

**SENATE BILL NO. 138**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**EIGHTEENTH LEGISLATURE - FIRST SESSION**

**BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR**

**Introduced: 2/26/93**  
**Referred: JUD, FIN**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act authorizing the interception of private communications related to the  
2 commission of certain criminal offenses; making related amendments to statutes  
3 relating to eavesdropping and wiretapping; relating to the penalty for violation  
4 of statutes relating to eavesdropping and unauthorized interception, publication, or  
5 use of private communications; and providing for an effective date."

6 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

7 \* Section 1. AS 12 is amended by adding a new chapter to read:

8 **CHAPTER 37. AUTHORIZED COMMUNICATIONS INTERCEPTIONS.**

9 **ARTICLE 1. INTERCEPTION OF PRIVATE COMMUNICATIONS.**

10 **Sec. 12.37.010. AUTHORIZATION TO INTERCEPT COMMUNICATIONS.**

11 The attorney general or a person designated in writing or by law to act for the attorney  
12 general, may authorize, in writing, an ex parte application to a court of competent  
13 jurisdiction for an order authorizing the interception of a private communication if the

1 interception may provide evidence of, or may assist in the apprehension of persons  
2 who have committed, are committing, or are planning to commit, the following  
3 offenses:

4 (1) murder in the first or second degree under AS 11.41.100 -  
5 11.41.110;

6 (2) kidnapping under AS 11.41.300; or

7 (3) a class A or unclassified felony drug offense under AS 11.71.

8 Sec. 12.37.020. APPLICATION FOR ORDER AUTHORIZING A  
9 COMMUNICATION INTERCEPTION. (a) Each application for an order authorizing  
10 the interception of a private communication shall be made in writing upon oath or  
11 affirmation and shall state

12 (1) the authority of the applicant to make the application;

13 (2) the identity of the peace officer for whom the authority to intercept  
14 the communication is sought;

15 (3) the facts relied upon by the applicant for the order, including

16 (A) if known, the identity of the particular person committing  
17 the offense and whose communication is to be intercepted;

18 (B) the details as to the particular offense that has been, is  
19 being, or is about to be committed;

20 (C) the specific type of communication to be intercepted;

21 (D) a showing that there is probable cause to believe that the  
22 communication will be communicated on the specific communication facility  
23 involved or at the specific place where the oral communication is to be  
24 intercepted;

25 (E) a showing that there is probable cause to believe that the  
26 facility from which, or the place where, the communication is to be intercepted,  
27 is, has been, or is about to be used in connection with the commission of the  
28 offense, or is leased to, listed in the name of, or commonly used by, the person  
29 whose communication is to be intercepted;

30 (F) the character and location of the specific communication  
31 facility involved or the specific place where the oral communication is to be

1 intercepted;

2 (G) the objective of the investigation;

3 (H) a statement of the period of time for which the interception  
4 is required to be maintained, and, if the objective of the investigation is such  
5 that the authorization for interception should not automatically terminate when  
6 the described type of communication has been first obtained, a specific  
7 statement of facts establishing probable cause to believe that additional  
8 communications of the same type will continue to occur;

9 (I) a specific statement of facts showing that other normal  
10 investigative procedures with respect to the offense have been tried and have  
11 failed, or reasonably appear to be unlikely to succeed if tried, or are too  
12 dangerous to employ;

13 (4) the facts known to the applicant concerning all previous applications  
14 made to a court for the issuance of an order authorizing the interception of a private  
15 communication involving any of the same facilities or places specified in the current  
16 application or involving the same person whose communication is to be intercepted,  
17 and the action taken by the court on each application;

18 (5) if the application is for an extension of a previously issued order,  
19 a statement of facts showing the results obtained thus far from the interception, or a  
20 reasonable explanation for the failure to obtain results;

21 (6) a proposed order authorizing the communication interception; and

22 (7) any additional facts in support of the application considered  
23 appropriate by the applicant or by the court.

24 (b) If an applicant for an order authorizing a communications interception is  
25 relying upon uncorroborated evidence provided by a confidential informant, the court  
26 may hold an in camera hearing at which it may inquire as to the identity of the  
27 informant or as to any other relevant information concerning the basis upon which the  
28 applicant is applying for the order.

29 **Sec. 12.37.030. REQUIREMENTS FOR AN ORDER AUTHORIZING A**  
30 **COMMUNICATIONS INTERCEPTION.** Upon consideration of an application, the  
31 court may enter an ex parte order authorizing the interception of a private

1 communication if the court determines, on the basis of the application, that

2 (1) there is probable cause to believe that the person whose  
3 communication is to be intercepted is committing, has committed, or is planning to  
4 commit an offense listed in AS 12.37.010;

5 (2) there is probable cause to believe that a communication concerning  
6 the offense may be obtained through the interception;

7 (3) there is probable cause to believe that the facility from which, or  
8 the place where, the communication is to be intercepted, is, has been, or is about to  
9 be used in connection with the commission of the offense, or is leased to, listed in the  
10 name of, or commonly used by, the person whose communication is to be intercepted;

11 (4) normal investigative procedures with respect to the offense have  
12 been tried and have failed or reasonably appear to be either unlikely to succeed if tried  
13 or too dangerous to employ; and

14 (5) if the application, other than an application for an extension, is for  
15 an order to intercept a communication of a person, or involving a communications  
16 facility, that was the subject of a previous application, the current application is based  
17 upon new evidence or information different from and in addition to the evidence or  
18 information offered to support the previous application.

19 Sec. 12.37.040. CONTENTS OF ORDER AUTHORIZING A  
20 COMMUNICATIONS INTERCEPTION; LIMITATIONS ON DISCLOSURE. (a)  
21 Each order entered under AS 12.37.030 shall state

22 (1) that the court is authorized to enter the order;

23 (2) if known, the identity of, or a particular description of, the person  
24 whose communications are to be intercepted;

25 (3) the character and location of the particular communication facility  
26 or the particular place of the communication as to which authority to intercept is  
27 granted;

28 (4) a specific description of the type of communication to be  
29 intercepted and a statement of the particular offense to which it relates;

30 (5) the identity of the peace officer or officers to whom the authority  
31 to intercept a communication is given and the identity of the person who authorized

1 the application; and  
2 (6) the period of time during which the interception is authorized,  
3 including a statement as to whether or not the interception automatically terminates  
4 when the described communication has been first obtained, and a statement that the  
5 interception shall begin and terminate as soon as practicable and be conducted in such  
6 a manner as to minimize the interception of communications not otherwise subject to  
7 interception.

8 (b) An order entered under AS 12.37.030 may not authorize the interception  
9 of private communications for a period of time exceeding 30 days or that period  
10 necessary to achieve the objective of the authorization, whichever is shorter. The  
11 authorized interception period begins on the day on which the peace officer first begins  
12 to conduct an interception under the order or 10 days after the order is entered,  
13 whichever is earlier. Extensions of 30 days or less may be granted if application for  
14 each extension order is made in accordance with AS 12.37.020 and the necessary  
15 findings are made by the court in accordance with AS 12.37.030.

16 (c) The court may require an applicant to file periodic reports with the court,  
17 showing what progress is being made toward achieving the authorized objective of the  
18 communication interception and what need exists for continued interception. The  
19 intervals at which the reports are to be filed shall be determined by the court.

20 (d) An order entered under AS 12.37.030 may, upon request of the applicant,  
21 direct that a communications common carrier, provider of wire or electronic  
22 communication services, landlord, owner, building operator, custodian, or other person  
23 furnish the applicant, without delay, all information, facilities, and technical assistance  
24 necessary to accomplish the interception unobtrusively. The obligations of a  
25 communications common carrier under an order may include the obligation to conduct  
26 an in-progress trace during an interception. A communications common carrier,  
27 provider of wire or electronic communication services, landlord, owner, building  
28 operator, custodian, or other person who furnishes facilities or technical assistance  
29 under this subsection shall be compensated by the applicant at prevailing rates.

30 (e) A communications common carrier, provider of wire or electronic  
31 communication services, landlord, owner, building operator, custodian, or other person

1 who, under this section, has been shown a copy of an order authorizing the  
2 interception of a private communication may not disclose the existence of the order  
3 or of the device used to accomplish the interception unless

4 (1) the person is required to do so by legal process; and

5 (2) the person gives prior notification to the attorney general or the  
6 attorney general's designee who authorized the application for the order.

7 (f) An order entered under AS 12.37.030 may, upon the request of the  
8 applicant, authorize the applicant to enter a designated place or facility as often as  
9 necessary to install, maintain, or remove an intercepting device. The applicant shall  
10 notify the court of each such entry before its occurrence, if practicable. If prior notice  
11 is not practicable, the applicant shall notify the court within 72 hours after the entry.

12 Sec. 12.37.050. PRIVILEGED COMMUNICATIONS. No otherwise  
13 privileged communication intercepted in accordance with, or in violation of, the  
14 provisions of AS 12.37.010 - 12.37.130 loses its privileged character by reason of the  
15 interception.

16 Sec. 12.37.060. COLLATERAL AUTHORITY OF COURT;  
17 INTERPRETATION OF ACT. (a) Notwithstanding any other provision of  
18 AS 12.37.010 - 12.37.130, a court to which an application is made for an order  
19 authorizing the interception of a private communication may take the evidence, make  
20 the findings, or issue the other orders necessary to conform the proceedings or the  
21 entry of an order to the United States Constitution, the Constitution of the State of  
22 Alaska, or any applicable law of the United States or the State of Alaska.

23 (b) When the language of AS 12.37.010 - 12.37.130 is the same or similar to  
24 the language of 18 U.S.C. 2510 - 2521, the courts of this state in construing  
25 AS 12.37.010 - 12.37.130 shall follow the construction given to those federal statutes  
26 by the federal courts.

27 Sec. 12.37.070. RECORDS AND RECORDINGS AND CUSTODY OF  
28 THEM. (a) A communication intercepted in accordance with AS 12.37.010 -  
29 12.37.130 shall, if practicable, be recorded by tape or wire or other comparable  
30 method. The recording shall, if practicable, be done in a way that will protect it from  
31 editing or other alteration. During an interception, the peace officer authorized to act

1 under the court's order shall, if practicable, keep a signed, written record of the  
2 interception, which shall include the following information:

3 (1) the date and hours during which the interception equipment or site  
4 was monitored;

5 (2) the time and duration of each intercepted communication;

6 (3) the parties to each intercepted communication, if known; and

7 (4) a summary of the contents of each intercepted communication.

8 (b) Immediately upon expiration of the authorized interception period specified  
9 in an order entered under AS 12.37.030 or, if an extension order has been entered,  
10 upon expiration of the authorized interception period specified in that order, any tapes  
11 or other recordings, and any records made during the interception, and all orders  
12 authorizing the interception, shall be transferred to the court that entered the order and  
13 shall be sealed under its direction. Custody of the tapes, other recordings, and records  
14 of the interception shall be maintained as the court directs. The tapes, recordings, and  
15 records of the interception may not be destroyed except upon order of the court, and  
16 in any event shall be kept for a minimum period of 10 years. Duplicate recordings  
17 and records of the interception may be made for disclosure or use under  
18 AS 12.37.090(d) and 12.37.110. The presence of the seal required by this subsection,  
19 or a satisfactory explanation for its absence, is a prerequisite for the use or disclosure  
20 of the contents of any communication intercepted under AS 12.37.010 - 12.37.130.

21 Sec. 12.37.080. CUSTODY OF APPLICATIONS AND ORDERS; PENALTY  
22 FOR DISCLOSURE. (a) Except for a copy that may be retained for use by the  
23 applicant, all applications made and orders entered under AS 12.37.010 - 12.37.130 for  
24 the interception of private communications shall be sealed by the court and maintained  
25 as the court directs. The applications and orders may not be destroyed except upon  
26 order of the court and in any event shall be kept for a minimum period of 10 years.

27 (b) In addition to any other remedies or penalties provided by law, the  
28 disclosure of applications and orders in violation of AS 12.37.010 - 12.37.130 is  
29 punishable under AS 09.50.020 as contempt of court.

30 Sec. 12.37.090. NOTICE OF INTERCEPTION AND DISCLOSURE. (a)  
31 Within a reasonable period of time, but no later than 90 days following the expiration

1 of the authorized interception period specified in an order entered under AS 12.37.030  
2 or, if an extension order has been entered, upon expiration of the authorized  
3 interception period specified in that order, the court entering the order shall cause a  
4 notice of interception to be served on

5 (1) a person who is named in the order; or

6 (2) a party to the intercepted communications if the court determines  
7 in its discretion that the party should be informed in the interest of justice.

8 (b) The notice of interception shall include a statement of

9 (1) the fact of the entry of the order under AS 12.37.030;

10 (2) the date of the entry of the order;

11 (3) the period of time for which the interception was authorized; and

12 (4) whether and how many private communications were intercepted.

13 (c) On an ex parte showing of good cause, the court may postpone service of  
14 the notice of interception.

15 (d) Upon the filing of a motion, the court may make available for inspection  
16 to a person or the person's attorney, as the court determines to be in the interest of  
17 justice, those portions of an intercepted communication, an application for an order,  
18 and an order that the court considers appropriate.

19 Sec. 12.37.100. APPROVAL FOR UNANTICIPATED INTERCEPTION. If,  
20 while intercepting a private communication in accordance with the provisions of  
21 AS 12.37.010 - 12.37.130, a peace officer intercepts a communication that relates to  
22 an offense other than one specified in the order of authorization, the attorney general,  
23 or a person designated in writing or by law to act for the attorney general, may file a  
24 motion for an order approving that interception so that the communication, or evidence  
25 derived from it, may be used during testimony in an official proceeding. A court may  
26 enter an order approving the interception if it finds that the person who intercepted the  
27 communication was otherwise acting in accordance with the provisions of  
28 AS 12.37.010 - 12.37.130.

29 Sec. 12.37.110. USE OF INTERCEPTED COMMUNICATION. An  
30 intercepted private communication, and evidence derived from it, may not be received  
31 in evidence or otherwise disclosed in an official proceeding unless each party to the

1 communication who is a party in the official proceeding was furnished, at least 10  
2 days before the proceeding, with a copy of the court order authorizing the interception  
3 and of the application for authorization under which the order was issued. The 10-day  
4 period may be waived by the presiding official if the presiding official finds that it was  
5 not practicable to furnish the person with the information 10 days before the  
6 proceeding and also finds that the person will not be prejudiced by the delay in  
7 receiving the information.

8 **Sec. 12.37.120. SUPPRESSION OF UNLAWFUL INTERCEPTIONS.** (a) A  
9 motion to suppress the contents of an intercepted private communication, or evidence  
10 derived from it, may be filed in a proceeding on the ground that

- 11 (1) the interception was unlawful;
- 12 (2) the order of authorization under which the communication was  
13 intercepted is insufficient on its face; or
- 14 (3) the interception was not made in substantial compliance with the  
15 order of authorization.

16 (b) Upon the filing of a motion to suppress under this section, the court may  
17 make available to the moving party or that party's attorney, for inspection, the portion  
18 or portions of the intercepted communication, applications, and orders that the court  
19 determines to be in the interest of justice.

20 (c) Suppression is the only judicial sanction available for a nonconstitutional  
21 violation of AS 12.37.010 - 12.37.130 involving an intercepted private communication.

22 **Sec. 12.37.130. REQUIRED REPORTS.** (a) Within 30 days after the  
23 expiration of the authorized interception period specified in an order entered under  
24 AS 12.37.030 or, if an extension order has been entered, upon expiration of the  
25 authorized interception period specified in that order, the court entering the order shall  
26 report to the Administrative Office of the United States Courts the following  
27 information:

- 28 (1) the fact that an order or extension order was applied for;
- 29 (2) the kind of order or extension order applied for;
- 30 (3) whether the order or extension order was granted as applied for,  
31 was granted as modified;

1 (4) the period of time for which the interception is authorized by the  
2 order and the number of, and duration of the authorized interception period specified  
3 in, any extension orders regarding that order;

4 (5) the offense specified in the order, extension order, or application;

5 (6) the name and title of the applicant; and

6 (7) the nature of the facilities from which or the place where the  
7 communication was to be intercepted.

8 (b) In January of each year, the attorney general or the attorney general's  
9 designee shall report to the Administrative Office of the United States Courts the  
10 following information with respect to orders and extension orders obtained in the  
11 preceding calendar year:

12 (1) the information required by (a) of this section with respect to each  
13 application for an order or extension order made;

14 (2) a general description of the interceptions made under the order or  
15 extension, including

16 (A) the approximate nature and frequency of incriminating  
17 communications intercepted;

18 (B) the approximate nature and frequency of other  
19 communications intercepted;

20 (C) the approximate number of persons whose communications  
21 were intercepted; and

22 (D) the approximate nature, amount, and cost of the manpower  
23 and other resources used in the interceptions;

24 (3) the number of arrests resulting from interceptions made under the  
25 order or extension order, and the offenses for which arrests were made;

26 (4) the number of trials resulting from the interceptions;

27 (5) the number of motions to suppress made with respect to the  
28 interceptions, the number of such motions granted, and the number of such motions  
29 denied; and

30 (6) the number of convictions resulting from interceptions and the  
31 offenses for which the convictions were obtained, and a general assessment of the

1 importance of the interceptions.

2 (c) In addition to the report required by (b) of this section, the attorney general  
3 or the attorney general's designee shall prepare and keep annual reports on the  
4 operation of AS 12.37.010 - 12.37.130. The reports shall contain the following  
5 information:

6 (1) the number of applications made under AS 12.37.010 - 12.37.130;

7 (2) the number of orders entered by the court;

8 (3) the effective period of time for which each interception was  
9 authorized;

10 (4) the number of, and duration of the authorized interception period  
11 specified in, any extension orders;

12 (5) the offenses in connection with which the communications were  
13 sought;

14 (6) the names and titles of the applicants;

15 (7) the number of indictments or other charges resulting from each  
16 application;

17 (8) the offenses that each indictment or other charge relates to; and

18 (9) the disposition of each indictment or other charge.

19 **ARTICLE 2. PEN REGISTERS AND TRAP DEVICES.**

20 **Sec. 12.37.200. AUTHORIZATION TO USE PEN REGISTERS AND TRAP**  
21 **DEVICES.** Upon application by a peace officer made in conformity with any  
22 provision of federal law authorizing such an application, a court may issue an order  
23 authorizing or concerning the use of a pen register or a trap device as permitted under  
24 federal law.

25 **ARTICLE 3. COMMUNICATIONS IN ELECTRONIC STORAGE.**

26 **Sec. 12.37.300. AUTHORIZATION FOR ACCESS TO AND USE OF**  
27 **COMMUNICATIONS IN ELECTRONIC STORAGE.** Upon application by a peace  
28 officer made in conformity with any provision of federal law authorizing such an  
29 application, a court may issue an order authorizing or concerning access to and  
30 disclosure or use of communications in electronic storage as permitted under federal  
31 law.

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ARTICLE 4. GENERAL PROVISIONS.

Sec. 12.37.900. DEFINITIONS. For purposes of this chapter,

(1) "communications common carrier" has the same meaning as in AS 42.20.390;

(2) "contents" has the same meaning as in AS 42.20.390;

(3) "court" means superior court, except that in AS 12.37.200 it means either superior or district court;

(4) "electronic communication" has the same meaning as in AS 42.20.390;

(5) "electronic communication service" has the same meaning as in AS 42.20.390;

(6) "electronic storage" means any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission of the communication, and any storage of the communication by an electronic communication service for purposes of backup protection of the communication;

(7) "in-progress trace" means to determine the origin of a wire communication to a telephone or telegraph instrument, equipment, or facility during the course of the communication;

(8) "intercept" has the same meaning as in AS 42.20.390;

(9) "peace officer" has the same meaning as in AS 11.81.900(b);

(10) "pen register" means a device or apparatus that is connected to a telephone or telegraph instrument, equipment, or facility to determine the destination of a wire communication to a telephone or telegraph instrument, equipment, or facility, but which does not intercept the contents of the communication; "pen register" does not include a device used by a provider or customer of a wire or electronic communication service for billing, or for recording as an incident to billing, for communications services provided by the provider, nor a device used by a provider or customer of a wire communication service for cost accounting or other like purposes in the ordinary course of its business;

(11) "official proceeding" means a judicial, legislative, or administrative proceeding or any other proceeding before a government agency or official authorized

1 to hear evidence under oath, other than a grand jury;

2 (12) "oral communication" has the same meaning as in AS 42.20.390;

3 (13) "private communication" has the same meaning as in  
4 AS 42.20.390;

5 (14) "trap device" means a device or apparatus that is connected to a  
6 telephone or telegraph instrument, equipment, or facility to determine the origin of a  
7 wire communication to the telephone or telegraph instrument, equipment, or facility,  
8 but that does not intercept the contents of the communication;

9 (15) "wire communication" has the same meaning as in AS 42.20.390.

10 \* Sec. 2. AS 42.20.300(a) is amended to read:

11 (a) A person who receives or assists in receiving, or who transmits or assists  
12 in transmitting a private communication [BY WIRE OR RADIO] may not divulge or  
13 publish the existence, contents, substance, purport, effect, or meaning of the  
14 communication, except through authorized channels of transmission or reception [TO]

15 (1) to the addressee or the agent or attorney of the addressee;

16 (2) to a person employed or authorized to forward a communication to  
17 its destination;

18 (3) to proper accounting or distributing officers of the various  
19 communicating centers over which the communication may be passed;

20 (4) to the master of a ship under whom the person is serving;

21 (5) to another on demand of lawful authority; or

22 (6) in response to a subpoena issued or order entered by a court of  
23 competent jurisdiction.

24 \* Sec. 3. AS 42.20.300(b) is amended to read:

25 (b) Except as provided in AS 12.37, a [A] person not authorized by a party  
26 to the communication may not intentionally intercept a private communication or  
27 divulge or publish the existence, contents, substance, purport, effect, or meaning of the  
28 intercepted communication to any person.

29 \* Sec. 4. AS 42.20.320 is amended to read:

30 Sec. 42.20.320. EXEMPTIONS. The following activities are exempt from the  
31 provisions of AS 42.20.300 and 42.20.310:

1 (1) listening to a radio or wireless communications of any sort where  
2 the same are publicly made;

3 (2) hearing conversation when heard by employees of a common carrier  
4 by wire incidental to the normal course of their employment in the operation,  
5 maintenance or repair of the equipment of the common carrier by wire; provided the  
6 information obtained is not used or divulged in any manner by the hearer;

7 (3) a broadcast by radio or other means whether it is a live broadcast  
8 or recorded for the purpose of later broadcasts of any function where the public is in  
9 attendance and the conversations that are overheard are incidental to the main purpose  
10 for which the broadcast is then being made;

11 (4) recording or listening with the aid of any device to an emergency  
12 communication made in the normal course of operations by a federal, state or local law  
13 enforcement agency or institutions dealing in emergency services, including but not  
14 limited to hospitals, clinics, ambulance services, fire fighting agencies, a public utility  
15 emergency repair facility, civilian defense establishment or military installations;

16 (5) inadvertent interception of telephone conversations over party lines;

17 (6) a peace officer, or a person acting at the direction or request  
18 of a peace officer, engaging in conduct authorized by or under AS 12.37.

19 \* Sec. 5. AS 42.20.320 is amended by adding a new subsection to read:

20 (b) Notwithstanding any other provision of law, a person who inadvertently  
21 intercepts a private communication that appears to pertain to the commission of a  
22 crime may report the information to a law enforcement agency.

23 \* Sec. 6. AS 42.20 is amended by adding a new section to read:

24 Sec. 42.20.325. DUTY TO REPORT. A person who is an employee of a  
25 communications common carrier or of an electronic communication service or of a  
26 private investigation agency, and has knowledge of the probable occurrence of conduct  
27 that violates a provision of AS 42.20.300 or 42.20.310 shall report the conduct, in  
28 writing, to the commissioner of public safety within 30 days after learning of the  
29 conduct.

30 \* Sec. 7. AS 42.20.330 is amended to read:

31 Sec. 42.20.330. PENALTY. A person who violates any of the provisions of

1 AS 42.20.300 and 42.20.310 is guilty of a class A misdemeanor [AND UPON  
2 CONVICTION IS PUNISHABLE BY A FINE OF NOT MORE THAN \$1,000, OR  
3 BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BY BOTH].

4 \* Sec. 8. AS 42.20 is amended by adding a new section to read:

5 Sec. 42.20.390. DEFINITIONS. In AS 42.20.300 - 42.20.390,

6 (1) "communications common carrier" means a business or person  
7 engaged as a common carrier for hire in the transmission of communications by wire,  
8 cable, satellite, electromagnetic waves, or radio, not including radio broadcasting;

9 (2) "contents" includes information obtained from a private  
10 communication concerning the existence, substance, purport, or meaning of the  
11 communication, or the identity of a party of the communication;

12 (3) "eavesdropping device" means a device or apparatus, including an  
13 induction coil, that can be used to intercept an oral, wire, or electronic communication,  
14 other than

15 (A) a hearing aid or similar device used for the restoration of  
16 subnormal hearing to not better than normal; or

17 (B) a telephone or telegraph instrument, equipment, or facility,  
18 or any component of such an instrument, equipment, or facility

19 (i) being used by a provider of wire or electronic  
20 communication service in the ordinary course of its business; or

21 (ii) furnished to a subscriber or user by a provider of  
22 wire or electronic communication service in the ordinary course of its  
23 business and being used by the subscriber or user in the ordinary course  
24 of its business;

25 (4) "electronic communication" means any transfer of signs, signals,  
26 writing, images, sounds, data, or intelligence of any nature transmitted in whole or in  
27 part by a wire, radio, electromagnetic, photoelectronic or photooptical system, but does  
28 not include

29 (A) the radio portion of a cordless telephone communication  
30 that is transmitted between the cordless telephone handset and the base unit;

31 (B) any wire or oral communication;

1 (C) any communication made through a tone-only paging  
2 device;

3 (D) any communications made through a tracking device  
4 consisting of an electronic or mechanical device that permits the tracking of the  
5 movement of a person or object; or

6 (E) any communication that is disseminated by the sender with  
7 the intent or expectation, or through a method of transmission that is so  
8 configured, that the communication is readily accessible to the general public;

9 (5) "electronic communication service" means a service that provides  
10 to users of the service the ability to send or receive wire or electronic communications;

11 (6) "employee" includes a person who is an officer, agent, or employee  
12 of, or a person under contract with, a business or a government entity;

13 (7) "intercept" means the aural or other acquisition of the contents of  
14 an oral, wire, or electronic communication through the use of any electronic,  
15 mechanical, or other device, including the acquisition of the contents by simultaneous  
16 transmission or by recording;

17 (8) "oral communication" means human speech used to communicate  
18 information from one party to another;

19 (9) "private communication" means an oral, wire, or electronic  
20 communication uttered or transmitted by a person who has a reasonable expectation  
21 that the communication is not subject to interception;

22 (10) "wire communication" means human speech used to communicate  
23 information from one party to another in whole or in part through the use of facilities  
24 for the transmission of communications by wire, cable, or other similar connection  
25 between the point of origin and the point of reception furnished or operated by a  
26 telephone, telegraph, or radio company for hire as a communications common carrier,  
27 but does not include the radio portion of a cordless telephone communication that is  
28 transmitted between the cordless telephone handset and the base unit.

29 \* Sec. 9. This Act takes effect July 1, 1993.