Access to Electronic Communications and Location Information
Senate Bill 640 - Summary

Problem: Electronic communication – through e-mail, cell phones and social media – has virtually eclipsed postal mail and other hard-copy methods as our primary means of communication. Right now, some government agencies interpret our outdated privacy laws to allow them to intercept and access a treasure trove of information about who we are, where we go, and what we do – the information being collected by search engines, social networking sites, cell towers and other websites every day. When government actors do so without appearing before a neutral arbiter and proving that the information they're obtaining is likely to turn up evidence of a crime – the standard law enforcement would have to meet if they were searching for the same information in the offline world – we believe they are in violation of the 4th Amendment and of Article I, section 9 of the Oregon Constitution.

Similarly, location tracking information – GPS records, cell phone location records, etc. – can reveal very sensitive information about a person's life. Location tracking records reveal a tremendous amount of detailed personal information about people ranging from which friends they are seeing, where they go to the doctor or how often – and where – they attend worship services.

Proposal: This bill reboots our privacy laws to ensure that that online and other digital activities, as well as sensitive location tracking records, receive the same protection as is guaranteed to offline activity.

Details: This bill prohibits service providers from disclosing, and public bodies from obtaining, contents or records of electronic communications unless the government first obtains a warrant or other court order based on probable cause. The bill provides exceptions in an emergency, when the subscriber gives specific consent, or the device has been reported stolen. It also requires public bodies to report on access to electronic communications content to the Legislature.

- Prohibits public bodies from accessing electronic communication information from third party service providers without a warrant or other court order. Includes content and metadata, but does not include basic subscriber information.
- Prohibits public bodies from accessing location information from a third party service provider without a warrant.
- Creates a "civil warrant" process for public bodies to meet the warrant requirement for civil, administrative or regulatory investigations.
- Provides exceptions in cases of an emergency, when the subscriber gives specific consent, when a subscriber reports a device has been stolen, when a service provider transmits through an intermediary (an internet server, for example), or to comply with federal missing and exploited children laws.
- Imposes reporting requirement on public bodies regarding their use of the statute to access information.

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