

1 HB391  
2 133527-2  
3 By Representative England  
4 RFD: Public Safety and Homeland Security  
5 First Read: 23-FEB-12

8 SYNOPSIS: Under existing law, it is a crime to install  
9 or place a device in a private place with knowledge  
10 that it is to be used for eavesdropping without  
11 permission. Also under existing law, it is a crime  
12 to possess, manufacture, send, or transport any  
13 device designed or commonly used for eavesdropping.

14 This bill would expand the crimes of  
15 installing eavesdropping devices and possession of  
16 eavesdropping devices to include the use of an  
17 eavesdropping device to access or intercept  
18 communications on a personal telecommunication  
19 device such as a cell phone.

20 Amendment 621 of the Constitution of Alabama  
21 of 1901, now appearing as Section 111.05 of the  
22 Official ReCompilation of the Constitution of  
23 Alabama of 1901, as amended, prohibits a general  
24 law whose purpose or effect would be to require a  
25 new or increased expenditure of local funds from  
26 becoming effective with regard to a local  
27 governmental entity without enactment by a 2/3 vote

1           unless: it comes within one of a number of  
2           specified exceptions; it is approved by the  
3           affected entity; or the Legislature appropriates  
4           funds, or provides a local source of revenue, to  
5           the entity for the purpose.

6           The purpose or effect of this bill would be  
7           to require a new or increased expenditure of local  
8           funds within the meaning of the amendment. However,  
9           the bill does not require approval of a local  
10          governmental entity or enactment by a 2/3 vote to  
11          become effective because it comes within one of the  
12          specified exceptions contained in the amendment.

13  
14                           A BILL  
15                           TO BE ENTITLED  
16                           AN ACT

17  
18           To amend Sections 13A-11-30, 13A-11-31, 13A-11-33,  
19   and 13A-11-34, Code of Alabama 1975, relating to eavesdropping  
20   devices; to expand the crimes of installing eavesdropping  
21   devices and criminal possession of an eavesdropping device to  
22   include certain unauthorized access to communications on  
23   personal telecommunication devices; and in connection  
24   therewith would have as its purpose or effect the requirement  
25   of a new or increased expenditure of local funds within the  
26   meaning of Amendment 621 of the Constitution of Alabama of  
27   1901, now appearing as Section 111.05 of the Official

1       Recompilation of the Constitution of Alabama of 1901, as  
2       amended.

3       BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4               Section 1. Sections 13A-11-30, 13A-11-31, 13A-11-33,  
5       and 13A-11-34, Code of Alabama 1975, are amended to read as  
6       follows:

7               "§13A-11-30.

8               "The following definitions apply to this article:

9               "(1) EAVESDROP. To overhear, record, amplify or  
10       transmit any part of the private communication of others  
11       without the consent of at least one of the persons engaged in  
12       the communication, except as otherwise provided by law.

13              "(2) EAVESDROPPING DEVICE. An instrument, machine,  
14       equipment, technology, or software that enables a person to do  
15       any of the following:

16              "a. Overhear, record, amplify, or transmit any part  
17       of the private communications of others.

18              "b. Access or intercept telephonic, electronic, or  
19       radio communications from a personal telecommunication device.

20              "(3) PERSONAL TELECOMMUNICATION DEVICE. Any type of  
21       personal instrument, device, machine, computer, or equipment  
22       that is capable of transmitting or receiving telephonic,  
23       electronic, or radio communications, or any part of the  
24       instrument, device, machine, or equipment, or any computer  
25       circuit, computer chip, electronic mechanism, or other  
26       component that is capable of facilitating the transmission or  
27       reception of telephonic, electronic, or radio communication.

1           "~~(2)~~(4) PRIVATE PLACE. A place where one may  
2 reasonably expect to be safe from casual or hostile intrusion  
3 or surveillance, but such term does not include a place to  
4 which the public or a substantial group of the public has  
5 access.

6           "~~(3)~~(5) SURVEILLANCE. Secret observation of the  
7 activities of another person for the purpose of spying upon  
8 and invading the privacy of the person observed.

9           "§13A-11-31.

10           (a) A person commits the crime of criminal  
11 eavesdropping if he or she intentionally uses any  
12 eavesdropping device to eavesdrop, whether or not he or she is  
13 present at the time, without the consent of at least one of  
14 the persons engaged in the communication.

15           (b) A person commits the crime of criminal  
16 eavesdropping if he or she intentionally uses any  
17 eavesdropping device to eavesdrop on a communication  
18 facilitated by a personal telecommunication device, whether or  
19 not he or she is present at the time, without the consent of  
20 the owner or user of the personal telecommunication device.

21           ~~(b)~~ (c) Criminal eavesdropping is a Class A  
22 misdemeanor.

23           "§13A-11-33.

24           "(a) A person commits the crime of installing an  
25 eavesdropping device if he or she intentionally installs or  
26 places ~~a~~ an eavesdropping device in a private place or in a  
27 personal telecommunication device with knowledge it is to be

1 used for eavesdropping and without permission of the owner and  
2 any lessee or tenant or guest for hire of the private place or  
3 without permission of the owner or user of the personal  
4 telecommunication device.

5 "(b) Installing an eavesdropping device in a private  
6 place or in a personal telecommunication device is prima facie  
7 evidence of knowledge that the device is to be used for  
8 eavesdropping.

9 "(c) Installing an eavesdropping device is a Class C  
10 felony.

11 "§13A-11-34.

12 "(a) A person commits the crime of criminal  
13 possession of an eavesdropping device if he or she possesses,  
14 manufactures, sends, or transports any eavesdropping device  
15 ~~designed or commonly used for eavesdropping~~, and:

16 "(1) Intends to use that device to eavesdrop; or

17 "(2) Knows that another person intends to use that  
18 device to eavesdrop.

19 "(b) Criminal possession of an eavesdropping device  
20 is a Class A misdemeanor."

21 Section 2. Although this bill would have as its  
22 purpose or effect the requirement of a new or increased  
23 expenditure of local funds, the bill is excluded from further  
24 requirements and application under Amendment 621, now  
25 appearing as Section 111.05 of the Official Recompile of  
26 the Constitution of Alabama of 1901, as amended, because the

1 bill defines a new crime or amends the definition of an  
2 existing crime.

3 Section 3. This act shall become effective on the  
4 first day of the third month following its passage and  
5 approval by the Governor, or its otherwise becoming law.