

BY: House Judiciary Committee

AMENDMENTS TO SENATE BILL NO. 665

(Third Reading File Bill)

AMENDMENT NO. 1

On page 1, strike in their entirety lines 2 and 3 and substitute:

“Criminal Procedure - Wiretapping - Exceptions for Out-of-State Interception”;

strike beginning with “authorizing” in line 4 down through “certain” in line 7 and substitute “allowing certain information to be used and certain persons to disclose certain information concerning certain communications intercepted in out-of-state jurisdictions in certain proceedings if the interception was made in accordance with the law of the other jurisdiction under certain circumstances; requiring that a motion to suppress the contents of certain communications or certain evidence be made in accordance with the Maryland Rules; providing for the application of this Act; and generally relating to interception of wire, oral, and electronic”; in line 10, after “10-405” insert “, 10-407(c), and 10-408(i)”.

AMENDMENT NO. 2

On page 2, strike in their entirety lines 1 through 10, inclusive, and substitute:

“(B) IF ANY WIRE OR ORAL COMMUNICATION IS INTERCEPTED IN ANY STATE OR ANY POLITICAL SUBDIVISION OF A STATE, THE UNITED STATES OR ANY TERRITORY, PROTECTORATE, OR POSSESSION OF THE UNITED STATES, INCLUDING THE DISTRICT OF COLUMBIA IN ACCORDANCE WITH THE LAW OF THAT JURISDICTION, BUT THAT WOULD BE IN VIOLATION OF THIS SUBTITLE IF THE INTERCEPTION WAS MADE IN THIS STATE, THE CONTENTS OF THE COMMUNICATION AND EVIDENCE DERIVED FROM THE COMMUNICATION MAY BE RECEIVED IN EVIDENCE IN ANY TRIAL, HEARING, OR OTHER PROCEEDING IN OR BEFORE ANY COURT, GRAND JURY, DEPARTMENT, OFFICER, AGENCY, REGULATORY BODY, LEGISLATIVE COMMITTEE, OR OTHER AUTHORITY OF THIS STATE, OR ANY

(Over)

POLITICAL SUBDIVISION OF THIS STATE IF:

(1) AT LEAST ONE OF THE PARTIES TO THE COMMUNICATION WAS OUTSIDE THE STATE DURING THE COMMUNICATION;

(2) THE INTERCEPTION WAS NOT MADE AS PART OF OR IN FURTHERANCE OF AN INVESTIGATION CONDUCTED BY OR ON BEHALF OF LAW ENFORCEMENT OFFICIALS OF THIS STATE; AND

(3) ALL PARTIES TO THE COMMUNICATION WERE CO-CONSPIRATORS IN A CRIME OF VIOLENCE AS DEFINED IN ARTICLE 27, § 643B OF THE CODE.

10-407.

(c) (1) Any person who has received, by any means authorized by this subtitle, any information concerning a wire, oral, or electronic communication, or evidence derived therefrom intercepted in accordance with the provisions of this subtitle, may disclose the contents of that communication or the derivative evidence while giving testimony under oath or affirmation in any proceeding held under the authority of any state or any political subdivision of a state, the United States or any territory, protectorate, or possession of the United States including the District of Columbia.

(2) ANY PERSON WHO HAS RECEIVED ANY INFORMATION CONCERNING A WIRE, ORAL, OR ELECTRONIC COMMUNICATION INTERCEPTED IN ANY STATE OR ANY POLITICAL SUBDIVISION OF A STATE, THE UNITED STATES OR ANY TERRITORY, PROTECTORATE, OR POSSESSION OF THE UNITED STATES, INCLUDING THE DISTRICT OF COLUMBIA IN ACCORDANCE WITH THE LAW OF THAT JURISDICTION, BUT THAT WOULD BE IN VIOLATION OF THIS SUBTITLE IF THE INTERCEPTION WAS MADE IN THIS STATE, OR EVIDENCE DERIVED FROM THE COMMUNICATION, MAY DISCLOSE THE CONTENTS OF THAT COMMUNICATION OR THE DERIVATIVE EVIDENCE WHILE GIVING TESTIMONY UNDER OATH OR AFFIRMATION IN ANY PROCEEDING HELD UNDER THE AUTHORITY OF THIS STATE IF:

(I) AT LEAST ONE OF THE PARTIES TO THE COMMUNICATION WAS OUTSIDE THE STATE DURING THE COMMUNICATION;

(II) THE INTERCEPTION WAS NOT MADE AS PART OF OR IN

FURTHERANCE OF AN INVESTIGATION CONDUCTED BY OR ON BEHALF OF LAW ENFORCEMENT OFFICIALS OF THIS STATE; AND

(III) ALL PARTIES TO THE COMMUNICATION WERE CO-CONSPIRATORS IN A CRIME OF VIOLENCE AS DEFINED IN ARTICLE 27, § 643B OF THE CODE.

10-408.

(i) (1) Any aggrieved person in any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority of this State or a political subdivision thereof, may move to suppress the contents of any intercepted wire, oral, or electronic communication, or evidence derived therefrom, on the grounds that:

(i) The communication was unlawfully intercepted;

(ii) The order of authorization under which it was intercepted is insufficient on its face, or was not obtained or issued in strict compliance with this subtitle; or

(iii) The interception was not made in conformity with the order of authorization.

(2) This motion [may be made before or during the trial, hearing, or proceeding] SHALL BE MADE IN ACCORDANCE WITH THE MARYLAND RULES. If the motion is granted, the contents of the intercepted wire, oral, or electronic communication, or evidence derived therefrom, shall be treated as having been obtained in violation of this subtitle. The judge, upon the filing of the motion by the aggrieved person, in his discretion may make available to the aggrieved person or his counsel for inspection such portions of the intercepted communication or evidence derived therefrom as the judge determines to be in the interests of justice.

(3) In addition to any other right to appeal, the State shall have the right to appeal from the denial of an application for an order of approval, if the prosecuting attorney shall certify to the judge or other official denying the application that the appeal is not taken for purposes of delay. The appeal shall be taken within 30 days after the date the order was entered and shall be diligently

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prosecuted.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed only prospectively to apply to communications intercepted on or after the effective date of this Act.”;

and in line 11, strike “2.” and substitute “3.”.