

**ARKANSAS SENATE**  
84th General Assembly - Regular Session, 2003  
**Amendment Form**

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**Subtitle of House Bill No. 2502**

"AN ACT CONCERNING THE INTERCEPTION AND USE OF WIRE, ORAL, OR  
ELECTRONIC COMMUNICATIONS."

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**Amendment No. 1 to House Bill No. 2502.**

Amend House Bill No. 2502 as engrossed, H4/1/03:

Add Senator Glover as a cosponsor of the bill

AND

Page 2, line 15, delete "service that" and substitute "service offered to the public that"

AND

Page 2, line 32, delete "carrier in" and substitute "carrier or electronic communication service in"

AND

Page 4, line 2, delete "wire communication" and substitute "wire or electronic communication"

AND

Page 5, delete line 34 and substitute the following:  
"circumstances justifying application under this subsection.

(C) The application shall disclose whether it or any substantially similar application has been denied."

AND

Page 6, delete lines 7 through 9 and substitute the following:

"(a)(1) Only the Department of Arkansas State Police is authorized by this act to own, possess, install, operate, or monitor electronic, mechanical, or other devices except that nothing in this act shall serve or



be interpreted to prohibit, restrict, or limit in any way a communication common carrier or a provider of wire or electronic communication from owning, possessing, installing, operating, monitoring, or otherwise using an electronic, mechanical, or other intercepting device in the ordinary course of the provider's business as necessary for quality control and network security purposes."

AND

Page 12, line 18, delete "communications." and substitute "communications by law enforcement."

AND

Page 12, line 35, delete "(c)" and substitute "(c)(1)"

AND

Page 12, delete line 36 and substitute the following:  
"subsections (a) and (b) of section 7 of this act for investigations.  
(2) However, duplicate recordings are subject to the same controls on dissemination and use as the original."

AND

Page 13, line 7, delete "applications." and substitute "applications by law enforcement."

AND

Page 14, line 2, delete "(c)" and substitute "(c)(1)"

AND

Page 14, delete line 5 and substitute the following:  
"any trial, until after the inventory has been served.  
(2) Additional postponements of up to ninety (90) days may be granted upon showing of good cause, but such showings are required for each application.  
(3) Under no circumstances shall the postponements total more than two (2) years."

AND

Page 17, delete line 30 and substitute the following:  
"section.  
(c) A subscriber or customer of a wire or electronic communications or remote computing service does not have a cause of action against a wire or electronic communications or remote computing service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance as required by court order, warrant, subpoena, or certification under this act."

AND

Page 17, delete line 35 and substitute the following:

“SECTION 18. Communication common carrier exception.

Notwithstanding any other provision in this act to the contrary, it shall not be unlawful for a wire or electronic communication service provider or any communication common carrier, or a switchboard operator, officer, employee, or agent thereof, whose facilities are used in the transmission of a wire or electronic communication, to intercept, disclose, store, or use that communication in the normal course of its employment or business while engaged in any activity which is a necessary incident to the rendition of its service or to the protection of its rights or property, except that a provider of wire communication service to the public shall not utilize service observing or random monitoring except for mechanical or service quality control checks.

SECTION 19. Nothing in this act shall restrict or prohibit”

AND

Appropriately renumber the subsequent sections of the bill

AND

Page 18, delete lines 5 through 8 and substitute the following:

“(a) A law enforcement officer authorized under section 5(b) of this act, designated in writing by the prosecuting attorney or circuit judge of the county where the installation will be used, may install and use a live intercept if the prosecuting attorney determines in writing, upon affidavit by a certified law enforcement officer and the concurrence of the Director or Deputy Director of the Department of Arkansas State Police, that:”

AND

Page 18, line 13, delete “There” and substitute “No circuit judge with jurisdiction is immediately available, and there”

AND

Page 18, delete lines 15 through 21 and substitute the following:

“(b)(1) If an authorized law enforcement officer installs a live intercept under subsection (a) of this section, the prosecuting attorney shall obtain an order from a circuit judge with jurisdiction approving installation immediately upon the availability of the circuit judge, but in no instance more than forty-eight (48) hours after the installation begins.

(2) If authorization is not obtained within forty-eight (48) hours, the officer shall terminate use of the live intercept on the expiration of the forty-eight (48) hours or at the time the application for the order is denied, whichever is earlier.”

AND

Page 18, line 23, delete "gained through" and substitute "gained, or any information derived from the information so gained, through"

AND

Page 18, delete line 24 and substitute the following:

"section if authorization for the live intercept is denied unless the information would have been inevitably discovered through other lawful investigation, or by other constitutionally permissible investigation.

(d) The information gained or derived through the emergency live intercept shall not be considered in any judicial determination as to whether grounds existed under subdivision (a)(1) of this section."

The Amendment was read the first time, rules suspended and read the second time and \_\_\_\_\_

By: Senator Glover  
PBB/RCK - 041020031131  
RCK921

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Secretary