

1 AMENDMENT TO SENATE BILL 8

2 AMENDMENT NO. _____. Amend Senate Bill 8 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Criminal Code of 1961 is amended by
5 changing Section 14-3 as follows:

6 (720 ILCS 5/14-3) (from Ch. 38, par. 14-3)

7 Sec. 14-3. Exemptions. The following activities shall
8 be exempt from the provisions of this Article:

9 (a) Listening to radio, wireless and television
10 communications of any sort where the same are publicly made;

11 (b) Hearing conversation when heard by employees of any
12 common carrier by wire incidental to the normal course of
13 their employment in the operation, maintenance or repair of
14 the equipment of such common carrier by wire so long as no
15 information obtained thereby is used or divulged by the
16 hearer;

17 (c) Any broadcast by radio, television or otherwise
18 whether it be a broadcast or recorded for the purpose of
19 later broadcasts of any function where the public is in
20 attendance and the conversations are overheard incidental to
21 the main purpose for which such broadcasts are then being
22 made;

1 (d) Recording or listening with the aid of any device to
2 any emergency communication made in the normal course of
3 operations by any federal, state or local law enforcement
4 agency or institutions dealing in emergency services,
5 including, but not limited to, hospitals, clinics, ambulance
6 services, fire fighting agencies, any public utility,
7 emergency repair facility, civilian defense establishment or
8 military installation;

9 (e) Recording the proceedings of any meeting required to
10 be open by the Open Meetings Act, as amended;

11 (f) Recording or listening with the aid of any device to
12 incoming telephone calls of phone lines publicly listed or
13 advertised as consumer "hotlines" by manufacturers or
14 retailers of food and drug products. Such recordings must be
15 destroyed, erased or turned over to local law enforcement
16 authorities within 24 hours from the time of such recording
17 and shall not be otherwise disseminated. Failure on the part
18 of the individual or business operating any such recording or
19 listening device to comply with the requirements of this
20 subsection shall eliminate any civil or criminal immunity
21 conferred upon that individual or business by the operation
22 of this Section;

23 (g) With prior notification to the State's Attorney of
24 the county in which it is to occur, recording or listening
25 with the aid of any device to any conversation where a law
26 enforcement officer, or any person acting at the direction of
27 law enforcement, is a party to the conversation and has
28 consented to it being intercepted or recorded under
29 circumstances where the use of the device is necessary for
30 the protection of the law enforcement officer or any person
31 acting at the direction of law enforcement, in the course of
32 an investigation of a forcible felony, a felony violation of
33 the Illinois Controlled Substances Act, a felony violation of
34 the Cannabis Control Act, or any "streetgang related" or

1 "gang-related" felony as those terms are defined in the
2 Illinois Streetgang Terrorism Omnibus Prevention Act. Any
3 recording or evidence derived as the result of this exemption
4 shall be inadmissible in any proceeding, criminal, civil or
5 administrative, except (i) where a party to the conversation
6 suffers great bodily injury or is killed during such
7 conversation, or (ii) when used as direct impeachment of a
8 witness concerning matters contained in the interception or
9 recording. The Director of the Department of State Police
10 shall issue regulations as are necessary concerning the use
11 of devices, retention of tape recordings, and reports
12 regarding their use;

13 (g-5) With approval of the State's Attorney of the
14 county in which it is to occur, recording or listening with
15 the aid of any device to any conversation where a law
16 enforcement officer, or any person acting at the direction of
17 law enforcement, is a party to the conversation and has
18 consented to it being intercepted or recorded in the course
19 of an investigation of any offense defined in Article 29D of
20 this Code. In all such cases, an application for an order
21 approving the previous or continuing use of an eavesdropping
22 device must be made within 48 hours of the commencement of
23 such use. In the absence of such an order, or upon its
24 denial, any continuing use shall immediately terminate. The
25 Director of State Police shall issue rules as are necessary
26 concerning the use of devices, retention of tape recordings,
27 and reports regarding their use.

28 Any recording or evidence obtained or derived in the
29 course of an investigation of any offense defined in Article
30 29D of this Code shall, upon motion of the State's Attorney
31 or Attorney General prosecuting any violation of Article 29D,
32 be reviewed in camera with notice to all parties present by
33 the court presiding over the criminal case, and, if ruled by
34 the court to be relevant and otherwise admissible, it shall

1 be admissible at the trial of the criminal case.

2 This subsection (g-5) is inoperative on and after January
3 1, 2005. No conversations recorded or monitored pursuant to
4 this subsection (g-5) shall be inadmissible in a court of law
5 by virtue of the repeal of this subsection (g-5) on January
6 1, 2005;

7 (h) Recordings made simultaneously with a video
8 recording of an oral conversation between a peace officer,
9 who has identified his or her office, and a person stopped
10 for an investigation of an offense under the Illinois Vehicle
11 Code;

12 (i) Recording of a conversation made by or at the
13 request of a person, not a law enforcement officer or agent
14 of a law enforcement officer, who is a party to the
15 conversation, under reasonable suspicion that another party
16 to the conversation is committing, is about to commit, or has
17 committed a criminal offense against the person or a member
18 of his or her immediate household, and there is reason to
19 believe that evidence of the criminal offense may be obtained
20 by the recording; and

21 (j) The use of a telephone monitoring device by either
22 (1) a corporation or other business entity engaged in
23 marketing or opinion research or (2) a corporation or other
24 business entity engaged in telephone solicitation, as defined
25 in this subsection, to record or listen to oral telephone
26 solicitation conversations or marketing or opinion research
27 conversations by an employee of the corporation or other
28 business entity when:

29 (i) the monitoring is used for the purpose of
30 service quality control of marketing or opinion research
31 or telephone solicitation, the education or training of
32 employees or contractors engaged in marketing or opinion
33 research or telephone solicitation, or internal research
34 related to marketing or opinion research or telephone

1 solicitation; and

2 (ii) the monitoring is used with the consent of at
3 least one person who is an active party to the marketing
4 or opinion research conversation or telephone
5 solicitation conversation being monitored.

6 No communication or conversation or any part, portion, or
7 aspect of the communication or conversation made, acquired,
8 or obtained, directly or indirectly, under this exemption
9 (j), may be, directly or indirectly, furnished to any law
10 enforcement officer, agency, or official for any purpose or
11 used in any inquiry or investigation, or used, directly or
12 indirectly, in any administrative, judicial, or other
13 proceeding, or divulged to any third party.

14 When recording or listening authorized by this subsection
15 (j) on telephone lines used for marketing or opinion research
16 or telephone solicitation purposes results in recording or
17 listening to a conversation that does not relate to marketing
18 or opinion research or telephone solicitation; the person
19 recording or listening shall, immediately upon determining
20 that the conversation does not relate to marketing or opinion
21 research or telephone solicitation, terminate the recording
22 or listening and destroy any such recording as soon as is
23 practicable.

24 Business entities that use a telephone monitoring or
25 telephone recording system pursuant to this exemption (j)
26 shall provide current and prospective employees with notice
27 that the monitoring or recordings may occur during the course
28 of their employment. The notice shall include prominent
29 signage notification within the workplace.

30 Business entities that use a telephone monitoring or
31 telephone recording system pursuant to this exemption (j)
32 shall provide their employees or agents with access to
33 personal-only telephone lines which may be pay telephones,
34 that are not subject to telephone monitoring or telephone

1 recording.

2 For the purposes of this subsection (j), "telephone
3 solicitation" means a communication through the use of a
4 telephone by live operators:

- 5 (i) soliciting the sale of goods or services;
- 6 (ii) receiving orders for the sale of goods or
7 services;
- 8 (iii) assisting in the use of goods or services; or
- 9 (iv) engaging in the solicitation, administration,
10 or collection of bank or retail credit accounts.

11 For the purposes of this subsection (j), "marketing or
12 opinion research" means a marketing or opinion research
13 interview conducted by a live telephone interviewer engaged
14 by a corporation or other business entity whose principal
15 business is the design, conduct, and analysis of polls and
16 surveys measuring the opinions, attitudes, and responses of
17 respondents toward products and services, or social or
18 political issues, or both; and-

19 (k) With approval of the State' Attorney of the county
20 in which it is to occur, recording or listening with the aid
21 of any device to any conversation where a law enforcement
22 officer, or any person acting at the direction of law
23 enforcement officer, is a party to the conversation and has
24 consented to it being intercepted or recorded in the course
25 of an investigation of a felony violation of the Illinois
26 Controlled Substances Act or a felony violation of the
27 Cannabis Control Act. In all such cases, an application for
28 an order approving the previous use of an eavesdropping
29 device must be made within 72 hours of the commencement of
30 such use. In the absence of such an order, or upon its
31 denial, any recording or evidence derived as the result of
32 this exemption shall be inadmissible in any proceeding,
33 criminal, civil, or administrative, except when used as
34 direct impeachment of a witness concerning matters contained

1 in the interception or recording. The Director of State
2 Police shall issue rules as are necessary concerning the use
3 of devices, retention of tape recordings, and reports
4 regarding their use.

5 (Source: P.A. 91-357, eff. 7-29-99; 92-854, eff. 12-5-02.)

6 Section 10. The Code of Criminal Procedure of 1963 is
7 amended by adding Section 108A-12 as follows:

8 (725 ILCS 5/108A-12 new)

9 Sec. 108A-12. Undercover narcotic investigation exception
10 to procedures.

11 (a) With prior notification to and verbal approval of the
12 State's Attorney of the county in which the conversation is
13 anticipated to occur or his or her designee, recording or
14 listening with the aid of an eavesdropping device to a
15 conversation in which a law enforcement officer, or any
16 person acting at the direction of a law enforcement officer,
17 is a party to an undercover conversation and has consented to
18 the conversation being intercepted or recorded in the course
19 of an investigation of a felony violation of the Illinois
20 Controlled Substances Act or a felony violation of the
21 Cannabis Control Act. The use of an eavesdropping device
22 under this Section shall be deemed necessary for the
23 protection of the law enforcement officer or person acting at
24 the direction of the law enforcement officer.

25 (b) In all such cases, any recording or evidence derived
26 as the result of this exemption shall be inadmissible in any
27 proceeding, criminal, civil, or administrative, unless an
28 application for an order approving the previous or continuing
29 use of an eavesdropping device is made within 72 hours of the
30 commencement of such use and the order is approved. In the
31 absence of an order approving use of the device, any
32 continuing use shall immediately terminate. In order to

1 approve such undercover use of an eavesdropping device during
2 an investigation of a felony violation of the Illinois
3 Controlled Substances Act or a felony violation of the
4 Cannabis Control Act, the judge must make a determination
5 that: (1) a law enforcement officer, or any person acting at
6 the direction of a law enforcement officer has consented to
7 an undercover conversation concerning a felony violation of
8 the Illinois Controlled Substances Act or a felony violation
9 of the Cannabis Control Act being intercepted or recorded and
10 (2) the judge would have granted an order had the information
11 been before the court prior to the use of the eavesdropping
12 device. The manner and form of the application for such order
13 shall be determined by the Attorney General.

14 (c) In the event that an application for approval under
15 this Section is denied the contents of the conversation
16 overheard or recorded shall be treated as having been
17 obtained in violation of this Article."