

1 STATE OF OKLAHOMA

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

3 CONFERENCE COMMITTEE SUBSTITUTE

4 FOR ENGROSSED

5 SENATE BILL 593

By: Lamb of the Senate

and

Sullivan of the House

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9 CONFERENCE COMMITTEE SUBSTITUTE

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

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

24 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:

Section 176.2 As used in the Security of Communications Act:

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

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

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

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

15 ~~4.~~ 5. "Communication facility" means any and all public and
16 private instrumentalities used or useful in the transmission of
17 writing, signs, signals, pictures, or sounds of all kinds and
18 includes mail, telephone, wire, radio, and all other means of
19 communication;

20 ~~5.~~ 6. "Contents", when used with respect to any wire, oral or
21 electronic communication, includes any information concerning the
22 substance, purport or meaning of that communication;

23 ~~6.~~ 7. "Electronic communication" means any transfer of signs,
24 signals, writing, images, sounds, data, or intelligence of any

1 nature transmitted in whole or in part by a wire, radio,
2 electromagnetic, photoelectronic or photooptical system, but does
3 not include:

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

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

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

22 ~~8.~~ 9. "Intercept" means the aural acquisition of the contents
23 of any wire, oral or electronic communication through the use of any
24 electronic, mechanical or other device;

1 ~~9.~~ 10. "Judge of competent jurisdiction" means the Presiding
2 Judge of the Court of Criminal Appeals;

3 ~~10.~~ 11. "Law enforcement officer" means any person who is
4 employed by the United States, this state or political subdivision
5 thereof and is empowered by law to conduct investigations of, or to
6 make arrests for, offenses enumerated in the Security of
7 Communications Act or similar federal offenses and any attorney
8 authorized by law to prosecute or participate in the prosecution of
9 such offenses;

10 ~~11.~~ 12. "Oral communication" means any communication uttered by
11 a person exhibiting an expectation that such communication is not
12 subject to interception under circumstance justifying such
13 expectation;

14 ~~12.~~ 13. "Person" means any individual, partnership,
15 association, joint-stock company, trust, corporation or political
16 subdivision including an employee or agent thereof; and

17 ~~13.~~ 14. "Wire communication" means any ~~communication~~ aural
18 transfer made in whole or in part through the use of facilities for
19 the transmission of communications by the aid of wire, cable or
20 other like connection between the point of origin and the point of
21 reception, including the use of such connection in a switching
22 station, furnished or operated by any person engaged ~~as a~~
23 ~~communication common carrier~~ in providing or operating such
24 facilities for the transmission of intrastate, interstate or foreign

1 communications or communications affecting intrastate, interstate or
2 foreign commerce.

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

6 Section 177.1 As used in Sections 177.1 through 177.5 of this
7 title and Section 3 of this act:

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

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

17 a. ~~the radio portion of a cordless telephone~~
18 ~~communication that is transmitted between the cordless~~
19 ~~telephone headset and the base unit,~~

20 ~~b.~~ any wire or oral communication,

21 ~~e.~~ b. any communication made through a tone-only paging
22 device, or

23 ~~d.~~ c. any communication from a tracking device;

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1 3. "Pen register" means a device which records or decodes
2 electronic or other impulses which identify the numbers dialed or
3 otherwise transmitted on the telephone line to which such device is
4 attached, but such term does not include any device used by a
5 provider or customer of a wire or electronic communication service
6 for billing, or recording as an incident to billing, for
7 communications services provided by such provider or any device used
8 by a provider or customer of a wire communication service for cost
9 accounting or other like purposes in the ordinary course of its
10 business;

11 4. "Tracking device" means an electronic or mechanical device
12 which permits the tracking of the movement of a person or object;

13 5. "Trap and trace device" means a device which captures the
14 incoming electronic or other impulses which identify the originating
15 number of an instrument or device from which a wire or electronic
16 communication was transmitted, but does not include devices used by
17 subscribers to identify the originating numbers of calls received by
18 such subscribers; and

19 ~~5.~~ 6. "Wire communication" means any ~~communication~~ aural
20 transfer made in whole or in part through the use of facilities for
21 the transmission of communications by the aid of wire, cable or
22 other like connection between the point of origin and the point of
23 reception, including the use of such connection in a switching
24 station furnished or operated by any person engaged ~~as a~~

1 ~~communication common carrier~~ in providing or operating such
2 facilities for the transmission of intrastate, interstate or foreign
3 communications or communications affecting intrastate, interstate or
4 foreign commerce.

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

8 A. Any magistrate may issue a search warrant authorizing the
9 installation or use of a tracking device in any moveable item,
10 container, vehicle or other vessel. Such warrant may authorize the
11 use of that tracking device within the jurisdiction of the
12 magistrate, and outside that jurisdiction if the tracking device is
13 installed within the magistrate's jurisdiction. No such warrant
14 shall issue unless probable cause is shown for believing that such
15 installation or use will lead to the discovery of evidence, fruits,
16 or instrumentalities of the commission or attempted commission of an
17 offense. Any application or affidavit seeking such a search warrant
18 shall inform the magistrate of the name or names of the persons, if
19 known, likely to have a reasonable expectation of privacy in the
20 area where the tracking device is to be installed. Nothing here
21 shall be construed as requiring a warrant for such installation or
22 use if a warrant is not required under the Constitution of the
23 United States of America.

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

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

20 SECTION 4. This act shall become effective July 1, 2007.

21 SECTION 5. It being immediately necessary for the preservation
22 of the public peace, health and safety, an emergency is hereby
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1 declared to exist, by reason whereof this act shall take effect and
2 be in full force from and after its passage and approval.

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