

JAN 22 2016

A BILL FOR AN ACT

RELATING TO LAW ENFORCEMENT.

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

1 SECTION 1. Section 710-1010, Hawaii Revised Statutes, is
2 amended by amending subsection (2) to read as follows:

3 "(2) This section does not apply to:

4 (a) The obstruction, impairment, or hindrance of the
5 making of an arrest; ~~[or]~~

6 (b) The obstruction, impairment, or hindrance of any
7 governmental function, as provided by law, in
8 connection with a labor dispute with the
9 government ~~[or]~~; or

10 (c) A person who is making a video or audio recording or
11 taking a photograph of a law enforcement officer while
12 the officer is in the performance of the officer's
13 duties in a public place or under circumstances in
14 which the officer has no reasonable expectation of
15 privacy; provided that the officer may take reasonable
16 action to maintain safety and control, secure crime
17 scenes and accident sites, protect the integrity and



1 confidentiality of investigations, and protect the
2 public safety and order."

3 SECTION 2. Section 711-1111, Hawaii Revised Statutes, is
4 amended by amending subsection (1) to read as follows:

5 "(1) A person commits the offense of violation of privacy
6 in the second degree if, except in the execution of a public
7 duty or as authorized by law, the person intentionally:

8 (a) Trespasses on property for the purpose of subjecting
9 anyone to eavesdropping or other surveillance in a
10 private place;

11 (b) Peers or peeps into a window or other opening of a
12 dwelling or other structure adapted for sojourn or
13 overnight accommodations for the purpose of spying on
14 the occupant thereof or invading the privacy of
15 another person with a lewd or unlawful purpose, under
16 circumstances in which a reasonable person in the
17 dwelling or other structure would not expect to be
18 observed;

19 (c) Trespasses on property for the sexual gratification of
20 the actor;



1 (d) Installs or uses, or both, in any private place,
2 without consent of the person or persons entitled to
3 privacy therein, any means or device for observing,
4 recording, amplifying, or broadcasting sounds or
5 events in that place other than another person in a
6 stage of undress or sexual activity; provided that
7 this paragraph shall not prohibit a person from making
8 a video or audio recording or taking a photograph of a
9 law enforcement officer while the officer is in the
10 performance of the officer's duties in a public place
11 or under circumstances in which the officer has no
12 reasonable expectation of privacy and the person is
13 not interfering with the officer's ability to maintain
14 safety and control, secure crime scenes and accident
15 sites, protect the integrity and confidentiality of
16 investigations, and protect the public safety and
17 order;

18 (e) Installs or uses outside a private place any device
19 for hearing, recording, amplifying, or broadcasting
20 sounds originating in that place which would not
21 ordinarily be audible or comprehensible outside,



1 without the consent of the person or persons entitled
2 to privacy therein;

3 (f) Covertly records or broadcasts an image of another
4 person's intimate area underneath clothing, by use of
5 any device, and that image is taken while that person
6 is in a public place and without that person's
7 consent;

8 (g) Intercepts, without the consent of the sender or
9 receiver, a message or photographic image by
10 telephone, telegraph, letter, electronic transmission,
11 or other means of communicating privately; but this
12 paragraph does not apply to:

13 (i) Overhearing of messages through a regularly
14 installed instrument on a telephone party line or
15 an extension; or

16 (ii) Interception by the telephone company, electronic
17 mail account provider, or telephone or electronic
18 mail subscriber incident to enforcement of
19 regulations limiting use of the facilities or
20 incident to other operation and use;

1 (h) Divulges, without the consent of the sender or the
 2 receiver, the existence or contents of any message or
 3 photographic image by telephone, telegraph, letter,
 4 electronic transmission, or other means of
 5 communicating privately, if the accused knows that the
 6 message or photographic image was unlawfully
 7 intercepted or if the accused learned of the message
 8 or photographic image in the course of employment with
 9 an agency engaged in transmitting it; or

10 (i) Knowingly possesses materials created under
 11 circumstances prohibited in section 711-1110.9."

12 SECTION 3. Section 803-42, Hawaii Revised Statutes, is
 13 amended by amending subsection (b) to read as follows:

14 "(b) (1) It shall not be unlawful under this part for an
 15 operator of a switchboard, or an officer, employee, or agent of
 16 a provider of wire or electronic communication services, whose
 17 facilities are used in the transmission of a wire communication,
 18 to intercept, disclose, or use that communication in the normal
 19 course of the officer's, employee's, or agent's employment while
 20 engaged in any activity that is either a necessary incident to
 21 the rendition of the officer's, employee's, or agent's service



1 or to the protection of the rights or property of the provider
2 of that service; provided that providers of wire communication
3 service to the public shall not utilize service observing or
4 random monitoring except for mechanical or service quality
5 control checks.

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

16 (3) (A) It shall not be unlawful under this part for a
17 person not acting under color of law to intercept
18 a wire, oral, or electronic communication when
19 the person is a party to the communication or
20 when one of the parties to the communication has
21 given prior consent to the interception unless



1 the communication is intercepted for the purpose
2 of committing any criminal or tortious act in
3 violation of the Constitution or laws of the
4 United States or of this State.

5 (B) It shall not be unlawful for a person acting
6 under color of law to install in any private
7 place, without consent of the person or persons
8 entitled to privacy therein, any device for
9 recording, amplifying, or broadcasting sounds or
10 events in that place, or use of any such
11 unauthorized installation, or install or use
12 outside a private place any such device to
13 intercept sounds originating in that place which
14 would not ordinarily be audible or comprehensible
15 outside.

16 (4) It shall not be unlawful under this part for a person
17 acting under color of law to intercept a wire, oral,
18 or electronic communication, when the person is a
19 party to the communication or one of the parties to
20 the communication has given prior consent to the
21 interception.



1 (5) It shall not be unlawful under this part for any
2 person to intercept a wire, oral, or electronic
3 communication, or to disclose or use the contents of
4 an intercepted communication, when such interception
5 is pursuant to a valid court order under this chapter
6 or otherwise authorized by law; provided that a
7 communications provider with knowledge of an
8 interception of communications accomplished through
9 the use of the communications provider's facilities
10 shall report the fact and duration of the interception
11 to the administrative director of the courts of this
12 State.

13 (6) Notwithstanding any other law to the contrary,
14 providers of wire or electronic communication service,
15 their officers, employees, and agents, landlords,
16 custodians, or other persons, are authorized to
17 provide information, facilities, or technical
18 assistance to persons authorized by law to intercept
19 or access wire, oral, or electronic communications, to
20 conduct electronic surveillance, or to install a pen
21 register or trap and trace device if such provider,



1 its officers, employees, or agents, landlord,
2 custodian, or other specified person, has been
3 provided with:

4 (A) A court order directing such assistance signed by
5 the designated judge; or

6 (B) A certification in writing from the Attorney
7 General of the United States, the Deputy Attorney
8 General of the United States, the Associate
9 Attorney General of the United States, the
10 attorney general of the State of Hawaii, or the
11 prosecuting attorney for each county that no
12 warrant or court order is required by law, that
13 all statutory requirements have been met, and
14 that the specific assistance is required, setting
15 forth the period of time during which the
16 providing of the information, facilities, or
17 technical assistance is authorized and specifying
18 the information, facilities, or technical
19 assistance required.

20 No provider of wire or electronic
21 communication service, officer, employee, or



1 agent thereof, or landlord, custodian, or other
2 specified person shall disclose the existence of
3 any access, interception, or surveillance or the
4 device used to accomplish the interception or
5 surveillance for which the person has been
6 furnished a court order or certification under
7 this part, except as may otherwise be required by
8 legal process and then only after prior
9 notification to the party that provided the court
10 order or certification.

11 No cause of action shall lie in any court
12 against any provider of wire or electronic
13 communication service, its officers, employees,
14 or agents, landlord, custodian, or other
15 specified person for providing information,
16 facilities, or assistance in accordance with the
17 terms of a court order or certification under
18 this part.

19 (7) It shall not be unlawful under this part for any
20 person:



- 1 (A) To intercept or access an electronic
- 2 communication made through an electronic
- 3 communication system configured so that the
- 4 electronic communication is readily accessible to
- 5 the general public.
- 6 (B) To intercept any radio communication that is
- 7 transmitted:
- 8 (i) By any station for the use of the general
- 9 public, or that relates to ships, aircraft,
- 10 vehicles, or persons in distress;
- 11 (ii) By any governmental, law enforcement,
- 12 emergency management, private land mobile,
- 13 or public safety communications system,
- 14 including police and fire, readily
- 15 accessible to the general public;
- 16 (iii) By a station operating on an authorized
- 17 frequency within the bands allocated to the
- 18 amateur, citizens band, or general mobile
- 19 radio services; or
- 20 (iv) By any marine or aeronautical communications
- 21 system.



- 1 (C) To engage in any conduct that:
 - 2 (i) Is prohibited by section 633 of the
 - 3 Communications Act of 1934 (47 U.S.C. §553);
 - 4 or
 - 5 (ii) Is excepted from the application of section
 - 6 705(a) of the Communications Act of 1934 by
 - 7 section 705(b) of that Act (47 U.S.C. §605).
- 8 (D) To intercept any wire or electronic communication
- 9 the transmission of which is causing harmful
- 10 interference to any lawfully operating station or
- 11 consumer electronic equipment to the extent
- 12 necessary to identify the source of the
- 13 interference.
- 14 (E) For other users of the same frequency to
- 15 intercept any radio communication made through a
- 16 system that uses frequencies monitored by
- 17 individuals engaged in the providing or the use
- 18 of the system, if the communication is not
- 19 scrambled or encrypted.
- 20 (8) It shall not be unlawful under this part:



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

3 (B) For a provider of electronic communication
4 service to record the fact that a wire or
5 electronic communication was initiated or
6 completed in order to protect the provider,
7 another provider furnishing service toward the
8 completion of the wire or electronic
9 communication, or a user of that service, from
10 the fraudulent, unlawful, or abusive use of such
11 service.

12 (C) For a provider of electronic or wire
13 communication service to use a pen register or a
14 trap and trace device for purposes relating to
15 the operation, maintenance, and testing of the
16 wire or electronic communication service or to
17 the protection of the rights or property of the
18 provider, or to the protection of users of that
19 service from abuse of service or unlawful use of
20 service.

1 (D) To use a pen register or a trap and trace device
2 where consent of the user of the service has been
3 obtained.

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

7 (10) Except as provided in this section, a person or entity
8 providing an electronic communication service to the
9 public shall not intentionally divulge the contents of
10 any communication (other than a communication to the
11 person or entity or an agent thereof) while in
12 transmission on that service to any person or entity
13 other than an addressee or intended recipient of the
14 communication or an agent of the addressee or intended
15 recipient.

16 (11) A person or entity providing electronic communication
17 service to the public may divulge the contents of any
18 such communication:

19 (A) As otherwise authorized by a court order or under
20 this part;



- 1 (B) With the lawful consent of the originator,
2 addressee, or intended recipient of the
3 communication;
- 4 (C) To a person employed or authorized, or whose
5 facilities are used, to forward the communication
6 to its destination;
- 7 (D) That was inadvertently obtained by the service
8 provider and that appears to pertain to the
9 commission of a crime, if divulged to a law
10 enforcement agency; or
- 11 (E) To a law enforcement agency, public safety
12 agency, or public safety answering point if the
13 provider, in good faith, believes that an
14 emergency involving danger of death or serious
15 bodily injury to any person requires disclosure
16 without delay of communications relating to the
17 emergency, and is provided with a certification
18 in writing from the governmental entity that
19 provides the facts and circumstances establishing
20 the existence of the emergency, that the specific
21 disclosure is required, and sets forth the period



1 of time during which the disclosure of the
2 information is authorized and specifies the
3 information required.

4 (12) It shall not be unlawful under this part for any
5 person to intercept a wire, oral, or electronic
6 communication involving a law enforcement officer when
7 the person is not a party to the communication;
8 provided that the law enforcement officer is in the
9 performance of the officer's duties in a public place
10 or under circumstances in which the officer has no
11 reasonable expectation of privacy and the person is
12 not interfering with the officer's ability to take
13 reasonable action to maintain safety and control,
14 secure crime scenes and accident sites, protect the
15 integrity and confidentiality of investigations, and
16 protect the public safety and order.

17 No cause of action shall lie in any court against any
18 provider of electronic communication service, its officers,
19 employees, or agents, custodian, or other specified person for
20 disclosing information in accordance with the terms of a
21 certification under this part."



S.B. NO. 2439

1 SECTION 4. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 5. This Act shall take effect upon its approval.
4

INTRODUCED BY:

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S.B. NO. 2439

Report Title:

Law Enforcement; Obstruction of Government Operations; Privacy in the Second Degree; One-party Consent; Electronic Communications; Video Recording; Audio Recording; Photograph

Description:

Establishes exceptions to the offense of obstructing government operations and the offense of violation of privacy in the second degree for a person making a video or audio recording or photograph of a law enforcement officer while the officer is in the performance of duties in a public place or under circumstances in which the officer has no reasonable expectation of privacy; provided that the officer may take reasonable action to maintain safety and control, secure crime scenes and accident sites, protect the integrity and confidentiality of investigations, and protect the public safety and order. Establishes one-party consent exception for a person who intercepts a wire, oral, or electronic communication that involves a law enforcement officer when the person is not a party to the communication.

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