

1 STATE OF OKLAHOMA

2 1st Session of the 51st Legislature (2007)

3 COMMITTEE SUBSTITUTE

4 FOR ENGROSSED

5 SENATE BILL NO. 593

By: Lamb of the Senate

and

Sullivan of the House

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9 COMMITTEE SUBSTITUTE

10 An Act relating to common carriers and search
11 warrants; amending 13 O.S. Section 176.2, as amended
12 by Section 1, Chapter 289, O.S.L. 2004 (13 O.S. Supp.
13 2006, Section 176.2), which relates to the Security
14 of Communications Act; adding definition; modifying
15 certain definition; amending 13 O.S. 2001, Section
16 177.1, as amended by Section 2, Chapter 224, O.S.L.
17 2002 (13 O.S. Supp. 2006, Section 177.1), which
18 relates to communication definitions; expanding
19 applicability of section; modifying certain
20 definitions; adding definition; authorizing issuance
21 of search warrant for specified purpose; establishing
22 requirements for issuance and extension of certain
23 warrant; amending 22 O.S. 2001, Section 1221, which
24 relates to search warrants; modifying search warrant
definition; providing for codification; providing an
effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 13 O.S. 2001, Section 176.2, as
amended by Section 1, Chapter 289, O.S.L. 2004 (13 O.S. Supp. 2006,
Section 176.2), is amended to read as follows:

1 Section 176.2 As used in the Security of Communications Act:

2 1. "Aggrieved person" means a person who was a party to any
3 intercepted wire, oral or electronic communication or a person
4 against whom the interception was directed;

5 2. "Aural acquisition" means obtaining knowledge of a
6 communication through the sense of hearing which is contemporaneous
7 with the communication;

8 3. " Aural transfer" means a transfer containing the human
9 voice at any point between and including the point of origin and the
10 point of reception;

11 4. "Communication common carrier" means, for the purposes of
12 the Security of Communications Act only, any telephone or telegraph
13 company, rural telephone cooperative, communications transmission
14 company or other public communications company under the laws of
15 this state;

16 ~~4.~~ 5. "Communication facility" means any and all public and
17 private instrumentalities used or useful in the transmission of
18 writing, signs, signals, pictures, or sounds of all kinds and
19 includes mail, telephone, wire, radio, and all other means of
20 communication;

21 ~~5.~~ 6. "Contents", when used with respect to any wire, oral or
22 electronic communication, includes any information concerning the
23 substance, purport or meaning of that communication;

1 ~~6-~~ 7. "Electronic communication" means any transfer of signs,
2 signals, writing, images, sounds, data, or intelligence of any
3 nature transmitted in whole or in part by a wire, radio,
4 electromagnetic, photoelectronic or photooptical system, but does
5 not include:

- 6 a. any wire or oral communication,
- 7 b. any communication made through a tone-only paging
8 device, or
- 9 c. any communication from a tracking device;

10 ~~7-~~ 8. "Electronic, mechanical or other device" means any device
11 or apparatus which can be used to intercept a wire, oral or
12 electronic communication other than:

- 13 a. any telephone or telegraph instrument, equipment or
14 facility or any component thereof furnished to the
15 subscriber or user by a communication common carrier
16 or other lawful supplier in the ordinary course of its
17 business which is being used by the subscriber or user
18 in the ordinary course of its business, or being used
19 by a communication common carrier in the ordinary
20 course of business or being used by a law enforcement
21 officer in the ordinary course of duties, or
- 22 b. a hearing aid or similar device being used to correct
23 subnormal hearing to not better than normal;

1 ~~8.~~ 9. "Intercept" means the aural acquisition of the contents
2 of any wire, oral or electronic communication through the use of any
3 electronic, mechanical or other device;

4 ~~9.~~ 10. "Judge of competent jurisdiction" means the Presiding
5 Judge of the Court of Criminal Appeals;

6 ~~10.~~ 11. "Law enforcement officer" means any person who is
7 employed by the United States, this state or political subdivision
8 thereof and is empowered by law to conduct investigations of, or to
9 make arrests for, offenses enumerated in the Security of
10 Communications Act or similar federal offenses and any attorney
11 authorized by law to prosecute or participate in the prosecution of
12 such offenses;

13 ~~11.~~ 12. "Oral communication" means any communication uttered by
14 a person exhibiting an expectation that such communication is not
15 subject to interception under circumstance justifying such
16 expectation;

17 ~~12.~~ 13. "Person" means any individual, partnership,
18 association, joint-stock company, trust, corporation or political
19 subdivision including an employee or agent thereof; and

20 ~~13.~~ 14. "Wire communication" means any ~~communication~~ aural
21 transfer made in whole or in part through the use of facilities for
22 the transmission of communications by the aid of wire, cable or
23 other like connection between the point of origin and the point of
24 reception, including the use of such connection in a switching

1 station, furnished or operated by any person engaged as a
2 ~~communication common carrier~~ in providing or operating such
3 facilities for the transmission of intrastate, interstate or foreign
4 communications or communications affecting intrastate, interstate or
5 foreign commerce.

6 SECTION 2. AMENDATORY 13 O.S. 2001, Section 177.1, as
7 amended by Section 2, Chapter 224, O.S.L. 2002 (13 O.S. Supp. 2006,
8 Section 177.1), is amended to read as follows:

9 Section 177.1 As used in Sections 177.1 through 177.5 of this
10 title and Section 3 of this act:

11 1. "Court of competent jurisdiction" means a court of general
12 criminal jurisdiction of this state, including the judges of the
13 district court, associate district judges and special district
14 judges, or any justice of the Supreme Court or judge of the Court of
15 Criminal Appeals or Court of Civil Appeals;

16 2. "Electronic communication" means any transfer of signs,
17 signals, writing, images, sounds, data or intelligence of any nature
18 transmitted in whole or in part by a wire, radio, electro-magnetic,
19 photo-electronic or photo-optical system, but does not include:

- 20 a. ~~the radio portion of a cordless telephone~~
21 ~~communication that is transmitted between the cordless~~
22 ~~telephone headset and the base unit,~~
23 ~~b.~~ any wire or oral communication,

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1 other like connection between the point of origin and the point of
2 reception, including the use of such connection in a switching
3 station furnished or operated by any person engaged ~~as a~~
4 ~~communication common carrier~~ in providing or operating such
5 facilities for the transmission of intrastate, interstate or foreign
6 communications or communications affecting intrastate, interstate or
7 foreign commerce.

8 SECTION 3. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 177.6 of Title 13, unless there
10 is created a duplication in numbering, reads as follows:

11 A. Any magistrate may issue a search warrant authorizing the
12 installation or use of a tracking device in any moveable item,
13 container, vehicle or other vessel. Such warrant may authorize the
14 use of that tracking device within the jurisdiction of the
15 magistrate, and outside that jurisdiction if the tracking device is
16 installed within the magistrate's jurisdiction. No such warrant
17 shall issue unless probable cause is shown for believing that such
18 installation or use will lead to the discovery of evidence, fruits,
19 or instrumentalities of the commission or attempted commission of an
20 offense. Any application or affidavit seeking such a search warrant
21 shall inform the magistrate of the name or names of the persons, if
22 known, likely to have a reasonable expectation of privacy in the
23 area where the tracking device is to be installed. Nothing here
24 shall be construed as requiring a warrant for such installation or

1 use if a warrant is not required under the Constitution of the
2 United States of America.

3 B. Search warrants issued under this section may authorize
4 intrusions into the item, container, vehicle or vessel for the
5 purpose of installing the tracking device or for maintenance or
6 retrieval of the tracking device. No search warrant issued under
7 this section shall permit the monitoring of a tracking device for
8 longer than sixty (60) days unless an extension warrant is issued by
9 the magistrate upon a renewed showing of probable cause as required
10 in subsection A of this section.

11 C. Within ninety (90) days after the expiration of any period
12 of authorized monitoring of a tracking device, including any
13 extensions thereof, the law enforcement officer who obtained the
14 search warrant shall serve a copy of the search warrant which was
15 obtained pursuant to this section upon the person or persons likely
16 to have a reasonable expectation of privacy in the area where the
17 tracking device was installed. This ninety-day period may be
18 extended by the court for good cause shown. The search warrant and
19 supporting affidavit shall also be filed with the clerk of the
20 district court as is required of all other search warrants after
21 such parties are notified.

22 SECTION 4. AMENDATORY 22 O.S. 2001, Section 1221, is
23 amended to read as follows:

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1 Section 1221. A search warrant is an order in writing, in the
2 name of the state, signed by a magistrate, directed to a peace
3 officer, commanding him to search for ~~personal~~ information or
4 property and bring it before the magistrate.

5 SECTION 5. This act shall become effective July 1, 2007.

6 SECTION 6. It being immediately necessary for the preservation
7 of the public peace, health and safety, an emergency is hereby
8 declared to exist, by reason whereof this act shall take effect and
9 be in full force from and after its passage and approval.

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