

B-Engrossed
House Bill 2459

Ordered by the Senate June 2
Including House Amendments dated April 13 and Senate Amendments
dated June 2

Sponsored by Representative NATHANSON; Representatives BYNUM, EVANS, HOLVEY, REARDON, RESCHKE,
SMITH WARNER (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Includes in definition of "conversation" communication occurring through video conferencing program for purposes of statutes regulating recording of communications. Prohibits recording of communication occurring through video conferencing program if participants are not informed of recording. Punishes by maximum of 364 days' imprisonment, \$6,250 fine, or both. Specifies exceptions.

A BILL FOR AN ACT

1
2 Relating to video conferencing; amending ORS 165.535 and 165.540.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1.** ORS 165.535 is amended to read:

5 165.535. As used in ORS 41.910, 133.723, 133.724, 165.540 and 165.545:

6 (1) "Conversation" means the transmission between two or more persons of an oral communi-
7 cation which is not a telecommunication or a radio communication, **and includes a communication**
8 **occurring through a video conferencing program.**

9 (2) "Person" has the meaning given that term in ORS 174.100 and includes:

10 (a) Public officials and law enforcement officers of:

11 (A) The state and of a county, municipal corporation or any other political subdivision of the
12 state; and

13 (B) A police department established by a university under ORS 352.121 or 353.125; and

14 (b) Authorized tribal police officers as defined in ORS 181A.680.

15 (3)(a) "Radio communication" means the transmission by radio or other wireless methods of
16 writing, signs, signals, pictures and sounds of all kinds, including all instrumentalities, facilities,
17 equipment and services (including, among other things, the receipt, forwarding and delivering of
18 communications) incidental to such transmission.

19 (b) "**Radio communication**" **does not include a communication occurring through a video**
20 **conferencing program.**

21 (4)(a) "Telecommunication" means the transmission of writing, signs, signals, pictures and
22 sounds of all kinds by aid of wire, cable or other similar connection between the points of origin
23 and reception of such transmission, including all instrumentalities, facilities, equipment and services
24 (including, among other things, the receipt, forwarding and delivering of communications) incidental
25 to such transmission.

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.
New sections are in **boldfaced** type.

1 **(b) “Telecommunication” does not include a communication occurring through a video**
2 **conferencing program.**

3 **(5) “Video conferencing program” means software or an application for a computer or**
4 **cellular telephone that allows two or more persons to communicate via simultaneous video**
5 **transmission.**

6 **SECTION 2.** ORS 165.540 is amended to read:

7 165.540. (1) Except as otherwise provided in ORS 133.724 or 133.726 or subsections (2) to (7) of
8 this section, a person may not:

9 (a) Obtain or attempt to obtain the whole or any part of a telecommunication or a radio com-
10 munication to which the person is not a participant, by means of any device, contrivance, machine
11 or apparatus, whether electrical, mechanical, manual or otherwise, unless consent is given by at
12 least one participant.

13 (b) Tamper with the wires, connections, boxes, fuses, circuits, lines or any other equipment or
14 facilities of a telecommunication or radio communication company over which messages are trans-
15 mitted, with the intent to obtain unlawfully the contents of a telecommunication or radio communi-
16 cation to which the person is not a participant.

17 (c) Obtain or attempt to obtain the whole or any part of a conversation by means of any device,
18 contrivance, machine or apparatus, whether electrical, mechanical, manual or otherwise, if not all
19 participants in the conversation are specifically informed that their conversation is being obtained.

20 (d) Obtain the whole or any part of a conversation, telecommunication or radio communication
21 from any person, while knowing or having good reason to believe that the conversation, telecom-
22 munication or radio communication was initially obtained in a manner prohibited by this section.

23 (e) Use or attempt to use, or divulge to others, any conversation, telecommunication or radio
24 communication obtained by any means prohibited by this section.

25 (2)(a) The prohibitions in subsection (1)(a), (b) and (c) of this section do not apply to:

26 (A) Officers, employees or agents of a telecommunication or radio communication company who
27 perform the acts prohibited by subsection (1)(a), (b) and (c) of this section for the purpose of con-
28 struction, maintenance or conducting of their telecommunication or radio communication service,
29 facilities or equipment.

30 (B) Public officials in charge of and at jails, police premises, sheriffs’ offices, Department of
31 Corrections institutions and other penal or correctional institutions, except as to communications
32 or conversations between an attorney and the client of the attorney.

33 (b) Officers, employees or agents of a telecommunication or radio communication company who
34 obtain information under paragraph (a) of this subsection may not use or attempt to use, or divulge
35 to others, the information except for the purpose of construction, maintenance, or conducting of
36 their telecommunication or radio communication service, facilities or equipment.

37 (3) The prohibitions in subsection (1)(a), (b) or (c) of this section do not apply to subscribers or
38 members of their family who perform the acts prohibited in subsection (1) of this section in their
39 homes.

40 (4) The prohibitions in subsection (1)(a) of this section do not apply to the receiving or obtaining
41 of the contents of any radio or television broadcast transmitted for the use of the general public.

42 (5) The prohibitions in subsection (1)(c) of this section do not apply to:

43 (a) A person who records a conversation during a felony that endangers human life;

44 (b) A person who records a conversation in which a law enforcement officer is a participant, if:

45 (A) The recording is made while the officer is performing official duties;

1 (B) The recording is made openly and in plain view of the participants in the conversation;

2 (C) The conversation being recorded is audible to the person by normal unaided hearing; and

3 (D) The person is in a place where the person lawfully may be;

4 (c)(A) A person who, pursuant to ORS 133.400, records an interview conducted by a peace officer
5 in a law enforcement facility; or

6 (B) A person who, pursuant to ORS 133.402, records a custodial interview, as defined ORS
7 133.402;

8 (d) A law enforcement officer who is in uniform and displaying a badge and who is operating:

9 (A) A vehicle-mounted video camera that records the scene in front of, within or surrounding
10 a police vehicle, unless the officer has reasonable opportunity to inform participants in the conver-
11 sation that the conversation is being obtained; or

12 (B) A video camera worn upon the officer's person that records the officer's interactions with
13 members of the public while the officer is on duty, unless:

14 (i) The officer has an opportunity to announce at the beginning of the interaction that the con-
15 versation is being obtained; and

16 (ii) The announcement can be accomplished without causing jeopardy to the officer or any other
17 person and without unreasonably impairing a criminal investigation; or

18 (e) A law enforcement officer who, acting in the officer's official capacity, deploys an Electro-
19 Muscular Disruption Technology device that contains a built-in monitoring system capable of re-
20 cording audio or video, for the duration of that deployment.

21 (6)(a) The prohibitions in subsection (1)(c) of this section do not apply to persons who intercept
22 or attempt to intercept [*with an unconcealed recording device the*] oral communications that are part
23 of any of the following proceedings, **if the person uses an unconcealed recording device or if**
24 **the communications occur through a video conferencing program:**

25 [(a)] (A) Public or semipublic meetings such as hearings before governmental or quasi-
26 governmental bodies, trials, press conferences, public speeches, rallies and sporting or other events;

27 [(b)] (B) Regularly scheduled classes or similar educational activities in public or private insti-
28 tutions; or

29 [(c)] (C) Private meetings or conferences if all others involved knew or reasonably should have
30 known that the recording was being made.

31 **(b) The prohibitions in subsection (1)(c) of this section do not apply to a person who, with**
32 **the intent to capture alleged unlawful activity, obtains or attempts to obtain a conversation**
33 **occurring through a video conferencing program if the person is a participant in the con-**
34 **versation, or at least one participant in the conversation consents to the recording, and:**

35 **(A) The person is a law enforcement officer or is acting in coordination with a law**
36 **enforcement officer;**

37 **(B) The person is acting in coordination with an attorney or an enforcement or regula-**
38 **tory entity; or**

39 **(C) The person reasonably believes that the recording may be used as evidence in a ju-**
40 **dicial or administrative proceeding.**

41 (7) The prohibitions in subsection (1)(a), (c), (d) and (e) of this section do not apply to any:

42 (a) Radio communication that is transmitted by a station operating on an authorized frequency
43 within the amateur or citizens bands; or

44 (b) Person who intercepts a radio communication that is transmitted by any governmental, law
45 enforcement, civil defense or public safety communications system, including police and fire, readily

1 accessible to the general public provided that the interception is not for purposes of illegal activity.

2 (8) Violation of subsection (1) or (2)(b) of this section is a Class A misdemeanor.

3 (9) The exception described in subsection (5)(b) of this section does not authorize the person
4 recording the law enforcement officer to engage in criminal trespass as described in ORS 164.243,
5 164.245, 164.255, 164.265 or 164.278 or to interfere with a peace officer as described in ORS 162.247.

6 (10) As used in this section:

7 (a) “Electro-Muscular Disruption Technology device” means a device that uses a high-voltage,
8 low power charge of electricity to induce involuntary muscle contractions intended to cause tem-
9 porary incapacitation. “Electro-Muscular Disruption Technology device” includes devices commonly
10 known as tasers.

11 (b) “Law enforcement officer” has the meaning given that term in ORS 133.726.

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