

HB 512 -- Intercepting Computer and Electronic Communication Device Information

Sponsor: Lair

This bill creates the crime of unlawfully intercepting computer and electronic communication device information, a class D felony, if a person knowingly and without the knowledge and consent of another person and for the purpose of spying on another person uses or endeavors to use or procures another person to use or endeavor to use a computer program, cell phone, or any other electronic or mechanical device or installs, downloads, or otherwise attaches any type of software program or other electronic or mechanical device to intercept information from another person's computer, cell phone, or other electronic communication device.

The provisions of the bill will not apply to:

- (1) A law enforcement officer engaged in his or her official duties;
- (2) A parent acting in regard to his or her child who is younger than 18 years of age;
- (3) A school acting in regard to one of its student but only when attached to a device provided by the school to the student;
- (4) An employer acting in regard to one of its employees but only after giving written notice to the employee and only when attached to a device provided by the employer to the employee; or
- (5) A person acting to protect another person in an emergency situation when a reasonable person would have probable cause to believe that the person whose information is being intercepted is in imminent danger of death, serious physical injury, sexual assault, or kidnapping if immediate action is not taken.

The defendant must have the burden of injecting any defense specified in the bill, but it cannot be a defense that the defendant was a spouse or relative of the victim or that the defendant owned, purchased, sold, loaned, or gave the device to the victim for his or her use.

A rebuttable presumption is created if a prosecutor introduces evidence showing that information was intercepted from or that something was installed, downloaded, or otherwise attached to another person's computer, cell phone, or other electronic communication device to intercept information by a defendant or someone procured by the defendant without the knowledge and

consent of the victim. The burden is then on the defendant to rebut this presumption by demonstrating that he or she did not act with the purpose of spying.