

ACT 209

H. B. 883.

A Bill for an Act Prohibiting Wire Interception and Eavesdropping to Protect the Right of Privacy, and Providing Penalties Therefor.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Definitions. In this Act:

(a) "Wire communication" means any communication made in whole or part by aid of wire, cable, or other connection furnished or operated by any person engaged as a common carrier or public utility in providing or operating such facilities for the transmission of communication.

(b) "Intercept" means the act of acquiring all or any part of any wire communication from the facility transmitting the communication through use of any electronic, mechanical, or other device.

(c) "Eavesdropping" means surreptitiously listening to, monitoring, transmitting, amplifying, or recording a private conversation.

(d) "Electronic, mechanical or other device" does not include:

(1) an extension telephone instrument furnished to subscriber or user by a communication common carrier or public utility in the ordinary course of its business; or

(2) a hearing aid or similar device used by a person with impaired hearing, for the purpose of overcoming the impairment and permitting the hearing of sounds ordinarily audible to the human ear.

SECTION 2. Wiretapping and wire interception prohibited; penalty. (a) Any person who within this State, whether acting under color of law or otherwise:

(1) willfully intercepts, or attempts to intercept, any wire communication without the consent of both the sender and the receiver of such communication; or

(2) willfully discloses or attempts to disclose, or uses or attempts to use, any information, knowing or having reason to know that such information was obtained in violation of paragraph (1) of this subsection, shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

(b) It shall be unlawful under this section for an operator of a switchboard, or an officer, employee or agent of any communications common carrier or public utility whose facilities are used in this State in the transmission of wire communications, to intercept, disclose, or use that communication in any way in the course of his employment except while engaged in an activity which is a necessary incident of the rendition of service, which shall include investigation of complaints of users of the service.

(c) It shall not be unlawful under this section for an officer, employee, or agent of the Federal Communications Commission, in any way in the course of his employment and in discharge of the monitoring responsibilities exercised by the Commission in the enforcement of the Federal Communications Act, to intercept a wire communication while it is being transmitted by radio, or to disclose or use the information thereby obtained.

SECTION 3. Eavesdropping; penalty. Any person who, in this State, whether acting under color of law or otherwise:

(1) willfully uses or attempts to use any electronic, mechanical or other device for the purpose of eavesdropping, without the consent of the parties to the conversation; or

(2) willfully discloses or attempts to disclose, or uses or attempts to use, any information, knowing or having reason to know that such information was obtained in violation of paragraph (1) of this section, shall be fined not more than \$10,000, or imprisoned not more than five years, or both.

SECTION 4. Possession or sale of wiretapping and wire interception and eavesdropping devices prohibited; penalty; confiscation. Any person, other than a communications or other common carrier and its duly authorized officers and employees, or officer of the United States Government duly authorized by law, who, in this State, sells or has in his possession, or who attempts to sell or give away or distribute, any electronic, mechanical or other device, knowing or having reason to know that such device or the design of such device renders it primarily useful for the purpose of wiretapping, wire interception or eavesdropping, shall be fined not more than \$25,000, or imprisoned not more than one year, or both. Any police officer is hereby empowered to confiscate any such electronic, mechanical or other device being sold or possessed in violation of this section, and upon conviction said devices shall be destroyed or otherwise disposed of as ordered by the court.

SECTION 5. Severability and savings provisions. If any provision of this Act or the application of any provision to any person or circumstance shall be held invalid, the remainder of this Act or the application of such pro-

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vision to persons or circumstances other than those to which it is held invalid, shall not be affected.

SECTION 6. Effective date. This Act shall take effect upon its approval.

(Approved June 4, 1967.)