

JAN 18 2012

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# A BILL FOR AN ACT

RELATING TO COMMUNICATION SERVICE PROVIDERS.

**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 or use  
6 outside a private place of such device to  
7 intercept sounds originating in that place which  
8 would not ordinarily be audible or comprehensible  
9 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 an  
19 intercepted communication, when such interception is  
20 pursuant to a valid court order under this chapter or  
21 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 such communication (other than a communication to  
18 the 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 governmental entity, if the provider, in  
17                  good faith, believes that an emergency involving  
18                  danger of death or serious physical injury to any  
19                  person requires disclosure without delay of  
20                  communications relating to the emergency."

21           SECTION 2. Statutory material to be repealed is bracketed  
22 and stricken. New statutory material is underscored.



1 SECTION 3. This Act shall take effect on July 1, 2012.

2

INTRODUCED BY:   
By Request



# S.B. NO. 2063

**Report Title:**

Communication; Service Providers; Privacy; Disclosure;  
Prosecuting Attorney's Office Package

**Description:**

Allows electronic communication service providers to voluntarily disclose electronic communications to a governmental agency where an emergency involving danger of death or serious physical injury to any person requires such disclosure without delay.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

