86R4340 JSC-D

By:  Miles S.B. No. 1644

A BILL TO BE ENTITLED

AN ACT

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

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

SECTION 1.  Section 123.001(2), Civil Practice and Remedies Code, is amended to read as follows:

(2)  "Interception" means the aural acquisition of the contents of a communication through the use of an interception device that is made without the consent of each [~~a~~] party to the communication, but does not include the ordinary use of:

(A)  a telephone or telegraph instrument or facility or telephone and telegraph equipment;

(B)  a hearing aid designed to correct subnormal hearing to not better than normal;

(C)  a radio, television, or other wireless receiver; or

(D)  a cable system that relays a public wireless broadcast from a common antenna to a receiver.

SECTION 2.  Section 123.003, Civil Practice and Remedies Code, is amended by adding Subsection (a-1) to read as follows:

(a-1)  A person may intercept a wire, oral, or electronic communication if the person is a party to the communication, or one of the parties to the communication has given prior consent to the interception, and the communication:

(1)  is made for the purpose of reporting or responding to an immediate life-threatening situation, as defined by Article 18A.201, Code of Criminal Procedure; or

(2)  constitutes a violation of Section 21.18, 22.07, 25.07, 25.071, 25.072, 33.021, 33.07, 38.12, 42.06, 42.061, 42.07, or 47.05, Penal Code.

SECTION 3.  Section 16.02, Penal Code, is amended by amending Subsection (c) and adding Subsections (c-1) and (c-2) to read as follows:

(c)  It is an affirmative defense to prosecution under Subsection (b) that:

(1)  an operator of a switchboard or an officer, employee, or agent of a communication common carrier whose facilities are used in the transmission of a wire or electronic communication intercepts a communication or discloses or uses an intercepted communication in the normal course of employment while engaged in an activity that is a necessary incident to the rendition of service or to the protection of the rights or property of the carrier of the communication, unless the interception results from the communication common carrier's use of service observing or random monitoring for purposes other than mechanical or service quality control checks;

(2)  an officer, employee, or agent of a communication common carrier provides information, facilities, or technical assistance to an investigative or law enforcement officer who is authorized as provided by this section to intercept a wire, oral, or electronic communication;

(3)  a person acting under color of law intercepts:

(A)  a wire, oral, or electronic communication, if:

(i)  each [~~the person is a~~] party to the communication [~~or if one of the parties to the communication~~] has given prior consent to the interception; or

(ii)  the person is a party to the communication, or one of the parties to the communication has given prior consent to the interception, and the communication:

(a)  is made for the purpose of reporting or responding to an immediate life-threatening situation; or

(b)  constitutes a violation of Section 21.18, 22.07, 25.07, 25.071, 25.072, 33.021, 33.07, 38.12, 42.06, 42.061, 42.07, or 47.05;

(B)  a wire, oral, or electronic communication, if the person is acting under the authority of Chapter 18A, Code of Criminal Procedure; or

(C)  a wire or electronic communication made by a computer trespasser and transmitted to, through, or from a protected computer, if:

(i)  the interception did not acquire a communication other than one transmitted to or from the computer trespasser;

(ii)  the owner of the protected computer consented to the interception of the computer trespasser's communications on the protected computer; and

(iii)  the actor was lawfully engaged in an ongoing criminal investigation and the actor had reasonable suspicion to believe that the contents of the computer trespasser's communications likely to be obtained would be material to the investigation;

(4)  a person not acting under color of law intercepts a wire, oral, or electronic communication, if:

(A)  each  [~~the person is a~~] party to the communication[~~; or~~

[~~(B)  one of the parties to the communication~~] has given prior consent to the interception, unless the communication is intercepted for the purpose of committing an unlawful act; or

(B)  the person is a party to the communication, or one of the parties to the communication has given prior consent to the interception, and the communication:

(i)  is made for the purpose of reporting or responding to an immediate life-threatening situation; or

(ii)  constitutes a violation of Section 21.18, 22.07, 25.07, 25.071, 25.072, 33.021, 33.07, 38.12, 42.06, 42.061, 42.07, or 47.05;

(5)  a person acting under color of law intercepts a wire, oral, or electronic communication if:

(A)  oral or written consent for the interception is given by a magistrate before the interception;

(B)  an immediate life-threatening situation exists;

(C)  the person is a member of a law enforcement unit specially trained to:

(i)  respond to and deal with life-threatening situations; or

(ii)  install interception devices; and

(D)  the interception ceases immediately on termination of the life-threatening situation;

(6)  an officer, employee, or agent of the Federal Communications Commission intercepts a communication transmitted by radio or discloses or uses an intercepted communication in the normal course of employment and in the discharge of the monitoring responsibilities exercised by the Federal Communications Commission in the enforcement of Chapter 5, Title 47, United States Code;

(7)  a person intercepts or obtains access to an electronic communication that was made through an electronic communication system that is configured to permit the communication to be readily accessible to the general public;

(8)  a person intercepts radio communication, other than a cordless telephone communication that is transmitted between a cordless telephone handset and a base unit, that is transmitted:

(A)  by a station for the use of the general public;

(B)  to ships, aircraft, vehicles, or persons in distress;

(C)  by a governmental, law enforcement, civil defense, private land mobile, or public safety communications system that is readily accessible to the general public, unless the radio communication is transmitted by a law enforcement representative to or from a mobile data terminal;

(D)  by a station operating on an authorized frequency within the bands allocated to the amateur, citizens band, or general mobile radio services; or

(E)  by a marine or aeronautical communications system;

(9)  a person intercepts a wire or electronic communication the transmission of which causes harmful interference to a lawfully operating station or consumer electronic equipment, to the extent necessary to identify the source of the interference;

(10)  a user of the same frequency intercepts a radio communication made through a system that uses frequencies monitored by individuals engaged in the provision or the use of the system, if the communication is not scrambled or encrypted; or

(11)  a provider of an electronic communications service records the fact that a wire or electronic communication was initiated or completed in order to protect the provider, another provider furnishing service towards the completion of the communication, or a user of that service from fraudulent, unlawful, or abusive use of the service.

(c-1)  For purposes of Subsections (c)(3)(A) and (c)(4), a party is considered to have given consent if:

(1)  a clear warning is given to the party that the communication is about to be recorded or transmitted and:

(A)  a recording is made of the warning, if the communication will be recorded; and

(B)  on receipt of the warning, the party does not terminate the communication; or

(2)  the recording or transmission is made by an employee of any regularly published newspaper, magazine, wire service, radio station, or television station and:

(A)  the recording or transmission is made in the course of bona fide news-gathering duties on a full-time or a contractual or part-time basis;

(B)  a recording or transmitting device is readily apparent to the party; and

(C)  the party does not terminate the communication.

(c-2)  For purposes of Subsections (c)(3)(A) and (c)(4), a party's withdrawal of consent after the communication is made does not affect the availability of the defense provided by Subsection (c).

SECTION 4.  The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 5.  This Act takes effect September 1, 2019.