
By: **Delegates Barkley and Vallario**
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CHAPTER _____

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; providing for the application of this Act; and generally~~
12 relating to interception of wire, oral, and 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~~ and 10-408(i)
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

1 contents of the communication and no evidence derived therefrom may be received in
 2 evidence in any trial, hearing, or other proceeding in or before any court, grand jury,
 3 department, officer, agency, regulatory body, legislative committee, or other authority
 4 of this State, or a political subdivision thereof if the disclosure of that information
 5 would be in violation of this subtitle.

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

17 ~~(1) NONE OF THE PARTIES TO THE COMMUNICATION WERE IN THIS~~
 18 ~~STATE DURING THE COMMUNICATION; OR~~

19 ~~(2) (1) A PARTY TO THE WIRE OR ORAL COMMUNICATION WAS IN THIS~~
 20 ~~STATE AT THE TIME OF THE COMMUNICATION;~~

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

23 ~~(1)~~ (2) THE INTERCEPTION WAS NOT MADE AS PART OF OR IN
 24 FURTHERANCE OF AN INVESTIGATION CONDUCTED BY OR ON BEHALF OF LAW
 25 ENFORCEMENT OFFICIALS OF THIS STATE; AND

26 ~~(1)~~ (3) ALL PARTIES TO THE COMMUNICATION WERE
 27 CO-CONSPIRATORS IN A ~~FELONY~~ OR CRIME OF VIOLENCE AS DEFINED IN ARTICLE 27,
 28 § 643B OF THE CODE.

29 10-407.

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

38 (2) ANY PERSON WHO HAS RECEIVED ANY INFORMATION CONCERNING
 39 A WIRE, ORAL, OR ELECTRONIC COMMUNICATION INTERCEPTED IN ANY STATE OR
 40 ANY POLITICAL SUBDIVISION OF A STATE, THE UNITED STATES OR ANY TERRITORY,
 41 PROTECTORATE, OR POSSESSION OF THE UNITED STATES, INCLUDING THE DISTRICT

1 OF COLUMBIA IN ACCORDANCE WITH THE LAW OF THAT JURISDICTION, BUT THAT
 2 WOULD BE IN VIOLATION OF THIS SUBTITLE IF THE INTERCEPTION WAS MADE IN
 3 THIS STATE, OR EVIDENCE DERIVED FROM THE COMMUNICATION, MAY DISCLOSE
 4 THE CONTENTS OF THAT COMMUNICATION OR THE DERIVATIVE EVIDENCE WHILE
 5 GIVING TESTIMONY UNDER OATH OR AFFIRMATION IN ANY PROCEEDING HELD
 6 UNDER THE AUTHORITY OF THIS STATE IF:

7 ~~(I) NONE OF THE PARTIES TO THE COMMUNICATION WERE IN THIS~~
 8 ~~STATE DURING THE COMMUNICATION; OR~~

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

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

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

16 ~~3. (III) ALL PARTIES TO THE COMMUNICATION WERE~~
 17 ~~CO-CONSPIRATORS IN A FELONY OR CRIME OF VIOLENCE AS DEFINED IN ARTICLE 27,~~
 18 ~~§ 643B OF THE CODE.~~

19 10-408.

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

25 (i) The communication was unlawfully intercepted;

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

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

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

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

6 ~~10-410.~~

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

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

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

18 ~~[(2)] (II) Punitive damages; and~~

19 ~~[(3)] (III) A reasonable attorney's fee and other litigation costs reasonably~~
20 ~~incurred.~~

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

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

27 SECTION 2. 3. AND BE IT FURTHER ENACTED, That this Act shall take
28 effect October 1, 2000.