

COMMITTEE OF CONFERENCE SUBSTITUTE TO HB 16

A BILL TO BE ENTITLED
AN ACT

1 To amend Titles 16 and Chapter 38 of Title 43 of the Official Code of Georgia Annotated,
 2 relating to crimes and offenses and operators of private detective businesses and private
 3 security businesses, respectively, so as to regulate the use of tracking devices; to prohibit the
 4 tracking of the location or movement of another person without such other person's consent;
 5 to provide for exceptions; to provide for punishment; to provide for the issuance of order
 6 authorizing the installation, use, and removal of tracking devices subject to certain conditions
 7 under certain circumstances; to provide for a definition; to provide for related matters; to
 8 provide for an effective date and applicability; to repeal conflicting laws; and for other
 9 purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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

13 "16-11-62.1.

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

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

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

25 (b) Except as otherwise provided in subsection (c) through (e) of this Code section, no
26 person shall use a tracking device to determine the location or movement of another person
27 without such other person's consent.

28 (c) Official law enforcement agencies and persons licensed as a private detective business
29 or registered pursuant to Chapter 38 of Title 43 who are employed by an accused in a
30 criminal proceeding shall be specifically authorized to use tracking devices.

31 (d) This Code section shall not apply:

32 (1) When the owner or lienholder of a vehicle has consented to the use of a tracking
33 device with respect to such vehicle;

34 (2) When the lessor or lessee of a vehicle and the person operating such vehicle have
35 consented to the use of a tracking device with respect to such vehicle; provided, however,
36 that this paragraph shall not apply to an employer leased vehicle;

37 (3) To official actions of an official law enforcement agency acting in a law enforcement
38 capacity;

39 (4) To actions of United States military law enforcement personnel in the performance
40 of their official duties;

41 (5) To actions of a parent, legal guardian, or person in loco parentis with respect to
42 determining the location or movement of a child or other person with whom such parent,
43 legal guardian, or person in loco parentis has such legal relationship;

44 (6) To actions of a family member or caregiver with respect to determining the location
45 or movement of a patient or family member with a diagnosis by a licensed physician of
46 Alzheimer's disease, vascular dementia, Pick's disease, Creutzfeldt-Jakob disease,
47 Parkinson's disease, or Lewy body dementia;

48 (7) To actions of a facility licensed pursuant to Title 31 with respect to determining the
49 location or movement of a patient when such device is deemed medically necessary by
50 the patient's physician; or

51 (8) To the provision of a commercial service, such as mobile telephone service or vehicle
52 safety or security service, which allows the provider of such service to determine the
53 location or movement of a device provided to a customer of such commercial service for
54 the purpose of providing such commercial service.

55 (e) This Code section shall not apply to persons licensed as a private detective business or
56 registered pursuant to Chapter 38 of Title 43 when such person obtains an order authorizing
57 the use of a tracking device pursuant to Code Section 43-38-17 in connection with a filed
58 civil action; provided further that any information or data obtained as a result of the use of
59 such a tracking device shall be:

60 (1) Confidential and shall not be disclosed to any person other than the judge and the
61 parties involved in such civil action and their attorneys except upon order of the court in

62 which such action is pending and shall be subject to discovery by any party to the civil
 63 action; and

64 (2) Destroyed immediately upon the termination of the civil action.

65 (f) Notwithstanding subsection (d) of this Code section, no person shall be required to be
 66 implanted with a tracking device pursuant to this Code section.

67 (g) Any person violating this Code section shall upon conviction be guilty of a
 68 misdemeanor; provided, however, that it shall not be a violation of this Code section to use
 69 a tracking device to determine the location or movement of another person without such
 70 other person's consent if such person is an occupant of a vehicle where use of such
 71 tracking device is permissible according to the provisions of subsection (d) of this Code
 72 section."

73 **SECTION 2.**

74 Chapter 38 of Title 43 of the Official Code of Georgia Annotated, relating to operators of
 75 private detective businesses and private security businesses, is amended by revising Code
 76 Section 43-38-17, which is reserved, as follows:

77 "43-38-17.

78 (a) As used in this Code section, the term 'tracking device' shall have the same meaning
 79 as set forth in Code Section 16-11-62.1.

80 (b) Upon the written application of any person licensed as a private detective business or
 81 registered under this chapter under oath or affirmation, a judge of any court in this state
 82 authorized to issue search warrants pursuant to Code Section 17-5-21 may issue an order
 83 in civil proceedings in accordance with Code Section 16-11-62.1 authorizing the
 84 installation, use, and removal of a tracking device subject to the following conditions:

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

88 (2) The application shall set forth facts sufficient to establish compliance with subsection
 89 (e) of Code Section 16-11-62.1, and the issuing judge may order that such order be sealed
 90 while the time period of the order remains in effect and such civil action remains open;

91 (3) The application shall particularly describe the person or object upon which a tracking
 92 device is to be installed;

93 (4) A tracking device authorized by this Code section shall be installed within ten days
 94 after the issuance of the order and shall be installed within the geographic jurisdiction of
 95 the issuing judge. If the tracking device is not installed within that time, the order shall
 96 be void;

97 (5)(A) An order issued pursuant to this Code section shall authorize the use of a
 98 tracking device for a reasonable period of time, not to exceed 45 days, except as
 99 provided in subparagraph (B) of this paragraph, measured from the date such tracking
 100 device is installed upon the person or object to be tracked.

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

104 (6) When the period of time authorized for the use of a tracking device or the last
 105 extension thereof has expired, monitoring of such tracking device shall be discontinued
 106 immediately; and

107 (7) A tracking device installed and used under the authority of an order issued pursuant
 108 to this Code section may be used within the jurisdiction of the issuing court as well as
 109 outside such jurisdiction if such tracking device was installed within the jurisdiction of
 110 the issuing court."

111 **SECTION 3.**

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

114 **SECTION 4.**

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