

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 (1) is made for the purpose of reporting or responding
2 to an immediate life-threatening situation, as defined by Article
3 18A.201, Code of Criminal Procedure; or

4 (2) constitutes a violation of Section 21.18, 22.07,
5 25.07, 25.071, 25.072, 33.021, 33.07, 38.12, 42.06, 42.061, 42.07,
6 or 47.05, Penal Code.

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

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

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

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

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

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

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

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

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

13 (b) constitutes a violation of
14 Section 21.18, 22.07, 25.07, 25.071, 25.072, 33.021, 33.07, 38.12,
15 42.06, 42.061, 42.07, or 47.05;

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

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

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

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

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

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

8 (A) each [~~the person is a~~] party to the
9 communication[~~, or~~

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

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

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

18 (ii) constitutes a violation of Section
19 21.18, 22.07, 25.07, 25.071, 25.072, 33.021, 33.07, 38.12, 42.06,
20 42.061, 42.07, or 47.05;

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

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

25 (B) an immediate life-threatening situation
26 exists;

27 (C) the person is a member of a law enforcement

1 unit specially trained to:

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

4 (ii) install interception devices; and

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

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

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

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

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

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

25 (C) by a governmental, law enforcement, civil
26 defense, private land mobile, or public safety communications
27 system that is readily accessible to the general public, unless the

1 radio communication is transmitted by a law enforcement
2 representative to or from a mobile data terminal;

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

6 (E) by a marine or aeronautical communications
7 system;

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

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

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

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

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

27 (A) a recording is made of the warning, if the

1 communication will be recorded; and

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

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

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

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

12 (C) the party does not terminate the
13 communication.

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

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

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