
By: **Delegates Barkley and Vallario**
Introduced and read first time: February 4, 2000
Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure - Wiretapping - Exceptions for Out-of-State**
3 **Interception**

4 FOR the purpose of allowing certain information to be used and certain persons to
5 disclose certain information concerning certain communications intercepted in
6 out-of-state jurisdictions in certain proceedings if the interception was made in
7 accordance with the law of the other jurisdiction under certain circumstances;
8 requiring that a motion to suppress the contents of certain communications or
9 certain evidence be made in accordance with the Maryland Rules; providing that
10 certain civil liability provisions do not apply to certain communications
11 intercepted out-of-state; and generally relating to interception of wire, oral, and
12 electronic communications.

13 BY repealing and reenacting, with amendments,
14 Article - Courts and Judicial Proceedings
15 Section 10-405, 10-407(c), 10-408(i), and 10-410
16 Annotated Code of Maryland
17 (1998 Replacement Volume and 1999 Supplement)

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

20 **Article - Courts and Judicial Proceedings**

21 10-405.

22 (A) [Whenever] EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION,
23 WHENEVER any wire or oral communication has been intercepted, no part of the
24 contents of the communication and no evidence derived therefrom may be received in
25 evidence in any trial, hearing, or other proceeding in or before any court, grand jury,
26 department, officer, agency, regulatory body, legislative committee, or other authority
27 of this State, or a political subdivision thereof if the disclosure of that information
28 would be in violation of this subtitle.

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

12 (1) NONE OF THE PARTIES TO THE COMMUNICATION WERE IN THIS
13 STATE DURING THE COMMUNICATION; OR

14 (2) (I) A PARTY TO THE WIRE OR ORAL COMMUNICATION WAS IN THIS
15 STATE AT THE TIME OF THE COMMUNICATION;

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

19 (III) ALL PARTIES TO THE COMMUNICATION WERE
20 CO-CONSPIRATORS IN A FELONY OR CRIME OF VIOLENCE AS DEFINED IN ARTICLE 27,
21 § 643B OF THE CODE.

22 10-407.

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

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

41 (I) NONE OF THE PARTIES TO THE COMMUNICATION WERE IN THIS
42 STATE DURING THE COMMUNICATION; OR

1 (II) 1. A PARTY TO THE WIRE OR ORAL COMMUNICATION WAS IN
2 THIS STATE AT THE TIME OF THE COMMUNICATION;

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

6 3. ALL PARTIES TO THE COMMUNICATION WERE
7 CO-CONSPIRATORS IN A FELONY OR CRIME OF VIOLENCE AS DEFINED IN ARTICLE 27,
8 § 643B OF THE CODE.

9 10-408.

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

15 (i) The communication was unlawfully intercepted;

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

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

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

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

34 10-410.

35 (a) (1) THIS SUBSECTION DOES NOT APPLY TO A COMMUNICATION
36 INTERCEPTED IN A JURISDICTION OTHER THAN THIS STATE IN ACCORDANCE TO THE
37 LAWS OF THAT JURISDICTION AS DESCRIBED IN §§ 10-405(B) AND 10-407(C)(2) OF THIS
38 SUBTITLE.

1 (2) Any person whose wire, oral, or electronic communication is
2 intercepted, disclosed, or used in violation of this subtitle shall have a civil cause of
3 action against any person who intercepts, discloses, or uses, or procures any other
4 person to intercept, disclose, or use the communications, and be entitled to recover
5 from any person:

6 [(1)] (I) Actual damages but not less than liquidated damages computed
7 at the rate of \$100 a day for each day of violation or \$1,000, whichever is higher;

8 [(2)] (II) Punitive damages; and

9 [(3)] (III) A reasonable attorney's fee and other litigation costs reasonably
10 incurred.

11 (b) A good faith reliance on a court order or legislative authorization shall
12 constitute a complete defense to any civil or criminal action brought under this
13 subtitle or under any other law.

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
15 October 1, 2000.