

**HB 2129 STAFF MEASURE SUMMARY**

**Carrier:** Sen. Prozanski

**Senate Committee On Judiciary**

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**Action Date:** 05/01/23  
**Action:** Do pass.  
**Vote:** 3-2-0-0  
**Yeas:** 3 - Gelser Blouin, Manning Jr, Prozanski  
**Nays:** 2 - Linthicum, Thatcher  
**Fiscal:** No fiscal impact  
**Revenue:** No revenue impact  
**Prepared By:** Patricia Pascone, LPRO Analyst  
**Meeting Dates:** 4/20, 5/1

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**WHAT THE MEASURE DOES:**

Creates an exception to the prohibition on obtaining or using an unlawfully recorded communication, when the communication is a matter of public concern and the person did not participate in initially obtaining it.

**ISSUES DISCUSSED:**

- General prohibition on distribution of illegally recorded communications
- Conflict with Supreme Court precedent (*Bartnicki v. Vopper* case)
- Recent litigation in Oregon on this issue
- Oregon Department of Justice issued guidance and notice to prosecutors
- Public may get confused by seeing law still on the books
- Court opinions comprise body of law defining what is or is not a matter of public concern on a fact-based analysis

**EFFECT OF AMENDMENT:**

No amendment.

**BACKGROUND:**

Oregon prohibits persons from recording certain conversations without consent, and from using illegally recorded conversations. Violations are punishable as a Class A misdemeanor. The statute currently provides no exception for use by persons who did not participate in the initial act of illegally recording a conversation about a matter of public concern.

The Supreme Court of the United States decided in 2001 that a similar federal law could not be enforced against a radio commentator who broadcast a phone call intercepted and recorded by someone else without consent of the participants. *Bartnicki v. Vopper*, 532 U.S. 514 (2001). The intercepted phone call was a conversation between a union president and a union negotiator, discussing contract negotiations between teachers and a public school. The Court held that prohibiting the radio commentator's use of the recording was a violation of his free speech rights because the recording concerned a matter of public importance and the radio commentator had played no part in the initial illegal interception.

House Bill 2129 exempts from prosecution a person who receives or uses an illegally recorded communication about a matter of public concern, if the person did not participate in initially obtaining the recording.