



94TH GENERAL ASSEMBLY
State of Illinois
2005 and 2006
HB1139

Introduced 02/08/05, by Rep. Chapin Rose

SYNOPSIS AS INTRODUCED:

720 ILCS 5/14-3

from Ch. 38, par. 14-3

Amends the Criminal Code of 1961. Exempts, from an eavesdropping violation, the recording or listening with the aid of any device to a conversation of a public officer or public employee, including a peace officer, if the public officer or public employee in the performance of his or her official duties conducts the conversation in a public place and the physical act of recording or listening does not interfere with the performance of those duties.

LRB094 06907 RLC 39499 b

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Criminal Code of 1961 is amended by changing
5 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 be
8 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 their
13 employment in the operation, maintenance or repair of the
14 equipment of such common carrier by wire so long as no
15 information obtained thereby is used or divulged by the hearer;

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

21 (d) Recording or listening with the aid of any device to
22 any emergency communication made in the normal course of
23 operations by any federal, state or local law enforcement
24 agency or institutions dealing in emergency services,
25 including, but not limited to, hospitals, clinics, ambulance
26 services, fire fighting agencies, any public utility,
27 emergency repair facility, civilian defense establishment or
28 military installation;

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

31 (f) Recording or listening with the aid of any device to
32 incoming telephone calls of phone lines publicly listed or

1 advertised as consumer "hotlines" by manufacturers or
2 retailers of food and drug products. Such recordings must be
3 destroyed, erased or turned over to local law enforcement
4 authorities within 24 hours from the time of such recording and
5 shall not be otherwise disseminated. Failure on the part of the
6 individual or business operating any such recording or
7 listening device to comply with the requirements of this
8 subsection shall eliminate any civil or criminal immunity
9 conferred upon that individual or business by the operation of
10 this Section;

11 (g) With prior notification to the State's Attorney of the
12 county in which it is to occur, recording or listening with the
13 aid of any device to any conversation where a law enforcement
14 officer, or any person acting at the direction of law
15 enforcement, is a party to the conversation and has consented
16 to it being intercepted or recorded under circumstances where
17 the use of the device is necessary for the protection of the
18 law enforcement officer or any person acting at the direction
19 of law enforcement, in the course of an investigation of a
20 forcible felony, a felony violation of the Illinois Controlled
21 Substances Act, a felony violation of the Cannabis Control Act,
22 or any "streetgang related" or "gang-related" felony as those
23 terms are defined in the Illinois Streetgang Terrorism Omnibus
24 Prevention Act. Any recording or evidence derived as the result
25 of this exemption shall be inadmissible in any proceeding,
26 criminal, civil or administrative, except (i) where a party to
27 the conversation suffers great bodily injury or is killed
28 during such conversation, or (ii) when used as direct
29 impeachment of a witness concerning matters contained in the
30 interception or recording. The Director of the Department of
31 State Police shall issue regulations as are necessary
32 concerning the use of devices, retention of tape recordings,
33 and reports regarding their use;

34 (g-5) With approval of the State's Attorney of the county
35 in which it is to occur, recording or listening with the aid of
36 any device to any conversation where a law enforcement officer,

1 or any person acting at the direction of law enforcement, is a
2 party to the conversation and has consented to it being
3 intercepted or recorded in the course of an investigation of
4 any offense defined in Article 29D of this Code. In all such
5 cases, an application for an order approving the previous or
6 continuing use of an eavesdropping device must be made within
7 48 hours of the commencement of such use. In the absence of
8 such an order, or upon its denial, any continuing use shall
9 immediately terminate. The Director of State Police shall issue
10 rules as are necessary concerning the use of devices, retention
11 of tape recordings, and reports regarding their use.

12 Any recording or evidence obtained or derived in the course
13 of an investigation of any offense defined in Article 29D of
14 this Code shall, upon motion of the State's Attorney or
15 Attorney General prosecuting any violation of Article 29D, be
16 reviewed in camera with notice to all parties present by the
17 court presiding over the criminal case, and, if ruled by the
18 court to be relevant and otherwise admissible, it shall be
19 admissible at the trial of the criminal case.

20 This subsection (g-5) is inoperative on and after January
21 1, 2005. No conversations recorded or monitored pursuant to
22 this subsection (g-5) shall be inadmissible ~~inadmissible~~ in a
23 court of law by virtue of the repeal of this subsection (g-5)
24 on January 1, 2005;

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

29 (i) Recording of a conversation made by or at the request
30 of a person, not a law enforcement officer or agent of a law
31 enforcement officer, who is a party to the conversation, under
32 reasonable suspicion that another party to the conversation is
33 committing, is about to commit, or has committed a criminal
34 offense against the person or a member of his or her immediate
35 household, and there is reason to believe that evidence of the
36 criminal offense may be obtained by the recording;

1 (j) The use of a telephone monitoring device by either (1)
2 a corporation or other business entity engaged in marketing or
3 opinion research or (2) a corporation or other business entity
4 engaged in telephone solicitation, as defined in this
5 subsection, to record or listen to oral telephone solicitation
6 conversations or marketing or opinion research conversations
7 by an employee of the corporation or other business entity
8 when:

9 (i) the monitoring is used for the purpose of service
10 quality control of marketing or opinion research or
11 telephone solicitation, the education or training of
12 employees or contractors engaged in marketing or opinion
13 research or telephone solicitation, or internal research
14 related to marketing or opinion research or telephone
15 solicitation; and

16 (ii) the monitoring is used with the consent of at
17 least one person who is an active party to the marketing or
18 opinion research conversation or telephone solicitation
19 conversation being monitored.

20 No communication or conversation or any part, portion, or
21 aspect of the communication or conversation made, acquired, or
22 obtained, directly or indirectly, under this exemption (j), may
23 be, directly or indirectly, furnished to any law enforcement
24 officer, agency, or official for any purpose or used in any
25 inquiry or investigation, or used, directly or indirectly, in
26 any administrative, judicial, or other proceeding, or divulged
27 to any third party.

28 When recording or listening authorized by this subsection
29 (j) on telephone lines used for marketing or opinion research
30 or telephone solicitation purposes results in recording or
31 listening to a conversation that does not relate to marketing
32 or opinion research or telephone solicitation; the person
33 recording or listening shall, immediately upon determining
34 that the conversation does not relate to marketing or opinion
35 research or telephone solicitation, terminate the recording or
36 listening and destroy any such recording as soon as is

1 practicable.

2 Business entities that use a telephone monitoring or
3 telephone recording system pursuant to this exemption (j) shall
4 provide current and prospective employees with notice that the
5 monitoring or recordings may occur during the course of their
6 employment. The notice shall include prominent signage
7 notification within the workplace.

8 Business entities that use a telephone monitoring or
9 telephone recording system pursuant to this exemption (j) shall
10 provide their employees or agents with access to personal-only
11 telephone lines which may be pay telephones, that are not
12 subject to telephone monitoring or telephone recording.

13 For the purposes of this subsection (j), "telephone
14 solicitation" means a communication through the use of a
15 telephone by live operators:

- 16 (i) soliciting the sale of goods or services;
17 (ii) receiving orders for the sale of goods or
18 services;
19 (iii) assisting in the use of goods or services; or
20 (iv) engaging in the solicitation, administration, or
21 collection of bank or retail credit accounts.

22 For the purposes of this subsection (j), "marketing or
23 opinion research" means a marketing or opinion research
24 interview conducted by a live telephone interviewer engaged by
25 a corporation or other business entity whose principal business
26 is the design, conduct, and analysis of polls and surveys
27 measuring the opinions, attitudes, and responses of
28 respondents toward products and services, or social or
29 political issues, or both; ~~and~~

30 (k) Electronic recordings, including but not limited to, a
31 motion picture, videotape, digital, or other visual or audio
32 recording, made of a custodial interrogation of an individual
33 at a police station or other place of detention by a law
34 enforcement officer under Section 5-401.5 of the Juvenile Court
35 Act of 1987 or Section 103-2.1 of the Code of Criminal
36 Procedure of 1963; ~~and~~

1 (1) ~~(*)~~ Recording the interview or statement of any person
2 when the person knows that the interview is being conducted by
3 a law enforcement officer or prosecutor and the interview takes
4 place at a police station that is currently participating in
5 the Custodial Interview Pilot Program established under the
6 Illinois Criminal Justice Information Act; and.

7 (m) Recording or listening with the aid of any device to a
8 conversation of a public officer or public employee, including
9 a peace officer, if the public officer or public employee in
10 the performance of his or her official duties conducts the
11 conversation in a public place and the physical act of
12 recording or listening does not interfere with the performance
13 of those duties.

14 (Source: P.A. 92-854, eff. 12-5-02; 93-206, eff. 7-18-03;
15 93-517, eff. 8-6-03; 93-605, eff. 11-19-03; revised 12-9-03.)