

JAN 23 2015

A BILL FOR AN ACT

RELATING TO PRIVACY.

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

1 SECTION 1. Section 803-42, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:
3 "(b) (1) It shall not be unlawful under this part for an
4 operator of a switchboard, or an officer, employee, or
5 agent of a provider of wire or electronic
6 communication services, whose facilities are used in
7 the transmission of a wire communication, to
8 intercept, disclose, or use that communication in the
9 normal course of the officer's, employee's, or agent's
10 employment while engaged in any activity that is
11 either a necessary incident to the rendition of the
12 officer's, employee's, or agent's service or to the
13 protection of the rights or property of the provider
14 of that service; provided that providers of wire
15 communication service to the public shall not utilize
16 service observing or random monitoring except for
17 mechanical or service quality control checks.



1 (2) It shall not be unlawful under this part for an
2 officer, employee, or agent of the Federal
3 Communications Commission, in the normal course of the
4 officer's, employee's, or agent's employment and in
5 discharge of the monitoring responsibilities exercised
6 by the Commission in the enforcement of title 47,
7 chapter 5, of the United States Code, to intercept a
8 wire or electronic communication, or oral
9 communication transmitted by radio, or to disclose or
10 use the information thereby obtained.

11 (3) (A) It shall not be unlawful under this part for a
12 person not acting under color of law to intercept
13 a wire, oral, or electronic communication when
14 ~~[the person is a party to the communication or~~
15 ~~when one]~~ all of the parties to the communication
16 ~~[has]~~ have been verbally notified on and at the
17 start of the interception and all of the parties
18 to the communication have given prior consent
19 either on the interception or in writing to the
20 interception unless the communication is
21 intercepted for the purpose of committing any



1 criminal or tortious act in violation of the
2 Constitution or laws of the United States or of
3 this State.

4 (B) It shall not be unlawful for a person acting
5 under color of law to install in any private
6 place, without consent of the person or persons
7 entitled to privacy therein, any device for
8 recording, amplifying, or broadcasting sounds or
9 events in that place, or use of any such
10 unauthorized installation, or install or use
11 outside a private place any such device to
12 intercept sounds originating in that place which
13 would not ordinarily be audible or comprehensible
14 outside.

15 (C) It shall not be unlawful under this part for a
16 person not acting under color of law to intercept
17 a wire, oral, or electronic communication when
18 the person is a party to the communication and
19 when such interception is necessary to protect
20 the person from threat of harassment or abuse.



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- 1 (4) It shall not be unlawful under this part for a person
2 acting under color of law to intercept a wire, oral,
3 or electronic communication, when the person is a
4 party to the communication or one of the parties to
5 the communication has given prior consent to the
6 interception.
- 7 (5) It shall not be unlawful under this part for any
8 person to intercept a wire, oral, or electronic
9 communication, or to disclose or use the contents of
10 an intercepted communication, when such interception
11 is pursuant to a valid court order under this chapter
12 or otherwise authorized by law; provided that a
13 communications provider with knowledge of an
14 interception of communications accomplished through
15 the use of the communications provider's facilities
16 shall report the fact and duration of the interception
17 to the administrative director of the courts of this
18 State.
- 19 (6) Notwithstanding any other law to the contrary,
20 providers of wire or electronic communication service,
21 their officers, employees, and agents, landlords,



1 custodians, or other persons, are authorized to
2 provide information, facilities, or technical
3 assistance to persons authorized by law to intercept
4 or access wire, oral, or electronic communications, to
5 conduct electronic surveillance, or to install a pen
6 register or trap and trace device if such provider,
7 its officers, employees, or agents, landlord,
8 custodian, or other specified person, has been
9 provided with:

10 (A) A court order directing such assistance signed by
11 the designated judge; or

12 (B) A certification in writing from the Attorney
13 General of the United States, the Deputy Attorney
14 General of the United States, the Associate
15 Attorney General of the United States, the
16 attorney general of the State of Hawaii, or the
17 prosecuting attorney for each county that no
18 warrant or court order is required by law, that
19 all statutory requirements have been met, and
20 that the specific assistance is required, setting
21 forth the period of time during which the



1 providing of the information, facilities, or
2 technical assistance is authorized and specifying
3 the information, facilities, or technical
4 assistance required.

5 No provider of wire or electronic
6 communication service, officer, employee, or
7 agent thereof, or landlord, custodian, or other
8 specified person shall disclose the existence of
9 any access, interception, or surveillance or the
10 device used to accomplish the interception or
11 surveillance for which the person has been
12 furnished a court order or certification under
13 this part, except as may otherwise be required by
14 legal process and then only after prior
15 notification to the party that provided the court
16 order or certification.

17 No cause of action shall lie in any court
18 against any provider of wire or electronic
19 communication service, its officers, employees,
20 or agents, landlord, custodian, or other
21 specified person for providing information,



1 facilities, or assistance in accordance with the
2 terms of a court order or certification under
3 this part.

4 (7) It shall not be unlawful under this part for any
5 person:

6 (A) To intercept or access an electronic
7 communication made through an electronic
8 communication system configured so that the
9 electronic communication is readily accessible to
10 the general public.

11 (B) To intercept any radio communication that is
12 transmitted:

13 (i) By any station for the use of the general
14 public, or that relates to ships, aircraft,
15 vehicles, or persons in distress;

16 (ii) By any governmental, law enforcement,
17 emergency management, private land mobile,
18 or public safety communications system,
19 including police and fire, readily
20 accessible to the general public;



- 1 (iii) By a station operating on an authorized
- 2 frequency within the bands allocated to the
- 3 amateur, citizens band, or general mobile
- 4 radio services; or
- 5 (iv) By any marine or aeronautical communications
- 6 system.
- 7 (C) To engage in any conduct that:
- 8 (i) Is prohibited by section 633 of the
- 9 Communications Act of 1934 (47 U.S.C. §553);
- 10 or
- 11 (ii) Is excepted from the application of section
- 12 705(a) of the Communications Act of 1934 by
- 13 section 705(b) of that Act (47 U.S.C. §605).
- 14 (D) To intercept any wire or electronic communication
- 15 the transmission of which is causing harmful
- 16 interference to any lawfully operating station or
- 17 consumer electronic equipment to the extent
- 18 necessary to identify the source of the
- 19 interference.
- 20 (E) For other users of the same frequency to
- 21 intercept any radio communication made through a



1 system that uses frequencies monitored by
2 individuals engaged in the providing or the use
3 of the system, if the communication is not
4 scrambled or encrypted.

5 (8) It shall not be unlawful under this part:

6 (A) To use a pen register or a trap and trace device
7 as specified in this part.

8 (B) For a provider of electronic communication
9 service to record the fact that a wire or
10 electronic communication was initiated or
11 completed in order to protect the provider,
12 another provider furnishing service toward the
13 completion of the wire or electronic
14 communication, or a user of that service, from
15 the fraudulent, unlawful, or abusive use of such
16 service.

17 (C) For a provider of electronic or wire
18 communication service to use a pen register or a
19 trap and trace device for purposes relating to
20 the operation, maintenance, and testing of the
21 wire or electronic communication service or to



1 the protection of the rights or property of the
2 provider, or to the protection of users of that
3 service from abuse of service or unlawful use of
4 service.

5 (D) To use a pen register or a trap and trace device
6 where consent of the user of the service has been
7 obtained.

8 (9) Good faith reliance upon a court order shall be a
9 complete defense to any criminal prosecution for
10 illegal interception, disclosure, or use.

11 (10) Except as provided in this section, a person or entity
12 providing an electronic communication service to the
13 public shall not intentionally divulge the contents of
14 any communication (other than a communication to the
15 person or entity or an agent thereof) while in
16 transmission on that service to any person or entity
17 other than an addressee or intended recipient of the
18 communication or an agent of the addressee or intended
19 recipient.



- 1 (11) A person or entity providing electronic communication
2 service to the public may divulge the contents of any
3 such communication:
- 4 (A) As otherwise authorized by a court order or under
5 this part;
- 6 (B) With the lawful consent of the originator,
7 addressee, or intended recipient of the
8 communication;
- 9 (C) To a person employed or authorized, or whose
10 facilities are used, to forward the communication
11 to its destination;
- 12 (D) That was inadvertently obtained by the service
13 provider and that appears to pertain to the
14 commission of a crime, if divulged to a law
15 enforcement agency; or
- 16 (E) To a law enforcement agency, public safety
17 agency, or public safety answering point if the
18 provider, in good faith, believes that an
19 emergency involving danger of death or serious
20 bodily injury to any person requires disclosure
21 without delay of communications relating to the



1 emergency, and is provided with a certification
 2 in writing from the governmental entity that
 3 provides the facts and circumstances establishing
 4 the existence of the emergency, that the specific
 5 disclosure is required, and sets forth the period
 6 of time during which the disclosure of the
 7 information is authorized and specifies the
 8 information required.

9 No cause of action shall lie in any court against any
 10 provider of electronic communication service, its officers,
 11 employees, or agents, custodian, or other specified person for
 12 disclosing information in accordance with the terms of a
 13 certification under this part."

14 SECTION 2. Statutory material to be repealed is bracketed
 15 and stricken. New statutory material is underscored.

16 SECTION 3. This Act shall take effect upon its approval.

17

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S.B. NO. 601

Report Title:

Right to Privacy; Electronic Communications; Interception; Two-party Consent; Law Enforcement Exception; Harassment and Abuse Exception

Description:

Establishes Hawaii as a two-party consent state by requiring a person to verbally notify and receive prior consent from all parties to the communication prior to the interception of a wire, oral, or electronic communication; and maintains a one-party consent exception for a person acting under the color of the law or when necessary to protect a person from threat of harassment or abuse.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

