

CHAPTER 184

AN ACT concerning access to telecommunications information and amending P.L.1968, c.409 and P.L.1993, c.29.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 2 of P.L.1968, c.409 (C.2A:156A-2) is amended to read as follows:

C.2A:156A-2 Definitions.

2. As used in this act:

- a. "Wire communication" means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable or other like connection between the point of origin and the point of reception, including the use of such connection in a switching station, furnished or operated by any person engaged in providing or operating such facilities for the transmission of intrastate, interstate or foreign communication. "Wire communication" includes any electronic storage of such communication, and the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit;

- b. "Oral communication" means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation, but does not include any electronic communication;

- c. "Intercept" means the aural or other acquisition of the contents of any wire, electronic or oral communication through the use of any electronic, mechanical, or other device;

- d. "Electronic, mechanical or other device" means any device or apparatus, including an induction coil, that can be used to intercept a wire, electronic or oral communication other than:

- (1) Any telephone or telegraph instrument, equipment or facility, or any component thereof, furnished to the subscriber or user by a provider of wire or electronic communication service in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business; or furnished by such subscriber or user for connection to the facilities of such service and used in the ordinary course of its business; or being used by a provider of wire or electronic communication service in the ordinary course of its business, or by an investigative or law enforcement officer in the ordinary course of his duties; or

- (2) A hearing aid or similar device being used to correct subnormal hearing to not better than normal;

- e. "Person" means that term as defined in R.S.1:1-2 and includes any officer or employee of the State or of a political subdivision thereof;

- f. "Investigative or law enforcement officer" means any officer of the State of New Jersey or of a political subdivision thereof who is empowered by law to conduct investigations of, or to make arrests for, any offense enumerated in section 8 of P.L.1968, c.409 (C.2A:156A-8) and any attorney authorized by law to prosecute or participate in the prosecution of any such offense;

- g. "Contents," when used with respect to any wire, electronic or oral communication, includes any information concerning the identity of the parties to such communication or the existence, substance, purport, or meaning of that communication, except that for purposes of sections 22, 23, 24 and 26 of P.L.1993, c.29 (C.2A:156A-28, C.2A:156A-29, C.2A:156A-30, and C.2A:156A-32) contents, when used with respect to any wire, electronic, or oral communication means any information concerning the substance, purport or meaning of that communication;

- h. "Court of competent jurisdiction" means the Superior Court;
- i. "Judge," when referring to a judge authorized to receive applications for, and to enter, orders authorizing interceptions of wire, electronic or oral communications, means one of the several judges of the Superior Court to be designated from time to time by the Chief Justice of the Supreme Court to receive applications for, and to enter, orders authorizing interceptions of wire, electronic or oral communications pursuant to this act;
- j. "Communication common carrier" means any person engaged as a common carrier for hire, in intrastate, interstate or foreign communication by wire or radio or in intrastate, interstate or foreign radio transmission of energy; but a person engaged in radio broadcasting shall not, while so engaged, be deemed a common carrier;
- k. "Aggrieved person" means a person who was a party to any intercepted wire, electronic or oral communication or a person against whom the interception was directed;
- l. "In-progress trace" means the determination of the origin of a telephonic communication to a known telephone during the communication;
- m. "Electronic communication" means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectric or photo-optical system that affects interstate, intrastate or foreign commerce, but does not include:
 - (1) Any wire or oral communication;
 - (2) Any communication made through a tone-only paging device; or
 - (3) Any communication from a tracking device;
- n. "User" means any person or entity who:
 - (1) Uses an electronic communication service; and
 - (2) Is duly authorized by the provider of such service to engage in such use;
- o. "Electronic communication system" means any wire, radio, electromagnetic, photo-optical or photoelectronic facilities for the transmission of electronic communications, and any computer facilities or related electronic equipment for the electronic storage of such communications;
- p. "Electronic communication service" means any service which provides to the users thereof the ability to send or receive wire or electronic communications;
- q. "Electronic storage" means:
 - (1) Any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof; and
 - (2) Any storage of such communication by an electronic communication service for purpose of backup protection of the communication;
- r. "Readily accessible to the general public" means, with respect to a radio communication, that such communication is not:
 - (1) Scrambled or encrypted;
 - (2) Transmitted using modulation techniques whose essential parameters have been withheld from the public with the intention of preserving the privacy of such communication;
 - (3) Carried on a subcarrier or other signal subsidiary to a radio transmission;
 - (4) Transmitted over a communication system provided by a common carrier, unless the communication is a tone-only paging system communication; or
 - (5) Transmitted on frequencies allocated under part 25, subpart D, E, or F of part 74, or part 94 of the Rules of the Federal Communications Commission, unless, in the case of a communication transmitted on a frequency allocated under part 74 that is not exclusively

allocated to broadcast auxiliary services, the communication is a two-way voice communication by radio;

s. "Remote computing service" means the provision to the public of computer storage or processing services by means of an electronic communication system;

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

u. "Tracking device" means an electronic or mechanical device which permits the tracking of the movement of a person or device;

v. "Point of interception" means the site at which the investigative or law enforcement officer is located at the time the interception is made;

w. "Location information" means global positioning system data, enhanced 9-1-1 data, cellular site information, and any other information that would assist a law enforcement agency in tracking the physical location of a cellular telephone or wireless mobile device.

2. Section 23 of P.L.1993, c.29 (C.2A:156A-29) is amended to read as follows:

C.2A:156A-29 Requirements for access.

23. Requirements for access.

a. A law enforcement agency, but no other governmental entity, may require the disclosure by a provider of electronic communication service or remote computing service of the contents of an electronic communication without notice to the subscriber or the customer if the law enforcement agency obtains a warrant.

b. Except as provided in subsection c. of this section, a provider of electronic communication service or remote computing service may disclose a record or other information pertaining to a subscriber or customer of the service to any person other than a governmental entity. This subsection shall not apply to the contents covered by subsection a. of this section.

c. A provider of electronic communication service or remote computing service or a communication common carrier shall disclose a record, the location information for a subscriber's or customer's mobile or wireless communications device, or other information pertaining to a subscriber or customer of the service, other than contents covered by subsections a. and f. of this section, to a law enforcement agency under the following circumstances:

(1) the law enforcement agency has obtained a warrant;

(2) the law enforcement agency has obtained the consent of the subscriber or customer to the disclosure;

(3) the law enforcement agency has obtained a court order for such disclosure under subsection e. of this section; or

(4) with respect to only the location information for a subscriber's or customer's mobile or wireless communications device and not to a record or other subscriber or customer information, the law enforcement agency believes in good faith that an emergency involving danger of death or serious bodily injury to the subscriber or customer requires disclosure without delay of information relating to the emergency.

A law enforcement agency receiving records or information pursuant to this subsection is not required to provide notice to the customer or subscriber.

d. Notwithstanding any other provision of law to the contrary, no service provider, its officers, employees, agents or other specified persons shall be liable in any civil action for

damages as a result of providing information, facilities or assistance in accordance with the terms of a court order or warrant under this section.

e. A court order for disclosure under subsection b. or c. may be issued by a judge of competent jurisdiction and shall issue only if the law enforcement agency offers specific and articulable facts showing that there are reasonable grounds to believe that the record or other information pertaining to a subscriber or customer of an electronic communication service or remote computing service or communication common carrier is relevant and material to an ongoing criminal investigation. A judge who has issued an order pursuant to this section, on a motion made promptly by the service provider, may quash or modify such order, if the information or records requested are unusually voluminous in nature or compliance with such order otherwise would cause an undue burden on such provider.

f. A provider of electronic communication service or remote computing service shall disclose to a law enforcement agency or to the State Commission of Investigation the:

- (1) name;
- (2) address;
- (3) telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address;
- (4) local and long distance telephone connection records or records of session times and durations;
- (5) length of service, including start date, and types of services utilized; and
- (6) means and source of payment for such service, including any credit card or bank account number,

of a subscriber to or customer of such service when the law enforcement agency obtains a grand jury or trial subpoena or when the State Commission of Investigation issues a subpoena.

g. Upon the request of a law enforcement agency, a provider of wire or electronic communication service or a remote computing service shall take all necessary steps to preserve, for a period of 90 days, records and other evidence in its possession pending the issuance of a court order or other legal process. The preservation period shall be extended for an additional 90 days upon the request of the law enforcement agency.

3. This act shall take effect immediately.

Approved January 12, 2010.