**5158-S.E AMH PS H2489.1 - NOT FOR FLOOR USE**

**ESSB 5158** - H COMM AMD

By Committee on Public Safety

**ADOPTED AS AMENDED 4/14/2015**

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec.**  A new section is added to chapter 80.36 RCW to read as follows:

(1) A wireless telecommunications provider must provide information in its possession concerning the current or most recent location of a telecommunications device and call information of a user of the device when requested by a law enforcement agency. A law enforcement agency must meet the following requirements:

(a) The law enforcement officer making the request on behalf of the law enforcement agency must be on duty during the course of his or her official duties at the time of the request;

(b) The law enforcement agency must verify there is no relationship or conflict of interest between the law enforcement officer responding, investigating or making the request, and either the person requesting the call location information or the person for whom the call location information is being requested;

(c) A law enforcement agency may only request this information when, in the law enforcement officer's exercise of reasonable judgment, he or she believes that the individual is in an emergency situation that involves the risk of death or serious physical harm and requires disclosure without a delay of information relating to the emergency;

(d) Concurrent to making a request, the responding law enforcement agency must check the federal bureau of investigation's national crime information center and any other available databases to identify if either the person requesting the call location information or the person for whom the call location information is being requested has any history of domestic violence or any court order restricting contact by a respondent;

(e) Concurrent to making a request, the responding law enforcement agency must also check with the Washington state patrol to identify if either the person requesting the call location information or the person for whom the call location information is being requested is participating in the address confidentiality program established in chapter 40.24 RCW. The secretary of state must make name information available to the Washington state patrol from the address confidentiality program as required under RCW 40.24.070. The Washington state patrol must not further disseminate list information except on an individual basis to respond to a request under this section;

(f) If the responding law enforcement agency identifies or has reason to believe someone has a history of domestic violence or stalking, has a court order restricting contact, or if the Washington state patrol identifies someone as participating in the address confidentiality program, then the law enforcement agency must not provide call location information to the individual who requested the information, unless pursuant to the order of a court of competent jurisdiction. A law enforcement agency may not disclose information obtained under this section to any other party except first responders responding to the emergency situation; and

(g) A law enforcement agency may not request information under this section for any purpose other than responding to a call for emergency services or in an emergency situation that involves the risk of death or serious physical harm.

(2) A wireless telecommunications provider may establish protocols by which the carrier voluntarily discloses call location information to law enforcement.

(3) No cause of action may be brought in any court against any wireless telecommunications provider, its officers, employees, agents, or other specified persons for providing call location information while acting in good faith and in accordance with the provisions of this section.

(4) All wireless telecommunications providers registered to do business in the state of Washington and all resellers of wireless telecommunications services shall submit their emergency contact information to the Washington state patrol in order to facilitate requests from a law enforcement agency for call location information in accordance with this section. Any change in contact information must be submitted immediately.

(5) The Washington state patrol must maintain a database containing emergency contact information for all wireless telecommunications providers registered to do business in the state of Washington and must make the information immediately available upon request to facilitate a request from law enforcement for call location information under this section.

(6) The Washington state patrol may adopt by rule criteria for fulfilling the requirements of this section.

**Sec.**  RCW 40.24.070 and 2008 c 18 s 5 are each amended to read as follows:

The secretary of state may not make any records in a program participant's file available for inspection or copying, other than the address designated by the secretary of state, except under the following circumstances:

(1) If requested by a law enforcement agency, to the law enforcement agency; and

(a) The participant's application contains no indication that he or she has been a victim of domestic violence, sexual assault, or stalking perpetrated by a law enforcement employee; and

(b) The request is in accordance with official law enforcement duties and is in writing on official law enforcement letterhead stationery and signed by the law enforcement agency's chief officer, or his or her designee; or

(2) If directed by a court order, to a person identified in the order; and

(a) The request is made by a nonlaw enforcement agency; or

(b) The participant's file indicates he or she has reason to believe he or she is a victim of domestic violence, sexual assault, or stalking perpetrated by a law enforcement employee.

(3) To the Washington state patrol solely for the use authorized in section 1 of this act, provided that participant information must clearly distinguish between those participants requesting disclosure to a law enforcement agency of the location of a telecommunications device and call information of the user, and those participants who request nondisclosure to a law enforcement agency of the location of a telecommunications device and call information of the user. The Washington state patrol may not use the information or make the information available for inspection and copying for any other purpose than authorized in section 1 of this act. The secretary of state may adopt rules to make available the information required for the purposes of this section and section 1 of this act. The secretary of state and the secretary of state's officers, employees, or custodian, are not liable, nor shall a cause of action exist, for any loss or damage based upon the release of information, or the nondisclosure of information, from the address confidentiality program to the Washington state patrol if the agency, officer, employee, or custodian acted in good faith in attempting to comply with the provisions of this section and section 1 of this act.

NEW SECTION. **Sec.**  This act may be known and cited as the Kelsey Smith act."

Correct the title.

EFFECT: Requires that the law enforcement officer making a request for cell phone information be on duty during the course of his/her official duties at the time of the request. Prohibits law enforcement from distributing cell phone information back to the requester or any other party, except to first responders responding to the emergency situation, when it is believed that someone has a history of domestic violence, stalking, is under a court order restricting contact, or is participating in the address confidentiality program. Requires that, prior to requesting a person's call information, a law enforcement agency must verify there is no relationship or conflict of interest between the law enforcement officer responding, investigating or making the request, and either the person requesting the call location information or the person for whom the call location information is being requested. Clarifies that the law enforcement officer must meet all the requirements.