

Regular Session, 2012

SENATE BILL NO. 710

BY SENATOR PERRY

LAW ENFORCEMENT. Provides relative to the interception of communications. (8/1/12)

1 AN ACT

2 To amend and reenact R.S. 15:1302(4), (11) and (15), 1303(A)(1), (2), (3), and (4), (C)(2),
3 (3) and (4), 1304(A), the introductory paragraph of 1308(A) and 1308(B), 1309, the
4 introductory paragraph of 1310(A) and 1310(A)(6), the introductory paragraph of
5 1310(C) and 1310(C)(5), the introductory paragraph of 1310(D)(1), 1310(E), (F)(1)
6 and (2), the introductory paragraph of 1310(F)(4), 1310(F)(4)(c) and (G), the
7 introductory paragraph of 1310(H)(1) and 1310(H)(2), 1311(C) and the introductory
8 paragraph of 1312(A), relative to the interception of communications; to provide for
9 definitions; to provide relative to authorizations and disclosures; to provide relative
10 to procedures for interception and reporting requirements; and to provide for related
11 matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. R.S. 15:1302(4), (11) and (15), 1303(A)(1), (2), (3), and (4), (C)(2), (3)
14 and (4), 1304(A), the introductory paragraph of 1308(A) and 1308(B), 1309, the introductory
15 paragraph of 1310(A) and 1310(A)(6), the introductory paragraph of 1310(C) and
16 1310(C)(5), the introductory paragraph of 1310(D)(1), 1310(E), (F)(1) and (2), the
17 introductory paragraph of 1310(F)(4), 1310(F)(4)(c) and (G), the introductory paragraph of

1 1310(H)(1) and 1310(H)(2), 1311(C) and the introductory paragraph of 1312(A) are hereby
2 amended and reenacted to read as follows:

3 §1302. Definitions

4 As used in this Chapter:

5 * * *

6 (4) "Communications common carrier" means any person engaged as a
7 common carrier for hire in communication by wire ~~or~~ radio, or electronic
8 communications; however, a person engaged in commercial radio broadcasting
9 which is supervised by the Federal Communications Commission shall not, insofar
10 as such person is so engaged, be deemed a common carrier.

11 * * *

12 (11) "Intercept" means the aural or other acquisition of the contents of any
13 wire, ~~or~~ oral, or electronic communication through the use of any electronic,
14 mechanical, or other device.

15 * * *

16 (15) "Pen register" means a device which records and decodes ~~electronic or~~
17 ~~other impulses which identify the numbers dialed or otherwise transmitted on the~~
18 ~~telephone line to which such device is attached, but this term does not include any~~
19 ~~device used by a provider or customer of a wire or electronic communication service~~
20 ~~for billing, or recording as an incident to billing, for communications services~~
21 ~~provided by such provider or any device used by a provider or customer of a wire~~
22 ~~communication service for cost accounting or other like purposes in the ordinary~~
23 ~~course of its business.~~ dialing, routing, addressing, or signaling information
24 transmitted by an instrument or facility from which a wire or electronic
25 communication is transmitted, if the information does not include the contents
26 of the communication. The term does not include a device used by a provider
27 or customer of a wire or electronic communication service in the ordinary
28 course of the provider's or customer's business for purposes of:

29 (i) Billing or recording as an incident to billing for communications services.

(ii) Cost accounting, security control, or other ordinary business purposes.

* * *

§1303. Interception and disclosure of wire, electronic, or oral communications

A. Except as otherwise specifically provided in this Chapter, it shall be unlawful for any person to:

(1) Willfully intercept, endeavor to intercept, or procure any other person to intercept or endeavor to intercept, any wire, **electronic** or oral communication;

(2) Willfully use, endeavor to use, or procure any other person to use or endeavor to use, any electronic, mechanical, or other device to intercept any oral communication when:

(a) Such device is affixed to, or otherwise transmits a signal through, a wire, cable, or other like connection used in wire **or electronic** communication; or

(b) Such device transmits communications by radio or interferes with the transmission of such communication;

(3) Willfully disclose, or endeavor to disclose, to any other person the contents of any wire, **electronic**, or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire, **electronic**, or oral communication in violation of this Subsection; or

(4) Willfully use, or endeavor to use, the contents of any wire, **electronic**, or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire, **electronic**, or oral communication in violation of this Subsection.

* * *

C. * * *

(2) It shall not be unlawful under this Chapter for an officer, employee, or agent of the Federal Communications Commission, in the normal course of his employment and in discharge of the monitoring responsibilities exercised by the commission in the enforcement of Chapter 5 of Title 47 of the United States Code, to intercept a wire **or electronic** communication, or oral communication transmitted

1 by radio, or to disclose or use the information thereby obtained.

2 (3) It shall not be unlawful under this Chapter for a person acting under color
3 of law to intercept a wire, **electronic**, or oral communication, where such person is
4 a party to the communication or one of the parties to the communication has given
5 prior consent to such interception. Such a person acting under color of law is
6 authorized to possess equipment used under such circumstances.

7 (4) It shall not be unlawful under this Chapter for a person not acting under
8 color of law to intercept a wire, **electronic**, or oral communication where such
9 person is a party to the communication or where one of the parties to the
10 communication has given prior consent to such interception, unless such
11 communication is intercepted for the purpose of committing any criminal or tortious
12 act in violation of the constitution or laws of the United States or of the state or for
13 the purpose of committing any other injurious act.

14 * * *

15 §1304. Manufacture, distribution, or possession of wire, **electronic**, or oral
16 communication intercepting devices prohibited

17 A. Except as otherwise specifically provided in this Chapter, it shall be
18 unlawful for any person willfully to manufacture, assemble, possess, or sell any
19 electronic, mechanical, or other device, knowing or having reason to know that the
20 design of such device renders it primarily useful for the purpose of surreptitious
21 interception of wire, **electronic**, or oral communications.

22 * * *

23 §1308. Authorization for interception of wire, **electronic**, or oral communications

24 A. The attorney general, or the deputy or any assistant attorney general acting
25 pursuant to the authorization of the attorney general, with the approval of the district
26 attorney or any assistant district attorney acting pursuant to the written authorization
27 of the district attorney in whose district the interception of wire, **electronic**, or oral
28 communications shall take place, and the district attorney or authorized assistant
29 district attorney, with the approval of the attorney general or authorized deputy or

1 assistant attorney general may authorize an application to a judge in whose district
2 the interception of wire, **electronic**, or oral communications shall take place, and
3 such judge may grant in conformity with R.S. 15:1310 an order authorizing or
4 approving the interception of wire, **electronic**, or oral communications by an
5 investigative or law enforcement officer having responsibility for the investigation
6 of the offense as to which the application is made, when such interception may
7 provide or has provided evidence of:

8 * * *

9 B. Failure of the district attorney to obtain approval for the interception of
10 wire, **electronic**, or oral communications as set forth in this Section shall constitute
11 cause for the attorney general to institute, prosecute, or intervene in a criminal action
12 or proceeding as authorized by law.

13 §1309. Authorization for disclosure and use of intercepted wire, **electronic**, or oral
14 communications

15 A. Any investigative or law enforcement officer who, by any means
16 authorized by this Chapter, has obtained knowledge of the contents of any wire,
17 **electronic**, or oral communication, or evidence derived therefrom, may disclose such
18 contents to another investigative or law enforcement officer to the extent that such
19 disclosure is appropriate to the proper performance of the official duties of the
20 officer making or receiving the disclosure, and provided that such disclosure of the
21 contents of any wire, **electronic**, or oral communication, or evidence derived
22 therefrom, relates directly to the offense for which the order was granted.

23 B. Any investigative or law enforcement officer who, by any means
24 authorized by this Chapter, has obtained knowledge of the contents of any wire,
25 **electronic**, or oral communication or evidence derived therefrom may use such
26 contents to the extent such use is appropriate to the proper performance of his
27 official duties.

28 C. Any person who has received, by any means authorized by this Chapter,
29 any information concerning a wire, **electronic**, or oral communication, or evidence

1 derived therefrom, intercepted in accordance with the provisions of this Chapter may
2 disclose the contents of that communication or such derivative evidence while giving
3 testimony under oath or affirmation in any criminal proceeding in any court of the
4 United States or of the state or in any federal or state grand jury proceeding.

5 D. No otherwise privileged wire, **electronic**, or oral communication
6 intercepted in accordance with, or in violation of, the provisions of this Chapter shall
7 lose its privileged character.

8 E. When an investigative or law enforcement officer, while engaged in
9 intercepting wire, **electronic**, or oral communications, obtains knowledge of
10 communications relating to offenses other than those specified in the order of
11 authorization or approval, the contents thereof, and evidence derived therefrom, may
12 be disclosed or used as provided in Subsections A, B and C of this Section.

13 §1310. Procedure for interception of wire, **electronic**, or oral communications

14 A. Each application for an order authorizing or approving the interception of
15 a wire, **electronic**, or oral communication shall be made in writing upon oath or
16 affirmation to a judge in whose district such interception of wire, **electronic**, or oral
17 communication shall take place and shall state the applicant's authority to make such
18 application. Each application shall include the following information:

19 * * *

20 (6) A full and complete statement of the facts concerning previous
21 applications for the past five years, known to the individuals authorizing and making
22 the application, made to any judge for authorization to intercept, or for approval of
23 interception of, wire, **electronic**, or oral communications involving any of the same
24 persons, facilities, or places specified in the application, and the action taken by the
25 judge on each such application.

26 * * *

27 C. Upon such application the judge may enter an ex parte order, as requested
28 or as modified, authorizing or approving interception of wire, **electronic**, or oral
29 communications within the territorial jurisdiction of the district in which the judge

1 is sitting, if the judge determines on the basis of the facts submitted by the applicant
2 that:

3 * * *

4 (5) The interception of wire, electronic, or oral communications, as planned,
5 is not reasonably expected to intercept privileged communications.

6 D.(1) Each order authorizing or approving the interception of any wire,
7 electronic, or oral communication shall specify:

8 * * *

9 E. No order entered under this Section may authorize or approve the
10 interception of any wire, electronic, or oral communication for any period longer
11 than is necessary to achieve the objective of the investigation, and in no event longer
12 than thirty days. Extensions of an order may be granted, but only upon application
13 for an extension made in accordance with Subsection A of this Section and the
14 court's making the findings required by Subsection C of this Section. The period of
15 extension shall be no longer than the authorizing judge deems necessary to achieve
16 the purposes for which it was granted and in no event for longer than thirty
17 successive days or until the described type of communication has been obtained.
18 Every order and extension thereof shall contain a provision that the authorization to
19 intercept shall be executed as soon as practicable, shall be conducted in such a way
20 as to minimize the interception of communications not otherwise subject to
21 interception under this Chapter, and must terminate upon completion of the
22 investigation or expiration of the order.

23 F.(1) The contents of any wire, electronic, or oral communication intercepted
24 by any means authorized by this Chapter shall be recorded on tape or wire or other
25 comparable device. The recording of the contents of any wire, electronic, or oral
26 communication under this Subsection shall be done in such way as will protect the
27 recording from editing or other alterations. Immediately upon the expiration of the
28 period of the order, or extensions thereof, such recordings shall be made available
29 to the judge issuing such order and sealed under his directions. Custody of the

1 recording shall be wherever the judge orders. They shall not be destroyed except
2 upon an order of the issuing or denying judge and in any event shall be kept for ten
3 years. Duplicate recordings may be made for use or disclosure pursuant to the
4 provisions of R.S. 15:1309(A) and (B) for investigations. The presence of the seal
5 provided for by this Subsection, or a satisfactory explanation for the absence thereof,
6 shall be a prerequisite for the use or disclosure of the contents of any wire,
7 **electronic**, or oral communication or evidence derived therefrom under R.S.
8 15:1309(C).

9 (2) Applications made and orders granted under this Chapter shall be sealed
10 by the judge. Custody of the applications and orders shall be wherever the judge
11 directs. Such applications and orders shall be disclosed only upon a showing of good
12 cause before a judge in whose district the interception of wire, **electronic**, or oral
13 communication took place and shall not be destroyed, except on order of the issuing
14 or denying judge, and in any event shall be kept for ten years.

15 * * *

16 (4) Within a reasonable time, but not later than ninety days after the filing of
17 an application for an order of approval, the issuing judge shall cause to be served, on
18 the persons named in the order of the application, and such other parties to
19 intercepted communications as the judge may determine in his discretion to be in the
20 interest of justice, an inventory which shall include notice of:

21 * * *

22 (c) The fact that during the period wire, **electronic**, or oral communications
23 were or were not intercepted. The judge, upon the filing of a motion, may in his
24 discretion make available to such person or his counsel for inspection such portions
25 of the intercepted communications, applications, and orders as the judge determines
26 to be in the interest of justice. On an ex parte showing of good cause to a judge in
27 whose district the interception of wire, **electronic**, or oral communications took
28 place, the serving of the inventory required by this Subsection may be postponed
29 until such time as may be appropriate in the circumstances.

* * *

G. The contents of any intercepted wire, electronic, or oral communication or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in any court unless each party, not less than thirty days before the trial, hearing, or proceeding, has been furnished with a copy of the court order, and accompanying application, under which the interception was authorized or approved. This thirty-day period may be waived by the judge if he finds that it was not possible to furnish the party with the above information thirty days before the trial, hearing, or proceeding and that the party will not be prejudiced by the delay in receiving such information.

H.(1) Any aggrieved person in any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the state, or a political subdivision thereof, may move to suppress the contents of any intercepted wire, **electronic**, or oral communication, or evidence derived therefrom, on the grounds that:

* * *

(2) Such motion shall be made before the trial, hearing, or proceeding, unless there was not opportunity to make such motion or the person was not aware of the grounds of the motion. If the motion is granted, the contents of the intercepted wire, **electronic**, or oral communication, or evidence derived therefrom, shall be treated as having been obtained in violation of this Chapter. The judge, upon the filing of such motion by the aggrieved person, may in his discretion make available to the aggrieved person or his counsel for inspection such portion of the intercepted communication or evidence derived therefrom as the judge determines to be in the interests of justice.

* * *

§1311. Reports concerning intercepted wire, **electronic**, or oral communications

* * *

C. In April of each year the judicial administrator of the supreme court shall

transmit to the legislature a full and complete report concerning the number of applications for orders authorizing or approving the interception of wire, **electronic**, or oral communications and the number of orders and extensions granted or denied during the preceding calendar year. Such report shall include a summary and analysis of the data required to be filed with the judicial administrator. The judicial administrator may issue binding regulations dealing with the content and form of the reports required to be filed by Subsections A and B of this Section.

§1312. Recovery of civil damages authorized

A. Any person whose wire, **electronic**, or oral communication is intercepted, disclosed, or used in violation of this Chapter shall have a civil cause of action against any person who intercepts, discloses, or uses, or procures any other person to intercept, disclose, or use such communications, and be entitled to recover from any such person:

* * *

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by James Benton.

DIGEST

Perry (SB 710)

Present law provides that "communications common carrier" means any person engaged as a common carrier for hire in communication by wire or radio, or electronic communications; however, a person engaged in commercial radio broadcasting which is supervised by the Federal Communications Commission shall not, insofar as such person is so engaged, be deemed a common carrier.

Proposed law retains present law and adds electronic communications.

Present law provides that "intercept" means the aural acquisition of the contents of any wire, or oral communication through the use of any electronic, mechanical, or other device.

Proposed law retains present law and adds electronic communication.

Present law provides that "pen register" means a device which records and decodes electronic or other impulses which identify the numbers dialed or otherwise transmitted on the telephone line to which such device is attached, but this term does not include any device used by a provider or customer of a wire or electronic communication service for billing, or recording as an incident to billing, for communications services provided by such provider or any device used by a provider or customer of a wire communication service for cost accounting or other like purposes in the ordinary course of its business.

Proposed law provides that "pen register" means dialing, routing, addressing, or signaling information transmitted by an instrument or facility from which a wire or electronic

communication is transmitted, if the information does not include the contents of the communication. The term does not include a device used by a provider or customer of a wire or electronic communication service in the ordinary course of the provider's or customer's business for purposes of:

1. Billing or recording as an incident to billing for communications services; or
2. Cost accounting, security control, or other ordinary business purposes.

Proposed law provides that it will be unlawful for any person to:

1. Willfully intercept, endeavor to intercept, or procure any other person to intercept or endeavor to intercept, any wire or oral communication;
2. Willfully use, endeavor to use, or procure any other person to use or endeavor to use, any electronic, mechanical, or other device to intercept any oral communication when:
 - (a) Such device is affixed to, or otherwise transmits a signal through, a wire, cable, or other like connection used in wire communication; or
 - (b) Such device transmits communications by radio or interferes with the transmission of such communication;
3. Willfully disclose, or endeavor to disclose, to any other person the contents of any wire or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire, electronic, or oral communication in violation of this Subsection; or
4. Willfully use, or endeavor to use, the contents of any wire or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire or oral communication in violation of this Subsection.

Proposed law retains present law and adds electronic communication.

Present law provides that it will not be unlawful under present law for an officer, employee, or agent of the Federal Communications Commission, in the normal course of his employment and in discharge of the monitoring responsibilities exercised by the commission in the enforcement of present law, to intercept a wire or electronic communication, or oral communication transmitted by radio, or to disclose or use the information thereby obtained. Further provides that it shall not be unlawful under present law for a person acting under color of law to intercept a wire, electronic, or oral communication, where such person is a party to the communication or one of the parties to the communication has given prior consent to such interception. Such a person acting under color of law is authorized to possess equipment used under such circumstances. It shall not be unlawful under present law for a person not acting under color of law to intercept a wire, electronic, or oral communication where such person is a party to the communication or where one of the parties to the communication has given prior consent to such interception, unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the constitution or laws of the United States or of the state or for the purpose of committing any other injurious act.

Proposed law retains present law and adds electronic communications.

Present law provides that except as otherwise specifically provided in present law, it will be unlawful for any person willfully to manufacture, assemble, possess, or sell any electronic, mechanical, or other device, knowing or having reason to know that the design of such device renders it primarily useful for the purpose of surreptitious interception of wire or oral

communications.

Proposed law retains present law and adds electronic communications.

Present law provides that the attorney general, or the deputy or any assistant attorney general acting pursuant to the authorization of the attorney general, with the approval of the district attorney or any assistant district attorney acting pursuant to the written authorization of the district attorney in whose district the interception of wire or oral communications shall take place, and the district attorney or authorized assistant district attorney, with the approval of the attorney general or authorized deputy or assistant attorney general may authorize an application to a judge in whose district the interception of wire or oral communications shall take place, and such judge may grant in conformity with present law an order authorizing or approving the interception of wire or oral communications by an investigative or law enforcement officer having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of: Failure of the district attorney to obtain approval for the interception of wire or oral communications as set forth in present law will constitute cause for the attorney general to institute, prosecute, or intervene in a criminal action or proceeding as authorized by law.

Proposed law retains present law and adds electronic communications.

Proposed law provides for the authorization for disclosure and use of intercepted wire or oral communications.

Proposed law retains present law and adds electronic communications.

Present law provides for the procedure for interception of wire or oral communications.

Proposed law retains present law and adds electronic communications.

Present law provides relative to reports concerning intercepted wire or oral communications.

Proposed law retains present law and adds electronic communications.

Present law provides that any person whose wire or oral communication is intercepted, disclosed, or used in violation of present law will have a civil cause of action against any person who intercepts, discloses, or uses, or procures any other person to intercept, disclose, or use such communications, and be entitled to recover from any such person.

Proposed law retains present law and adds electronic communications.

Effective August 1, 2012.

(Amends R.S. 15:1302(4), (11) and (15), 1303(A)(1), (2), (3), and (4), (C)(2), (3) and (4), 1304(A), 1308(A) (intro para) and 1308(B), 1309, 1310(A) (intro para) and 1310(A)(6), 1310(C) (intro para) and 1310(C)(5), 1310(D)(1) (intro para), 1310(E), (F)(1) and (2), 1310(F)(4) (intro para), 1310(F)(4)(c) and (G), 1310(H)(1) (intro para) and 1310(H)(2), 1311(C) and 1312(A) (intro para))