CHAPTER 29

Pen Registers and Trap and Trace Devices

**SECTION 17‑29‑10.** Definitions.

 As used in this chapter:

 (1) The term “pen register” means a device which records or decodes electronic or other impulses which identify the numbers dialed or otherwise transmitted on the telephone line to which the device is attached, but this term does not include any device used by a provider or customer of a wire or electronic communication service for billing, or recording as an incident to billing, for communications services provided by the provider, or any 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.

 (2) The term “trap and trace device” means a device which captures the incoming electronic or other impulses which identify the originating number of an instrument or device from which a wire or electronic communication was transmitted.

HISTORY: 1988 Act No. 529.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Private Detectives and Private Security Businesses Section 29, Violation of Statutes.

S.C. Jur. Telecommunications Section 19, State Law.

Treatises and Practice Aids

1 Causes of Action 2d 499, Cause of Action Under 18 U.S.C.A. S2520 for Unlawful Interception, Disclosure, or Use of a Communication by a Nongovernmental Defendant.

Attorney General’s Opinions

The Department of Corrections may ban and monitor cell phone calls with the use of a Managed Access device without violating the Constitution. S.C. Op Atty Gen (Dec. 15, 2010) 2010 WL 5578963.

**SECTION 17‑29‑20.** Installation of pen register or trap and trace device prohibited.

 (A) Except as provided in this section, no person may install or use a pen register or a trap and trace device without first obtaining a court order under Section 17‑29‑40.

 (B) The prohibition of subsection (A) does not apply with respect to the use of a pen register or a trap and trace device by a provider of electronic or wire communication service:

 (1) relating to the operation, maintenance, and testing of a wire or electronic communication service or to the protection of the rights or property of the provider, or to the protection of users of that service from abuse of service or unlawful use of service; or

 (2) to record the fact that a wire or electronic communication was initiated or completed in order to protect the provider, another provider furnishing service toward the completion of the wire communication, or a user of that service, from fraudulent, unlawful, or abusive use of service; or

 (3) where the consent of the user of that service has been obtained.

 (C) Any person violating the provisions of subsection (A) of this section is guilty of a misdemeanor and upon conviction must be punished by a fine of not more than one thousand dollars or by imprisonment for a term of not more than one year, or both.

HISTORY: 1988 Act No. 529.

Federal Aspects

8 Federal Procedure, L Ed, Criminal Procedure Sections 22:231 et seq.

7 Federal Procedural Forms, L Ed, Criminal Procedure, Forms 20:613, 20:649, 20:963.

Library References

Telecommunications 1453, 1470, 1475, 1487.

Westlaw Topic No. 372.

C.J.S. Telecommunications Sections 236, 239, 241, 250, 252, 269 to 270, 276, 291, 293.

RESEARCH REFERENCES

ALR Library

9 ALR 5th 553 , “Caller Id” System, Allowing Telephone Call Recipient to Ascertain Number of Telephone from Which Call Originated, as Violation of Right to Privacy, Wiretapping Statute, or Similar Protections.

Encyclopedias

S.C. Jur. Telecommunications Section 26, Criminal Liability.

United States Supreme Court Annotations

Admissibility of evidence obtained by wiretapping as affected by sec. 605 of the Federal Communications Act (47 USC sec. 605)—federal cases. 20 L Ed 2d 1718.

Obtaining evidence by use of sound recording or of mechanical or electronic eavesdropping device (“bugging”) as violation of Fourth Amendment—federal cases. 59 L Ed 2d 959.

Attorney General’s Opinions

The Department of Corrections may ban and monitor cell phone calls with the use of a Managed Access device without violating the Constitution. S.C. Op Atty Gen (Dec. 15, 2010) 2010 WL 5578963.

NOTES OF DECISIONS

In general 1

1. In general

An optional telephone service which uses a device to reveal the number of an incoming call as it rings is neither unconstitutional nor a violation of Section 17‑29‑20 since such a device falls under the Section 17‑29‑20 exceptions for trap and trace devices (1) which are used to protect the user from abuse or the unlawful use of telephone service, or (2) for which the consent of the user has been obtained. Southern Bell Tel. and Tel. Co. v. Hamm (S.C. 1991) 306 S.C. 70, 409 S.E.2d 775, 9 A.L.R.5th 1131.

**SECTION 17‑29‑30.** Certain officials may make application for order authorizing or approving installation and use of pen register or trap and trace device.

 (A)(1) The Attorney General or an assistant attorney general designated by the Attorney General on behalf of the State, and a circuit solicitor or an assistant circuit solicitor designated by the solicitor on behalf of a political subdivision having law enforcement authority, hereinafter referred to as the attorney, may make application for an order or an extension of an order under Section 17‑29‑40 authorizing or approving the installation and use of a pen register or a trap and trace device under this chapter, in writing under oath to the circuit court of the circuit wherein the political subdivision is located or if on behalf of the State to any circuit court.

 (2) A law enforcement officer of this State or a political subdivision thereof may make application for an order or an extension of an order under Section 17‑29‑40 authorizing or approving the installation and use of a pen register or a trap and trace device under this chapter, in writing under oath to the circuit court of the circuit wherein the political subdivision is located or if on behalf of the State to any circuit court.

 (B) An application under subsection (A) of this section must include:

 (1) the identity of the attorney or the law enforcement officer of this State or a political subdivision thereof making the application and the identity of the law enforcement agency conducting the investigation; and

 (2) a certification by the applicant that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by that agency, and that the applicant has probable cause to believe that a user of the service to which the pen register or trap and trace device is applied is a participant in the criminal activity being investigated.

HISTORY: 1988 Act No. 529.

Library References

Telecommunications 1470, 1475, 1487.

Westlaw Topic No. 372.

C.J.S. Telecommunications Sections 239, 269 to 270, 276, 291, 293.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Private Detectives and Private Security Businesses Section 29, Violation of Statutes.

S.C. Jur. Telecommunications Section 25, State Law.

**SECTION 17‑29‑40.** Issuance of court order authorizing installation of pen register or trap and trace device.

 (A) Upon an application made under Section 17‑29‑30, the court shall enter an ex parte order authorizing the installation and use of a pen register or a trap and trace device within that political subdivision, or within the State if the applicant is the attorney for the State or a law enforcement officer thereof, if the court finds that the attorney or the law enforcement officer of this State or a political subdivision thereof has certified to the court that the information likely to be obtained by the installation and use is relevant to an ongoing criminal investigation, and that the probable cause required by Section 17‑29‑30 (B)(2) exists.

 (B) An order issued under this section must specify:

 (1) the identity, if known of the person to whom is leased or in whose name is listed the telephone line to which the pen register or trap and trace device is to be attached;

 (2) the identity, if known, of the person who is the subject of the criminal investigation, and to whom the probable cause requirement of Section 17‑29‑30(B)(2) applies;

 (3) the number and, if known, physical location of the telephone line to which the pen register or trap and trace device is to be attached and, in the case of a trap and trace device, the geographic limits of the trap and trace order; and

 (4) a statement of the offense to which the information likely to be obtained by the pen register or trap and trace device relates.

 The order must also direct, upon the request of the applicant, the furnishing of information, facilities, and technical assistance necessary to accomplish the installation of the pen register or trap and trace device under Section 17‑29‑50.

 (C)(1) An order issued under this section must authorize the installation and use of a pen register or a trap and trace device for a period not to exceed sixty days.

 (2) Extensions of such an order may be granted, but only upon an application for an order under Section 17‑29‑30 and upon the judicial finding required by subsection (A) of this section. The period of extension may be for a period not to exceed sixty days.

 (D) An order authorizing or approving the installation and use of a pen register or a trap and trace device must direct that:

 (1) the order be sealed until otherwise ordered by the court; and

 (2) the person owning or leasing the line to which the pen register or a trap and trace device is attached, or who has been ordered by the court to provide assistance to the applicant, not disclose the existence of the pen register or trap and trace device or the existence of the investigation to the listed subscriber, or to any other person, unless otherwise ordered by the court.

HISTORY: 1988 Act No. 529.

Library References

Telecommunications 1470, 1475, 1487.

Westlaw Topic No. 372.

C.J.S. Telecommunications Sections 239, 269 to 270, 276, 291, 293.

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S.C. Jur. Private Detectives and Private Security Businesses Section 29, Violation of Statutes.

S.C. Jur. Telecommunications Section 19, State Law.

S.C. Jur. Telecommunications Section 25, State Law.

**SECTION 17‑29‑50.** Rights and duties of provider of wire or electronic communication service, landlord.

 (A) Upon the request of the attorney or an officer of a law enforcement agency authorized to install and use a pen register under this chapter, a provider of wire or electronic communication service, landlord, custodian, or other person shall furnish the law enforcement officer forthwith all information, facilities, and technical assistance necessary to accomplish the installation of the pen register unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place, if the assistance is directed by a court order as provided in Section 17‑29‑40.

 (B) Upon the request of the attorney or an officer of a law enforcement agency authorized to receive the results of a trap and trace device under this chapter, a provider of a wire or electronic communication service, landlord, custodian, or other person shall install or cause to be installed the device forthwith on the appropriate line and shall furnish the law enforcement officer all additional information, facilities, and technical assistance including installation and operation of the device unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place, if the installation and assistance is directed by a court order as provided in Section 17‑29‑40. Unless otherwise ordered by the court, the results of the trap and trace device must be furnished to the officer of a law enforcement agency, designated in the court order, at reasonable intervals during regular business hours for the duration of the order.

 (C) A provider of a wire or electronic communication service, landlord, custodian, or other person who furnishes facilities or technical assistance pursuant to this section must be reasonably compensated for those reasonable expenses incurred in providing the facilities and assistance.

 (D) No cause of action lies in any court against any provider of a wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order under this chapter.

 (E) A good faith reliance on a court order issued under this chapter is a complete defense against any civil or criminal action brought under this chapter or any other provision of law.

HISTORY: 1988 Act No. 529.

Library References

Telecommunications 1475.

Westlaw Topic No. 372.

C.J.S. Telecommunications Sections 239, 276, 291.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Private Detectives and Private Security Businesses Section 29, Violation of Statutes.

S.C. Jur. Telecommunications Section 19, State Law.

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