

SENATE, No. 2782

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED AUGUST 3, 2020

Sponsored by:

Senator RICHARD J. CODEY

District 27 (Essex and Morris)

Senator BOB SMITH

District 17 (Middlesex and Somerset)

SYNOPSIS

Makes it unlawful for a private citizen to record a communication unless all parties to the communication have previously consented.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning wiretapping and amending P.L.1968, c.409.

2

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

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

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

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

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

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

31 d. A person not acting under color of law to intercept a wire,
32 electronic or oral communication, where **[such person is a party to**
33 **the communication or one]** all of the parties to the communication
34 **[has]** have given prior consent to such interception unless such
35 communication is intercepted or used for the purpose of committing
36 any criminal or tortious act in violation of the Constitution or laws
37 of the United States or of this State or for the purpose of
38 committing any other injurious act. The fact that such person is the
39 subscriber to a particular telephone does not constitute consent
40 effective to authorize interception of communications among parties
41 not including such person on that telephone. Any person who
42 unlawfully intercepts or uses such communication as provided in
43 this paragraph shall be subject to the civil liability established in
44 section 24 of P.L.1968, c.409 (C.2A:156A-24), in addition to any
45 other criminal or civil liability imposed by law;

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 e. Any person to intercept or access an electronic
2 communication made through an electronic communication system
3 that is configured so that such electronic communication is readily
4 accessible to the general public;
- 5 f. Any person to intercept any radio communication which is
6 transmitted:
- 7 (1) by any station for the use of the general public, or that
8 relates to ships, aircraft, vehicles, or persons in distress;
- 9 (2) by any governmental, law enforcement, civil defense, private
10 land mobile, or public safety communication system, including
11 police and fire, readily accessible to the general public;
- 12 (3) by a station operating on an authorized frequency within the
13 bands allocated to the amateur, citizens band, or general mobile
14 radio services; or
- 15 (4) by any marine or aeronautical communications system;
- 16 g. Any person to engage in any conduct which:
- 17 (1) is prohibited by section 633 of the Communications Act of
18 1934 (47 U.S.C. s.553); or
- 19 (2) is excepted from the application of section 705(a) of the
20 Communications Act of 1934 (47 U.S.C. s.605(a)) by section
21 705(b) of that Act (47 U.S.C. s.605(b));
- 22 h. Any person to intercept any wire or electronic
23 communication the transmission of which is causing harmful
24 interference to any lawfully operating station or consumer
25 electronic equipment, to the extent necessary to identify the source
26 of such interference; or for other users of the same frequency to
27 intercept any radio communication made through a system that
28 utilizes frequencies monitored by individuals engaged in the
29 provision or the use of such system, if such communication is not
30 scrambled or encrypted; or
- 31 i. A provider of electronic communication service to record the
32 fact that a wire or electronic communication was initiated or
33 completed in order to protect such provider, another provider
34 furnishing service toward the completion of the wire or electronic
35 communication, or a user of that service, from fraudulent, unlawful
36 or abusive use of such service.
- 37 (cf: P.L.1999, c.151, s.3)

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39 2. This act shall take effect immediately.
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42 STATEMENT
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44 This bill would make it unlawful for a private citizen to record a
45 communication unless all parties have previously consented.

46 The "New Jersey Wiretapping and Electronic Surveillance
47 Control Act," P.L.1968, c.409 (C.2A:156A-1 et seq.) (the Wiretap
48 Act) governs the recording or other acquisition of the contents of

1 any “wire, electronic or oral communication.” This includes
2 communication conducted in person, by telephone, fax, pager, e-
3 mail, or over the Internet. Currently, a private citizen violates the
4 Wiretap Act if he records or acquires the contents of a
5 communication without the prior consent of one of the parties to the
6 communication. (It is not a violation of the act for a private citizen
7 to record or acquire the contents of a communication if he is a party
8 to the communication or if one of the parties has previously
9 consented.) Under the bill, recording or acquiring the contents of a
10 communication would be lawful only if *all* parties to the
11 communication have previously consented.

12 The intent of the bill is to prevent persons from being recorded
13 without their knowledge. In the view of the sponsor, it is
14 particularly important to protect individuals’ privacy in light of
15 advancing technology. For example, false information about an
16 individual can spread quickly if a wrongdoer fraudulently alters a
17 legitimate recording and posts the altered version online.