

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 392
Judiciary

(Delegates Stewart and Young)

Evidence - Wiretapping and Electronic Surveillance - Fair Housing Testing

This bill establishes that it is lawful for a person to intercept a wire, oral, or electronic communication if (1) the person is working as a fair housing tester for a fair housing testing program operated by the federal government, the State, a local government, or a “nonprofit civil rights organization”; (2) the person is a party to the communication; and (3) the interception is being made for the purpose of obtaining evidence of a fair housing violation under federal, State, or local law.

Fiscal Summary

State Effect: The bill is not anticipated to materially affect State finances or operations.

Local Effect: The bill is not anticipated to materially affect local finances or operations.

Small Business Effect: None.

Analysis

Bill Summary: A “nonprofit civil rights organization” is (1) a qualified fair housing enforcement organization or a fair housing organization, as defined under 24 C.F.R. § 125.103 or (2) an organization incorporated under Maryland law as a private, tax-exempt civil rights organization that has at least two years of experience in complaint intake, complaint investigation, and testing for fair housing violations or enforcement of meritorious claims.

Current Law:

Interception of a Communication

Except as otherwise provided in statute, it is unlawful for a person to:

- willfully intercept, endeavor to intercept, or procure any other person to intercept a wire, oral, or electronic communication;
- willfully disclose, or endeavor to disclose, to any other person the contents of a wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through an illegal intercept; or
- willfully use, or endeavor to use, the contents of a wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through an illegal intercept.

One specified exception is the interception of a communication where the interceptor is a party to the communication and all of the parties to the communication have given prior consent to the interception, unless the communication is intercepted for the purpose of committing any criminal or tortious act in violation of State or federal law. Exceptions also exist for law enforcement activities that meet specified criteria.

Violators are guilty of a felony, punishable by imprisonment for up to five years and/or a \$10,000 maximum fine.

Admission of Evidence Obtained through an Intercepted Communication/Disclosure During Testimony

Except as specified, whenever any wire, oral, or electronic communication has been intercepted, no part of the contents of the communication and no evidence derived from the communication may be received in evidence in any trial, hearing, or other proceeding if the disclosure of that information would be *in violation of* the State's wiretap and electronic surveillance laws.

However, any person who has received information concerning a communication that was obtained through an *authorized* interception or evidence derived from an *authorized* interception may disclose the contents of that communication or the derivative evidence while giving testimony under oath or affirmation in any federal, State, or local proceeding.

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See SB 47 of 2023.

Designated Cross File: SB 57 (Senator Sydnor) - Judicial Proceedings.

Information Source(s): Maryland Commission on Civil Rights; Howard and Prince George's counties; Judiciary (Administrative Office of the Courts); Department of Housing and Community Development; Department of Public Safety and Correctional Services; Department of Legislative Services

Fiscal Note History: First Reader - January 25, 2024
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