

AN ACT

relating to creating an exception to the offense of unlawful installation of a tracking device.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 16.06, Penal Code, is amended by amending Subsection (d) and adding Subsection (e) to read as follows:

(d) It is an affirmative defense to prosecution under this section that the person:

(1) obtained the effective consent of the owner or lessee of the motor vehicle before the electronic or mechanical tracking device was installed;

~~(2) [was a peace officer who installed the device in the course of a criminal investigation or pursuant to an order of a court to gather information for a law enforcement agency];~~

~~[(3)]~~ assisted another whom the person reasonably believed to be a peace officer authorized to install the device in the course of a criminal investigation or pursuant to an order of a court to gather information for a law enforcement agency; or

(3) ~~[(4)]~~ was a private investigator licensed under Chapter 1702, Occupations Code, who installed the device:

(A) with written consent:

(i) to install the device given by the owner or lessee of the motor vehicle; and

1 (ii) to enter private residential property,
2 if that entry was necessary to install the device, given by the
3 owner or lessee of the property; or

4 (B) pursuant to an order of or other
5 authorization from a court to gather information.

6 (e) This section does not apply to a peace officer who
7 installed the device in the course of a criminal investigation or
8 pursuant to an order of a court to gather information for a law
9 enforcement agency.

10 SECTION 2. The change in law made by this Act applies only
11 to an offense committed on or after the effective date of this Act.
12 An offense committed before the effective date of this Act is
13 governed by the law in effect at the time the offense was committed,
14 and the former law is continued in effect for that purpose. For
15 purposes of this section, an offense was committed before the
16 effective date of this Act if any element of the offense occurred
17 before that date.

18 SECTION 3. This Act takes effect September 1, 2009.

President of the Senate

Speaker of the House

I certify that H.B. No. 1659 was passed by the House on April 29, 2009, by the following vote: Yeas 141, Nays 0, 1 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 1659 on May 29, 2009, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 1659 on May 31, 2009, by the following vote: Yeas 141, Nays 0, 1 present, not voting.

Chief Clerk of the House

H.B. No. 1659

I certify that H.B. No. 1659 was passed by the Senate, with amendments, on May 27, 2009, by the following vote: Yeas 31, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 1659 on May 31, 2009, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor