
A BILL FOR AN ACT

RELATING TO ELECTRONIC EAVESDROPPING.

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

1 SECTION 1. Section 711-1111, Hawaii Revised Statutes, is
2 amended by amending subsection (1) to read as follows:

3 "(1) A person commits the offense of violation of privacy
4 in the second degree if, except in the execution of a public
5 duty or as authorized by law, the person intentionally:

6 (a) Trespasses on property for the purpose of subjecting
7 anyone to eavesdropping or other surveillance in a
8 private place;

9 (b) Peers or peeps into a window or other opening of a
10 dwelling or other structure adapted for sojourn or
11 overnight accommodations for the purpose of spying on
12 the occupant thereof or invading the privacy of
13 another person with a lewd or unlawful purpose, under
14 circumstances in which a reasonable person in the
15 dwelling or other structure would not expect to be
16 observed;



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- 1 (c) Trespasses on property for the sexual gratification of
2 the actor;
- 3 (d) Installs or uses, or both, in any private place,
4 without consent of the person or persons entitled to
5 privacy therein, any means or device for observing,
6 recording, amplifying, or broadcasting sounds or
7 events in that place other than another person in a
8 stage of undress or sexual activity; provided that
9 this paragraph shall not prohibit a person from making
10 a video or audio recording or taking a photograph of a
11 law enforcement officer while the officer is in the
12 performance of the officer's duties in a public place
13 or under circumstances in which the officer has no
14 reasonable expectation of privacy and the person is
15 not interfering with the officer's ability to maintain
16 safety and control, secure crime scenes and accident
17 sites, protect the integrity and confidentiality of
18 investigations, and protect the public safety and
19 order;
- 20 (e) Installs or uses outside a private place any device
21 for hearing, recording, amplifying, or broadcasting



1 sounds originating in that place which would not
2 ordinarily be audible or comprehensible outside,
3 without the consent of the person or persons entitled
4 to privacy therein;

5 (f) Covertly records or broadcasts an image of another
6 person's intimate area underneath clothing, by use of
7 any device, and that image is taken while that person
8 is in a public place and without that person's
9 consent;

10 (g) Intercepts, without the consent of the sender [~~or~~] and
11 the receiver, a message or photographic image by
12 telephone, telegraph, letter, electronic transmission,
13 or other means of communicating privately; but this
14 paragraph does not apply to:

15 (i) Overhearing of messages through a regularly
16 installed instrument on a telephone party line or
17 an extension; or

18 (ii) Interception by the telephone company, electronic
19 mail account provider, or telephone or electronic
20 mail subscriber incident to enforcement of



- 1 regulations limiting use of the facilities or
2 incident to other operation and use;
- 3 (h) Divulges, without the consent of the sender [~~or~~] and
4 the receiver, the existence or contents of any message
5 or photographic image by telephone, telegraph, letter,
6 electronic transmission, or other means of
7 communicating privately, if the accused knows that the
8 message or photographic image was unlawfully
9 intercepted or if the accused learned of the message
10 or photographic image in the course of employment with
11 an agency engaged in transmitting it; or
- 12 (i) Knowingly possesses materials created under
13 circumstances prohibited in section 711-1110.9."

14 SECTION 2. Section 803-42, Hawaii Revised Statutes, is
15 amended by amending subsection (b) to read as follows:

- 16 "(b) (1) It shall not be unlawful under this part for an
17 operator of a switchboard, or an officer, employee, or
18 agent of a provider of wire or electronic
19 communication services, whose facilities are used in
20 the transmission of a wire communication, to
21 intercept, disclose, or use that communication in the



1 normal course of the officer's, employee's, or agent's
2 employment while engaged in any activity that is
3 either a necessary incident to the rendition of the
4 officer's, employee's, or agent's service or to the
5 protection of the rights or property of the provider
6 of that service; provided that providers of wire
7 communication service to the public shall not utilize
8 service observing or random monitoring except for
9 mechanical or service quality control checks.

10 (2) It shall not be unlawful under this part for an
11 officer, employee, or agent of the Federal
12 Communications Commission, in the normal course of the
13 officer's, employee's, or agent's employment and in
14 discharge of the monitoring responsibilities exercised
15 by the Commission in the enforcement of title 47,
16 chapter 5, of the United States Code, to intercept a
17 wire or electronic communication, or oral
18 communication transmitted by radio, or to disclose or
19 use the information thereby obtained.

20 (3) ~~[(A) It shall not be unlawful under this part for a~~
21 ~~person not acting under color of law to intercept~~



1 ~~a wire, oral, or electronic communication when~~
2 ~~the person is a party to the communication or~~
3 ~~when one of the parties to the communication has~~
4 ~~given prior consent to the interception unless~~
5 ~~the communication is intercepted for the purpose~~
6 ~~of committing any criminal or tortious act in~~
7 ~~violation of the Constitution or laws of the~~
8 ~~United States or of this State.~~

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

20 [~~(4)~~] ~~It shall not be unlawful under this part for a person~~
21 ~~acting under color of law to intercept a wire, oral,~~



1 ~~or electronic communication, when the person is a~~
2 ~~party to the communication or one of the parties to~~
3 ~~the communication has given prior consent to the~~
4 ~~interception.~~

5 ~~(5)]~~ (4) It shall not be unlawful under this part for any
6 person to intercept a wire, oral, or electronic
7 communication, or to disclose or use the contents of
8 an intercepted communication, when such interception
9 is pursuant to a valid court order under this chapter
10 or otherwise authorized by law; provided that a
11 communications provider with knowledge of an
12 interception of communications accomplished through
13 the use of the communications provider's facilities
14 shall report the fact and duration of the interception
15 to the administrative director of the courts of this
16 State.

17 ~~[(6)]~~ (5) Notwithstanding any other law to the contrary,
18 providers of wire or electronic communication service,
19 their officers, employees, and agents, landlords,
20 custodians, or other persons, are authorized to
21 provide information, facilities, or technical



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

8 (A) A court order directing such assistance signed by
9 the designated judge; or

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



1 the information, facilities, or technical
2 assistance required.

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

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



1 terms of a court order or certification under
2 this part.

3 ~~(7)~~ (6) It shall not be unlawful under this part for any
4 person:

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

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

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

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

20 (iii) By a station operating on an authorized
21 frequency within the bands allocated to the



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



1 of the system, if the communication is not
2 scrambled or encrypted.

3 [~~(8)~~] (7) It shall not be unlawful under this part:

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

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

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



1 service from abuse of service or unlawful use of
2 service.

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

6 ~~[(+9)]~~ (8) Good faith reliance upon a court order shall be a
7 complete defense to any criminal prosecution for
8 illegal interception, disclosure, or use.

9 ~~[(+10)]~~ (9) Except as provided in this section, a person or
10 entity providing an electronic communication service
11 to the public shall not intentionally divulge the
12 contents of any communication (other than a
13 communication to the person or entity or an agent
14 thereof) while in transmission on that service to any
15 person or entity other than an addressee or intended
16 recipient of the communication or an agent of the
17 addressee or intended recipient.

18 ~~[(+11)]~~ (10) A person or entity providing electronic
19 communication service to the public may divulge the
20 contents of any such communication:



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



1 the existence of the emergency, that the specific
2 disclosure is required, and sets forth the period
3 of time during which the disclosure of the
4 information is authorized and specifies the
5 information required.

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

11 SECTION 3. This Act does not affect rights and duties that
12 matured, penalties that were incurred, and proceedings that were
13 begun before its effective date.

14 SECTION 4. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 5. This Act shall take effect upon its approval.

17

INTRODUCED BY: _____



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Report Title:

Electronic Eavesdropping; Prohibition

Description:

Prohibits the interception or use of certain communications unless both parties consent.

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

