

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

House Bill 4268

FISCAL
NOTE

BY DELEGATES REED, CLARK, FORSHT, MANDT,
WESTFALL, WAMSLEY, QUEEN, MALLOW, BOOTH AND
JENNINGS

[Introduced January 19, 2022; Referred to the
Committee on the Judiciary]

1 A BILL to amend and reenact §62-1D-3 of the Code of West Virginia, 1931, as amended, relating
2 to modifying the criminal code relating to consent for recording devices; clarifying that
3 recording anyone in a bathroom for any reason without the consent of both individuals is
4 expressly forbidden; and providing for a penalty.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1D. WIRETAPPING AND ELECTRONIC SURVEILLANCE ACT.

§62-1D-3. Interception of communications generally.

1 (a) Except as otherwise specifically provided in this article it is unlawful for any person to:

2 (1) Intentionally intercept, attempt to intercept or procure any other person to intercept or
3 attempt to intercept, any wire, oral or electronic communication; or

4 (2) Intentionally disclose or intentionally attempt to disclose to any other person the
5 contents of any wire, oral or electronic communication, knowing or having reason to know that
6 the information was obtained through the interception of a wire, oral or electronic communication
7 in violation of this article; and

8 (3) Intentionally use or disclose or intentionally attempt to use or disclose the contents of
9 any wire, oral or electronic communication or the identity of any party thereto, knowing or having
10 reason to know that such information was obtained through the interception of a wire, oral or
11 electronic communication in violation of this article.

12 (b) Any person who violates subsection (a) of this section is guilty of a felony and, upon
13 conviction thereof, shall be imprisoned in the penitentiary for not more than five years or fined not
14 more than \$10,000 or both fined and imprisoned.

15 (c) It is lawful under this article for an operator of a switchboard or an officer, employee,
16 or provider of any wire or electronic communication service whose facilities are used in the
17 transmission of a wire communication to intercept, disclose or use that communication or the
18 identity of any party to that communication in the normal course of his or her employment while
19 engaged in any activity which is a necessary incident to the rendition of his or her service or to

20 the protection of the rights or property of the carrier of the communication. Providers of wire or
21 electronic communication services may not utilize service observing or random monitoring except
22 for mechanical or service quality control checks.

23 (d) Notwithstanding any other law, any provider of wire or electronic communications
24 services, or the directors, officers, employees, agents, landlords or custodians of any such
25 provider, are authorized to provide information, facilities or technical assistance to persons
26 authorized by this article to intercept wire, oral or electronic communication if such provider or its
27 directors, officers, employees, agents, landlords or custodians has been provided with a duly
28 certified copy of a court order directing such assistance and setting forth the period of time during
29 which the provision of the information, facilities, or technical assistance is authorized and
30 specifying the information, facilities or assistance required. No cause of action shall lie in any
31 court against any such provider of wire or electronic communication services, its directors,
32 officers, agents, landlords or custodians for providing information facilities or assistance in
33 accordance with the terms of any such order.

34 (e) It is lawful under this article for a person to intercept a wire, oral or electronic
35 communication where ~~the person is~~ both persons are a party to the communication or where ~~one~~
36 both of the parties to the communication has given prior consent to the interception unless the
37 communication is intercepted for the purpose of committing any criminal or tortious act in violation
38 of the constitution or laws of the United States or the constitution or laws of this state:

39 (f) Notwithstanding the provisions of this article or any other provision of law, an electronic
40 interception as defined by ~~section one, article one-f of this chapter~~ §62-1F-1, is regulated solely
41 by the provisions of article one-f of this chapter, and no penalties or other requirements of this
42 article are applicable.

43 (g) Unless otherwise authorized by law, any recording of an individual in a restroom
44 without the consent of both parties is expressly forbidden. Any person who violates this subsection
45 is guilty of a felony and, upon conviction thereof, shall be imprisoned in the correctional facility for

46 not more than five years or fined not more than \$5,000, or both fined and imprisoned.

NOTE: The purpose of this bill is to modify the consent statute for communications from one party consent to two party consent. The bill also forbids recording in a restroom and provides a penalty for doing so.

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