

Senate Bill 162

By: Senators Adelman of the 42nd, Brown of the 26th and Golden of the 8th

A BILL TO BE ENTITLED
AN ACT

1 To amend Part 1 of Article 3 of Chapter 11 of Title 16 of the Official Code of Georgia
2 Annotated, relating to wiretapping, eavesdropping, surveillance, and related offenses, so as
3 to change provisions relating to disclosure of stored wire or electronic communications; to
4 change provisions relating to search warrants and issuance of subpoenas; to provide for
5 definitions; to designate specific information which may be disclosed by an electronic
6 communication service or a remote computing service; to authorize interstate application of
7 Georgia's search warrants or subpoenas under certain circumstances; to provide for
8 application to other jurisdictions for search warrants and subpoenas under certain
9 circumstances; to provide for immunity for civil liability; to provide for related matters; to
10 repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 style="text-align:center">**SECTION 1.**

13 Part 1 of Article 3 of Chapter 11 of Title 16 of the Official Code of Georgia Annotated,
14 relating to wiretapping, eavesdropping, surveillance, and related offenses, is amended by
15 striking in its entirety Code Section 16-11-66.1, relating to disclosure of stored wire or
16 electronic communications, and inserting in lieu thereof the following:

17 "16-11-66.1.

18 (a) As used in this Code section, the term:

19 (1) 'Criminal offense' means a violation of the Official Code of Georgia which may result
20 in the imposition of criminal sanctions where the alleged violator uses computer
21 technology or electronic communications in the furtherance of his or her criminal related
22 actions.

23 (2) 'Electronic communication' means any transfer of signs, signals, writing, images,
24 sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio,
25 satellite, electrical, electromagnetic, photoelectronic, photo-optical, or computer

1 technology related system that affects intrastate, interstate, or foreign commerce, but does
2 not include:

3 (A) Any wire or oral communication;

4 (B) Any communication made through a tone-only paging device;

5 (C) Any communication from a tracking device; or

6 (D) Electronic funds transfer information stored by a financial institution in a
7 communication system used for the electronic storage and transfer of funds.

8 (3) 'Electronic communication service' means any service which provides to users
9 thereof the ability to send or receive wire or electronic communications.

10 (4) 'Electronic storage' means:

11 (A) Any temporary, intermediate, or permanent storage of an electronic
12 communication incidental to the electronic transmission thereof; or

13 (B) Any storage of electronic communication by an electronic communication service
14 for purposes of backup protection of such communication.

15 (5) 'Electronic communication system' means any wire, radio, satellite, electromagnetic,
16 photo-optical, or photoelectronic facilities for the transmission of wire, satellite, or
17 electronic communications, and any computer facilities or related electronic equipment
18 for the electronic storage of such communications.

19 (6) 'Electronic means' is any device or apparatus which can be used to intercept a wire,
20 oral, or electronic communication. The term shall not include a hearing aid or similar
21 device being used to correct subnormal hearing to not better than normal.

22 (7) 'Law enforcement unit' shall have the same meaning as provided in Code Section
23 35-8-2.2.

24 (8) 'Prosecutorial office' means the Office of Attorney General, an office of district
25 attorney, or an office of solicitor-general within the State of Georgia.

26 (9) 'Records' means any books, records, papers, documentation, or other information or
27 tangible things specified in a search warrant, subpoena, notice to produce, notice of
28 deposition, or order to produce.

29 (10) 'Remote computing service' means the provision to the public of computer storage
30 or processing services by means of an electronic communication system.

31 (11) 'Respondent' means the person, business, or other entity served with a search
32 warrant, subpoena, notice to produce, notice of deposition, or order to produce.

33 (12) 'Wire communication' means any aural transfer made in whole or in part through the
34 use of facilities for the transmission of communications by the aid of wire, cable, or other
35 similar connection between the point of origin and the point of reception furnished by or
36 operated by any person engaged in providing or operating such facilities for the

1 transmission of interstate, intrastate, or foreign communications and any electronic
2 storage of such communications.

3 ~~(a)(b)~~ A law enforcement officer, a prosecuting attorney, or the Attorney General unit or
4 prosecutorial office may require the disclosure of stored wire or electronic
5 communications, as well as ~~transactional~~ records pertaining thereto, to the extent and under
6 the procedures and conditions provided for by the laws of the United States, the State of
7 Georgia, or any other state with jurisdiction over a respondent.

8 ~~(b)(c)~~ A provider of electronic communication service or remote computing service shall
9 provide the contents of, and ~~transactional~~ records pertaining to, wire and electronic
10 communications in its possession or reasonably accessible thereto when a requesting law
11 enforcement officer, a prosecuting attorney, or the Attorney General unit or prosecutorial
12 office complies with the provisions for access thereto set forth by the laws of the United
13 States, the State of Georgia, or any other state with jurisdiction over a respondent.

14 (d) A law enforcement unit or prosecutorial office may require a provider of electronic
15 communication service or remote computing service to disclose the name, address, local
16 and long distance telephone connection records, records of session times and durations,
17 length of service, types of service utilized, telephone or instrument number or other
18 subscriber number or identity, including any temporarily assigned network address, and
19 means and source of payment for such service of a subscriber to or customer of such
20 service.

21 ~~(c)(e)~~ Search warrants or subpoenas for the production of stored wire or electronic
22 communications and ~~transactional~~ records pertaining thereto shall have state-wide and may
23 have interstate application or application as provided by the laws of the United States, the
24 State of Georgia, or any other state when issued by a judge with jurisdiction over the
25 criminal offense under investigation and ~~to which such records relate~~ relevant to a pending
26 criminal trial or a respondent.

27 ~~(d)(f)~~ A subpoena or search warrant for the production of stored wire or electronic
28 communications and ~~transactional~~ records pertaining thereto may be issued by a court with
29 jurisdiction over the criminal offense under investigation, pending criminal trial, or a
30 respondent at any time upon a showing by a law enforcement official, a prosecuting
31 attorney, or the Attorney General ~~that~~ unit or prosecutorial office that the subpoenaed
32 ~~material relates~~ requested records are relevant and material to a pending criminal
33 investigation or trial.

34 (g) Any law enforcement unit or prosecutorial office of the State of Georgia is hereby
35 authorized to apply to the court or other appropriate entity of the United States or any other
36 state with jurisdiction over a respondent for the issuance of search warrants, subpoenas, or

1 orders to produce as may be appropriate to further a pending criminal investigation or
2 prosecution of a pending criminal trial.

3 (h) Any business located within the State of Georgia that provides electronic
4 communication services or remote computing services, when served with a search warrant,
5 subpoena, notice to produce, notice of deposition, or order to disclose properly issued by
6 another state to produce records related to investigation or trial of a criminal offense that
7 would reveal the identity of the customers using those services, data stored by, or on behalf
8 of, the customer, the customer's usage of those services, the recipient or destination of
9 communications sent to or from those customers, or the content of those communications
10 shall produce those requested records as if that search warrant, subpoena, notice, or order
11 had been issued by a Georgia court, provided that such business has the right to object that
12 such compliance is unduly burdensome or oppressive.

13 (e)(i) Violation of this Code section shall be punishable as contempt.

14 (j) No civil or criminal cause of action shall lie against any foreign or Georgia business or
15 its officers, employees, agents, or other persons for providing records, information,
16 facilities, or assistance given pursuant to this Code section."

17 SECTION 2.

18 All laws and parts of laws in conflict with this Act are repealed.