

By: Carona

S.B. No. 385

A BILL TO BE ENTITLED

AN ACT

relating to the interception of wire, oral, or electronic communications.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 18.20, Code of Criminal Procedure, is amended by adding Section 9A to read as follows:

Sec. 9A. INTERCEPTION ORDER FOR COMMUNICATION BY SPECIFIED PERSON. (a) The requirements of Sections 8(a)(2)(B) and 9(b)(2) relating to the specification of the facilities from which or the place where a communication is to be intercepted do not apply if:

(1) in the case of an application for an order authorizing the interception of an oral communication:

(A) the application contains a full and complete statement as to why the specification is not practical and identifies the person committing or believed to be committing the offense and whose communications are to be intercepted; and

(B) a judge of competent jurisdiction finds that the specification is not practical; and

(2) in the case of an application for an order authorizing the interception of a wire or electronic communication:

(A) the application identifies the person committing or believed to be committing the offense and whose communications are to be intercepted;

(B) a judge of competent jurisdiction finds that

1 the applicant has made an adequate showing of probable cause to  
2 believe that the actions of the person identified in the  
3 application could have the effect of thwarting interception from a  
4 specified facility; and

5 (C) the authority to intercept a wire or  
6 electronic communication under the order is limited to a period in  
7 which it is reasonable to presume that the person identified in the  
8 application will be reasonably proximate to the interception  
9 device.

10 (b) A person implementing an order authorizing the  
11 interception of an oral communication that, in accordance with this  
12 section, does not specify the facility from which or the place where  
13 a communication is to be intercepted may begin interception only  
14 after the person ascertains the place where the communication is to  
15 be intercepted.

16 (c) A provider of wire or electronic communications that  
17 receives an order authorizing the interception of a wire or  
18 electronic communication that, in accordance with this section,  
19 does not specify the facility from which or the place where a  
20 communication is to be intercepted may move the court to modify or  
21 quash the order on the ground that the provider's assistance with  
22 respect to the interception cannot be performed in a timely or  
23 reasonable fashion. On notice to the state, the court shall decide  
24 the motion expeditiously.

25 SECTION 2. Section 9A, Article 18.20, Code of Criminal  
26 Procedure, as added by this Act, applies only to an application for  
27 an order authorizing the interception of a wire, oral, or

1 electronic communication that is submitted on or after the  
2 effective date of this Act. An application that was submitted  
3 before the effective date of this Act is covered by the law in  
4 effect on the date the application was submitted, and the former law  
5 is continued in effect for that purpose.

6 SECTION 3. This Act takes effect September 1, 2009.

COMMITTEE AMENDMENT NO. 1

Amend S.B. No. 385 (Senate engrossment) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 15, Article 18.20, Code of Criminal Procedure, is amended by adding Subsection (d) to read as follows:

(d) The director of the Department of Public Safety shall make the report described by Subsection (c) of this section available on any publicly accessible Internet website maintained by the department. Before posting the report as required by this subsection, the department shall redact from the report any information including personal information, such as telephone numbers, social security numbers, or other personal identification information that could:

(1) jeopardize an ongoing intercept or investigation;  
or

(2) endanger the physical safety of a peace officer who made a request or a prosecutor who filed an application under this article.

SECTION \_\_\_\_\_. Section 15(d), Article 18.20, Code of Criminal Procedure, as added by this Act, applies only to a report submitted by the director of the Department of Public Safety to the applicable officials under Section 15(c), Article 18.20, Code of Criminal Procedure, on or after the effective date of this Act. A report submitted before the effective date of this Act is governed

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1 by the law in effect on the date the report is submitted, and that  
2 law is continued in effect for that purpose.

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