

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 897

Short Title: Amend Elec. Surveillance Law.

(Public)

Sponsors: Senators Rand; Carrington, East, Hoyle, and McDaniel.

Referred to: Judiciary.

April 16, 1997

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AMENDMENTS TO THE ELECTRONIC
SURVEILLANCE LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-286(21) reads as rewritten:

"(21) '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 interstate or foreign communications or communications affecting interstate or foreign commerce and the term includes any electronic storage of such communication, but the term does not include the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit. communication."

Section 2. G.S. 15A-291 reads as rewritten:

"§ 15A-291. Application for electronic surveillance order; judicial review panel.

(a) The Attorney General or the Attorney General's designee may, pursuant to the provisions of section 2516(2) of Chapter 119 of the United States Code, apply to a

1 judicial review panel for an order authorizing or approving the interception of wire, oral,
2 or electronic communications by investigative or law enforcement officers having
3 responsibility for the investigation of the offenses as to which the application is made,
4 and for such offenses and causes as are enumerated in G.S. 15A-290. A judicial review
5 panel shall be composed of such judges as may be assigned by the Chief Justice of the
6 Supreme Court of North Carolina, ~~Carolina~~ or an Associate Justice acting as the Chief
7 Justice's designee, which shall review applications for electronic surveillance orders and
8 may issue orders valid throughout the State authorizing such surveillance as provided by
9 this Article, and which shall submit a report of its decision to the Chief Justice. A judicial
10 review panel may be appointed by the Chief Justice or an Associate Justice acting as the
11 Chief Justice's designee pursuant to the Attorney General's written notification upon the
12 notification of the Attorney General's Office of his ~~the~~ intent to apply for an electronic
13 surveillance order.

14 (b) A judicial review panel is hereby authorized to grant orders valid throughout
15 the State for the interception of wire, oral, or electronic communications. Applications for
16 such orders may be made by the Attorney General or the Attorney General's designee.
17 ~~and by no other person.~~ The Attorney General, General or the Attorney General's designee
18 in applying for such orders, and a judicial review panel in granting such orders, shall
19 comply with all procedural requirements of section 2518 of Chapter 119 of the United
20 States Code. The Attorney General or the Attorney General's designee may make
21 emergency applications as provided by section 2518 of Chapter 119 of the United States
22 Code. In applying section 2518 the word "judge" in that section shall be construed to
23 refer to the judicial review panel, unless the context otherwise indicates. The judicial
24 review panel may stipulate any special conditions it feels necessary to assure compliance
25 with the terms of this act.

26 (c) No judge who sits as a member of a judicial review panel shall preside at any
27 trial or proceeding resulting from or in any manner related to information gained pursuant
28 to a lawful electronic surveillance order issued by that panel.

29 (d) Each application for an order authorizing or approving the interception of a
30 wire, oral, or electronic communication must be made in writing upon oath or affirmation
31 to the judicial review panel. Each application must include the following information:

- 32 (1) The identity of the office requesting the application;
- 33 (2) A full and complete statement of the facts and circumstances relied
34 upon by the applicant, to justify his belief that an order should be
35 issued, including:
- 36 a. Details as to the particular offense that has been, or is being
37 committed;
- 38 b. A particular description of the nature and location of the facilities
39 from which or the place where the communication is to be
40 intercepted;
- 41 c. A particular description of the type of communications sought to
42 be intercepted; and

1 d. The identity of the person, if known, committing the offense and
2 whose communications are to be intercepted;

3 (3) A full and complete statement as to whether or not other investigative
4 procedures have been tried and failed or why they reasonably appear to
5 be unlikely to succeed if tried or to be too dangerous;

6 (4) A statement of the period of time for which the interception is required
7 to be maintained. If the nature of the investigation is such that the
8 authorization for interception should not automatically terminate when
9 the described type of communication has been obtained, a particular
10 description of facts establishing probable cause to believe that additional
11 communications of the same type will occur thereafter must be added;

12 (5) A full and complete statement of the facts concerning all previous
13 applications known to the individual authorizing and making
14 adjudication, made to a judicial review panel for authorization to
15 intercept, or for approval of interceptions of wire, oral, or electronic
16 communications involving any of the same persons, facilities, or places
17 specified in the application, and the action taken by that judicial review
18 panel on each such application; and

19 (6) Where the application is for the extension of an order, a statement
20 setting forth the results thus far obtained from the interception, or a
21 reasonable explanation of the failure to obtain such results.

22 (e) Before acting on the application, the judicial review panel may examine on
23 oath the person requesting the application or any other person who may possess pertinent
24 information, but information other than that contained in the affidavit may not be
25 considered by the panel in determining whether probable cause exists for the issuance of
26 the order unless the information is either recorded or contemporaneously summarized in
27 the record or on the face of the order by the panel."

28 Section 3. G.S. 15A-294 is amended by adding a new subsection to read:

29 "(d1) The notification required pursuant to G.S. 15A-294(d) may be delayed if the
30 judicial review panel has probable cause to believe that notification would substantially
31 jeopardize the success of an electronic surveillance or a criminal investigation. Delay of
32 notification shall be only by order of the judicial review panel. The period of delay shall
33 be designated by the judicial review panel and may be extended from time to time until
34 the jeopardy to the electronic surveillance or the criminal investigation dissipates."

35 Section 4. G.S. 15A-298 reads as rewritten:

36 "**§ 15A-298. Subpoena authority.**

37 Pursuant to rules issued by the Attorney General, the Director of the State Bureau of
38 Investigation or ~~his~~ the Director's designee may issue an administrative subpoena to a
39 communications common carrier or an electronic communications service to compel
40 production of business records if the records:

41 (1) Disclose information concerning local or long-distance telephone toll
42 billing records or subscriber information; and

1 (2) Are material to an active criminal investigation being conducted by the
2 State Bureau of Investigation."
3 Section 5. This act is effective when it becomes law and applies to all
4 applications filed on or after that date.