

By: Schofield

H.B. No. 3169

A BILL TO BE ENTITLED

AN ACT

relating to requiring the consent of all parties to legally intercept certain 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 electronic, mechanical, or other device that is made without the consent of all parties [~~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 16.02, Penal Code, is amended by amending Subsection (c) and adding Subsection (c-1) to read as follows:

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

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

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

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

18 (A) a wire, oral, or electronic communication, if
19 the person is a party to the communication or if one of the parties
20 to the communication has given prior consent to the interception;

21 (B) a wire, oral, or electronic communication, if
22 the person is acting under the authority of Article 18.20, Code of
23 Criminal Procedure; or

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

27 (i) the interception did not acquire a

1 communication other than one transmitted to or from the computer
2 trespasser;

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

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

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

13 (A) the person alleges that the communication:

14 (i) is of an emergency nature, such as the
15 reporting of a fire, medical emergency, crime, or disaster;

16 (ii) conveys a threat to themselves or
17 others or makes other unlawful requests or demands ~~[is a party to~~
18 ~~the communication];~~ ~~[or]~~

19 (B) the person is an employee of a communication
20 common carrier requested to intercept a wire, oral, or electronic
21 communication for the sole purpose of tracing the origin of such
22 communication when the interception is requested by the recipient
23 of the communication and the recipient alleges that the
24 communication:

25 (i) is obscene, harassing, or threatening
26 in nature; or

27 (ii) occurs anonymously, repeatedly, or at

1 an extremely inconvenient hour; or

2 (C) all ~~[one]~~ of the parties to the communication
3 have ~~[has]~~ given prior consent to the interception, unless the
4 communication is intercepted for the purpose of committing an
5 unlawful act;

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

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

10 (B) an immediate life-threatening situation
11 exists;

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

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

16 (ii) install electronic, mechanical, or
17 other devices; and

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

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

27 (7) a person intercepts or obtains access to an

1 electronic communication that was made through an electronic
2 communication system that is configured to permit the communication
3 to be readily accessible to the general public;

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

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

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

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

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

19 (E) by a marine or aeronautical communications
20 system;

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

26 (10) a user of the same frequency intercepts a radio
27 communication made through a system that uses frequencies monitored

1 by individuals engaged in the provision or the use of the system, if
2 the communication is not scrambled or encrypted; or

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

9 (c-1) A person conducting an interception under Subsection
10 (c)(4)(B) shall notify local police authorities within 48 hours
11 after the time of the interception.

12 SECTION 3. The change in law made by this Act applies only
13 to an offense committed on or after the effective date of this Act.
14 An offense committed before the effective date of this Act is
15 governed by the law in effect when the offense was committed, and
16 the former law is continued in effect for that purpose. For the
17 purposes of this section, an offense is committed before the
18 effective date of this Act if any element of the offense is
19 committed before that date.

20 SECTION 4. This Act takes effect September 1, 2015.