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By: **Senators Giannetti, Britt, Currie, Exum, Green, Jones, Lawlah, Miller,  
and Pinsky**

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CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Wiretapping and Electronic Surveillance - Vehicle Theft**

3 FOR the purpose of making it lawful for an investigative or law enforcement officer to  
4 intercept a wire, oral, or electronic communication in the course of a certain  
5 investigation in order to provide evidence of the commission of vehicle theft  
6 under certain circumstances; and generally relating to interception of wire, oral,  
7 or electronic communications in the course of law enforcement investigations of  
8 vehicle theft.

9 BY repealing and reenacting, with amendments,  
10 Article - Courts and Judicial Proceedings  
11 Section 10-402  
12 Annotated Code of Maryland  
13 (2002 Replacement Volume and 2004 Supplement)

14 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
15 MARYLAND, That the Laws of Maryland read as follows:

16 **Article - Courts and Judicial Proceedings**

17 10-402.

18 (a) Except as otherwise specifically provided in this subtitle it is unlawful for  
19 any person to:

20 (1) Wilfully intercept, endeavor to intercept, or procure any other person  
21 to intercept or endeavor to intercept, any wire, oral, or electronic communication;

1           (2)     Wilfully disclose, or endeavor to disclose, to any other person the  
2 contents of any wire, oral, or electronic communication, knowing or having reason to  
3 know that the information was obtained through the interception of a wire, oral, or  
4 electronic communication in violation of this subtitle; or

5           (3)     Wilfully use, or endeavor to use, the contents of any wire, oral, or  
6 electronic communication, knowing or having reason to know that the information  
7 was obtained through the interception of a wire, oral, or electronic communication in  
8 violation of this subtitle.

9       (b)     Any person who violates subsection (a) of this section is guilty of a felony  
10 and is subject to imprisonment for not more than 5 years or a fine of not more than  
11 \$10,000, or both.

12       (c)     (1)     (i)     It is lawful under this subtitle for an operator of a switchboard,  
13 or an officer, employee, or agent of a provider of wire or electronic communication  
14 service, whose facilities are used in the transmission of a wire or electronic  
15 communication to intercept, disclose, or use that communication in the normal course  
16 of his employment while engaged in any activity which is a necessary incident to the  
17 rendition of his service or to the protection of the rights or property of the provider of  
18 that service, except that a provider of wire communications service to the public may  
19 not utilize service observing or random monitoring except for mechanical or service  
20 quality control checks.

21           (ii)     1.     It is lawful under this subtitle for a provider of wire or  
22 electronic communication service, its officers, employees, and agents, landlords,  
23 custodians or other persons to provide information, facilities, or technical assistance  
24 to persons authorized by federal or State law to intercept wire, oral, or electronic  
25 communications or to conduct electronic surveillance, if the provider, its officers,  
26 employees, or agents, landlord, custodian, or other specified person has been provided  
27 with a court order signed by the authorizing judge directing the provision of  
28 information, facilities, or technical assistance.

29                           2.     The order shall set forth the period of time during which  
30 the provision of the information, facilities, or technical assistance is authorized and  
31 specify the information, facilities, or technical assistance required. A provider of wire  
32 or electronic communication service, its officers, employees, or agents, or landlord,  
33 custodian, or other specified person may not disclose the existence of any interception  
34 or surveillance or the device used to accomplish the interception or surveillance with  
35 respect to which the person has been furnished an order under this subparagraph,  
36 except as may otherwise be required by legal process and then only after prior  
37 notification to the judge who granted the order, if appropriate, or the State's Attorney  
38 of the county where the device was used. Any such disclosure, shall render the person  
39 liable for compensatory damages. No cause of action shall lie in any court against any  
40 provider of wire or electronic communication service, its officers, employees, or  
41 agents, landlord, custodian, or other specified person for providing information,  
42 facilities, or assistance in accordance with the terms of a court order under this  
43 subtitle.

1 (2) (i) This paragraph applies to an interception in which:

2 1. The investigative or law enforcement officer or other  
3 person is a party to the communication; or

4 2. One of the parties to the communication has given prior  
5 consent to the interception.

6 (ii) It is lawful under this subtitle for an investigative or law  
7 enforcement officer acting in a criminal investigation or any other person acting at  
8 the prior direction and under the supervision of an investigative or law enforcement  
9 officer to intercept a wire, oral, or electronic communication in order to provide  
10 evidence:

11 1. Of the commission of:

12 A. Murder;

13 B. Kidnapping;

14 C. Rape;

15 D. A sexual offense in the first or second degree;

16 E. Child abuse;

17 F. Child pornography under § 11-207, § 11-208, or §  
18 11-208.1 of the Criminal Law Article;

19 G. Gambling;

20 H. Robbery under § 3-402 or § 3-403 of the Criminal Law  
21 Article;

22 I. A felony under Title 6, Subtitle 1 of the Criminal Law  
23 Article;

24 J. Bribery;

25 K. Extortion;

26 L. Dealing in a controlled dangerous substance, including a  
27 violation of § 5-617 or § 5-619 of the Criminal Law Article;

28 M. A fraudulent insurance act, as defined in Title 27, Subtitle  
29 4 of the Insurance Article;

30 N. An offense relating to destructive devices under § 4-503 of  
31 the Criminal Law Article;

- 1 O. Sexual solicitation of a minor under § 3-324 of the  
2 Criminal Law Article; or
- 3 P. A conspiracy or solicitation to commit an offense listed in  
4 items A through O of this item; or
- 5 2. If:
- 6 A. A person has created a barricade situation; and
- 7 B. Probable cause exists for the investigative or law  
8 enforcement officer to believe a hostage or hostages may be involved.

9 (3) It is lawful under this subtitle for a person to intercept a wire, oral, or  
10 electronic communication where the person is a party to the communication and  
11 where all of the parties to the communication have given prior consent to the  
12 interception unless the communication is intercepted for the purpose of committing  
13 any criminal or tortious act in violation of the Constitution or laws of the United  
14 States or of this State.

15 (4) (i) It is lawful under this subtitle for a law enforcement officer in  
16 the course of the officer's regular duty to intercept an oral communication, if:

- 17 1. The law enforcement officer initially lawfully detained a  
18 vehicle during a criminal investigation or for a traffic violation;
- 19 2. The law enforcement officer is a party to the oral  
20 communication;
- 21 3. The law enforcement officer has been identified as a law  
22 enforcement officer to the other parties to the oral communication prior to any  
23 interception;
- 24 4. The law enforcement officer informs all other parties to  
25 the communication of the interception at the beginning of the communication; and
- 26 5. The oral interception is being made as part of a video tape  
27 recording.

28 (ii) If all of the requirements of subparagraph (i) of this paragraph  
29 are met, an interception is lawful even if a person becomes a party to the  
30 communication following:

- 31 1. The identification required under subparagraph (i)3 of  
32 this paragraph; or
- 33 2. The informing of the parties required under subparagraph  
34 (i)4 of this paragraph.

35 (5) It is lawful under this subtitle for an officer, employee, or agent of a  
36 governmental emergency communications center to intercept a wire, oral, or

1 electronic communication where the officer, agent or employee is a party to a  
2 conversation concerning an emergency.

3           (6)   (i)       It is lawful under this subtitle for law enforcement personnel to  
4 utilize body wires to intercept oral communications in the course of a criminal  
5 investigation if there is reasonable cause to believe that a law enforcement officer's  
6 safety may be in jeopardy.

7                   (ii)       Communications intercepted under this paragraph may not be  
8 recorded, and may not be used against the defendant in a criminal proceeding.

9           (7)       It is lawful under this subtitle for a person:

10                   (i)       To intercept or access an electronic communication made  
11 through an electronic communication system that is configured so that the electronic  
12 communication is readily accessible to the general public;

13                   (ii)       To intercept any radio communication that is transmitted:

14                           1.       By any station for the use of the general public, or that  
15 relates to ships, aircraft, vehicles, or persons in distress;

16                           2.       By any governmental, law enforcement, civil defense,  
17 private land mobile, or public safety communications system, including police and  
18 fire, readily accessible to the general public;

19                           3.       By a station operating on an authorized frequency within  
20 the bands allocated to the amateur, citizens band, or general mobile radio services; or

21                           4.       By any marine or aeronautical communications system;

22                           (iii)       To intercept any wire or electronic communication the  
23 transmission of which is causing harmful interference to any lawfully operating  
24 station or consumer electronic equipment, to the extent necessary to identify the  
25 source of the interference; or

26                           (iv)       For other users of the same frequency to intercept any radio  
27 communication made through a system that utilizes frequencies monitored by  
28 individuals engaged in the provision or the use of the system, if the communication is  
29 not scrambled or encrypted.

30           (8)       It is lawful under this subtitle:

31                   (i)       To use a pen register or trap and trace device as defined under  
32 § 10-4B-01 of this title; or

33                   (ii)       For a provider of electronic communication service to record the  
34 fact that a wire or electronic communication was initiated or completed in order to  
35 protect the provider, another provider furnishing service toward the completion of the

1 wire or electronic communication, or a user of that service, from fraudulent, unlawful,  
2 or abusive use of the service.

3 (9) It is lawful under this subtitle for a person to intercept a wire or  
4 electronic communication in the course of a law enforcement investigation of possible  
5 telephone solicitation theft if:

6 (i) The person is an investigative or law enforcement officer or is  
7 acting under the direction of an investigative or law enforcement officer; and

8 (ii) The person is a party to the communication and participates in  
9 the communication through the use of a telephone instrument.

10 (10) IT IS LAWFUL UNDER THIS SUBTITLE FOR A PERSON TO INTERCEPT A  
11 WIRE, ORAL, OR ELECTRONIC COMMUNICATION IN THE COURSE OF A LAW  
12 ENFORCEMENT INVESTIGATION IN ORDER TO PROVIDE EVIDENCE OF THE  
13 COMMISSION OF VEHICLE THEFT IF:

14 (I) THE PERSON IS AN INVESTIGATIVE OR LAW ENFORCEMENT  
15 OFFICER OR IS ACTING UNDER THE DIRECTION OF AN INVESTIGATIVE OR LAW  
16 ENFORCEMENT OFFICER; AND

17 (II) THE DEVICE THROUGH WHICH THE INTERCEPTION IS MADE  
18 HAS BEEN PLACED WITHIN A VEHICLE BY LAW ENFORCEMENT PERSONNEL UNDER  
19 CIRCUMSTANCES IN WHICH IT IS THOUGHT THAT VEHICLE THEFT MAY OCCUR.

20 (d) (1) Except as provided in paragraph (2) of this subsection, a person or  
21 entity providing an electronic communication service to the public may not  
22 intentionally divulge the contents of any communication (other than one to the person  
23 or entity providing the service, or an agent of the person or entity) while in  
24 transmission on that service to any person or entity other than an addressee or  
25 intended recipient of the communication or an agent of the addressee or intended  
26 recipient.

27 (2) A person or entity providing electronic communication service to the  
28 public may divulge the contents of a communication:

29 (i) As otherwise authorized by federal or State law;

30 (ii) To a person employed or authorized, or whose facilities are used,  
31 to forward the communication to its destination; or

32 (iii) That were inadvertently obtained by the service provider and  
33 that appear to pertain to the commission of a crime, if the divulgence is made to a law  
34 enforcement agency.

35 (e) (1) Except as provided in paragraph (2) of this subsection or in  
36 subsection (f) of this section, a person who violates subsection (d) of this section is  
37 subject to a fine of not more than \$10,000 or imprisonment for not more than 5 years,  
38 or both.

1                   (2)       If an offense is a first offense under paragraph (1) of this subsection  
2 and is not for a tortious or illegal purpose or for purposes of direct or indirect  
3 commercial advantage or private commercial gain, and the wire or electronic  
4 communication with respect to which the offense occurred is a radio communication  
5 that is not scrambled or encrypted, and:

6                   (i)       The communication is not the radio portion of a cellular  
7 telephone communication, a public land mobile radio service communication, or a  
8 paging service communication, the offender is subject to a fine of not more than  
9 \$1,000 or imprisonment for not more than one year, or both; or

10                  (ii)       The communication is the radio portion of a cellular telephone  
11 communication, a public land mobile radio service communication, or a paging service  
12 communication, the offender is subject to a fine of not more than \$500.

13                  (3)       Unless the conduct is for the purpose of direct or indirect commercial  
14 advantage or private financial gain, conduct which would otherwise be an offense  
15 under this subsection is not an offense under this subsection, if the conduct consists of  
16 or relates to the interception of a satellite transmission that is not encrypted or  
17 scrambled and that is transmitted:

18                  (i)       To a broadcasting station for purposes of retransmission to the  
19 general public; or

20                  (ii)       As an audio subcarrier intended for redistribution to facilities  
21 open to the public, but not including data transmissions or telephone calls.

22       (f)       (1)       A person who engages in conduct in violation of this subtitle is subject  
23 to suit by the federal government or by the State in a court of competent jurisdiction,  
24 if the communication is:

25                  (i)       A private satellite video communication that is not scrambled or  
26 encrypted and the conduct in violation of this subtitle is the private viewing of that  
27 communication, and is not for a tortious or illegal purpose, or for purposes of direct or  
28 indirect commercial advantage, or private commercial gain; or

29                  (ii)       A radio communication that is transmitted on frequencies  
30 allocated under Subpart D of Part 74 of the Rules of the Federal Communications  
31 Commission that is not scrambled or encrypted and the conduct in violation of this  
32 subtitle is not for a tortious or illegal purpose or for purpose of direct or indirect  
33 commercial advantage or private commercial gain.

34                  (2)       (i)       The State is entitled to appropriate injunctive relief in an action  
35 under this subsection if the violation is the person's first offense under subsection  
36 (e)(1) of this section and the person has not been found liable in a prior civil action  
37 under § 10-410 of this subtitle.

38                  (ii)       In an action under this subsection, if the violation is a second or  
39 subsequent offense under subsection (e)(1) of this section or if the person has been

1 found liable in a prior civil action under § 10-410 of this subtitle, the person is subject  
2 to a mandatory civil fine of not less than \$500.

3           (3)       The court may use any means within its authority to enforce an  
4 injunction issued under paragraph (2)(i) of this subsection, and shall impose a civil  
5 fine of not less than \$500 for each violation of an injunction issued under paragraph  
6 (2)(i) of this subsection.

7       SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
8 October 1, 2005.