

1 AN ACT in relation to criminal law.

2 Be it enacted by the People of the State of Illinois,
3 represented in the General Assembly:

4 Section 5. The Criminal Code of 1961 is amended by
5 changing Section 14-3 as follows:

6 (720 ILCS 5/14-3) (from Ch. 38, par. 14-3)

7 Sec. 14-3. Exemptions. The following activities shall
8 be exempt from the provisions of this Article:

9 (a) Listening to radio, wireless and television
10 communications of any sort where the same are publicly made;

11 (b) Hearing conversation when heard by employees of any
12 common carrier by wire incidental to the normal course of
13 their employment in the operation, maintenance or repair of
14 the equipment of such common carrier by wire so long as no
15 information obtained thereby is used or divulged by the
16 hearer;

17 (c) Any broadcast by radio, television or otherwise
18 whether it be a broadcast or recorded for the purpose of
19 later broadcasts of any function where the public is in
20 attendance and the conversations are overheard incidental to
21 the main purpose for which such broadcasts are then being
22 made;

23 (d) Recording or listening with the aid of any device to
24 any emergency communication made in the normal course of
25 operations by any federal, state or local law enforcement
26 agency or institutions dealing in emergency services,
27 including, but not limited to, hospitals, clinics, ambulance
28 services, fire fighting agencies, any public utility,
29 emergency repair facility, civilian defense establishment or
30 military installation;

31 (e) Recording the proceedings of any meeting required to

1 be open by the Open Meetings Act, as amended;

2 (f) Recording or listening with the aid of any device to
3 incoming telephone calls of phone lines publicly listed or
4 advertised as consumer "hotlines" by manufacturers or
5 retailers of food and drug products. Such recordings must be
6 destroyed, erased or turned over to local law enforcement
7 authorities within 24 hours from the time of such recording
8 and shall not be otherwise disseminated. Failure on the part
9 of the individual or business operating any such recording or
10 listening device to comply with the requirements of this
11 subsection shall eliminate any civil or criminal immunity
12 conferred upon that individual or business by the operation
13 of this Section;

14 (g) With prior notification to the State's Attorney of
15 the county in which it is to occur, recording or listening
16 with the aid of any device to any conversation where a law
17 enforcement officer, or any person acting at the direction of
18 law enforcement, is a party to the conversation and has
19 consented to it being intercepted or recorded under
20 circumstances where the use of the device is necessary for
21 the protection of the law enforcement officer or any person
22 acting at the direction of law enforcement, in the course of
23 an investigation of a forcible felony, a felony violation of
24 the Illinois Controlled Substances Act, a felony violation of
25 the Cannabis Control Act, or any "streetgang related" or
26 "gang-related" felony as those terms are defined in the
27 Illinois Streetgang Terrorism Omnibus Prevention Act. Any
28 recording or evidence derived as the result of this exemption
29 shall be inadmissible in any proceeding, criminal, civil or
30 administrative, except (i) where a party to the conversation
31 suffers great bodily injury or is killed during such
32 conversation, or (ii) when used as direct impeachment of a
33 witness concerning matters contained in the interception or
34 recording. The Director of the Department of State Police

1 shall issue regulations as are necessary concerning the use
2 of devices, retention of tape recordings, and reports
3 regarding their use;

4 (g-5) With approval of the State's Attorney of the
5 county in which it is to occur, recording or listening with
6 the aid of any device to any conversation where a law
7 enforcement officer, or any person acting at the direction of
8 law enforcement, is a party to the conversation and has
9 consented to it being intercepted or recorded in the course
10 of an investigation of any offense defined in Article 29D of
11 this Code. In all such cases, an application for an order
12 approving the previous or continuing use of an eavesdropping
13 device must be made within 48 hours of the commencement of
14 such use. In the absence of such an order, or upon its
15 denial, any continuing use shall immediately terminate. The
16 Director of State Police shall issue rules as are necessary
17 concerning the use of devices, retention of tape recordings,
18 and reports regarding their use.

19 Any recording or evidence obtained or derived in the
20 course of an investigation of any offense defined in Article
21 29D of this Code shall, upon motion of the State's Attorney
22 or Attorney General prosecuting any violation of Article 29D,
23 be reviewed in camera with notice to all parties present by
24 the court presiding over the criminal case, and, if ruled by
25 the court to be relevant and otherwise admissible, it shall
26 be admissible at the trial of the criminal case.

27 This subsection (g-5) is inoperative on and after January
28 1, 2005. No conversations recorded or monitored pursuant to
29 this subsection (g-5) shall be inadmissible in a court of law
30 by virtue of the repeal of this subsection (g-5) on January
31 1, 2005_i;

32 (h) Recordings made simultaneously with a video
33 recording of an oral conversation between a peace officer,
34 who has identified his or her office, and a person stopped

1 for an investigation of an offense under the Illinois Vehicle
2 Code;

3 (i) Recording of a conversation made by or at the
4 request of a person, not a law enforcement officer or agent
5 of a law enforcement officer, who is a party to the
6 conversation, under reasonable suspicion that another party
7 to the conversation is committing, is about to commit, or has
8 committed a criminal offense against the person or a member
9 of his or her immediate household, and there is reason to
10 believe that evidence of the criminal offense may be obtained
11 by the recording; and

12 (j) The use of a telephone monitoring device by either
13 (1) a corporation or other business entity engaged in
14 marketing or opinion research or (2) a corporation or other
15 business entity engaged in telephone solicitation, as defined
16 in this subsection, to record or listen to oral telephone
17 solicitation conversations or marketing or opinion research
18 conversations by an employee of the corporation or other
19 business entity when:

20 (i) the monitoring is used for the purpose of
21 service quality control of marketing or opinion research
22 or telephone solicitation, the education or training of
23 employees or contractors engaged in marketing or opinion
24 research or telephone solicitation, or internal research
25 related to marketing or opinion research or telephone
26 solicitation; and

27 (ii) the monitoring is used with the consent of at
28 least one person who is an active party to the marketing
29 or opinion research conversation or telephone
30 solicitation conversation being monitored.

31 No communication or conversation or any part, portion, or
32 aspect of the communication or conversation made, acquired,
33 or obtained, directly or indirectly, under this exemption
34 (j), may be, directly or indirectly, furnished to any law

1 enforcement officer, agency, or official for any purpose or
2 used in any inquiry or investigation, or used, directly or
3 indirectly, in any administrative, judicial, or other
4 proceeding, or divulged to any third party.

5 When recording or listening authorized by this subsection
6 (j) on telephone lines used for marketing or opinion research
7 or telephone solicitation purposes results in recording or
8 listening to a conversation that does not relate to marketing
9 or opinion research or telephone solicitation; the person
10 recording or listening shall, immediately upon determining
11 that the conversation does not relate to marketing or opinion
12 research or telephone solicitation, terminate the recording
13 or listening and destroy any such recording as soon as is
14 practicable.

15 Business entities that use a telephone monitoring or
16 telephone recording system pursuant to this exemption (j)
17 shall provide current and prospective employees with notice
18 that the monitoring or recordings may occur during the course
19 of their employment. The notice shall include prominent
20 signage notification within the workplace.

21 Business entities that use a telephone monitoring or
22 telephone recording system pursuant to this exemption (j)
23 shall provide their employees or agents with access to
24 personal-only telephone lines which may be pay telephones,
25 that are not subject to telephone monitoring or telephone
26 recording.

27 For the purposes of this subsection (j), "telephone
28 solicitation" means a communication through the use of a
29 telephone by live operators:

- 30 (i) soliciting the sale of goods or services;
31 (ii) receiving orders for the sale of goods or
32 services;
33 (iii) assisting in the use of goods or services; or
34 (iv) engaging in the solicitation, administration,

1 or collection of bank or retail credit accounts.

2 For the purposes of this subsection (j), "marketing or
3 opinion research" means a marketing or opinion research
4 interview conducted by a live telephone interviewer engaged
5 by a corporation or other business entity whose principal
6 business is the design, conduct, and analysis of polls and
7 surveys measuring the opinions, attitudes, and responses of
8 respondents toward products and services, or social or
9 political issues, or both; and-

10 (k) With approval of the State's Attorney of the county
11 in which it is to occur, recording or listening with the aid
12 of any device to any conversation where a law enforcement
13 officer, or any person acting at the direction of a law
14 enforcement officer, is a party to the conversation and has
15 consented to it being intercepted or recorded in the course
16 of an investigation of a felony violation of the Illinois
17 Controlled Substances Act or a felony violation of the
18 Cannabis Control Act. In all such cases, an application for
19 an order approving the previous use of an eavesdropping
20 device must be made within 72 hours of the commencement of
21 such use. In the absence of such an order, or upon its
22 denial, any recording or evidence derived as the result of
23 this exemption shall be inadmissible in any proceeding,
24 criminal, civil, or administrative, except when used as
25 direct impeachment of a witness concerning matters contained
26 in the interception or recording. The Director of State
27 Police shall issue rules as are necessary concerning the use
28 of devices, retention of tape recordings, and reports
29 regarding their use.

30 (Source: P.A. 91-357, eff. 7-29-99; 92-854, eff. 12-5-02.)

31 Section 10. The Code of Criminal Procedure of 1963 is
32 amended by adding Section 108A-12 as follows:

1 (725 ILCS 5/108A-12 new)

2 Sec. 108A-12. Undercover narcotic investigation exception
3 to procedures.

4 (a) With prior notification to and verbal approval of the
5 State's Attorney of the county in which the conversation is
6 anticipated to occur or his or her designee, recording or
7 listening with the aid of an eavesdropping device to a
8 conversation in which a law enforcement officer, or any
9 person acting at the direction of a law enforcement officer,
10 is a party to an undercover conversation and has consented to
11 the conversation being intercepted or recorded in the course
12 of an investigation of a felony violation of the Illinois
13 Controlled Substances Act or a felony violation of the
14 Cannabis Control Act. The use of an eavesdropping device
15 under this Section shall be deemed necessary for the
16 protection of the law enforcement officer or person acting at
17 the direction of the law enforcement officer.

18 (b) In all such cases, any recording or evidence derived
19 as the result of this exemption shall be inadmissible in any
20 proceeding, criminal, civil, or administrative, unless an
21 application for an order approving the previous or continuing
22 use of an eavesdropping device is made within 72 hours of the
23 commencement of such use and the order is approved. In the
24 absence of an order approving use of the device, any
25 continuing use shall immediately terminate. In order to
26 approve such undercover use of an eavesdropping device during
27 an investigation of a felony violation of the Illinois
28 Controlled Substances Act or a felony violation of the
29 Cannabis Control Act, the judge must make a determination
30 that: (1) a law enforcement officer, or any person acting at
31 the direction of a law enforcement officer has consented to
32 an undercover conversation concerning a felony violation of
33 the Illinois Controlled Substances Act or a felony violation
34 of the Cannabis Control Act being intercepted or recorded and

1 (2) the judge would have granted an order had the information
2 been before the court prior to the use of the eavesdropping
3 device. The manner and form of the application for such order
4 shall be determined by the Attorney General.

5 (c) In the event that an application for approval under
6 this Section is denied the contents of the conversation
7 overheard or recorded shall be treated as having been
8 obtained in violation of this Article.