



SPONSOR: Rep. Lynn & Sen. Delcollo  
Reps. Baumbach, Brady, Keeley; Sen. Henry

HOUSE OF REPRESENTATIVES  
149th GENERAL ASSEMBLY

HOUSE BILL NO. 421

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO INTERCEPTION OF COMMUNICATIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1           Section 1. Amend § 2401, Title 11 of the Delaware Code by making deletions as shown by strike through and  
2 insertions as shown by underline as follows:

3           § 2402 Interception of communications generally; divulging contents of communications, violations of chapter.

4           (a) *Prohibited acts.* — Except as specifically provided in this chapter or elsewhere in this Code no person shall:

5               (1) Intentionally intercept, endeavor to intercept, or procure any other person to intercept or endeavor to  
6 intercept any wire, oral or electronic communication;

7               (2) Intentionally disclose or endeavor to disclose to any other person the contents of any wire, oral or  
8 electronic communication, knowing or having reason to know that the information was obtained through the  
9 interception of a wire, oral or electronic communication in violation of this chapter; or

10              (3) Intentionally use or endeavor to use the contents of any wire, oral or electronic communication, knowing  
11 or having reason to know that the information was obtained through the interception of a wire, oral or electronic  
12 communication in violation of this chapter.

13           (b) *Penalties for violation of subsection (a) of this section.* — Any person who violates subsection (a) of this  
14 section shall be guilty of a class E felony and be fined not more than \$10,000.

15           (c) *Lawful acts.* — It is lawful:

16              (1) For an operator of a switchboard or an officer, employee or agent of a provider of wire or electronic  
17 communication service whose facilities are used in the transmission of wire or electronic communication to intercept,  
18 disclose or use such communication in the normal course of employment while engaged in any activity that is  
19 necessarily incident to the rendition of such person's service or to the protection of the rights or property of the  
20 provider of that service, except that a provider of wire communications service to the public may not utilize service  
21 observing or random monitoring except for mechanical or service quality control checks.

(2) For a provider of wire or electronic communication service, its officers, employees and agents, landlords, custodians or other persons to provide information, facilities or technical assistance to persons authorized by federal or State law to intercept wire, oral, or electronic communications or to conduct electronic surveillance, if the provider, its officers, employees or agents, landlord, custodian or other specified person has been provided with a court order signed by an authorizing judge directing the provision of information, facilities or technical assistance.

a. An order as prescribed by this paragraph shall set forth the period of time during which the provision of the information, facilities or technical assistance is authorized and specify the information, facilities or technical assistance required.

b. A provider of wire or electronic communication service, its officers, employees or agents, or landlord, custodian or other specified person may not disclose the existence of any interception or surveillance or the device used to accomplish the interception or surveillance with respect to which the person has been furnished an order under this paragraph, except as may otherwise be required by legal process and then only after prior notification to the judge who granted the order, if appropriate, or the Attorney General of this State or the Attorney General's designee. Any unauthorized disclosure shall render the person liable for compensatory damages.

c. No cause of action shall lie in any court against any provider of wire or electronic communication service, its officers, employees or agents, or landlord, custodian or other specified person for providing information, facilities, or assistance in accordance with the terms of a court order issued pursuant to this chapter.

(3) For an investigative or law-enforcement officer acting in a criminal investigation or any other person acting at the prior direction and under the supervision of an investigative or law-enforcement officer in such investigation pursuant to a court order issued by the Superior Court pursuant to § 2407 of this title to intercept a wire, oral or electronic communication in order to provide evidence of the commission of the offenses including racketeering, murder, kidnapping, human trafficking, gambling, robbery, bribery, extortion, dealing in narcotic drugs or dangerous drugs, dealing in central nervous system depressant or stimulant drugs, controlled substances or counterfeit controlled substances, prison escape, jury tampering, stalking, any felony involving risk of physical injury to a victim or any conspiracy or solicitation to commit any of the foregoing offenses or which may provide evidence aiding in the apprehension of the perpetrator of any of the foregoing offenses.

(4) For a person to intercept a wire, oral or electronic communication ~~where the person is a party to the communication or where one both~~ of the parties to the communication ~~has~~ have given prior consent to the interception, unless the communication is intercepted for the purpose of committing any criminal or tortious act in violation of the

51 constitutions or laws of the United States, this State or any other state or any political subdivision of the United States  
52 or this or any other state.

#### SYNOPSIS

This bill changes when the interception of certain communications is lawful. Currently, if one party to the communication gives consent to the interception, such interception is lawful. This bill requires that both parties to the communication give prior consent before the interception is lawful.