

# **WEST VIRGINIA LEGISLATURE**

**2016 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 252**

BY SENATOR TRUMP

[Originating in the Committee on the Judiciary;

reported on February 20, 2016.]



1 A BILL to amend and reenact §62-1D-2 of the Code of West Virginia, 1931, as amended, relating  
2 to Wiretapping and Electronic Surveillance Act; excluding from protection under the act  
3 oral communications uttered in a child care center where there are notices posted  
4 informing persons that their oral communications are being intercepted; and defining "child  
5 care center".

*Be it enacted by the Legislature of West Virginia:*

1 That §62-1D-2 of the Code of West Virginia, 1931, as amended, be amended and  
2 reenacted to read as follows:

## **ARTICLE 1D. WIRETAPPING AND ELECTRONIC SURVEILLANCE ACT.**

### **§62-1D-2. Definitions.**

1 As used in this article, unless the context in which used clearly requires otherwise, the  
2 following terms have the meanings indicated:

3 (a) "Aggrieved person" means a person who was a party to any intercepted wire, oral or  
4 electronic communication or a person against whom the interception was directed.

5 (p) "Aural transfer" means a transfer containing the human voice at any point between and  
6 including the point of origin and the point of reception.

7 "Child care center" means a facility maintained by the state or any county or municipality  
8 thereof, or any agency or facility maintained by an individual, firm, corporation, association or  
9 organization, public or private, for the care of children in any setting.

10 (b) "Communications common carrier" means any telegraph company or telephone  
11 company and any radio common carrier.

12 (e) "Contents", when used with respect to any wire, oral or electronic communication,  
13 includes any information concerning the substance, purport or meaning of that communication.

14 (f) "Designated judge" means a circuit court judge designated by the Chief Justice of the  
15 West Virginia Supreme Court of Appeals to hear and rule on applications for the interception of  
16 wire, oral or electronic communications.

17        (f) "Electronic communication" means any transfer of signs, signals, writing, images,  
18 sounds, data or intelligence of any nature transmitted, in whole or in part, by a wire, radio, electro-  
19 magnetic, photo-electronic or photo-optical system, but does not include:

20              (1) The radio portion of a cordless telephone communication that is transmitted between  
21 the cordless telephone handset and the base unit;

22              (2) Any wire or oral communication;

23              (3) Any combination made through a tone-only paging device.

24        (g) "Electronic communication service" means any service which provides to users  
25 thereof the ability to send or receive wire or electronic communications.

26        (h) "Electronic communications system" means any wire, radio, electromagnetic, photo-  
27 optical or photo-electronic facilities for the transmission of electronic communications, and any  
28 computer facilities or related electronic equipment for the electronic storage of such the  
29 communications.

30        (i) "Electronic, mechanical or other device" means any device or apparatus: (i) Which  
31 can be used to intercept a wire, oral or electronic communication; or (ii) the design of which render  
32 it primarily useful for the surreptitious interception of any such communication. There is excepted  
33 from this definition:

34              (1) Any telephone or telegraph instrument, equipment or facility or any component thereof:  
35 (a) Furnished to the subscriber or user by a provider of wire or electronic communication service  
36 in the ordinary course of its business and being used by the subscriber or user in the ordinary  
37 course of its business; or furnished by such the subscriber or user for connection to the facilities  
38 of such the service and used in the ordinary course of its business; or (b) being used by a  
39 communications common carrier in the ordinary course of its business or by an investigative or  
40 law-enforcement officer in the ordinary course of his or her duties; or

41              (2) A hearing aid or similar device being used to correct subnormal hearing to not better  
42 than normal; or

43           (3) Any device used in a lawful consensual monitoring including, but not limited to, tape  
44 recorders, telephone induction coils, answering machines, body transmitters and pen registers.

45           (e) "Intercept" means the aural or other acquisition of the contents of any wire, electronic  
46 or oral communication through the use of any electronic, mechanical or other device.

47           (g) "Investigative or law-enforcement officer" means a member or members of the  
48 Department of Public Safety West Virginia State Police who is or are empowered by law to  
49 conduct investigations of or to make arrest for offenses enumerated in this chapter.

50           (h) "Oral communication" means any oral communication uttered by a person exhibiting  
51 an expectation that such the communication is not subject to interception under circumstances  
52 justifying such the expectation,. ~~but such The~~ term does not include: any

53           (1) An electronic communication.; or

54           (2) An oral communication uttered in any child care center where there are notices posted  
informing persons that their oral communications are being intercepted.

56           (i) "Pen register" means a device which records or decodes electronic or other impulses  
57 which identify the numbers dialed or otherwise transmitted on the telephone line to which such  
58 the device is attached, but such the term does not include any device used by a provider or  
59 customer of a wire or electronic communication service for billing, or recording as an incident to  
60 billing, for communications services provided by such the provider or any device used by a  
61 provider or customer of a wire communication service for cost accounting or other like purposes  
62 in the ordinary course of its business.

63           (j) "Person" means any person, individual, partnership, association, joint stock company,  
64 trust or corporation and includes any police officer, employee or agent of this state or of a political  
65 subdivision thereof.

66           (q) "Trap and trace device" means a device which captures the incoming electronic or  
67 other impulses which identify the originating number of an instrument or device from which a wire  
68 or electronic communication was transmitted.

69           (m) "User" means any person or entity who or which uses an electronic communication  
70   service and is duly authorized by the provider of such the service to engage in such that use.

71           (k) "Wire communication" means any aural transfer made, in whole or in part, through the  
72   use of facilities for the transmission of communications by the aid of wire, cable or other like  
73   connection between the point of origin and the point of reception (including the use of such the  
74   connection in a switching station) furnished or operated by any person engaged in providing or  
75   operating such the facilities for the transmission of interstate or foreign communications or  
76   communications affecting interstate or foreign commerce and such the term includes any  
77   electronic storage of such the communication, but such the term does not include the radio portion  
78   of a cordless telephone communication that is transmitted between the cordless telephone  
79   handset and the base unit.