

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015**

**SENATE BILL 238
RATIFIED BILL**

AN ACT TO PROVIDE THAT A PERSON COMMITS THE OFFENSE OF CYBERSTALKING IF THE PERSON KNOWINGLY INSTALLS OR PLACES A TRACKING DEVICE WITHOUT CONSENT AND USES THE DEVICE TO TRACK THE LOCATION OF AN INDIVIDUAL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-196.3 reads as rewritten:

"§ 14-196.3. Cyberstalking.

- (a) The following definitions apply in this section:
- (1) Electronic communication. – Any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature, transmitted in whole or in part by a wire, radio, computer, electromagnetic, photoelectric, or photo-optical system.
 - (2) Electronic mail. – The transmission of information or communication by the use of the Internet, a computer, a facsimile machine, a pager, a cellular telephone, a video recorder, or other electronic means sent to a person identified by a unique address or address number and received by that person.
 - (3) Electronic tracking device. – An electronic or mechanical device that permits a person to remotely determine or track the position and movement of another person.
 - (4) Fleet vehicle. – Any of the following: (i) one or more motor vehicles owned by a single entity and operated by employees or agents of the entity for business or government purposes, (ii) motor vehicles held for lease or rental to the general public, or (iii) motor vehicles held for sale, or used as demonstrators, test vehicles, or loaner vehicles, by motor vehicle dealers.
- (b) It is unlawful for a person to:
- (1) Use in electronic mail or electronic communication any words or language threatening to inflict bodily harm to any person or to that person's child, sibling, spouse, or dependent, or physical injury to the property of any person, or for the purpose of extorting money or other things of value from any person.
 - (2) Electronically mail or electronically communicate to another repeatedly, whether or not conversation ensues, for the purpose of abusing, annoying, threatening, terrifying, harassing, or embarrassing any person.
 - (3) Electronically mail or electronically communicate to another and to knowingly make any false statement concerning death, injury, illness, disfigurement, indecent conduct, or criminal conduct of the person electronically mailed or of any member of the person's family or household with the intent to abuse, annoy, threaten, terrify, harass, or embarrass.
 - (4) Knowingly permit an electronic communication device under the person's control to be used for any purpose prohibited by this section.
 - (5) Knowingly install, place, or use an electronic tracking device without consent, or cause an electronic tracking device to be installed, placed, or used without consent, to track the location of any person. The provisions of this subdivision do not apply to the installation, placement, or use of an electronic tracking device by any of the following:



- a. A law enforcement officer, judicial officer, probation or parole officer, or employee of the Division of Corrections, Department of Public Safety, when any such person is engaged in the lawful performance of official duties and in accordance with State or federal law.
- b. The owner or lessee of any vehicle on which the owner or lessee installs, places, or uses an electronic tracking device, unless the owner or lessee is subject to (i) a domestic violence protective order under Chapter 50B of the General Statutes or (ii) any court order that orders the owner or lessee not to assault, threaten, harass, follow, or contact a driver or occupant of the vehicle.
- c. A legal guardian for a disabled adult, as defined in G.S. 108A-101(d), or a legally authorized individual or organization designated to provide protective services to a disabled adult pursuant to G.S. 108A-105(c), when the electronic tracking device is installed, placed, or used to track the location of the disabled adult for which the person is a legal guardian or the individual or organization is designated to provide protective services.
- d. The owner of fleet vehicles, when tracking such vehicles.
- e. A creditor or other secured party under a retail installment agreement involving the sale of a motor vehicle or the lessor under a retail lease of a motor vehicle, and any assignee or successor in interest to that creditor, secured party, or lessor, when tracking a motor vehicle identified as security under the retail installment sales agreement or leased pursuant to a retail lease agreement, including the installation, placement, or use of an electronic tracking device to locate and remotely disable the motor vehicle, with the express written consent of the purchaser, borrower, or lessee of the motor vehicle.
- f. The installation, placement, or use of an electronic tracking device authorized by an order of a State or federal court.
- g. A motor vehicle manufacturer, its subsidiary, or its affiliate that installs or uses an electronic tracking device in conjunction with providing a vehicle subscription telematics service, provided that the customer subscribes or consents to that service.
- h. A parent or legal guardian of a minor when the electronic tracking device is installed, placed, or used to track the location of that minor unless the parent or legal guardian is subject to a domestic violence protective order under Chapter 50B of the General Statutes or any court order that orders the parent or legal guardian not to assault, threaten, harass, follow, or contact that minor or that minor's parent, legal guardian, custodian, or caretaker as defined in G.S. 7B-101.
- i. An employer, when providing a communication device to an employee or contractor for use in connection with his or her work for the employer.
- j. A business, if the tracking is incident to the provision of a product or service requested by the person, except as limited in sub-subdivision k. of this subdivision.
- k. A private detective or private investigator licensed under Chapter 74C of the General Statutes, provided that (i) the tracking is pursuant to authority under G.S. 74C-3(a)(8), (ii) the tracking is not otherwise contrary to law, and (iii) the person being tracked is not under the protection of a domestic violence protective order under Chapter 50B of the General Statutes or any other court order that protects against assault, threat, harassment, following, or contact.

(c) Any offense under this section committed by the use of electronic mail or electronic communication may be deemed to have been committed where the electronic mail or electronic communication was originally sent, originally received in this State, or first viewed by any person in this State.

(d) Any person violating the provisions of this section shall be guilty of a Class 2 misdemeanor.

(e) This section does not apply to any peaceable, nonviolent, or nonthreatening activity intended to express political views or to provide lawful information to others. This section shall not be construed to impair any constitutionally protected activity, including speech, protest, or assembly."

SECTION 2. This act becomes effective December 1, 2015, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 28th day of September, 2015.

s/ Daniel J. Forest
President of the Senate

s/ Paul Stam
Presiding Officer of the House of Representatives

Pat McCrory
Governor

Approved _____m. this _____ day of _____, 2015