

MAINE STATE LEGISLATURE

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120th MAINE LEGISLATURE

FIRST REGULAR SESSION-2001

Legislative Document

No. 851

H.P. 651

House of Representatives, February 15, 2001

**An Act to Prohibit the Recording of Private Telephone Conversations
Without Consent.**

Reference to the Committee on Judiciary suggested and ordered printed.

Millicent M. MacFarland

MILLICENT M. MacFARLAND, Clerk

Presented by Representative BELANGER of Caribou.
Cosponsored by Senator KNEELAND of Aroostook and
Representatives: ANDREWS of York, DAVIS of Falmouth, DESMOND of Mapleton,
HONEY of Boothbay, MAYO of Bath, NUTTING of Oakland, PARADIS of Frenchville,
SHERMAN of Hodgdon.

Be it enacted by the People of the State of Maine as follows:

2
4 **Sec. 1. 15 MRSA §709, sub-§2-A** is enacted to read:

6 **2-A. Emergency services provider.** "Emergency services
8 provider" means a state, county or municipal government entity to
 the extent it provides fire, emergency medical or police services
 or related dispatch services.

10 **Sec. 2. 15 MRSA §709, sub-§4, ¶C**, as amended by PL 1979, c.
12 701, §11, is further amended to read:

14 C. A person given prior authority by ~~the sender or receiver~~
 all parties to the communication.

16 **Sec. 3. 15 MRSA §710**, as amended by PL 1987, c. 680, §§2 to
18 4, is further amended to read:

20 **§710. Offenses**

22 **1. Interception, oral communications prohibited.** Any
24 ~~Except as provided in subsection 7, a person, other than an~~
26 ~~employee of a common carrier as defined in this chapter, a law~~
28 ~~enforcement officer or an investigative officer as defined in~~
30 ~~this chapter, carrying out practices otherwise permitted by this~~
32 ~~chapter, who intentionally or knowingly intercepts, attempts to~~
 intercept or procures any other person to intercept or attempt to
 intercept, any wire or oral communication or a person who is a
 sender or receiver of a telephony communication and who
 intentionally or knowingly records, attempts to record or
 procures another person to record or attempt to record that
 telephony communication without the consent of all parties to the
 communication is guilty of a Class C crime.

34 **2. Editing of tape recordings in judicial proceedings**
36 **prohibited.** Any person who knowingly or intentionally edits,
38 alters or tampers with any tape, transcription or other sound
40 recording, or knows of such editing, altering or tampering, and
42 presents that recording in any judicial proceeding or proceeding
 under oath, without fully indicating the nature of the changes
 made and the original state of the recording, is guilty of a
 Class C crime.

44 **3. Disclosure, or use of wire or oral communications**
46 **prohibited.** A person is guilty of a Class C crime if he that
 person:

48 A. Intentionally or knowingly discloses or attempts to
 disclose to any person the contents of any wire or oral

2 communication, knowing that the information was obtained
through interception in violation of this section; or

4 B. Intentionally or knowingly uses or attempts to use the
6 contents of any wire or oral communication, knowing that the
information was obtained through interception in violation
8 of this section.

10 **4. Duty to report.** Any communication common carrier shall
promptly report to the Attorney General any facts coming to its
12 attention in the conduct of its business ~~which that~~ may indicate
a possible violation of this section and such carrier shall adopt
14 reasonable rules to assure compliance with this subsection,
provided such carrier shall ~~is~~ not be liable to any person who
16 may claim an injury arising out of any such report, if made in
good faith. Any person violating this subsection shall--be is
18 subject to a civil penalty not to exceed \$5,000, payable to the
State, to be recovered in a civil action.

20 **5. Possession of interception devices prohibited.** A Except
~~as provided in subsection 7, a person, other than an employee of~~
22 ~~a common carrier as defined in this chapter, a law enforcement~~
~~officer or an investigative officer as defined in this chapter,~~
24 ~~carrying out practices otherwise permitted by this chapter,~~ who
has in his that person's possession any device, contrivance,
26 machine or apparatus designed or commonly used for intercepting
wire or oral communications defined in this chapter, is guilty of
28 a Class C crime.

30 **6. Sale of interception devices prohibited.** A person who
32 sells, exchanges, delivers, barter, gives or furnishes or
possesses with an intent to sell any device, contrivance, machine
34 or apparatus designed or commonly used for the interception of
wire or oral communications as defined in this chapter is guilty
of a Class B crime. This subsection shall does not include
36 devices manufactured under written contract for sale to common
carriers, law enforcement agencies and the Department of
38 Corrections, provided that the production of any such device
shall has not have commenced prior to the signing of the contract
40 by both parties.

42 **7. Exceptions.** The following persons carrying out the
following practices are exempt from the provisions of subsections
44 1 and 6:

46 A. An employee of a communication common carrier carrying
out practices permitted under section 712;

48 B. An investigative officer carrying out practices permitted
50 under section 712;

2 C. A law enforcement officer conducting a lawful
3 investigation; and

4
5 D. An emergency services provider carrying out practices
6 permitted under section 712.

8 **Sec. 4.15 MRSA §712, sub-§4** is enacted to read:

10 **4. Emergency services.** It is not a violation of this
11 chapter for an emergency services provider to record calls made
12 to that provider to the extent the recording is necessary or
13 useful in rendering adequate service or in monitoring service
14 quality.

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SUMMARY

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19 This bill amends laws governing the interception and
20 recording of wire and oral communications. With certain narrow
21 exceptions, current law prohibits a person from intercepting or
22 recording communications between others. This bill amends the
23 law to prohibit any person who is a sender or receiver of a
24 telephony communication from intentionally or knowingly recording
25 or procuring another person to record the communication without
26 the consent of all parties to the communication. It creates an
27 exception for calls made to emergency services providers and
28 clarifies current law with respect to an exception provided to
 law enforcement agencies conducting investigations.