



Sen. William R. Haine

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1 AMENDMENT TO SENATE BILL 97

2 AMENDMENT NO. _____. Amend Senate Bill 97 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Criminal Code of 1961 is amended by
5 changing Sections 14-1 and 14-3 as follows:

6 (720 ILCS 5/14-1) (from Ch. 38, par. 14-1)

7 Sec. 14-1. Definition.

8 (a) Eavesdropping device.

9 An eavesdropping device is any device capable of being used
10 to hear or record oral conversation or intercept, retain, or
11 transcribe electronic communications whether such conversation
12 or electronic communication is conducted in person, by
13 telephone, or by any other means; Provided, however, that this
14 definition shall not include devices used for the restoration
15 of the deaf or hard-of-hearing to normal or partial hearing.

16 (b) Eavesdropper.

1 An eavesdropper is any person, including law enforcement
2 officers, who is a principal, as defined in this Article, or
3 who operates or participates in the operation of any
4 eavesdropping device contrary to the provisions of this
5 Article.

6 (c) Principal.

7 A principal is any person who:

8 (1) Knowingly employs another who illegally uses an
9 eavesdropping device in the course of such employment; or

10 (2) Knowingly derives any benefit or information from
11 the illegal use of an eavesdropping device by another; or

12 (3) Directs another to use an eavesdropping device
13 illegally on his behalf.

14 (d) Conversation.

15 For the purposes of this Article, the term conversation
16 means any oral communication between 2 or more persons
17 regardless of whether one or more of the parties intended their
18 communication to be of a private nature under circumstances
19 justifying that expectation.

20 (e) Electronic communication.

21 For purposes of this Article, the term electronic
22 communication means any transfer of signs, signals, writing,
23 images, sounds, data, or intelligence of any nature transmitted
24 in whole or part by a wire, radio, pager, computer,
25 electromagnetic, photo electronic or photo optical system,
26 where the sending and receiving parties intend the electronic

1 communication to be private and the interception, recording, or
2 transcription of the electronic communication is accomplished
3 by a device in a surreptitious manner contrary to the
4 provisions of this Article. Electronic communication does not
5 include any communication from a tracking device.

6 (f) Bait car.

7 For purposes of this Article, the term bait car means any
8 motor vehicle that is not occupied by a law enforcement officer
9 and is used by a law enforcement agency to deter, detect,
10 identify, and assist in the apprehension of an auto theft
11 suspect in the act of stealing a motor vehicle.

12 (Source: P.A. 91-657, eff. 1-1-00.)

13 (720 ILCS 5/14-3) (from Ch. 38, par. 14-3)

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

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

18 (b) Hearing conversation when heard by employees of any
19 common carrier by wire incidental to the normal course of their
20 employment in the operation, maintenance or repair of the
21 equipment of such common carrier by wire so long as no
22 information obtained thereby is used or divulged by the hearer;

23 (c) Any broadcast by radio, television or otherwise whether
24 it be a broadcast or recorded for the purpose of later
25 broadcasts of any function where the public is in attendance

1 and the conversations are overheard incidental to the main
2 purpose for which such broadcasts are then being made;

3 (d) Recording or listening with the aid of any device to
4 any emergency communication made in the normal course of
5 operations by any federal, state or local law enforcement
6 agency or institutions dealing in emergency services,
7 including, but not limited to, hospitals, clinics, ambulance
8 services, fire fighting agencies, any public utility,
9 emergency repair facility, civilian defense establishment or
10 military installation;

11 (e) Recording the proceedings of any meeting required to be
12 open by the Open Meetings Act, as amended;

13 (f) Recording or listening with the aid of any device to
14 incoming telephone calls of phone lines publicly listed or
15 advertised as consumer "hotlines" by manufacturers or
16 retailers of food and drug products. Such recordings must be
17 destroyed, erased or turned over to local law enforcement
18 authorities within 24 hours from the time of such recording and
19 shall not be otherwise disseminated. Failure on the part of the
20 individual or business operating any such recording or
21 listening device to comply with the requirements of this
22 subsection shall eliminate any civil or criminal immunity
23 conferred upon that individual or business by the operation of
24 this Section;

25 (g) With prior notification to the State's Attorney of the
26 county in which it is to occur, recording or listening with the

1 aid of any device to any conversation where a law enforcement
2 officer, or any person acting at the direction of law
3 enforcement, is a party to the conversation and has consented
4 to it being intercepted or recorded under circumstances where
5 the use of the device is necessary for the protection of the
6 law enforcement officer or any person acting at the direction
7 of law enforcement, in the course of an investigation of a
8 forcible felony, a felony violation of the Illinois Controlled
9 Substances Act, a felony violation of the Cannabis Control Act,
10 a felony violation of the Methamphetamine Control and Community
11 Protection Act, or any "streetgang related" or "gang-related"
12 felony as those terms are defined in the Illinois Streetgang
13 Terrorism Omnibus Prevention Act. Any recording or evidence
14 derived as the result of this exemption shall be inadmissible
15 in any proceeding, criminal, civil or administrative, except
16 (i) where a party to the conversation suffers great bodily
17 injury or is killed during such conversation, or (ii) when used
18 as direct impeachment of a witness concerning matters contained
19 in the interception or recording. The Director of the
20 Department of State Police shall issue regulations as are
21 necessary concerning the use of devices, retention of tape
22 recordings, and reports regarding their use;

23 (g-5) With approval of the State's Attorney of the county
24 in which it is to occur, recording or listening with the aid of
25 any device to any conversation where a law enforcement officer,
26 or any person acting at the direction of law enforcement, is a

1 party to the conversation and has consented to it being
2 intercepted or recorded in the course of an investigation of
3 any offense defined in Article 29D of this Code. In all such
4 cases, an application for an order approving the previous or
5 continuing use of an eavesdropping device must be made within
6 48 hours of the commencement of such use. In the absence of
7 such an order, or upon its denial, any continuing use shall
8 immediately terminate. The Director of State Police shall issue
9 rules as are necessary concerning the use of devices, retention
10 of tape recordings, and reports regarding their use.

11 Any recording or evidence obtained or derived in the course
12 of an investigation of any offense defined in Article 29D of
13 this Code shall, upon motion of the State's Attorney or
14 Attorney General prosecuting any violation of Article 29D, be
15 reviewed in camera with notice to all parties present by the
16 court presiding over the criminal case, and, if ruled by the
17 court to be relevant and otherwise admissible, it shall be
18 admissible at the trial of the criminal case.

19 This subsection (g-5) is inoperative on and after January
20 1, 2005. No conversations recorded or monitored pursuant to
21 this subsection (g-5) shall be inadmissible in a court of law
22 by virtue of the repeal of this subsection (g-5) on January 1,
23 2005;

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

1 investigation of an offense under the Illinois Vehicle Code;

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

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

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

25 (ii) the monitoring is used with the consent of at
26 least one person who is an active party to the marketing or

1 opinion research conversation or telephone solicitation
2 conversation being monitored.

3 No communication or conversation or any part, portion, or
4 aspect of the communication or conversation made, acquired, or
5 obtained, directly or indirectly, under this exemption (j), may
6 be, directly or indirectly, furnished to any law enforcement
7 officer, agency, or official for any purpose or used in any
8 inquiry or investigation, or used, directly or indirectly, in
9 any administrative, judicial, or other proceeding, or divulged
10 to any third party.

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

21 Business entities that use a telephone monitoring or
22 telephone recording system pursuant to this exemption (j) shall
23 provide current and prospective employees with notice that the
24 monitoring or recordings may occur during the course of their
25 employment. The notice shall include prominent signage
26 notification within the workplace.

1 Business entities that use a telephone monitoring or
2 telephone recording system pursuant to this exemption (j) shall
3 provide their employees or agents with access to personal-only
4 telephone lines which may be pay telephones, that are not
5 subject to telephone monitoring or telephone recording.

6 For the purposes of this subsection (j), "telephone
7 solicitation" means a communication through the use of a
8 telephone by live operators:

9 (i) soliciting the sale of goods or services;

10 (ii) receiving orders for the sale of goods or
11 services;

12 (iii) assisting in the use of goods or services; or

13 (iv) engaging in the solicitation, administration, or
14 collection of bank or retail credit accounts.

15 For the purposes of this subsection (j), "marketing or
16 opinion research" means a marketing or opinion research
17 interview conducted by a live telephone interviewer engaged by
18 a corporation or other business entity whose principal business
19 is the design, conduct, and analysis of polls and surveys
20 measuring the opinions, attitudes, and responses of
21 respondents toward products and services, or social or
22 political issues, or both;

23 (k) Electronic recordings, including but not limited to, a
24 motion picture, videotape, digital, or other visual or audio
25 recording, made of a custodial interrogation of an individual
26 at a police station or other place of detention by a law

1 enforcement officer under Section 5-401.5 of the Juvenile Court
2 Act of 1987 or Section 103-2.1 of the Code of Criminal
3 Procedure of 1963; ~~and~~

4 (l) Recording the interview or statement of any person when
5 the person knows that the interview is being conducted by a law
6 enforcement officer or prosecutor and the interview takes place
7 at a police station that is currently participating in the
8 Custodial Interview Pilot Program established under the
9 Illinois Criminal Justice Information Act; ~~and-~~

10 (m) Recording or listening to an audio transmission from a
11 microphone placed by a person under the authority of a law
12 enforcement agency inside a bait car surveillance vehicle while
13 simultaneously capturing a photographic or video image.

14 (Source: P.A. 93-206, eff. 7-18-03; 93-517, eff. 8-6-03;
15 93-605, eff. 11-19-03; 94-556, eff. 9-11-05.)".