

SENATE SUBSTITUTE TO HB 16

AS PASSED SENATE

A BILL TO BE ENTITLED
AN ACT

1 To amend Titles 16 and 17 of the Official Code of Georgia Annotated, relating to crimes and
 2 offenses and criminal procedure, respectively, so as to regulate the use of tracking devices;
 3 to prohibit the tracking of the location or movement of another person without such other
 4 person's consent; to provide for exceptions; to provide for punishment; to provide for the
 5 issuance of search warrants authorizing the installation, use, and removal of tracking devices
 6 subject to certain conditions; to provide for a definition; to provide for installation and use
 7 of tracking devices in emergency situations; to transfer the responsibility for regulation of
 8 bingo games and issuance of bingo licenses from the Georgia Bureau of Investigation to the
 9 Department of Revenue; to provide for related matters; to provide for an effective date and
 10 applicability; to repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

12 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is
 13 amended by adding a new Code section to read as follows:

14 "16-11-62.1.

15 (a) As used in this Code section, the term 'tracking device' means any device that reveals
 16 its location or movement by the transmission of electronic signals.

17 (b) Except as otherwise provided in this Code section, no person shall use a tracking
 18 device to determine the location or movement of another person without such other
 19 person's consent.

20 (c) Official law enforcement agencies shall be specifically authorized to use tracking
 21 devices pursuant to Code Section 17-5-22.1.

22 (d) This Code section shall not apply:

23 (1) When the owner or lienholder of a vehicle has consented to the use of a tracking
 24 device with respect to such vehicle;
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- 26 (2) When the lessor or lessee of a vehicle and the person operating such vehicle have
27 consented to the use of a tracking device with respect to such vehicle;
- 28 (3) To official actions of an official law enforcement agency acting in a law enforcement
29 capacity;
- 30 (4) To actions of United States military law enforcement personnel in the performance
31 of their official duties;
- 32 (5) To actions of a parent, legal guardian, or person in loco parentis with respect to
33 determining the location or movement of a child or other person with whom such parent,
34 legal guardian, or person in loco parentis has such legal relationship;
- 35 (6) To actions of a family member or caregiver with respect to determining the location
36 or movement of a patient or family member with a diagnosis by a licensed physician of
37 Alzheimer's disease, vascular dementia, Pick's disease, Creutzfeldt-Jakob disease,
38 Parkinson's disease, or Lewy body dementia;
- 39 (7) To actions of a facility licensed pursuant to Title 31 with respect to determining the
40 location or movement of a patient when such device is deemed medically necessary by
41 the patient's physician;
- 42 (8) To actions of a private detective who is licensed pursuant to Chapter 38 of Title 43
43 while in the performance of duties that are authorized for such detective in connection
44 with pending, active civil litigation, provided that any information or data obtained as a
45 result of the use of such a tracking device by such private detective shall be confidential
46 and shall not be disclosed to any person other than the judge and the parties involved in
47 such litigation and their attorneys except upon order of the court in which such litigation
48 is pending, shall be subject to discovery by any party to the litigation, and, upon the
49 termination of the litigation, shall be immediately destroyed, provided that such private
50 detective first obtains an order authorizing the use of a tracking device from the superior
51 court of the county in which the person who is the subject of the tracking device resides;
52 or
- 53 (9) To the provision of a commercial service, such as mobile telephone service or vehicle
54 safety or security service, which allows the provider of such service to determine the
55 location or movement of a device provided to a customer of such commercial service for
56 the purpose of providing such commercial service.
- 57 (e) Notwithstanding subsection (d) of this Code section, no person shall be required to be
58 implanted with a tracking device pursuant to this Code section.
- 59 (f) Any person violating this Code section shall upon conviction be guilty of a
60 misdemeanor; provided, however, that it shall not be a violation of this Code section to use
61 a tracking device to determine the location or movement of another person without such
62 other person's consent if such person is an occupant of a vehicle where use of such

63 tracking device is permissible according to the provisions of subsection (d) of this Code
 64 section."

65 **SECTION 2.**

66 Said title is further amended by replacing "Director" with "Commissioner" and "director"
 67 with "commissioner" wherever the former word occurs in:

- 68 (1) Code Section 16-12-51, relating to definitions pertaining to bingo;
- 69 (2) Code Section 16-12-52, relating to license required to operate bingo game and
 70 recreational bingo exception;
- 71 (3) Code Section 16-12-53, relating to bingo licensing procedures, fees, and renewals;
- 72 (4) Code Section 16-12-54, relating to revocation of licenses and access to premises by
 73 law enforcement agencies;
- 74 (5) Code Section 16-12-55, relating to certification of tax-exempt status of organization,
 75 issuance of certificate of licensure, and evidentiary nature of certificate;
- 76 (6) Code Section 16-12-56, relating to issuance of annual one-day license to nonprofit,
 77 tax-exempt school and application;
- 78 (7) Code Section 16-12-59, relating to annual report to be filed with the director;
- 79 (8) Code Section 16-12-61, relating to promulgation of necessary rules and regulations
 80 by director authorized; and
- 81 (9) Code Section 16-12-62, relating to penalties.

82 **SECTION 3.**

83 Said title is further amended by replacing "Georgia Bureau of Investigation" with
 84 "Department of Revenue" wherever the former words occur in:

- 85 (1) Code Section 16-12-51, relating to definitions pertaining to bingo; and
- 86 (2) Code Section 16-12-53, relating to bingo licensing procedures, fees, and renewals

87 .

88 **SECTION 4.**

89 Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is
 90 amended by adding a new Code section to read as follows:

91 "17-5-22.1.

- 92 (a) As used in this Code section, the term 'tracking device' means an electronic or
 93 mechanical device which, when placed or installed upon a person or object, permits other
 94 persons to remotely determine or track the position and movement of such person or object,
 95 but the term shall not include:

96 (1) Devices, such as a cellular telephone or other personal electronic device, which
97 include as an incidental feature the capability of determining the location of such devices
98 by utilizing a global positioning satellite system; or

99 (2) Devices which are installed or utilized with the knowledge and consent of the owner
100 or user of the device or, in the case of a minor, with the knowledge and consent of his or
101 her parent or guardian.

102 (b) Upon the written application of any certified peace officer of this state or its political
103 subdivisions charged with the duty of enforcing the criminal laws and otherwise as
104 authorized in Code Section 17-5-20 under oath or affirmation, a judge of any court in this
105 state authorized to issue search warrants pursuant to Code Section 17-5-21 may issue a
106 search warrant authorizing the installation, use, and removal of a tracking device subject
107 to the following conditions:

108 (1) The application shall be made before a judge of the superior court with the authority
109 to issue warrants within the geographic jurisdiction where such tracking device is to be
110 installed;

111 (2) The application shall set forth facts sufficient to establish probable cause to believe
112 that a particular crime has been committed, is being committed, or will be committed and
113 that the person or object to be tracked is involved, was involved, or will be involved in
114 the commission or facilitation of such crime;

115 (3) The application shall set forth facts sufficient to establish probable cause to believe
116 that the use of a tracking device will result in the prevention of a criminal offense under
117 investigation, the seizure of evidence relevant to the investigation or prosecution of a
118 criminal offense, or the whereabouts of a fugitive from justice or a suspect, victim, or
119 witness relating to a criminal offense;

120 (4) The application shall particularly describe the person or object upon which a tracking
121 device is to be installed;

122 (5) A tracking device authorized by this Code section shall be installed within ten days
123 after the issuance of the warrant and shall be installed within the geographic jurisdiction
124 of the issuing judge. If the tracking device is not installed within that time, the warrant
125 shall be returned to the issuing judge as unserved. The date and time of installation shall
126 be recorded and included in the return made to the issuing judge;

127 (6)(A) A search warrant issued pursuant to this Code section shall authorize the use of
128 a tracking device for a reasonable period of time, not to exceed 45 days, except as
129 provided in subparagraph (B) of this paragraph, measured from the date such tracking
130 device is installed upon the person or object to be tracked.

131 (B) Upon written application for extension and upon a finding of good cause, the
132 issuing judge may authorize one or more extensions for a reasonable period of time, not
133 to exceed 45 days each;

134 (7) When the period of time authorized for the use of a tracking device or the last
135 extension thereof has expired, monitoring of such tracking device shall be discontinued
136 immediately;

137 (8) Within ten days after the period of time authorized for the use of a tracking device
138 or the last extension thereof has expired, the officer executing the warrant shall make a
139 return thereof to the issuing judge. The return shall specify the date and time such
140 tracking device was installed and the address or location of installation of such tracking
141 device, the date and time that monitoring was discontinued, and a general summary of the
142 movements of the object or person tracked during the duration of the surveillance;

143 (9) Within ten days after the period of time authorized for the use of a tracking device
144 or the last extension thereof has expired, the officer executing a search warrant issued
145 pursuant to this Code section shall serve a copy of such warrant on the person who was
146 tracked or whose property was tracked. Service shall be accomplished by delivering a
147 copy to such person or by leaving a copy at such person's residence or usual place of
148 abode with an individual of suitable age and discretion who resides at that location or by
149 mailing a copy to such person's last known address. Upon the request of the state or the
150 officer executing the warrant, the issuing judge may delay notice for a reasonable time;
151 provided, however, that where such notice is delayed, such notice shall be served no later
152 than ten days after issuance of an arrest warrant, indictment, or accusation based wholly
153 or in part upon information derived from the use of a tracking device;

154 (10) A tracking device installed and used under the authority of a warrant issued
155 pursuant to this Code section may be used within the jurisdiction of the issuing court as
156 well as outside such jurisdiction if such tracking device was installed within the
157 jurisdiction of the issuing court; and

158 (11) The warrant and any extension thereof, the application upon which the warrant and
159 extensions, if any, were issued, the affidavit supporting the warrant and extensions, if
160 any, the return, and any request for and order granting a delay in the serving of notice
161 shall be filed with the clerk of the court of the issuing judge, or with the court if so
162 ordered, at the time the return is made or when the warrant has been returned not
163 executed; provided, however, that the issuing judge may order that such documents be
164 sealed while an investigation remains ongoing until such time that an arrest warrant,
165 indictment, or accusation based wholly or in part upon information derived from the use
166 of the tracking device is issued.

167 (c)(1) Any investigative or law enforcement officer, specially designated in writing for
168 such purpose by the Attorney General or by a district attorney, who reasonably
169 determines that:

170 (A) An emergency situation exists that involves:

171 (i) Immediate danger of death or serious bodily injury to any person; or

172 (ii) Conspiratorial activities characteristic of organized crime.

173 that requires the installation and use of a tracking device before an order authorizing
174 such installation and use can, with due diligence, be obtained; and

175 (B) There are grounds upon which a search warrant pursuant to subsection (b) of this
176 Code section could be issued to authorize such installation and use,

177 may have installed and use a tracking device if, within 48 hours of the time the tracking
178 device is installed, an order approving the installation or use is issued in accordance with
179 subsection (b) of this Code section.

180 (2) In the event that an application for a search warrant made pursuant to this subsection
181 is granted, then the tracking device shall be installed and used in accordance with the
182 provisions of subsection (b) of this Code section.

183 (3) In the event that an application for a search warrant made pursuant to this subsection
184 is denied or in any event where the installation or use of the tracking device is terminated
185 without a search warrant having been issued, any tracking information or other surveillance
186 effected pursuant to this subsection shall be confidential and shall not be disclosed or be
187 admissible in any court of this state except to prove violations of this Code section."

188 **SECTION 5.**

189 This Act shall become effective upon its approval by the Governor or upon its becoming law
190 without such approval and shall apply with respect to conduct on and after that date.

191 **SECTION 6.**

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