

1 SB150
2 147958-1
3 By Senator Taylor
4 RFD: Judiciary
5 First Read: 07-FEB-13

2
3
4
5
6
7
8 SYNOPSIS: Under existing law, it is a crime to
9 install or place a device in a private place with
10 knowledge that it is to be used for eavesdropping
11 without permission. Also under existing law, it is
12 a crime to possess, manufacture, send, or transport
13 any device designed or commonly used for
14 eavesdropping.

15 This bill would expand the crimes of
16 installing eavesdropping devices and possession of
17 eavesdropping devices to include the use of an
18 eavesdropping device to access or intercept
19 communications on a personal telecommunication
20 device such as a cell phone.

21 Amendment 621 of the Constitution of Alabama
22 of 1901, now appearing as Section 111.05 of the
23 Official Recompilation of the Constitution of
24 Alabama of 1901, as amended, prohibits a general
25 law whose purpose or effect would be to require a
26 new or increased expenditure of local funds from
27 becoming effective with regard to a local

1 governmental entity without enactment by a 2/3 vote
2 unless: it comes within one of a number of
3 specified exceptions; it is approved by the
4 affected entity; or the Legislature appropriates
5 funds, or provides a local source of revenue, to
6 the entity for the purpose.

7 The purpose or effect of this bill would be
8 to require a new or increased expenditure of local
9 funds within the meaning of the amendment. However,
10 the bill does not require approval of a local
11 governmental entity or enactment by a 2/3 vote to
12 become effective because it comes within one of the
13 specified exceptions contained in the amendment.

14
15 A BILL
16 TO BE ENTITLED
17 AN ACT
18

19 To amend Sections 13A-11-30, 13A-11-31, 13A-11-33,
20 and 13A-11-34, Code of Alabama 1975, relating to eavesdropping
21 devices; to expand the crimes of installing eavesdropping
22 devices and criminal possession of an eavesdropping device to
23 include certain unauthorized access to communications on
24 personal telecommunication devices; to add Section 13A-11-36.1
25 to the Code of Alabama 1975, to exclude certain activity
26 related to utility services from the criminal provisions; and
27 in connection therewith would have as its purpose or effect

1 the requirement of a new or increased expenditure of local
2 funds within the meaning of Amendment 621 of the Constitution
3 of Alabama of 1901, now appearing as Section 111.05 of the
4 Official Recompilation of the Constitution of Alabama of 1901,
5 as amended.

6 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

7 Section 1. Sections 13A-11-30, 13A-11-31, 13A-11-33,
8 and 13A-11-34, Code of Alabama 1975, are amended to read as
9 follows:

10 "§13A-11-30.

11 "The following definitions apply to this article:

12 "(1) EAVESDROP. To overhear, record, amplify or
13 transmit any part of the private communication of others
14 without the consent of at least one of the persons engaged in
15 the communication, except as otherwise provided by law.

16 "(2) EAVESDROPPING DEVICE. An instrument, machine,
17 equipment, technology, or software that enables a person to do
18 any of the following:

19 "a. Overhear, record, amplify, or transmit any part
20 of the private communications of others.

21 "b. Access or intercept telephonic, electronic, or
22 radio communications from a personal telecommunication device.

23 "(3) PERSONAL TELECOMMUNICATION DEVICE. Any type of
24 personal instrument, device, machine, computer, or equipment
25 that is capable of transmitting or receiving telephonic,
26 electronic, or radio communications, or any part of the
27 instrument, device, machine, or equipment, or any computer

1 circuit, computer chip, electronic mechanism, or other
2 component that is capable of facilitating the transmission or
3 reception of telephonic, electronic, or radio communication.

4 ~~"(2)~~ (4) PRIVATE PLACE. A place where one may
5 reasonably expect to be safe from casual or hostile intrusion
6 or surveillance, but such term does not include a place to
7 which the public or a substantial group of the public has
8 access.

9 ~~"(3)~~ (5) SURVEILLANCE. Secret observation of the
10 activities of another person for the purpose of spying upon
11 and invading the privacy of the person observed.

12 "§13A-11-31.

13 "(a) A person commits the crime of criminal
14 eavesdropping if he or she intentionally uses any
15 eavesdropping device to eavesdrop, whether or not he or she is
16 present at the time, without the consent of at least one of
17 the persons engaged in the communication or as authorized by
18 18 U.S.C. § 2571(2) (a).

19 "(b) A person commits the crime of criminal
20 eavesdropping if he or she intentionally uses any
21 eavesdropping device to eavesdrop on a communication
22 facilitated by a personal telecommunication device, whether or
23 not he or she is present at the time, without the consent of
24 the owner or user of the personal telecommunication device or
25 as authorized by 18 U.S.C. § 2571(2) (a).

26 ~~"(b)~~ (c) Criminal eavesdropping is a Class A
27 misdemeanor.

1 "§13A-11-33.

2 "(a) A person commits the crime of installing an
3 eavesdropping device if he or she intentionally installs or
4 places ~~a~~ an eavesdropping device in a private place or in a
5 personal telecommunication device with knowledge it is to be
6 used for eavesdropping and without permission of the owner and
7 any lessee or tenant or guest for hire of the private place or
8 without permission of the owner or user of the personal
9 telecommunication device.

10 "(b) Installing an eavesdropping device in a private
11 place or in a personal telecommunication device is prima facie
12 evidence of knowledge that the device is to be used for
13 eavesdropping.

14 "(c) Installing an eavesdropping device is a Class C
15 felony.

16 "§13A-11-34.

17 "(a) A person commits the crime of criminal
18 possession of an eavesdropping device if he or she possesses,
19 manufactures, sends, or transports any eavesdropping device
20 ~~designed or commonly used for eavesdropping,~~ and:

21 "(1) Intends to use that device to eavesdrop; or

22 "(2) Knows that another person intends to use that
23 device to eavesdrop.

24 "(b) Criminal possession of an eavesdropping device
25 is a Class A misdemeanor."

26 Section 2. Section 13A-11-36.1 is added to the Code
27 of Alabama 1975, to read as follows:

1 §13A-11-36.1.

2 A person does not commit a crime under this article
3 when gathering, measuring, analyzing, communicating, managing,
4 or using information or data related to utility services.

5 Section 3. Although this bill would have as its
6 purpose or effect the requirement of a new or increased
7 expenditure of local funds, the bill is excluded from further
8 requirements and application under Amendment 621, now
9 appearing as Section 111.05 of the Official Recompilation of
10 the Constitution of Alabama of 1901, as amended, because the
11 bill defines a new crime or amends the definition of an
12 existing crime.

13 Section 4. This act shall become effective on the
14 first day of the third month following its passage and
15 approval by the Governor, or its otherwise becoming law.