

FIRST REGULAR SESSION

# HOUSE BILL NO. 1081

## 102ND GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE SCHNELTING.

2352H.011

DANA RADEMAN MILLER, Chief Clerk

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### AN ACT

To repeal section 542.402, RSMo, and to enact in lieu thereof three new sections relating to privacy protections, with a penalty provision.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Section 542.402, RSMo, is repealed and three new sections enacted in lieu thereof, to be known as sections 542.402, 542.527, and 565.260, to read as follows:

542.402. 1. Except as otherwise specifically provided in sections 542.400 to 542.422, a person is guilty of a class E felony and upon conviction shall be punished as provided by law, if such person:

(1) Knowingly intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept, any wire communication;

(2) Knowingly uses, endeavors to use, or procures any other person to use or endeavor to use any electronic, mechanical, or other device to intercept any oral communication when such device transmits communications by radio or interferes with the transmission of such communication; provided, however, that nothing in sections 542.400 to 542.422 shall be construed to prohibit the use by law enforcement officers of body microphones and transmitters in undercover investigations for the acquisition of evidence and the protection of law enforcement officers and others working under their direction in such investigations;

(3) Knowingly discloses, or endeavors to disclose, to any other person the contents of any wire communication, when he knows or has reason to know that the information was obtained through the interception of a wire communication in violation of this subsection; or

EXPLANATION — Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 (4) Knowingly uses, or endeavors to use, the contents of any wire communication,  
18 when he knows or has reason to know that the information was obtained through the  
19 interception of a wire communication in violation of this subsection.

20 2. It is not unlawful under the provisions of sections 542.400 to 542.422:

21 (1) For an operator of a switchboard, or an officer, employee, or agent of any  
22 communication common carrier, whose facilities are used in the transmission of a wire  
23 communication, to intercept, disclose, or use that communication in the normal course of his  
24 employment while engaged in any activity which is a necessary incident to the rendition of  
25 his service or to the protection of the rights or property of the carrier of such communication,  
26 however, communication common carriers shall not utilize service observing or random  
27 monitoring except for mechanical or service quality control checks;

28 (2) For a person acting under law to intercept a wire or oral communication, where  
29 such person is a party to the communication **and the other party has consented** or where  
30 ~~[one]~~ **all** of the parties to the communication ~~[has]~~ **have** given prior consent to such  
31 interception;

32 **(3) For a person acting under law to intercept a wire or oral communication if**  
33 **such person is a peace officer and the peace officer has obtained the communication in**  
34 **response to an emergency hostage situation;**

35 ~~[(3)]~~ (4) For a person not acting under law to intercept a wire communication where  
36 such person is a party to the communication **and the other party has consented** or where  
37 ~~[one]~~ **all** of the parties to the communication ~~[has]~~ **have** given prior consent to such  
38 interception unless such communication is intercepted for the purpose of committing any  
39 criminal or tortious act; **or**

40 **(5) For a person not acting under law to intercept a wire or oral communication**  
41 **if:**

42 **(a) There is no expectation of privacy;**

43 **(b) The communication occurs within a government proceeding that is open to**  
44 **the public;**

45 **(c) The communication is recorded to obtain evidence of a crime;**

46 **(d) The person is a victim of domestic violence and the victim records the**  
47 **communication made to the victim by his or her perpetrator for the purpose of**  
48 **obtaining a restraining order or obtaining evidence that the perpetrator violated an**  
49 **existing restraining order;**

50 **(e) The person is under eighteen years of age and a party to the communication**  
51 **and records the communication to obtain a statement by another party that the other**  
52 **party intends to commit, is committing, or has committed an unlawful sexual act or**  
53 **unlawful act of physical force against such person;**

54 (f) The communication is to report an emergency including, but not limited to, a  
55 fire, medical emergency, crime, or disaster;

56 (g) The communication conveys a threat of extortion, blackmail, bodily harm, or  
57 other unlawful request or demand; or

58 (h) The communication is made by a hostage holder.

542.527. Except if there is a reasonable expectation of privacy, it shall not be a  
2 violation of law for a person to place any video or audio surveillance in the person's  
3 home for security purposes.

565.260. 1. Except as provided in subsection 2 of this section, a person commits  
2 the offense of unlawful tracking of a motor vehicle if the person knowingly installs,  
3 conceals, or otherwise places an electronic tracking device in or on a motor vehicle  
4 without the consent of all owners of the vehicle for the purpose of monitoring or  
5 following an occupant or occupants of the vehicle. As used in this section, "person" does  
6 not include the manufacturer of the motor vehicle.

7 2. It shall not be an offense under this section if the installing, concealing, or  
8 placing of an electronic tracking device in or on a motor vehicle is:

9 (1) By, or at the direction of, a law enforcement officer in furtherance of a  
10 criminal investigation and such investigation is carried out in accordance with  
11 applicable state and federal law;

12 (2) By the owner or lessee of such motor vehicle;

13 (3) By, or at the direction of, a parent or legal guardian who owns or leases the  
14 vehicle, and if the device is used solely for the purpose of monitoring the minor child of  
15 the parent or legal guardian when the child is an occupant of the vehicle;

16 (4) By a legally authorized representative of a vulnerable adult for the purpose  
17 of tracking a motor vehicle owned or leased by such adult. As used in this subdivision,  
18 "vulnerable adult" means any person eighteen years of age or older who is impaired by  
19 reason of mental illness, intellectual or developmental disability, physical illness or  
20 disability, or other causes, including age, to the extent the person lacks sufficient  
21 understanding or capacity to make, communicate, or carry out reasonable decisions  
22 concerning his or her well-being or has one or more limitations that substantially impair  
23 the person's ability to independently provide for his or her daily needs or safeguard his  
24 or her person, property, or legal interests;

25 (5) By an owner of fleet vehicles for the purpose of tracking such vehicles;

26 (6) By an employer for the purpose of tracking a motor vehicle owned by the  
27 employer while in use by the employer's employee; or

28 (7) By a bail bond agent, general bail bond agent, property bail bondsman, or  
29 surety bail bond agent, as those terms are defined under section 374.700, in conjunction

30 **with the agent's or bondsman's duties to track a defendant, in which the agent or**  
31 **bondsman is acting as a surety and pledging money or property for the defendant's**  
32 **appearance in court.**

33 **3. The provisions of this section shall not apply to a tracking system installed by**  
34 **the manufacturer of a motor vehicle.**

35 **4. The offense of unlawful tracking of a motor vehicle is a class A misdemeanor.**

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