 issued if the issuing judge is not available. The delay may be
25 extended by the court if the court determines that there is a
26 continuous finding of an adverse result, subject to the
27 condition that an extension shall only be granted upon an

1 updated showing of the need for further delay. Each additional
2 delay shall be limited to a period of 90 days or less, unless
3 the facts of the case justify a longer period, provided,
4 however, that the delayed notification shall be no later than
5 the date of arrest of the individual who was tracked or whose
6 property was tracked, which is based wholly or in part upon
7 the results of the tracking device.

8 (g) The warrant shall direct that the affidavit,
9 application, warrant, inventory, and return be sealed until
10 notice is given to the person who was tracked or whose
11 property was tracked.

12 (h) If an authorized judge issues a warrant for a
13 tracking device in accordance with this act, the device shall
14 be installed in any county within the jurisdiction of the
15 issuing judge.

16 (i) Upon obtaining a warrant for a tracking device
17 or any other electronic device for which location information
18 may be obtained as authorized by Section 15-5-40, Code of
19 Alabama 1975, the tracking device or other electronic device
20 for which location information may be obtained as authorized
21 by Section 15-5-40, Code of Alabama 1975, may be monitored in
22 any location in the State of Alabama from any location within
23 or outside of the State of Alabama. Unless otherwise
24 prohibited by federal law, the tracking device or other
25 electronic device for which location information may be
26 obtained as authorized by Section 15-5-40, Code of Alabama
27 1975, may be monitored from any location within or outside of

1 the State of Alabama even if the tracking device or electronic
2 device for which location information may be obtained as
3 authorized by Section 15-5-40, Code of Alabama 1975, is
4 transported outside of the State of Alabama.

5 (j) A person commits the crime of unlawfully
6 installing a tracking device if he or she intentionally
7 installs a tracking device without following the procedures
8 established in this act or the procedures established in
9 federal law. The unlawful installation of a tracking device is
10 a Class A misdemeanor. Nothing in this act shall be construed
11 as limiting or affecting the ability of a business entity to
12 install or use a tracking device on a vehicle, equipment, or
13 device that the business entity owns, leases, holds a lienhold
14 interest in, or operates. Nothing in this act shall be
15 construed as limiting or affecting the ability of an
16 individual to install or use a tracking device on a vehicle,
17 equipment, or device that the individual owns, leases, holds a
18 lienhold interest in, or operates. Nothing in this act shall
19 be construed as limiting or affecting the ability of an
20 automobile manufacturer, its affiliates, subsidiaries, or a
21 related telematics provider to install a feature that could be
22 considered a tracking device.

23 Section 2. Although this bill would have as its
24 purpose or effect the requirement of a new or increased
25 expenditure of local funds, the bill is excluded from further
26 requirements and application under Amendment 621, now
27 appearing as Section 111.05 of the Official Recompilation of

1 the Constitution of Alabama of 1901, as amended, because the
2 bill defines a new crime or amends the definition of an
3 existing crime.

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