

HOUSE BILL 803

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0lr2196
CF SB 569

By: **Delegates Dumais and Crutchfield**

Introduced and read first time: February 3, 2020

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Intercepted Communications – Penalties and Admissibility of Evidence**

3 FOR the purpose of repealing certain penalties relating to the prohibition against
4 intercepting and disclosing certain communications; providing that a certain
5 communication that was intercepted in violation of certain provisions of law may be
6 admissible in certain proceedings under certain circumstances; prohibiting the
7 admissibility of the contents of an intercepted communication or information derived
8 from an intercepted electronic communication as evidence unless certain conditions
9 are met; and generally relating to intercepted communications and the admissibility
10 of evidence.

11 BY repealing and reenacting, without amendments,
12 Article – Courts and Judicial Proceedings
13 Section 10–402(a), (d), and (f)
14 Annotated Code of Maryland
15 (2013 Replacement Volume and 2019 Supplement)

16 BY repealing and reenacting, with amendments,
17 Article – Courts and Judicial Proceedings
18 Section 10–402(b) and (e) and 10–405
19 Annotated Code of Maryland
20 (2013 Replacement Volume and 2019 Supplement)

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

23 **Article – Courts and Judicial Proceedings**

24 10–402.

25 (a) Except as otherwise specifically provided in this subtitle it is unlawful for any

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 person to:

2 (1) Willfully intercept, endeavor to intercept, or procure any other person
3 to intercept or endeavor to intercept, any wire, oral, or electronic communication;

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

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

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

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

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

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

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

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

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

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

1 (i) The communication is not the radio portion of a cellular
2 telephone communication, a public land mobile radio service communication, or a paging
3 service communication, the offender is subject to a fine of not more than \$1,000 [or
4 imprisonment for not more than 1 year, or both]; or

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

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

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

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

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

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

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

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

33 (ii) In an action under this subsection, if the violation is a second or
34 subsequent offense under subsection (e)(1) of this section or if the person has been found
35 liable in a prior civil action under § 10–410 of this subtitle, the person is subject to a
36 mandatory civil fine of not less than \$500.

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

5 10–405.

6 (a) Except as provided in subsection (b) of this section, whenever any wire, oral,
7 or electronic communication has been intercepted, no part of the contents of the
8 communication and no evidence derived therefrom may be received in evidence in any trial,
9 hearing, or other proceeding in or before any court, grand jury, department, officer, agency,
10 regulatory body, legislative committee, or other authority of this State, or a political
11 subdivision thereof if the disclosure of that information would be in violation of this subtitle.

12 (b) If any wire, oral, or electronic communication is intercepted in any state or
13 any political subdivision of a state, the United States or any territory, protectorate, or
14 possession of the United States, including the District of Columbia in accordance with the
15 law of that jurisdiction, but that would be in violation of this subtitle if the interception was
16 made in this State, the contents of the communication and evidence derived from the
17 communication may be received in evidence in any trial, hearing, or other proceeding in or
18 before any court, grand jury, department, officer, agency, regulatory body, legislative
19 committee, or other authority of this State, or any political subdivision of this State if:

20 (1) (I) At least one of the parties to the communication was outside the
21 State during the communication;

22 [(2)] (II) The interception was not made as part of or in furtherance of an
23 investigation conducted by or on behalf of law enforcement officials of this State; and

24 [(3)] (III) All parties to the communication were co-conspirators in a crime
25 of violence as defined in § 14–101 of the Criminal Law Article; OR

26 (2) A COURT DETERMINES THAT:

27 (I) THE CONTENTS OF THE COMMUNICATION AND EVIDENCE
28 DERIVED FROM THE COMMUNICATION ARE OFFERED AS EVIDENCE OF A MATERIAL
29 FACT IN A CRIMINAL PROCEEDING;

30 (II) THE CONTENTS OF THE COMMUNICATION AND EVIDENCE
31 DERIVED FROM THE COMMUNICATION ARE MORE PROBATIVE ON THE POINT FOR
32 WHICH THEY ARE OFFERED THAN ANY OTHER EVIDENCE THAT THE PROPONENT CAN
33 PROCURE THROUGH REASONABLE EFFORTS; AND

34 (III) THE INTEREST OF JUSTICE WILL BE BEST SERVED BY
35 ADMISSION OF THE CONTENTS OF THE COMMUNICATION AND EVIDENCE DERIVED

1 FROM THE COMMUNICATION INTO EVIDENCE.

2 (C) THE CONTENTS OF THE COMMUNICATION AND EVIDENCE DERIVED
3 FROM THE COMMUNICATION MAY NOT BE RECEIVED IN EVIDENCE UNDER
4 SUBSECTION (B) OF THIS SECTION UNLESS:

5 (1) THE PROPONENT OF THE CONTENTS OF THE COMMUNICATION
6 AND EVIDENCE DERIVED FROM THE COMMUNICATION DISCLOSES TO THE ADVERSE
7 PARTY THE INTENTION TO OFFER THE CONTENTS OF THE COMMUNICATION AND
8 EVIDENCE DERIVED FROM THE COMMUNICATION, INCLUDING THE NAME AND
9 ADDRESS OF ANY PARTY WHOSE COMMUNICATION WAS INTERCEPTED; AND

10 (2) THE DISCLOSURE REQUIRED UNDER THIS SUBSECTION IS MADE
11 SUFFICIENTLY IN ADVANCE OF THE TRIAL OR HEARING TO PROVIDE THE ADVERSE
12 PARTY WITH A FAIR OPPORTUNITY TO PREPARE TO MEET THE CONTENTS OF THE
13 COMMUNICATION AND EVIDENCE DERIVED FROM THE COMMUNICATION.

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
15 October 1, 2020.