

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 252

BY SENATOR TRUMP

[Introduced January 13, 2016;

Referred to the Committee on the Judiciary.]

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; and excluding from protection under the
3 act oral communications uttered in a place where there are notices posted informing
4 persons that their oral communications are being intercepted.

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 ~~(b)~~ "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 ~~(c)~~ "Communications common carrier" means any telegraph company or telephone
8 company and any radio common carrier.

9 ~~(d)~~ "Contents," when used with respect to any wire, oral or electronic communication,
10 includes any information concerning the substance, purport or meaning of that communication.

11 ~~(e)~~ "Designated judge" means a circuit court judge designated by the chief justice of the
12 West Virginia Supreme Court of Appeals to hear and rule on applications for the interception of
13 wire, oral or electronic communications.

14 ~~(f)~~ "Electronic communication" means any transfer of signs, signals, writing, images,
15 sounds, data or intelligence of any nature transmitted, in whole or in part, by a wire, radio, electro-
16 magnetic, photoelectronic or photooptical system but does not include:

17 (1) The radio portion of a cordless telephone communication that is transmitted between

18 the cordless telephone handset and the base unit;

19 (2) Any wire or oral communication;

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

21 ~~(e)~~ "Electronic communication service" means any service which provides to users thereof
22 the ability to send or receive wire or electronic communications.

23 ~~(f)~~ "Electronic communications system" means any wire, radio, electromagnetic,
24 photooptical or photoelectronic facilities for the transmission of electronic communications, and
25 any computer facilities or related electronic equipment for the electronic storage of ~~such~~ the
26 communications.

27 ~~(d)~~ "Electronic, mechanical or other device" means any device or apparatus (i) which can
28 be used to intercept a wire, oral or electronic communication or (ii) the design of which renders it
29 primarily useful for the surreptitious interception of any such communication. There is excepted
30 from this definition:

31 (1) Any telephone or telegraph instrument, equipment or facility or any component thereof:

32 (A) Furnished to the subscriber or user by a provider of wire or electronic communication service
33 in the ordinary course of its business and being used by the subscriber or user in the ordinary
34 course of its business; or furnished by ~~such~~ the subscriber or user for connection to the facilities
35 of ~~such~~ the service and used in the ordinary course of its business; or (B) being used by a
36 communications common carrier in the ordinary course of its business or by an investigative or
37 law-enforcement officer in the ordinary course of his or her duties; or

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

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

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

44 ~~(g)~~ "Investigative or law-enforcement officer" means a member or members of the
45 department of public safety who is or are empowered by law to conduct investigations of or to
46 make arrest for offenses enumerated in this chapter.

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

50 (1) An electronic communication; or

51 (2) An oral communication uttered in any place where there are notices posted informing
52 persons that their oral communications are being intercepted.

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

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

63 ~~(k)~~ "Trap and trace device" means a device which captures the incoming electronic or
64 other impulses which identify the originating number of an instrument or device from which a wire
65 or electronic communication was transmitted.

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

68 ~~(k)~~ "Wire communication" means any aural transfer made in whole or in part through the
69 use of facilities for the transmission of communications by the aid of wire, cable or other like

70 connection between the point of origin and the point of reception (including the use of ~~such~~ the
71 connection in a switching station) furnished or operated by any person engaged in providing or
72 operating ~~such~~ the facilities for the transmission of interstate or foreign communications or
73 communications affecting interstate or foreign commerce and ~~such~~ the term includes any
74 electronic storage of ~~such~~ the communication, but ~~such~~ the term does not include the radio portion
75 of a cordless telephone communication that is transmitted between the cordless telephone
76 handset and the base unit.

NOTE: The purpose of this bill is to exclude oral communications uttered in a place where there are notices posted informing persons that their oral communications are being intercepted from protection under the Wiretapping and Electronic Surveillance Act.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.

The definitions in this section have been alphabetized and their subdivision designations have been stricken.