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HOUSE BILL 2766

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State of Washington                      54th Legislature                      1996 Regular Session

By Representatives Chappell, Chandler, Dickerson, Morris and Costa

Read first time 01/18/96. Referred to Committee on Law & Justice.

1            AN ACT Relating to electronic communications privacy; reenacting  
2 and amending RCW 9.73.030; and creating a new section.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4            NEW SECTION.    **Sec. 1.** The legislature finds the use of electronic  
5 means of communications such as electronic mail and facsimiles has  
6 outpaced, and poses new challenges for, laws and regulations governing  
7 privacy.

8            Specifically, the legislature finds that while state and federal  
9 laws prohibit the interception or recording of private communications,  
10 including those by electronic means, it is unclear whether any law  
11 protects the privacy of stored electronic communications.

12            The legislature further finds that as the use of electronic  
13 technology has increased dramatically in governmental, business, and  
14 personal communications, the need to address privacy concerns has  
15 become increasingly urgent.

16            **Sec. 2.** RCW 9.73.030 and 1986 c 38 s 1 and 1985 c 260 s 2 are each  
17 reenacted and amended to read as follows:

1 (1) Except as otherwise provided in this chapter, it shall be  
2 unlawful for any individual, partnership, corporation, association, or  
3 the state of Washington, its agencies, and political subdivisions to  
4 intercept, read, alter, or record any:

5 (a) Private communication transmitted by telephone, telegraph,  
6 radio, electronic mail, facsimile, or other device between two or more  
7 individuals between points within or without the state by any device  
8 electronic or otherwise designed to record and/or transmit said  
9 communication regardless how such device is powered or actuated,  
10 without first obtaining the consent of all the participants in the  
11 communication;

12 (b) Private conversation, by any device electronic or otherwise  
13 designed to record or transmit such conversation regardless how the  
14 device is powered or actuated without first obtaining the consent of  
15 all the persons engaged in the conversation.

16 (2) Notwithstanding subsection (1) of this section, wire  
17 communications or conversations (a) of an emergency nature, such as the  
18 reporting of a fire, medical emergency, crime, or disaster, or (b)  
19 which convey threats of extortion, blackmail, bodily harm, or other  
20 unlawful requests or demands, or (c) which occur anonymously or  
21 repeatedly or at an extremely inconvenient hour, or (d) which relate to  
22 communications by a hostage holder or barricaded person as defined in  
23 RCW 70.85.100, whether or not conversation ensues, may be recorded with  
24 the consent of one party to the conversation.

25 (3) Where consent by all parties is needed pursuant to this  
26 chapter, consent shall be considered obtained whenever one party has  
27 announced to all other parties engaged in the communication or  
28 conversation, in any reasonably effective manner, that such  
29 communication or conversation is about to be recorded or transmitted:  
30 PROVIDED, That if the conversation is to be recorded that said  
31 announcement shall also be recorded.

32 (4) An employee of any regularly published newspaper, magazine,  
33 wire service, radio station, or television station acting in the course  
34 of bona fide news gathering duties on a full time or contractual or  
35 part time basis, shall be deemed to have consent to record and divulge  
36 communications or conversations otherwise prohibited by this chapter if  
37 the consent is expressly given or if the recording or transmitting  
38 device is readily apparent or obvious to the speakers. Withdrawal of  
39 the consent after the communication has been made shall not prohibit

1 any such employee of a newspaper, magazine, wire service, or radio or  
2 television station from divulging the communication or conversation.

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