

By: Sanford

H.B. No. 2544

A BILL TO BE ENTITLED

AN ACT

relating to the prosecution of the offense of unlawful installation of tracking device or malicious software.

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

SECTION 1. The heading to Section 16.06, Penal Code, is amended to read as follows:

Sec. 16.06. UNLAWFUL INSTALLATION OF TRACKING DEVICE OR MALICIOUS SOFTWARE.

SECTION 2. Section 16.06(a), Penal Code, is amended by adding Subdivision (1-a) to read as follows:

(1-a) "Malicious software" means any intentionally imperceptible program, application, or other software, including malware, that is designed to obtain or transmit electronic communications, including e-mails, text messages, instant messages, or keystrokes, or other private information from a computer system.

SECTION 3. Section 16.06, Penal Code, is amended by amending Subsections (b), (d), and (e) and adding Subsection (d-1) to read as follows:

(b) A person commits an offense if the person knowingly installs:

(1) an electronic or mechanical tracking device on a motor vehicle owned or leased by another person; or

(2) malicious software on a computer system that is

1 part of a motor vehicle described by Subdivision (1).

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

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

7 (2) assisted another whom the person reasonably  
8 believed to be a peace officer authorized to install the device or  
9 software in the course of a criminal investigation or pursuant to an  
10 order of a court to gather information for a law enforcement agency;  
11 or

12 (3) was a private investigator licensed under Chapter  
13 [1702](#), Occupations Code, who installed the device or software:

14 (A) with written consent:

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

17 (ii) to enter private residential property,  
18 if that entry was necessary to install the device or software, given  
19 by the owner or lessee of the property; or

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

22 (d-1) It is a defense to prosecution under this section  
23 that:

24 (1) the victim is younger than 18 years of age; and

25 (2) the actor is the victim's parent or legal guardian.

26 (e) This section does not apply to a peace officer who  
27 installed the device or software in the course of a criminal

1 investigation or pursuant to an order of a court to gather  
2 information for a law enforcement agency.

3           SECTION 4. The change in law made by this Act applies only  
4 to an offense committed on or after the effective date of this Act.  
5 An offense committed before the effective date of this Act is  
6 governed by the law in effect on the date the offense was committed,  
7 and the former law is continued in effect for that purpose. For  
8 purposes of this section, an offense was committed before the  
9 effective date of this Act if any element of the offense occurred  
10 before that date.

11           SECTION 5. This Act takes effect September 1, 2017.