

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Committee Substitute

for

Senate Bill 233

BY SENATOR TRUMP

[Originating in the Committee on the Judiciary;

reported on February 14, 2017]

1 A BILL to amend and reenact §62-1D-2 of the Code of West Virginia, 1931, as amended, relating
2 generally to the Wiretapping and Electronic Surveillance Act; excluding from protection
3 under the act oral communications uttered in a child care center where there are written
4 notices posted informing persons that their oral communications are subject to being
5 intercepted; and defining “child 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)~~ (1) “Aggrieved person” means a person who was a party to any intercepted wire, oral
4 or electronic communication or a person against whom the interception was directed.

5 ~~(b)~~ (2) “Aural transfer” means a transfer containing the human voice at any point between
6 and including the point of origin and the point of reception.

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

10 ~~(b)~~ (4) “Communications common carrier” means any telegraph company or telephone
11 company and any radio common carrier.

12 ~~(c)~~ (5) “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)~~ (6) “Designated judge” means a circuit court judge designated by the Chief Justice of
15 the West Virginia Supreme Court of Appeals to hear and rule on applications for the interception
16 of wire, oral or electronic communications.

17 ~~(f)~~ (7) “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)~~ (A) The radio portion of a cordless telephone communication that is transmitted
21 between the cordless telephone handset and the base unit;

22 ~~(2)~~ (B) Any wire or oral communication; or

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

24 ~~(e)~~ (8) “Electronic communication service” means any service which provides to users
25 thereof the ability to send or receive wire or electronic communications.

26 ~~(h)~~ (9) “Electronic communications system” means any wire, radio, electromagnetic,
27 photo-optical or photo-electronic facilities for the transmission of electronic communications, and
28 any computer facilities or related electronic equipment for the electronic storage of ~~such~~ the
29 communications.

30 ~~(d)~~ (10) “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)~~ (A) Any telephone or telegraph instrument, equipment or facility or any component
35 thereof: (a) Furnished to the subscriber or user by a provider of wire or electronic communication
36 service in the ordinary course of its business and being used by the subscriber or user in the
37 ordinary course of its business; or furnished by ~~such~~ the subscriber or user for connection to the
38 facilities of ~~such~~ the service and used in the ordinary course of its business; or (b) being used by
39 a 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)~~ (B) A hearing aid or similar device being used to correct subnormal hearing to not
42 better than normal; or

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

46 ~~(e)~~ (11) "Intercept" means the aural or other acquisition of the contents of any wire,
47 electronic or oral communication through the use of any electronic, mechanical or other device.

48 ~~(g)~~ (12) "Investigative or law-enforcement officer" means a member or members of the
49 ~~Department of Public Safety~~ West Virginia State Police who is or are empowered by law to
50 conduct investigations of, or to make arrest for, offenses enumerated in this chapter.

51 ~~(h)~~ (13) "Oral communication" means any oral communication uttered by a person
52 exhibiting an expectation that ~~such the~~ the communication is not subject to interception under
53 circumstances justifying ~~such the~~ the expectation, ~~but such~~ The term does not include: ~~any~~

54 (A) An electronic communication; or

55 (B) An oral communication uttered in any child care center where there are written notices
56 posted informing persons that their oral communications are subject to being intercepted.

57 ~~(i)~~ (14) "Pen register" means a device which records or decodes electronic or other
58 impulses which identify the numbers dialed or otherwise transmitted on the telephone line to which
59 ~~such the~~ the device is attached, but ~~such the~~ the term does not include any device used by a provider or
60 customer of a wire or electronic communication service for billing, or recording as an incident to
61 billing, for communications services provided by ~~such the~~ the provider or any device used by a
62 provider or customer of a wire communication service for cost accounting or other like purposes
63 in the ordinary course of its business.

64 ~~(j)~~ (15) "Person" means any person, individual, partnership, association, joint stock
65 company, trust or corporation and includes any police officer, employee or agent of this state or
66 of a political subdivision thereof.

67 ~~(k)~~ (16) "Trap and trace device" means a device which captures the incoming electronic
68 or other impulses which identify the originating number of an instrument or device from which a

69 wire or electronic communication was transmitted.

70 ~~(m)~~ (17) "User" means any person or entity who or which uses an electronic
71 communication service and is duly authorized by the provider of ~~such~~ the service to engage in
72 ~~such~~ that use.

73 ~~(k)~~ (18) "Wire communication" means any aural transfer made, in whole or in part, through
74 the use of facilities for the transmission of communications by the aid of wire, cable or other like
75 connection between the point of origin and the point of reception, including the use of ~~such~~ the
76 connection in a switching station, furnished or operated by any person engaged in providing or
77 operating ~~such~~ the facilities for the transmission of interstate or foreign communications or
78 communications affecting interstate or foreign commerce and ~~such~~ the term includes any
79 electronic storage of ~~such~~ the communication, but ~~such~~ the term does not include the radio portion
80 of a cordless telephone communication that is transmitted between the cordless telephone
81 handset and the base unit.