

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

26 (+) “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 (+) “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
55 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 ~~(k)~~ “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.