

ASSEMBLY BILL NO. 3950
(Third Reprint)

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am herewith returning Assembly Bill No. 3950 (Third Reprint) with my recommendations for reconsideration.

This bill would impose criminal and civil penalties for an employer's use of a tracking device or an electronic communications device in a vehicle operated by an employee. Under the bill, it would be a fourth degree crime for an employer to knowingly use either device in a vehicle used by an employee that is not provided by the employer, if written notice has not been provided to the employee. A crime of the fourth degree is punishable by a term of imprisonment of up to 18 months, a fine of up to \$10,000, or both. If the vehicle is provided by an employer, an employer knowingly using either device without providing written notice to the employee would be a disorderly persons offense if it is the employer's first or second violation and a fourth degree crime for each subsequent violation. A disorderly persons offense is punishable by a term of imprisonment of up to six months, a fine of up to \$1,000, or both. If an employer unknowingly violates the provisions of the bill, the employer would be subject to a civil penalty of up to \$1,000 for the first violation and \$2,500 for each subsequent violation.

While I am in complete agreement that employers should provide notice to an employee whenever a business decision is made to track the employee's movement, I do not believe that criminal penalties are an appropriate means of enforcing this requirement. Instead, I am recommending changes to impose civil penalties on employers who violate the bill. I am also recommending revisions to clarify some of the bill's vague provisions that threaten to punish otherwise lawful behavior. For example, the bill makes it a crime

for an employer to "make use of" an electronic communications device in a vehicle without ever requiring that the electronic communications device actually be used for tracking an employee. As a result, an employer calling an employee on a cell phone furnished by the employer could be inadvertently covered by the bill. My recommendations protect against such an outcome by clarifying that the bill's provisions apply only to devices that are specifically designed or intended to be used for the purpose of tracking employees.

Finally, I am recommending an amendment to the definition of "employer" in the bill to exclude State and local government entities. The State has legitimate interests in protecting State property and resources, paid for by taxpayers, and has a duty to ensure those resources are used properly. To further those interests, the State may frequently take measures to ensure that State employees who use State vehicles are using those vehicles to perform State business. The purpose of this recommendation is to protect taxpayers by providing governmental agencies with the tools they need to effectively monitor the public resources with which they and their employees are entrusted.

Therefore, I herewith return Assembly Bill No. 3950 (Third Reprint) and recommend that it be amended as follows:

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| <u>Page 2, Title, Line 2:</u> | Delete "Title 2C of the New Jersey Statutes and" |
| <u>Page 2, Section 1, Lines 16-17:</u> | Delete "law enforcement agency" and insert "government entity" |
| <u>Page 2, Section 1, Line 21:</u> | Delete "permits the tracking of" and insert "is designed or intended to be used for the sole purpose of tracking" |
| <u>Page 2, Section 1, Line 24:</u> | Delete "It shall be a crime of the fourth degree for an" and insert "An" |
| <u>Page 2, Section 1, Line 24:</u> | Delete "to" and insert "who" |
| <u>Page 2, Section 1, Line 25:</u> | Delete "make" and insert "makes" |

Page 2, Section 1, Lines 25-26: Delete "or electronic communications device"

Page 2, Section 1, Lines 26-27: Delete "that is not provided by the employer"

Page 2, Section 1, Line 30: After "employee" insert "shall be subject to a civil penalty in an amount not to exceed \$1,000 for the first violation and not to exceed \$2,500 for each subsequent violation, collectible by the Commissioner of Labor and Workforce Development in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.)"

Page 2, Section 1, Lines 31-37: Delete in their entirety

Page 3, Section 1, Line 3: Delete "d." and insert "c."

Page 3, Section 2, Lines 8-14: Delete in their entirety

Page 3, Section 3, Line 16: Delete "3." and insert "2."

[seal]

Respectfully,

/s/ Philip D. Murphy

Governor

Attest:

/s/ Parimal Garg

Chief Counsel to the Governor