

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

376M0429

HOUSE ENGROSSED NO. **HB 1104** - 01/26/2006

Introduced by: Representatives Hills, Brunner, Cutler, Elliott, Haley, Hennies, Jensen, Jerke, Kroger, Murschel, O'Brien, Pederson (Gordon), Roberts, Rounds, Sebert, Street, Tornow, and Turbiville and Senators Gray, Abdallah, Hansen (Tom), Hundstad, Moore, and Sutton (Dan)

1 FOR AN ACT ENTITLED, An Act to revise the elements of the crime of eavesdropping.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That § 23A-35A-20 be amended to read as follows:

4 23A-35A-20. Except as provided in § 23A-35A-21, a person is guilty of a Class 5 felony
5 who being:

6 (1) Not a sender or receiver of a telephone or telegraph communication, ~~knowingly~~
7 intentionally and by means of an ~~instrument or eavesdropping~~ device overhears or
8 records a telephone or telegraph communication, or aids, authorizes, employs,
9 procures, or permits another to so do, without the consent of either a sender or
10 receiver thereof;

11 (2) Not present during a conversation or discussion, ~~knowingly~~ intentionally and by
12 means of an ~~instrument or eavesdropping~~ device overhears or records such
13 conversation or discussion, or aids, authorizes, employs, procures, or permits another
14 to so do, without the consent of a party to such conversation or discussion; or



1 (3) Not a member of a jury, ~~knowingly~~ intentionally records or listens to by means of an
2 ~~instrument or eavesdropping~~ device the deliberations of ~~such~~ the jury or aids,
3 authorizes, employs, procures, or permits another to so do.

4 Section 2. That § 23A-35A-1 be amended to read as follows:

5 23A-35A-1. Terms used in this chapter mean:

6 (1) "Aggrieved person," a person who was a party to any intercepted wire or oral
7 communication or a person against whom the interception was directed;

8 (2) "Attorney general," the attorney general of the State of South Dakota, ~~unless~~
9 ~~otherwise specified;~~

10 (3) "Chapter 119 of the United States Code," Chapter 119 of Part I of Title 18, United
11 States Code, being Public Law 90-351, the Omnibus Crime Control and Safe Streets
12 Act of 1968;

13 (4) "Communications common carrier," the meaning which is given the term "common
14 carrier" by section 153(h) of Title 47 of the United States Code;

15 (5) "Contents," when used with respect to any wire or oral communication, any
16 information concerning the identity of the parties to such communication or the
17 existence, substance, purport, or meaning of that communication;

18 (6) "~~Electronic, mechanical or other~~ Eavesdropping device," any ~~device~~ electronic,
19 mechanical, or other apparatus which ~~can be~~ is intentionally used to intercept a wire
20 or oral communication other than:

21 (a) Any telephone or telegraph instrument, equipment, or facility, or any
22 component thereof, (i) furnished to the subscriber or user by a
23 communications common carrier in the ordinary course of its business and
24 being used by the subscriber or user in the ordinary course of its business; or

1 (ii) being used by a communications common carrier in the ordinary course of
2 its business, or by an investigative or law enforcement officer in the ordinary
3 course of ~~his duties~~ duty;

4 (b) A hearing aid or similar device being used to correct subnormal hearing to not
5 better than normal;

6 (7) "Intercept," the aural acquisition of the contents of any wire or oral communication
7 through the use of any ~~electronic, mechanical, or other~~ eavesdropping device;

8 (8) "Investigative or law enforcement officer," any officer of the State of South Dakota
9 or any political subdivision thereof who is empowered by the laws of this state to
10 conduct investigations of or to make arrests for offenses designated and enumerated
11 in this chapter, any law enforcement officer of the United States and any attorney
12 authorized by the laws of this state to prosecute or participate in the prosecution of
13 offenses designated and enumerated in this chapter;

14 (9) "Judge," or "judge of competent jurisdiction," the judge of any circuit court of the
15 State of South Dakota;

16 (10) "Oral communication," any oral communication uttered by a person exhibiting an
17 expectation that such communication is not subject to interception under
18 circumstances justifying such expectation;

19 (11) "Pen register," a device which records or decodes electronic or other impulses which
20 identify the numbers dialed or otherwise transmitted on the telephone line to which
21 the device is attached, but the term does not include any device used by a provider
22 or customer of a wire communication service for billing, or recording as an incident
23 to billing, for communications services provided by the provider or customer of a
24 wire communication service for cost accounting or other like purposes in the ordinary

1 course of its business;

2 (12) "Person," any employee, or agent of the United States or any state or political
3 subdivision thereof, and any individual, partnership, limited liability company,
4 association, joint stock company, trust, or corporation;

5 (13) "State's attorney," the ~~qualified~~ state's attorney of any county of the State of South
6 Dakota;

7 (14) "Trap and trace device," a device which captures the incoming electronic or other
8 impulses which identify the originating number of an instrument or device from
9 which a wire communication was transmitted; and

10 (15) "Wire communication," any communication made in whole or in part through the use
11 of facilities for the transmission of communications by the aid of wire, cable, or other
12 like connection between the point of origin and the point of reception furnished or
13 operated by any person engaged as a common carrier in providing or operating such
14 facilities for the transmission of interstate or foreign communications.