

ASSEMBLY, No. 3616

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED MARCH 5, 2020

Sponsored by:

Assemblywoman ANNETTE QUIJANO

District 20 (Union)

SYNOPSIS

Requires parties to certain telephone communications to give notice of intention to record communications in order for communications to be lawfully recorded; failure to give notice violates “New Jersey Wiretapping and Electronic Surveillance Control Act.”

CURRENT VERSION OF TEXT

As introduced.



A3616 QUIJANO

2

1 AN ACT concerning the interception of certain wire
2 communications, and amending P.L.1968, c.409.

3

4 BE IT ENACTED by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 4 of P.L.1968, c.409 (C.2A:156A-4) is amended to
8 read as follows:

9 4. It shall not be unlawful under this act for:

10 a. An operator of a switchboard, or an officer, agent or
11 employee of a provider of wire or electronic communication
12 service, whose facilities are used in the transmission of a wire or
13 electronic communication, to intercept, disclose or use that
14 communication in the normal course of his employment while
15 engaged in any activity which is a necessary incident to the
16 rendition of his service or to the protection of the rights or property
17 of the provider of that service. No provider of wire or electronic
18 communication service shall utilize service observing or random
19 monitoring except for mechanical or service quality control checks;

20 b. Any investigative or law enforcement officer to intercept a
21 wire, electronic or oral communication, where such officer is a
22 party to the communication or where another officer who is a party
23 to the communication requests or requires him to make such
24 interception;

25 c. Any person acting at the direction of an investigative or law
26 enforcement officer to intercept a wire, electronic or oral
27 communication, where such person is a party to the communication
28 or one of the parties to the communication has given prior consent
29 to such interception; provided, however, that no such interception
30 shall be made without the prior approval of the Attorney General or
31 his designee or a county prosecutor or his designee;

32 d. A person not acting under color of law to intercept: (1) a
33 wire **[,]** communication except as described in paragraph (2) of this
34 subsection, or an electronic or oral communication, where such
35 person is a party to the communication or one of the parties to the
36 communication has given prior consent to such interception, unless
37 such communication is intercepted or used for the purpose of
38 committing any criminal or tortious act in violation of the
39 Constitution or laws of the United States or of this State or for the
40 purpose of committing any other injurious act; or

41 (2) a wire communication conducted by telephone, including a
42 cellular telephone, where such person is a party to the
43 communication and, at the beginning of the communication, notifies
44 all other parties to the communication that the communication is
45 being intercepted, and this notification also informs those parties

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 that they are each authorized to intercept the communication
2 without giving any further notice to do so, unless such
3 communication is intercepted or used for the purpose of committing
4 any criminal or tortious act in violation of the Constitution or laws
5 of the United States or of this State or for the purpose of
6 committing any other injurious act. However, the wire
7 communication described in this paragraph may be intercepted by a
8 person not acting under color of law, without any prior notice to
9 another party, when the communication conveys a threat of a crime
10 of violence to cause death or bodily harm against another, or is
11 otherwise threatening, intimidating, or harassing in nature, or the
12 person has a reasonable suspicion that a party to the communication
13 is committing, is about to commit, or has committed a crime,
14 disorderly persons or petty disorderly persons offense, or a violation
15 of any ordinance or regulation.

16 The fact that **【such】** a person is the subscriber to a particular
17 telephone does not constitute consent effective to authorize
18 interception of communications among parties not including such
19 person on that telephone.

20 Any person who unlawfully intercepts or uses such
21 communication as provided in **【this】** paragraph (1) or (2) of this
22 subsection shall be subject to the civil liability established in
23 section 24 of P.L.1968, c.409 (C.2A:156A-24), in addition to any
24 other criminal or civil liability imposed by law;

25 e. Any person to intercept or access an electronic
26 communication made through an electronic communication system
27 that is configured so that such electronic communication is readily
28 accessible to the general public;

29 f. Any person to intercept any radio communication which is
30 transmitted:

31 (1) by any station for the use of the general public, or that
32 relates to ships, aircraft, vehicles, or persons in distress;

33 (2) by any governmental, law enforcement, civil defense, private
34 land mobile, or public safety communication system, including
35 police and fire, readily accessible to the general public;

36 (3) by a station operating on an authorized frequency within the
37 bands allocated to the amateur, citizens band, or general mobile
38 radio services; or

39 (4) by any marine or aeronautical communications system;

40 g. Any person to engage in any conduct which:

41 (1) is prohibited by section 633 of the Communications Act of
42 1934, codified as 47 U.S.C. s.553; or

43 (2) is excepted from the application of section 705(a) of the
44 Communications Act of 1934 by section 705(b) of that Act,
45 codified as 47 U.S.C. s.605(a) and (b);

46 h. Any person to intercept any wire or electronic
47 communication the transmission of which is causing harmful
48 interference to any lawfully operating station or consumer

1 electronic equipment, to the extent necessary to identify the source
2 of such interference; or for other users of the same frequency to
3 intercept any radio communication made through a system that
4 utilizes frequencies monitored by individuals engaged in the
5 provision or the use of such system, if such communication is not
6 scrambled or encrypted; or

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

13 (cf: P.L.1999, c.151, s.3)

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15 2. This act shall take effect on the first day of the third month
16 next following enactment.

17 18 19 STATEMENT

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21 This bill would require all private parties, i.e., all parties “not
22 acting under color of law” as public officials or employees in
23 carrying out their governmental responsibilities, to give notice of
24 their intention to record a telephone communication to which they
25 are a party, whether conducted by landline or cellular network, in
26 order to engage in the lawful recording of that communication.
27 This notice would be required to occur at the beginning of the
28 communication, and would also be required to inform the other
29 parties to the communication that they are each authorized to record
30 the communication without giving any further notice to do so.
31 Recording any such communication, without giving proper notice,
32 would represent an illegal act of wiretapping in violation of the
33 “New Jersey Wiretapping and Electronic Surveillance Control Act,”
34 P.L.1968, c.409 (C.2A:156A-1 et seq.).

35 Such illegal wiretapping would be graded, in accordance with
36 existing law, as a crime of the third degree. See P.L.1968, c.409,
37 s.3 (C.2A:156A-3). A crime of the third degree is punishable by a
38 term of imprisonment of three to five years, a fine of up to \$15,000,
39 or both. An aggrieved person illegally recorded would also be
40 entitled to recover, through a civil lawsuit: actual damages, but not
41 less than liquidated damages computed at \$100 per day for each day
42 of violation, or \$1,000, whichever is higher; punitive damages; and
43 attorney’s fee and other litigation costs. See P.L.1968, c.409, s.24
44 (C.2A:156A-24).

45 The bill’s notice requirement for recording telephone
46 communications would not apply to any communication conveying
47 a threat of a crime of violence to cause death or bodily harm against
48 another, is otherwise threatening, intimidating, or harassing in

1 nature, or is such that the person making the recording has a
2 reasonable suspicion that a party to the communication is
3 committing, is about to commit, or has committed a crime,
4 disorderly persons or petty disorderly persons offense, or a violation
5 of any ordinance or regulation. In these instances, the person
6 making the communication could be recorded without his or her
7 knowledge, and the recording party would not be engaged in an
8 illegal wiretapping activity.