

AMENDED IN SENATE APRIL 9, 2012

**SENATE BILL**

**No. 1434**

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**Introduced by Senator Leno**

February 24, 2012

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An act to ~~amend Section 496 of~~ *add Chapter 3.6 (commencing with Section 1546) to Title 12 of Part 2 of the Penal Code, relating to property crime location information.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1434, as amended, Leno. ~~Receiving stolen property. Location information: warrants.~~

*Existing law authorizes a court or magistrate to issue a warrant for the search of a place and the seizure of property or things identified in the warrant where there is probable cause to believe that specified grounds exist. Existing law also provides for a warrant procedure for the acquisition of stored communications in the possession of a provider of electronic communication service or a remote computing service.*

*This bill would prohibit a government entity, as defined, from obtaining the location information of an electronic device without a warrant issued by a duly authorized magistrate unless certain exceptions apply, including in an emergency or when requested by the owner of the device. The bill would prohibit the use of information obtained in violation of these provisions from being used in a civil or administrative hearing. The bill would require a provider to prepare and publish a report containing specified information relating to requests for location information on the Internet, in a searchable format, on or before March 1 of each year.*

~~Under existing law, a person who buys or receives property that has been stolen or that has been obtained in a manner constituting theft or~~

~~extortion, knowing the property to be so stolen or obtained, or who conceals, sells, withholds, or aids in concealing, selling, or withholding property from the owner, knowing the property to be so stolen or obtained, is guilty of either a misdemeanor or a felony, as prescribed. Under existing law, a swap meet vendor, as defined, or a person whose principal business is dealing in, or collecting, merchandise or personal property, and every agent, employee, or representative of that person, who buys or receives property of a value in excess of \$950 that has been stolen or obtained in a manner constituting theft or extortion, under circumstances that should cause the person, agent, employee, or representative to make reasonable inquiry to ascertain that the person from whom the property was bought or received had the legal right to sell or deliver it, without making a reasonable inquiry is guilty of a misdemeanor or a felony, as specified. If the value of the property is less than \$950, the crime is a misdemeanor. Existing law authorizes treble damages, as well as costs of suit and reasonable attorney's fees, for anyone harmed by these crimes.~~

~~This bill would make technical, nonsubstantive changes to these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Chapter 3.6 (commencing with Section 1546) is  
2     added to Title 12 of Part 2 of the Penal Code, to read:

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*CHAPTER 3.6. LOCATION PRIVACY*

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6     1546. For purposes of this chapter, the following definitions  
7     shall apply:

8     (a) "Electronic communication service" means a service that  
9     provides to users thereof the ability to send or receive wire or  
10    electronic communications.

11    (b) "Electronic device" means a device that enables access to,  
12    or use of, an electronic communication service, remote computing  
13    service, or location information service.

14    (c) "Government entity" means a state or local agency,  
15    including, but not limited to, a law enforcement entity or any other  
16    investigative entity, agency, department, division, bureau, board,

1 *or commission, or an individual acting or purporting to act for or*  
2 *on behalf of a state or local agency.*

3 (d) *“Location information” means information, concerning the*  
4 *location of an electronic device that, in whole or in part, is*  
5 *generated, derived from, or obtained by the operation of an*  
6 *electronic device.*

7 (e) *“Location information service” means the provision of a*  
8 *global positioning service or other mapping, locational, or*  
9 *directional information service.*

10 (f) *“Owner” means the person or entity recognized by the law*  
11 *as having the ultimate control over, or having the legal title, claim,*  
12 *or right to, an electronic device.*

13 (g) *“Provider” means a commercial entity offering an electronic*  
14 *communication service, remote computing service, or location*  
15 *information service.*

16 (h) *“Remote computing service” means the provision of*  
17 *computer storage or processing services by means of an electronic*  
18 *communications system.*

19 (i) *“User” means a person or entity that uses an electronic*  
20 *device.*

21 1546.1. (a) *No government entity shall obtain the location*  
22 *information of an electronic device without a warrant issued by a*  
23 *duly authorized magistrate using procedures established pursuant*  
24 *to Chapter 3 (commencing with Section 1523).*

25 (b) *No warrant entered under this section shall authorize*  
26 *obtaining location information of an electronic device for a period*  
27 *longer than is necessary to achieve the objective of the*  
28 *authorization, nor in any event longer than 30 days, commencing*  
29 *on the day of the initial obtaining of location information, or 10*  
30 *days after the issuance of the warrant, whichever comes first.*

31 (c) *Notwithstanding subdivision (a), a government entity may*  
32 *obtain location information in any of the following circumstances:*

33 (1) *In order to respond to the user’s call for emergency services.*

34 (2) *With the informed, affirmative consent of the owner or user*  
35 *of the electronic device concerned.*

36 (3) *Pursuant to a request by a government entity that asserts*  
37 *that the government entity reasonably believes that an emergency*  
38 *involving immediate danger of death or serious physical injury to*  
39 *the owner or user requires the immediate access to location*  
40 *information and there is insufficient time to obtain a warrant. The*

1 government entity seeking the location information pursuant to  
2 this paragraph shall file with the appropriate court a written  
3 statement setting forth the facts giving rise to the emergency no  
4 later than 48 hours after seeking disclosure.

5 1546.2. (a) Unless disclosure of information pertaining to a  
6 particular request or set of requests is specifically prohibited by  
7 law, a provider shall prepare a report including all of the following  
8 information, to the extent it can be reasonably determined:

9 (1) The number of federal and state warrants for location  
10 information and the number of requests for location information  
11 made with the informed consent of the user as described in  
12 paragraph (2) of subdivision (c) of Section 1546.1 or emergency  
13 requests received by the provider pursuant to paragraph (1) of  
14 subdivision (c) of Section 1546.1 received by the provider from  
15 January 1 to December 31, inclusive, of the previous year.

16 (2) The total number of disclosures made by the provider  
17 pursuant to Section 1546.1, from January 1 to December 31,  
18 inclusive, of the previous year.

19 (3) For each category of demand or disclosure, the provider  
20 shall include all of the following information:

21 (A) The number of times location information has been disclosed  
22 by the provider.

23 (B) The number of times no location information has been  
24 disclosed by the provider.

25 (C) The number of times the provider contests the demand.

26 (D) The number of users whose location information was  
27 disclosed by the provider.

28 (b) A report containing all the information required by this  
29 section shall be made publicly available on the Internet, in a  
30 searchable format, on or before March 1 of each year.

31 1546.3. Except as proof of a violation of this section, no  
32 evidence obtained in violation of this section shall be admissible  
33 in a civil or administrative proceeding.

34 SECTION 1. Section 496 of the Penal Code is amended to  
35 read:

36 ~~496. (a) (1) A person who buys or receives property that has~~  
37 ~~been stolen or that has been obtained in a manner constituting theft~~  
38 ~~or extortion, knowing the property to be so stolen or obtained, or~~  
39 ~~who conceals, sells, withholds, or aids in concealing, selling, or~~  
40 ~~withholding property from the owner, knowing the property to be~~

1 ~~so stolen or obtained, shall be punished by imprisonment in a~~  
2 ~~county jail for not more than one year, or imprisonment pursuant~~  
3 ~~to subdivision (h) of Section 1170. However, if the district attorney~~  
4 ~~or the grand jury determines that this action would be in the~~  
5 ~~interests of justice, the district attorney or the grand jury, as the~~  
6 ~~case may be, may, if the value of the property does not exceed~~  
7 ~~nine hundred fifty dollars (\$950), specify in the accusatory pleading~~  
8 ~~that the offense shall be a misdemeanor, punishable only by~~  
9 ~~imprisonment in a county jail not exceeding one year.~~

10 (2) ~~A principal in the actual theft of the property may be~~  
11 ~~convicted pursuant to this section. However, no person may be~~  
12 ~~convicted both pursuant to this section and of the theft of the same~~  
13 ~~property.~~

14 (b) (1) ~~A swap meet vendor, as defined in Section 21661 of the~~  
15 ~~Business and Professions Code, and a person whose principal~~  
16 ~~business is dealing in, or collecting, merchandise or personal~~  
17 ~~property, and every agent, employee, or representative of that~~  
18 ~~person, who buys or receives property of a value in excess of nine~~  
19 ~~hundred fifty dollars (\$950) that has been stolen or obtained in a~~  
20 ~~manner constituting theft or extortion, under circumstances that~~  
21 ~~should cause the person, agent, employee, or representative to~~  
22 ~~make reasonable inquiry to ascertain that the person from whom~~  
23 ~~the property was bought or received had the legal right to sell or~~  
24 ~~deliver it, without making a reasonable inquiry, shall be punished~~  
25 ~~by imprisonment in a county jail for not more than one year, or~~  
26 ~~imprisonment pursuant to subdivision (h) of Section 1170.~~

27 (2) ~~A swap meet vendor, as defined in Section 21661 of the~~  
28 ~~Business and Professions Code, and a person whose principal~~  
29 ~~business is dealing in, or collecting, merchandise or personal~~  
30 ~~property, and an agent, employee, or representative of that person,~~  
31 ~~who buys or receives any property of a value of nine hundred fifty~~  
32 ~~dollars (\$950) or less that has been stolen or obtained in a manner~~  
33 ~~constituting theft or extortion, under circumstances that should~~  
34 ~~cause the person, agent, employee, or representative to make~~  
35 ~~reasonable inquiry to ascertain that the person from whom the~~  
36 ~~property was bought or received had the legal right to sell or deliver~~  
37 ~~it, without making a reasonable inquiry, shall be guilty of a~~  
38 ~~misdemeanor.~~

39 (e) ~~A person who has been injured by a violation of subdivision~~  
40 ~~(a) or (b) may bring an action for three times the amount of actual~~

1 damages, if any, sustained by the plaintiff, costs of suit, and  
2 reasonable attorney's fees.  
3 (d) ~~Notwithstanding Section 664, an attempt to commit an act~~  
4 ~~prohibited by this section, except an offense specified in the~~  
5 ~~accusatory pleading as a misdemeanor, is punishable by~~  
6 ~~imprisonment in a county jail for not more than one year, or by~~  
7 ~~imprisonment pursuant to subdivision (h) of Section 1170.~~