



GOV. MSG. NO. 1195

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

April 30, 2012

The Honorable Shan Tsutsui, President
and Members of the Senate
Twenty-Sixth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

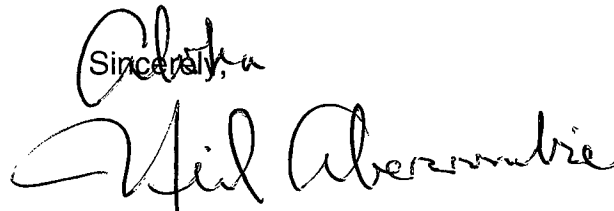
The Honorable Calvin Say, Speaker
and Members of the House
Twenty-Sixth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on April 30, 2012, the following bill was signed into law:

SB2247 SD2 HD1

RELATING TO PUBLIC SAFETY.
Act 094 (12)

Sincerely,

NEIL ABERCROMBIE
Governor, State of Hawaii

A BILL FOR AN ACT

RELATING TO PUBLIC SAFETY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 803-42, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:
3 "(b) (1) It shall not be unlawful under this part for an
4 operator of a switchboard, or an officer, employee, or
5 agent of a provider of wire or electronic
6 communication services, whose facilities are used in
7 the transmission of a wire communication, to
8 intercept, disclose, or use that communication in the
9 normal course of the officer's, employee's, or agent's
10 employment while engaged in any activity that is
11 either a necessary incident to the rendition of the
12 officer's, employee's, or agent's service or to the
13 protection of the rights or property of the provider
14 of that service; provided that providers of wire
15 communication service to the public shall not utilize
16 service observing or random monitoring except for
17 mechanical or service quality control checks.



1 (2) It shall not be unlawful under this part for an
2 officer, employee, or agent of the Federal
3 Communications Commission, in the normal course of the
4 officer's, employee's, or agent's employment and in
5 discharge of the monitoring responsibilities exercised
6 by the Commission in the enforcement of Title 47,
7 chapter 5, of the United States Code, to intercept a
8 wire or electronic communication, or oral
9 communication transmitted by radio, or to disclose or
10 use the information thereby obtained.

11 (3) (A) It shall not be unlawful under this part for a
12 person not acting under color of law to intercept
13 a wire, oral, or electronic communication when
14 the person is a party to the communication or
15 when one of the parties to the communication has
16 given prior consent to the interception unless
17 the communication is intercepted for the purpose
18 of committing any criminal or tortious act in
19 violation of the Constitution or laws of the
20 United States or of this State.

21 (B) It shall not be unlawful for a person acting
22 under color of law to install in any private



1 place, without consent of the person or persons
2 entitled to privacy therein, any device for
3 recording, amplifying, or broadcasting sounds or
4 events in that place, or use of any such
5 unauthorized installation, or [~~installation~~]
6 install or use outside a private place [~~of~~] any
7 such device to intercept sounds originating in
8 that place which would not ordinarily be audible
9 or comprehensible outside.

10 (4) It shall not be unlawful under this part for a person
11 acting under color of law to intercept a wire, oral,
12 or electronic communication, when the person is a
13 party to the communication or one of the parties to
14 the communication has given prior consent to the
15 interception.

16 (5) It shall not be unlawful under this part for any
17 person to intercept a wire, oral, or electronic
18 communication, or to disclose or use the contents of
19 an intercepted communication, when such interception
20 is pursuant to a valid court order under this chapter
21 or [~~as~~] otherwise authorized by law; provided that a
22 communications provider with knowledge of an



1 interception of communications accomplished through
2 the use of the communications provider's facilities
3 shall report the fact and duration of the interception
4 to the administrative director of the courts of this
5 State.

6 (6) Notwithstanding any other law to the contrary,
7 providers of wire or electronic communication service,
8 their officers, employees, and agents, landlords,
9 custodians, or other persons, are authorized to
10 provide information, facilities, or technical
11 assistance to persons authorized by law to intercept
12 or access wire, oral, or electronic communications, to
13 conduct electronic surveillance, or to install a pen
14 register or trap and trace device if such provider,
15 its officers, employees, or agents, landlord,
16 custodian, or other specified person, has been
17 provided with:

18 (A) A court order directing such assistance signed by
19 the designated judge; or

20 (B) A certification in writing from the Attorney
21 General of the United States, the Deputy Attorney
22 General of the United States, the Associate



1 Attorney General of the United States, the
2 attorney general of the State of Hawaii, or the
3 prosecuting attorney for each county that no
4 warrant or court order is required by law, that
5 all statutory requirements have been met, and
6 that the specific assistance is required, setting
7 forth the period of time during which the
8 providing of the information, facilities, or
9 technical assistance is authorized and specifying
10 the information, facilities, or technical
11 assistance required.

12 No provider of wire or electronic
13 communication service, officer, employee, or
14 agent thereof, or landlord, custodian, or other
15 specified person shall disclose the existence of
16 any access, interception, or surveillance or the
17 device used to accomplish the interception or
18 surveillance for which the person has been
19 furnished a court order or certification under
20 this part, except as may otherwise be required by
21 legal process and then only after prior



1 notification to the party that provided the court
2 order or certification.

3 No cause of action shall lie in any court
4 against any provider of wire or electronic
5 communication service, its officers, employees,
6 or agents, landlord, custodian, or other
7 specified person for providing information,
8 facilities, or assistance in accordance with the
9 terms of a court order or certification under
10 this part.

11 (7) It shall not be unlawful under this part for any
12 person:

13 (A) To intercept or access an electronic
14 communication made through an electronic
15 communication system configured so that the
16 electronic communication is readily accessible to
17 the general public.

18 (B) To intercept any radio communication that is
19 transmitted:

20 (i) By any station for the use of the general
21 public, or that relates to ships, aircraft,
22 vehicles, or persons in distress;



- 1 (ii) By any governmental, law enforcement, civil
2 defense, private land mobile, or public
3 safety communications system, including
4 police and fire, readily accessible to the
5 general public;
- 6 (iii) By a station operating on an authorized
7 frequency within the bands allocated to the
8 amateur, citizens band, or general mobile
9 radio services; or
- 10 (iv) By any marine or aeronautical communications
11 system.
- 12 (C) To engage in any conduct that:
- 13 (i) Is prohibited by section 633 of the
14 Communications Act of 1934 (47 U.S.C. §553);
15 or
- 16 (ii) Is excepted from the application of section
17 705(a) of the Communications Act of 1934 by
18 section 705(b) of that Act (47 U.S.C. §605).
- 19 (D) To intercept any wire or electronic communication
20 the transmission of which is causing harmful
21 interference to any lawfully operating station or
22 consumer electronic equipment to the extent



1 necessary to identify the source of the
2 interference[+].

3 (E) For other users of the same frequency to
4 intercept any radio communication made through a
5 system that uses frequencies monitored by
6 individuals engaged in the providing or the use
7 of the system, if the communication is not
8 scrambled or encrypted.

9 (8) It shall not be unlawful under this part:

10 (A) To use a pen register or a trap and trace device
11 as specified in this part.

12 (B) For a provider of electronic communication
13 service to record the fact that a wire or
14 electronic communication was initiated or
15 completed in order to protect the provider,
16 another provider furnishing service toward the
17 completion of the wire or electronic
18 communication, or a user of that service, from
19 the fraudulent, unlawful, or abusive use of such
20 service.

21 (C) For a provider of electronic or wire
22 communication service to use a pen register or a



1 trap and trace device for purposes relating to
2 the operation, maintenance, and testing of the
3 wire or electronic communication service or to
4 the protection of the rights or property of the
5 provider, or to the protection of users of that
6 service from abuse of service or unlawful use of
7 service.

8 (D) To use a pen register or a trap and trace device
9 where consent of the user of the service has been
10 obtained.

11 (9) Good faith reliance upon a court order shall be a
12 complete defense to any criminal prosecution for
13 illegal interception, disclosure, or use.

14 (10) Except as provided in this section, a person or entity
15 providing an electronic communication service to the
16 public shall not intentionally divulge the contents of
17 any communication (other than a communication to the
18 person or entity or an agent thereof) while in
19 transmission on that service to any person or entity
20 other than an addressee or intended recipient of the
21 communication or an agent of the addressee or intended
22 recipient.



- 1 (11) A person or entity providing electronic communication
- 2 service to the public may divulge the contents of any
- 3 such communication:
- 4 (A) As otherwise authorized by a court order or under
- 5 this part;
- 6 (B) With the lawful consent of the originator,
- 7 addressee, or intended recipient of the
- 8 communication;
- 9 (C) To a person employed or authorized, or whose
- 10 facilities are used, to forward the communication
- 11 to its destination; [~~or~~]
- 12 (D) That was inadvertently obtained by the service
- 13 provider and that appears to pertain to the
- 14 commission of a crime, if divulged to a law
- 15 enforcement agency[~~-~~]; or
- 16 (E) To a law enforcement agency, public safety
- 17 agency, or public safety answering point if the
- 18 provider, in good faith, believes that an
- 19 emergency involving danger of death or serious
- 20 bodily injury to any person requires disclosure
- 21 without delay of communications relating to the
- 22 emergency, and is provided with a certification



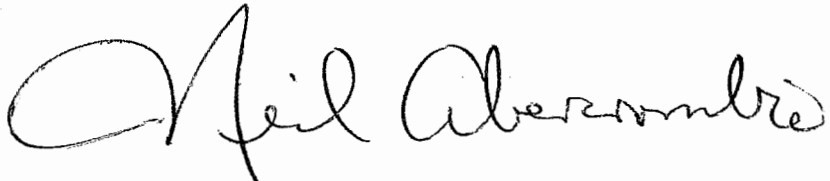
1 in writing from the governmental entity that
 2 provides the facts and circumstances establishing
 3 the existence of the emergency, that the specific
 4 disclosure is required, and sets forth the period
 5 of time during which the disclosure of the
 6 information is authorized and specifies the
 7 information required.

8 No cause of action shall lie in any court against any
 9 provider of electronic communication service, its officers,
 10 employees, or agents, custodian, or other specified person for
 11 disclosing information in accordance with the terms of a
 12 certification under this part."

13 SECTION 2. Statutory material to be repealed is bracketed
 14 and stricken. New statutory material is underscored.

15 SECTION 3. This Act shall take effect upon its approval.

APPROVED this 30 day of APR, 2012



GOVERNOR OF THE STATE OF HAWAII