



House of Representatives

General Assembly

File No. 510

February Session, 2012

Substitute House Bill No. 5503

House of Representatives, April 18, 2012

The Committee on Judiciary reported through REP. FOX, G. of the 146th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING THE RECORDING OF TELEPHONIC COMMUNICATIONS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 52-570d of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective July 1, 2012*):

3 (a) No [person] party, active or otherwise, in a telephonic
4 communication shall, [use any instrument, device or equipment to] by
5 any means, record [an oral private telephonic communication unless
6 the use of such instrument, device or equipment (1) is] or cause to be
7 recorded such communication unless it: (1) Is preceded by
8 documented and reciprocal consent of [all parties to the
9 communication and such] every other party prior [consent either is
10 obtained in writing or is part of, and obtained at] to or as part of the
11 start of [, the] any recording, or (2) is preceded by verbal notification
12 which is recorded at the beginning and is part of the communication
13 [by the recording party] and if any party provides verbal notification,
14 any party may record provided verbal notification or another is

15 recorded, or (3) is accompanied by an automatic tone warning [device
16 which automatically] that produces a distinct signal that is repeated at
17 intervals of approximately fifteen seconds during the communication
18 while [such instrument, device or equipment is in use] recording and if
19 any party provides the automatic tone warning, any party may record.

20 (b) [The] Unless otherwise specified, the provisions of subsection (a)
21 of this section shall not apply to:

22 (1) Any federal, state or local criminal law enforcement official who
23 in the [lawful] performance of his duties records telephonic
24 communications;

25 (2) Any officer, employee or agent of a public or private safety
26 agency, as defined in section 28-25, who in the [lawful] performance of
27 his duties records telephonic communications of an emergency nature;

28 (3) Any person who, as the recipient of a telephonic communication
29 which conveys threats of extortion, bodily harm or other unlawful
30 requests or demands, records such telephonic communication;

31 (4) Any person who, as the recipient of a telephonic communication
32 which occurs repeatedly or at an extremely inconvenient hour, records
33 such telephonic communication;

34 (5) Any officer, employee or agent of any communication common
35 carrier who in the [lawful] performance of his duties records
36 telephonic communications or provides facilities to an investigative
37 officer or criminal law enforcement official authorized pursuant to
38 chapter 959a to intercept a wire communication;

39 (6) Any officer, employee or agent of a Federal Communications
40 Commission licensed broadcast station who records a telephonic
41 communication solely for broadcast over the air;

42 (7) Any officer, employee or agent of the United States Secret
43 Service who records telephonic communications which concern the
44 safety and security of the President of the United States, members of

45 his immediate family or the White House and its grounds; [and]

46 (8) Any officer, employee or agent of a Federal Communications
47 Commission broadcast licensee who records a telephonic
48 communication as part of a broadcast network or cooperative
49 programming effort solely for broadcast over the air by a licensed
50 broadcast station;

51 (9) Any party who records a telephonic communication, provided:

52 (A) Any party under this state's jurisdiction has complied with
53 subsection (a) of this section and, every other party is operating under
54 the authority of or under contract with the United States regardless of
55 location, or

56 (B) Any party under this state's jurisdiction has complied with
57 subsection (a) of this section and has given consideration to laws, if
58 any, that apply within any given termination point's jurisdiction and
59 every other party is not under this state's jurisdiction;

60 (10) Any party who records a telephonic communication, provided
61 the intent of the recording is to memorialize evidence of a crime before,
62 during or after the fact and the unaltered and undisclosed recording
63 must be submitted to law enforcement within a reasonable amount of
64 time; and

65 (11) Any recording that results from any automatic or automated
66 system that may be reasonably categorized as a voice mail, call center,
67 phone answering or similar system and where the calling party was
68 acting under informed consent in the telephonic communication.

69 (c) For the purposes of this section:

70 (1) "Party" means any officer, agent or employee of this state or any
71 political subdivision thereof, an individual acting for or on behalf of
72 the United States government, and any individual, partnership,
73 association, joint stock company, trust, limited liability company,
74 corporation or other legal entity;

75 (2) "Consent" means any instance of an express, implied or informed
 76 agreement, approval or permission that is directly linked to a specific
 77 recorded telephonic communication; and

78 (3) "Jurisdiction" means any entity denoted as an authority of or
 79 under contract with the United States government or any of the states
 80 of the United States.

81 (d) Regardless of jurisdiction, where consent by all parties to any
 82 given telephonic communication is required, consent shall be
 83 considered obtained when any party has given verbal notification to
 84 every other party and such notification is recorded at the beginning
 85 and is part of the recorded communication.

86 (e) It shall be unlawful for any person or persons to record any
 87 telephonic communication if such recording is for the purpose of
 88 committing any criminal or tortious act.

89 [(c)] (f) Any person aggrieved by a violation of subsection (a) or (e)
 90 of this section may bring a civil action in the Superior Court to recover
 91 damages, together with costs and a reasonable attorney's fee.

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2012	52-570d

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Statement of Legislative Commissioners:

The effective date of section 1 was changed for accuracy.

JUD *Joint Favorable Subst.-LCO*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill makes changes to telephone recording laws and does not result in a fiscal impact.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis

sHB 5503

AN ACT CONCERNING THE RECORDING OF TELEPHONIC COMMUNICATIONS.

SUMMARY:

This bill generally updates telephone recording laws, alters some of the conditions for obtaining parties' consent to record conversations, and adds new exceptions to the requirement to obtain consent before recording. By law, those aggrieved by a violation may sue in Superior Court for damages, costs, and a reasonable attorney's fee.

The bill also makes it unlawful for anyone to record a telephone call if the recording is for the purpose of committing any criminal or tortuous act.

The bill also makes minor and technical changes.

EFFECTIVE DATE: July 1, 2012

RECORDING RESTRICTIONS

With certain exceptions, current law prohibits anyone from recording a telephone conversation without the knowledge of all parties to the conversation. Knowledge of all parties can be established in three ways: (1) prior consent obtained in writing or at the start of the recording, (2) by orally announcing (and recording the announcement) to all parties at the beginning that the conversation is being recorded, or (3) by an automatic and distinct signal repeated every 15 seconds while recording equipment is in use.

The bill permits any (1) sort of documented consent, rather than only written and (2) party to record the communication if that party or any other party provides the verbal notification or the distinct signal.

The bill defines consent as an express, implied, or informed agreement, approval, or permission directly linked to a specific recorded telephone communication. Under the bill, the required consent is obtained when any party gives verbal notice to all the other parties which is recorded at the beginning and becomes part of the recorded conversation.

The bill specifies that a party who is not active on the call can record the conversation.

The bill defines a “party” as an officer, agent, or employee of the state or any political subdivision; an individual acting for or on behalf of the United States government; and any individual, partnership, association, joint stock company, trust, limited liability company, corporation, or other legal entity.

EXCEPTIONS

The bill adds to those who are exempt from the law’s notification requirements any party:

1. under this state’s jurisdiction who has complied with the requirements above when every other party is operating under the authority of, or under contract with, the United States government, regardless of location;
2. under this state’s jurisdiction, who has complied with the requirements listed above and has given consideration to any other laws that apply within any given termination point’s jurisdiction, and all other parties are not under this state’s jurisdiction; and
3. whose purpose is to memorialize evidence of a crime before, during, or after the fact and submits the unaltered and undisclosed recording to law enforcement within a reasonable time.

Under the bill, “jurisdiction” means any state or an entity denoted

as an authority of or under contract with the U.S. government.

Under the bill, it is permissible to record messages on voice mail or a call center, phone answering, or similar systems where the calling party is acting under informed consent.

Existing law allows the following to record telephone conversations without establishing knowledge of all parties by the means described above:

1. law enforcement, public safety, and private emergency personnel in the lawful performance of their duties (including police, "911" calls, ambulance providers, the Secret Service while protecting the President, and telephone workers legally assisting the police.) (The bill removes the term "lawful" which has no legal effect since the performance of their duties is presumed to be lawful);
2. anyone who receives blackmail calls or unlawful requests or demands and anyone who receives calls that occur repeatedly or at an extremely inconvenient hour; and
3. Federal Communications Commission-licensed radio personnel recording for rebroadcast or programming

COMMITTEE ACTION

Judiciary Committee

Joint Favorable
Yea 43 Nay 0 (04/02/2012)