

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1224

Introduced by Day, 49.

Read first time January 16, 2024

Committee: Judiciary

1 A BILL FOR AN ACT relating to tracking devices; to amend section
2 86-2,103, Reissue Revised Statutes of Nebraska, and section 28-101,
3 Revised Statutes Supplement, 2023; to prohibit certain conduct
4 relating to mobile tracking devices; to change provisions relating
5 to intercepted communications; to define and redefine terms; and to
6 repeal the original sections.

7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-101, Revised Statutes Supplement, 2023, is
2 amended to read:

3 28-101 Sections 28-101 to 28-1357, 28-1601 to 28-1603, and 28-1701
4 and sections 2 to 5 of this act shall be known and may be cited as the
5 Nebraska Criminal Code.

6 Sec. 2. For purposes of sections 2 to 5 of this act:

7 (1) Business entity means any form of corporation, partnership,
8 association, cooperative, joint venture, business trust, or sole
9 proprietorship that conducts business in this state;

10 (2) Mobile tracking device has the same meaning as in section
11 86-2,103;

12 (3) Private investigator means a private detective, plain clothes
13 investigator, or private investigative agency licensed under sections
14 71-3201 to 71-3213;

15 (4) Protection order means any:

16 (a) Domestic violence protection issued pursuant to section 42-924
17 or a valid foreign protection order recognized pursuant to section
18 42-931;

19 (b) Harassment protection order issued pursuant to section 28-311.09
20 or that meets or exceeds the criteria set forth in section 28-311.10
21 regarding protection orders issued by a court in any other state or a
22 territory, possession, or tribe; or

23 (c) Sexual assault protection order issued pursuant to section
24 28-311.11 or that meets or exceeds the criteria set forth in section
25 28-311.12 regarding protection orders issued by a court in any other
26 state or a territory, possession, or tribe;

27 (5) Senior adult has the same meaning as in section 28-366.01;

28 (6)(a) Substantially conforming criminal violation means a criminal
29 violation of federal law, the law of another state, or an ordinance of a
30 county, city, or village of this state or another state that is
31 substantially similar to the Nebraska statute at issue.

1 (b) Whether a violation is substantially conforming is a question of
2 law to be determined by the court; and

3 (7) Vulnerable adult has the same meaning as in section 28-371.

4 Sec. 3. (1) Except as otherwise provided in section 4 of this act,
5 a person shall not knowingly:

6 (a) Install a mobile tracking device on another person's property
7 without the other person's consent;

8 (b) Cause a mobile tracking device to track the position or movement
9 of another person or another person's property without the other person's
10 consent; or

11 (c) Fail to remove or ensure the removal of a mobile tracking device
12 installed on another person's property with that other person's consent
13 when the other person subsequently revokes such consent.

14 (2) For purposes of this section, if a person has given consent for
15 another person to install a mobile tracking device on the consenting
16 person's property, it is presumed that the consenting person has revoked
17 that consent if any of the following applies:

18 (a) The consenting person and the person to whom consent was given
19 are married and one of them files an action for divorce, annulment, or
20 separate maintenance;

21 (b) The consenting person or the person to whom consent was given
22 files a petition for a protection order. Revocation under this
23 subdivision (2)(b) is effective when the person to whom consent was given
24 has notice that the other has filed such petition; or

25 (c) The consenting person receives a protection order against the
26 person to whom consent was given. Revocation under this subdivision (2)
27 (c) is effective when the person to whom consent was given has notice of
28 the protection order.

29 Sec. 4. Section 3 of this act does not apply to any of the
30 following:

31 (1) A mobile tracking device installed and used in compliance with

1 sections 86-271 to 86-2,115;

2 (2) A mobile tracking device installed and used pursuant to a court
3 order, including, but not limited to, as a condition of pretrial release,
4 probation, parole, or post-release supervision;

5 (3) A parent or legal guardian of a minor child who installs or uses
6 a mobile tracking device to track the minor child if any of the following
7 applies:

8 (a) The parents or legal guardians of the child are lawfully married
9 to each other and are not separated or otherwise living apart, and either
10 of those parents or legal guardians consents to the installation of the
11 tracking device or tracking application;

12 (b) The parent or legal guardian of the child is the sole surviving
13 parent or legal guardian of the child;

14 (c) The parent or legal guardian of the child has sole custody of
15 the child; or

16 (d) The parents or legal guardians of the child are divorced,
17 separated, or otherwise living apart and neither parent has sole custody
18 of the child, and both consent to the installation of the mobile tracking
19 device;

20 (4) A caregiver of a vulnerable adult or senior adult, if such
21 adult's treating physician certifies that the installation or use of a
22 mobile tracking device on such adult's property is necessary to ensure
23 the safety of such adult;

24 (5) A person acting in good faith on behalf of a business entity for
25 a legitimate business purpose or a governmental entity for a legitimate
26 government purpose. This subdivision (5) does not apply to a private
27 investigator;

28 (6)(a) A private investigator who is acting in the normal course of
29 the investigator's business of private investigation on behalf of another
30 person and who has the consent of the owner of the property upon which
31 the mobile tracking device is installed, for the purpose of obtaining

1 information with reference to any of the following:

2 (i) Criminal offenses committed, threatened, or suspected against
3 the United States, a territory of the United States, a state, or any
4 person or legal entity;

5 (ii) Locating an individual known to be a fugitive from justice;

6 (iii) Locating lost or stolen property or other assets that have
7 been awarded by the court; or

8 (iv) Investigating claims related to workers' compensation.

9 (b) This subdivision (6) does not apply if the person on whose
10 behalf the private investigator is working is the subject of a protection
11 order or if the private investigator knows or reasonably should know that
12 the person on whose behalf the private investigator is working seeks the
13 investigator's services to aid in the commission of a crime;

14 (7) An owner or lessee of a motor vehicle who installs, or directs
15 the installation of, a mobile tracking device on the vehicle during the
16 period of ownership or lease, if any of the following applies:

17 (a) The mobile tracking device is removed before the vehicle's title
18 is transferred or the vehicle's lease expires;

19 (b) The new owner of the vehicle, in the case of a sale, or the
20 lessor of the vehicle, in the case of an expired lease, consents in
21 writing to the non-removal of the mobile tracking device; or

22 (c) The owner of the vehicle at the time of the installation of the
23 mobile tracking device was the original manufacturer of the vehicle; or

24 (8) A person or business entity that installs a mobile tracking
25 device on any fixed-wing aircraft or rotorcraft operated or managed by
26 the person or business entity pursuant to 14 C.F.R. part 91 or part 135
27 to track the position or movement of the fixed-wing aircraft or
28 rotorcraft.

29 Sec. 5. (1) Except as provided in subsection (2) of this section, a
30 violation of section 3 of this act is a Class I misdemeanor.

31 (2) A violation of section 3 of this act is a Class IIIA felony if

1 any of the following applies:

2 (a) The offender has a prior conviction under section 3 of this act
3 or a substantially conforming criminal violation within the last seven
4 years;

5 (b) The offender has a prior conviction under section 28-311.03 or a
6 substantially conforming criminal violation within the last seven years;

7 (c) At the time of the commission of the offense, the offender was
8 the subject of a protection order, regardless of whether the person to be
9 protected under the order is the victim of the offense or another person;
10 or

11 (d) The offender has a history of violence toward the victim.

12 Sec. 6. Section 86-2,103, Reissue Revised Statutes of Nebraska, is
13 amended to read:

14 86-2,103 (1) A district court may issue a warrant or other order for
15 the installation of a mobile tracking device, and such order may
16 authorize the use of that device within the jurisdiction of the court and
17 outside that jurisdiction if the device is installed in that
18 jurisdiction.

19 (2) For purposes of this section, mobile tracking device means any:

20 (a) Electronic ~~an electronic~~ or mechanical device which permits the
21 tracking of the movement of a person or object; or -

22 (b) Software program installed on a person's device which permits
23 the tracking of the movement of a person or object.

24 Sec. 7. Original section 86-2,103, Reissue Revised Statutes of
25 Nebraska, and section 28-101, Revised Statutes Supplement, 2023, are
26 repealed.