

HB 592-FN – AS INTRODUCED

2013 SESSION

13-0706  
05/03

HOUSE BILL            **592-FN**

AN ACT                regulating the use of electronic tracking devices.

SPONSORS:            Rep. Kurk, Hills 2; Rep. Ginsburg, Straf 6; Rep. Winters, Hills 18

COMMITTEE:          Commerce and Consumer Affairs

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ANALYSIS

This bill prohibits the use of electronic tracking devices to track an individual without the consent of the individual or a court order.

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Explanation:          Matter added to current law appears in ***bold italics***.  
                                Matter removed from current law appears [~~in brackets and struck through~~].  
                                Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Thirteen*

AN ACT regulating the use of electronic tracking devices.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1 1 New Chapter; Regulation of the Use of Electronic Tracking Devices. Amend RSA by inserting  
2 after chapter 358-S the following new chapter:

3 CHAPTER 358-T

4 REGULATION OF THE USE OF ELECTRONIC TRACKING DEVICES

5 358-T:1 Definitions. In this chapter:

6 I. “Electronic tracking device” means any item, application, or mark that is passively or  
7 actively capable of transmitting electronically an individual's location, or is capable of following or  
8 plotting the path of an individual, including, without limitation, devices using global positioning  
9 satellites. An electronic tracking device shall not include the following:

10 (a) Bar codes or similar markings that do not transmit information.

11 (b) Locating technology used by the enhanced 911 system or to facilitate an emergency  
12 response.

13 (c) Commercial mobile service as described in 47 U.S.C. section 332 when used to  
14 provide such service.

15 II. “Person” means an individual, corporation, business trust, estate, trust, partnership,  
16 limited liability company, association, foundation, joint venture, government, government  
17 subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

18 III. “Reasonable notice” means notice provided:

19 (a) In plain English.

20 (b) In a type size that may be read by an average individual, considering the physical  
21 location of the individual in relation to the type.

22 (c) In person, by a label attached to the personal property containing the electronic  
23 tracking device, by electronic means, or by poster at the entrances to real property.

24 IV. “Track” means to locate, follow, or plot the path of an individual or personal property  
25 owned by, or in the lawful possession of, the individual by means of an electronic tracking device.

26 358-T:2 Use of Electronic Tracking Devices Prohibited. Except as otherwise provided in this  
27 chapter, no person shall use an electronic tracking device to track an individual without the consent  
28 of the individual or the parent or legal guardian of the individual, or a valid court order.

29 358-T:3 Exceptions. This chapter shall not apply to:

30 I. An electronic tracking device that tracks personal property exclusively and is activated  
31 solely for that purpose in order to locate the property in cases, such as rental cars, where the owner

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1 has reason to believe the property is being used in violation of a contract governing its use; provided,  
2 however, that where such activation occurs and an individual has been tracked, the burden of  
3 proving that the purpose of the activation was to locate the property shall fall on the owner.

4 II. An electronic tracking device that tracks personal property and is used on real property  
5 by the owner or lessee of that real property.

6 III. An electronic tracking device used by an employer on or within the employer's personal  
7 or real property, in connection with an employment relationship or work-related functions, during or  
8 after working hours, upon reasonable notice to the employee.

9 IV. An electronic tracking device used by a nursing facility, assisted living facility, the state,  
10 or a political subdivision, department, or agency:

11 (a) To locate a person who is a resident of a nursing facility or assisted living facility,  
12 incarcerated in the state prison or county jail, housed in a mental health facility pursuant to a court  
13 order after having been charged with a crime, subject to court-ordered electronic monitoring, or  
14 resident of a state or county hospital.

15 (b) To collect funds for the use of a toll road or bridge it owns and operates in accordance  
16 with the provisions of RSA 236:31 and RSA 237:16-e.

17 V. An electronic tracking device that is affixed to products for use in supply chain security or  
18 to ensure product integrity, regardless of whether such device incidentally allows tracking of  
19 employees, contracted distribution agents, or other persons who may accompany the products. This  
20 provision shall not be construed to permit the tracking of consumer purchases at the retail level.

21 VI. An electronic tracking device the use of which is activated by or at the request of an  
22 individual, relates to the individual, and locates the individual but does not follow or plot the path of  
23 the individual or personal property owned by or in the lawful possession of the individual. For the  
24 purpose of this paragraph, the consent of one individual in a motor vehicle shall be considered  
25 consent by all individuals in that motor vehicle.

26 358-T:4 Penalties.

27 I. Any person convicted of violating this chapter shall be guilty of a class A misdemeanor.  
28 Each such act shall constitute a separate offense.

29 II. An aggrieved individual or the state may bring suit for \$1,000 or actual damages,  
30 whichever is greater, plus court costs and reasonable attorney's fees, for each violation of this  
31 chapter.

32 2 Effective Date. This act shall take effect January 1, 2014.

**HB 592-FN - FISCAL NOTE**

AN ACT                    regulating the use of electronic tracking devices.

**FISCAL IMPACT:**

The Judicial Branch, Judicial Council, and New Hampshire Association of Counties state this bill, **as introduced**, will increase state and county expenditures by an indeterminable amount in FY 2014 and each year thereafter. There will be no fiscal impact on state, county, and local revenue, or local expenditures.

**METHODOLOGY:**

The Judicial Branch states this bill regulates the use of electronic tracking devices, and prohibits the use of such devices to track an individual without the individual's consent or a court order. Under proposed RSA 358-T:1, I, a violation of the various regulations created by the bill would be a class A misdemeanor. In addition, proposed RSA 358-T:4, II allows an aggrieved individual or the state to sue for \$1,000 or actual damages, plus costs and attorney fees, for each violation of the bill. The Branch states that in accordance with the New Hampshire Judicial Needs Assessment conducted by the National Center for State Courts in 2005, such suits would be classified as complex civil cases. The Branch has no information on which to estimate how many new class A misdemeanors or complex civil cases will be brought as a result of the bill. The Branch can, however, provide the projected average cost of processing each type of case. The Branch projects the average cost of processing a complex civil case in the Superior Court will be \$656.99 in FY 2014 and \$672.69 in FY 2015 and each year thereafter, and the average cost of processing a class A misdemeanor will be \$62.71 in FY 2014 and \$64.40 in FY 2015 and each year thereafter. The Branch states the case cost estimates are based on data that is more than seven years old and does not reflect the changes to the courts over that same period of time or the impact these changes may have on the processing of these types of cases.

The Judicial Council states this bill may result in an indeterminable increase in general fund expenditures. The Council states if an individual is found to be indigent, a flat fee of \$275 per misdemeanor handled by a public defender or contract attorney will apply. If an assigned counsel attorney is used, the fee will be \$60 per hour with a cap of \$1,400. The Council also states additional costs could be incurred if an appeal is filed. The public defender, contract attorney and assigned counsel rates for Supreme Court appeals is \$2,000 per case, with many

assigned counsel attorneys seeking permission to exceed the fee cap. The Council states it would also be obligated to fund the collateral costs of representation, including the expenses associated with obtaining forensic experts, transcripts, or other services requested by counsel and approved by the court during the defense of a case or during an appeal.

The New Hampshire Association of Counties states to the extent more individuals are charged, convicted, and sentenced to incarceration in a county correctional facility, the counties may have increased expenditures. The Association is unable to determine the number of individuals who might be charged, convicted or incarcerated as a result of this bill to determine an exact fiscal impact. The average annual cost to incarcerate an individual in a county correctional facility is approximately \$35,000. There is no impact on county revenue.

The Department of Justice states the bill will have no fiscal impact on the Department.