

1 **COMMUNICATION INTERCEPTION AMENDMENTS**

2 2018 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: V. Lowry Snow**

5 Senate Sponsor: Todd Weiler

6

LONG TITLE

7 **General Description:**

8 This bill modifies provisions related to interception of communications.

9 **Highlighted Provisions:**

10 This bill:

11 ▶ requires all parties to a communication to give consent to an interception, with
12 certain exceptions; and

13 ▶ makes technical changes.

14 **Money Appropriated in this Bill:**

15 None

16 **Other Special Clauses:**

17 None

18 **Utah Code Sections Affected:**

19 AMENDS:

20 **77-23a-4**, as last amended by Laws of Utah 2011, Chapter 340

21

Be it enacted by the Legislature of the state of Utah:

22 Section 1. Section **77-23a-4** is amended to read:

23 **77-23a-4. Offenses -- Criminal and civil -- Lawful interception.**

24 (1) (a) Except as otherwise specifically provided in this chapter, [any] a person who
25 violates Subsection (1)(b) is guilty of an offense and is subject to punishment under Subsection
26



28 (10), or when applicable, the person is subject to civil action under Subsection (11).

29 (b) A person commits a violation of this ~~[subsection]~~ Subsection (1) who:

30 (i) intentionally or knowingly intercepts, endeavors to intercept, or procures ~~[any other]~~
31 another person to intercept or endeavor to intercept ~~[any]~~ a wire, electronic, or oral
32 communication;

33 (ii) intentionally or knowingly uses, endeavors to use, or procures ~~[any other]~~ another
34 person to use or endeavor to use ~~[any]~~ an electronic, mechanical, or other device to intercept
35 ~~[any]~~ an oral communication, when the device is affixed to, or otherwise transmits a signal
36 through a wire, cable, or other like connection used in wire communication or when the device
37 transmits communications by radio, or interferes with the transmission of the communication;

38 (iii) intentionally or knowingly discloses or endeavors to disclose to ~~[any other]~~
39 another person the contents of ~~[any]~~ a wire, electronic, or oral communication, knowing or
40 having reason to know that the information was obtained through the interception of a wire,
41 electronic, or oral communication in violation of this section; or

42 (iv) intentionally or knowingly uses or endeavors to use the contents of ~~[any]~~ a wire,
43 electronic, or oral communication, knowing or having reason to know that the information was
44 obtained through the interception of a wire, electronic, or oral communication in violation of
45 this section.

46 (2) The operator of a switchboard, or an officer, employee, or agent of a provider of
47 wire or electronic communication service whose facilities are used in the transmission of a wire
48 communication may intercept, disclose, or use that communication in the normal course of
49 ~~[his]~~ the person's employment while engaged in ~~[any]~~ an activity ~~[which]~~ that is a necessary
50 incident to the rendition of ~~[his]~~ that person's service or to the protection of the rights or
51 property of the provider of that service. However, a provider of wire communications service
52 to the public may not ~~[utilize]~~ use service observing or random monitoring except for
53 mechanical or service quality control checks.

54 (3) (a) ~~[Providers]~~ A provider of wire or electronic communications service, ~~[their~~
55 ~~officers, employees, or agents, and any landlords, custodians, or other persons]~~ a provider's
56 officer, employee, or agent, and a landlord, custodian, or other person may provide
57 information, facilities, or technical assistance to ~~[persons]~~ a person authorized by law to
58 intercept wire, oral, or electronic communications or to conduct electronic surveillance if the

59 provider and ~~[its officers, employees, or agents, and any landlords, custodians, or other~~
60 ~~specified persons]~~ the provider's officer, employee, or agent, and a landlord, custodian, or other
61 specified person have been provided with:

62 (i) a court order directing the assistance signed by the authorizing judge; or
63 (ii) a certification in writing by a person specified in Subsection 77-23a-10(7), or by
64 the attorney general or an assistant attorney general, or by a county attorney or district attorney
65 or ~~[his]~~ a county attorney's or district attorney's deputy that no warrant or court order is required
66 by law, that all statutory requirements have been met, and that the specified assistance is
67 required.

68 (b) The order or certification under this ~~[subsection]~~ Subsection (3) shall set the period
69 of time during which the provision of the information, facilities, or technical assistance is
70 authorized and shall specify the information, facilities, or technical assistance required.

71 (4) (a) ~~[The providers]~~ A provider of wire or electronic communications service, ~~[their~~
72 ~~officers, employees, or agents, and any landlords, custodians, or other specified persons]~~ a
73 provider's officer, employee, or agent, and a landlord, custodian, or other specified person may
74 not disclose the existence of ~~[any]~~ an interception or surveillance or the device used to
75 accomplish the interception or surveillance regarding which the person has been furnished an
76 order or certification under this section except as is otherwise required by legal process, and
77 then only after prior notification to the attorney general or to the county attorney or district
78 attorney of the county in which the interception was conducted, as is appropriate.

79 (b) ~~[Any]~~ A disclosure in violation of this ~~[subsection]~~ Subsection (4) renders the
80 person liable for civil damages under Section 77-23a-11.

81 (5) A cause of action does not lie in ~~[any]~~ a court against ~~[any]~~ a provider of wire or
82 electronic communications service, ~~[its officers, employees, or agents, or any landlords,~~
83 ~~custodians, or other specified persons]~~ a provider's officer, employee, or agent, or a landlord,
84 custodian, or other specified person for providing information, facilities, or assistance in
85 accordance with the terms of a court order or certification under this chapter.

86 (6) Subsections (3), (4), and (5) supersede any law to the contrary.

87 (7) (a) A person acting under color of law may intercept a wire, electronic, or oral
88 communication if that person is a party to the communication or one of the parties to the
89 communication has given prior consent to the interception.

90 (b) A person not acting under color of law may intercept a private wire, electronic, or
 91 oral communication if [~~that person is a party to the communication or one~~] all of the parties to
 92 the communication [~~has given~~] give prior consent to the interception[~~, unless the~~
 93 ~~communication is intercepted for the purpose of committing any criminal or tortious act in~~
 94 ~~violation of state or federal laws~~].

95 (c) An employee of a telephone company may intercept a wire communication for the
 96 sole purpose of tracing the origin of the communication when the interception is requested by
 97 the recipient of the communication and the recipient alleges that the communication is obscene,
 98 harassing, or threatening in nature. The telephone company and [~~its officers, employees, and~~
 99 ~~agents~~] the telephone company's officer, employee, and agent shall release the results of the
 100 interception, made under this [~~subsection~~] Subsection (7)(c), upon request of the local law
 101 enforcement authorities.

102 (d) Notwithstanding Subsection (7)(b), a wire, electronic, or oral communication may
 103 be recorded with the consent of one party to the communication when the person making the
 104 recording reasonably believes that the communication:

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

107 (ii) is likely to involve or convey threats of extortion, blackmail, bodily harm, injury,
 108 abuse, whether physical, psychological, or otherwise, other unlawful requests or demands, or
 109 evidence of a crime;

110 (iii) is likely to be fraudulent, obscene, or harassing in nature;

111 (iv) occurs anonymously, repeatedly, or without invitation or at an inconvenient hour;

112 (v) is intended to harass or is part of an ongoing pattern of harassment or abuse;

113 (vi) relates to communications by a hostage holder as discussed in Section [54-3-24](#), or
 114 barricaded person, whether or not conversation ensues;

115 (vii) involves a commercial solicitor, pollster, or other person unknown to the recipient
 116 of the communication; or

117 (viii) consists of a statement by a public official or public employee in the performance
 118 of the public official's or public employee's official duty.

119 (8) A person may:

120 (a) intercept or access an electronic communication made through an electronic

121 communications system that is configured so that the electronic communication is readily
122 accessible to the general public;

123 (b) intercept ~~[any]~~ a radio communication transmitted by:

124 (i) ~~[any]~~ a station for the use of the general public, or that relates to ships, aircraft,
125 vehicles, or persons in distress;

126 (ii) ~~[any]~~ a government, law enforcement, civil defense, private land mobile, or public
127 safety communications system, including police and fire, readily accessible to the general
128 public;

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

131 (iv) by a marine or aeronautics communications system;

132 (c) intercept ~~[any]~~ a wire or electronic communication, the transmission of which is
133 causing harmful interference to ~~[any]~~ a lawfully operating station or consumer electronic
134 equipment, to the extent necessary to identify the source of the interference; or

135 (d) as one of a group of users of the same frequency, intercept ~~[any]~~ a radio
136 communication made through a system that ~~[utilizes]~~ uses frequencies monitored by
137 individuals engaged in the provision or the use of the system, if the communication is not
138 scrambled or encrypted.

139 (9) (a) Except under Subsection (9)(b), a person ~~[or entity]~~ providing an electronic
140 communications service to the public may not intentionally divulge the contents of ~~[any]~~ a
141 communication, while in transmission of that service, to any person ~~[or entity]~~ other than an
142 addressee or intended recipient of the communication or his agent.

143 (b) A person ~~[or entity]~~ providing electronic communications service to the public may
144 divulge the contents of ~~[any]~~ a communication:

145 (i) as otherwise authorized under this section or Section 77-23a-9;

146 (ii) with lawful consent of the originator or ~~[any]~~ an addressee or intended recipient of
147 the communication;

148 (iii) to a person employed or authorized or whose facilities are used to forward the
149 communication to ~~[its]~~ the communication's destination; or

150 (iv) that is inadvertently obtained by the service provider and appears to pertain to the
151 commission of a crime, if the divulgence is made to a law enforcement agency.

152 (10) (a) Except under Subsection (10)(b) or (11), a violation of Subsection (1) is a third
153 degree felony.

154 (b) If the offense is a first offense under this section and is not for a tortious or illegal
155 purpose or for purposes of direct or indirect commercial advantage or private commercial gain,
156 and the wire or electronic communication regarding which the offense was committed is a
157 radio communication that is not scrambled or encrypted:

158 (i) if the communication is not the radio portion of a cellular telephone communication,
159 a public land mobile radio service communication, or paging service communication, and the
160 conduct is not under Subsection (11), the offense is a class A misdemeanor; and

161 (ii) if the communication is the radio portion of a cellular telephone communication, a
162 public land mobile radio service communication, or a paging service communication, the
163 offense is a class B misdemeanor.

164 (c) Conduct otherwise an offense under this section is not an offense if the conduct was
165 not done for the purpose of direct or indirect commercial advantage or private financial gain,
166 and consists of or relates to the interception of a satellite transmission that is not encrypted or
167 scrambled, and is either transmitted:

168 (i) to a broadcasting station for purposes of retransmission to the general public; or

169 (ii) as an audio subcarrier intended for redistribution to facilities open to the public, but
170 in any event not including data transmissions or telephone calls.

171 (11) (a) A person is subject to civil suit initiated by the state in a court of competent
172 jurisdiction when [his] the person's conduct is prohibited under Subsection (1) and the conduct
173 involves a:

174 (i) private satellite video communication that is not scrambled or encrypted, and the
175 conduct in violation of this chapter is the private viewing of that communication and is not for
176 a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or
177 private commercial gain; or

178 (ii) radio communication that is transmitted on frequencies allocated under Subpart D,
179 Part 74, Rules of the Federal Communication Commission, that is not scrambled or encrypted
180 and the conduct in violation of this chapter is not for a tortious or illegal purpose or for
181 purposes of direct or indirect commercial advantage or private commercial gain.

182 (b) In an action under Subsection (11)(a):

183 (i) if the violation of this chapter is a first offense under this section and the person is
184 not found liable in a civil action under Section 77-23a-11, the state may seek appropriate
185 injunctive relief; or

186 (ii) if the violation of this chapter is a second or subsequent offense under this section,
187 or the person has been found liable in [any] a prior civil action under Section 77-23a-11, the
188 person is subject to a mandatory \$500 civil penalty.

189 (c) The court may use any means within its authority to enforce an injunction issued
190 under Subsection (11)(b)(i), and shall impose a civil fine of not less than \$500 for each
191 violation of the injunction.

Legislative Review Note
Office of Legislative Research and General Counsel