

ENROLLED BILL
-- Judiciary/Judicial Proceedings --

Introduced by **Delegates Menes, Frush, and Moe**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **Wiretapping and Electronic Surveillance - Vehicle Theft**

3 FOR the purpose of making it lawful for an investigative or law enforcement officer to
4 intercept a wire, oral, or electronic communication in the course of a certain
5 investigation in order to provide evidence of the commission of vehicle theft
6 under certain circumstances; and generally relating to interception of wire, oral,
7 or electronic communications in the course of law enforcement investigations of
8 vehicle theft.

9 BY repealing and reenacting, with amendments,
10 Article - Courts and Judicial Proceedings
11 Section 10-402
12 Annotated Code of Maryland
13 (2002 Replacement Volume and 2004 Supplement)

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

1 **Article - Courts and Judicial Proceedings**

2 10-402.

3 (a) Except as otherwise specifically provided in this subtitle it is unlawful for
4 any person to:

5 (1) Wilfully intercept, endeavor to intercept, or procure any other person
6 to intercept or endeavor to intercept, any wire, oral, or electronic communication;

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

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

15 (b) Any person who violates subsection (a) of this section is guilty of a felony
16 and is subject to imprisonment for not more than 5 years or a fine of not more than
17 \$10,000, or both.

18 (c) (1) (i) It is lawful under this subtitle for an operator of a switchboard,
19 or an officer, employee, or agent of a provider of wire or electronic communication
20 service, whose facilities are used in the transmission of a wire or electronic
21 communication to intercept, disclose, or use that communication in the normal course
22 of his employment while engaged in any activity which is a necessary incident to the
23 rendition of his service or to the protection of the rights or property of the provider of
24 that service, except that a provider of wire communications service to the public may
25 not utilize service observing or random monitoring except for mechanical or service
26 quality control checks.

27 (ii) 1. It is lawful under this subtitle for a provider of wire or
28 electronic communication service, its officers, employees, and agents, landlords,
29 custodians or other persons to provide information, facilities, or technical assistance
30 to persons authorized by federal or State law to intercept wire, oral, or electronic
31 communications or to conduct electronic surveillance, if the provider, its officers,
32 employees, or agents, landlord, custodian, or other specified person has been provided
33 with a court order signed by the authorizing judge directing the provision of
34 information, facilities, or technical assistance.

35 2. The order shall set forth the period of time during which
36 the provision of the information, facilities, or technical assistance is authorized and
37 specify the information, facilities, or technical assistance required. A provider of wire
38 or electronic communication service, its officers, employees, or agents, or landlord,
39 custodian, or other specified person may not disclose the existence of any interception
40 or surveillance or the device used to accomplish the interception or surveillance with
41 respect to which the person has been furnished an order under this subparagraph,

1 except as may otherwise be required by legal process and then only after prior
2 notification to the judge who granted the order, if appropriate, or the State's Attorney
3 of the county where the device was used. Any such disclosure, shall render the person
4 liable for compensatory damages. No cause of action shall lie in any court against any
5 provider of wire or electronic communication service, its officers, employees, or
6 agents, landlord, custodian, or other specified person for providing information,
7 facilities, or assistance in accordance with the terms of a court order under this
8 subtitle.

9 (2) (i) This paragraph applies to an interception in which:

10 1. The investigative or law enforcement officer or other
11 person is a party to the communication; or

12 2. One of the parties to the communication has given prior
13 consent to the interception.

14 (ii) It is lawful under this subtitle for an investigative or law
15 enforcement officer acting in a criminal investigation or any other person acting at
16 the prior direction and under the supervision of an investigative or law enforcement
17 officer to intercept a wire, oral, or electronic communication in order to provide
18 evidence:

19 1. Of the commission of:

20 A. Murder;

21 B. Kidnapping;

22 C. Rape;

23 D. A sexual offense in the first or second degree;

24 E. Child abuse;

25 F. Child pornography under § 11-207, § 11-208, or §
26 11-208.1 of the Criminal Law Article;

27 G. Gambling;

28 H. Robbery under § 3-402 or § 3-403 of the Criminal Law
29 Article;

30 I. A felony under Title 6, Subtitle 1 of the Criminal Law
31 Article;

32 J. Bribery;

33 K. Extortion;

- 1 L. Dealing in a controlled dangerous substance, including a
2 violation of § 5-617 or § 5-619 of the Criminal Law Article;
- 3 M. A fraudulent insurance act, as defined in Title 27, Subtitle
4 4 of the Insurance Article;
- 5 N. An offense relating to destructive devices under § 4-503 of
6 the Criminal Law Article;
- 7 O. Sexual solicitation of a minor under § 3-324 of the
8 Criminal Law Article; or
- 9 P. A conspiracy or solicitation to commit an offense listed in
10 items A through O of this item; or
- 11 2. If:
- 12 A. A person has created a barricade situation; and
- 13 B. Probable cause exists for the investigative or law
14 enforcement officer to believe a hostage or hostages may be involved.

15 (3) It is lawful under this subtitle for a person to intercept a wire, oral, or
16 electronic communication where the person is a party to the communication and
17 where all of the parties to the communication have given prior consent to the
18 interception unless the communication is intercepted for the purpose of committing
19 any criminal or tortious act in violation of the Constitution or laws of the United
20 States or of this State.

21 (4) (i) It is lawful under this subtitle for a law enforcement officer in
22 the course of the officer's regular duty to intercept an oral communication, if:

- 23 1. The law enforcement officer initially lawfully detained a
24 vehicle during a criminal investigation or for a traffic violation;
- 25 2. The law enforcement officer is a party to the oral
26 communication;
- 27 3. The law enforcement officer has been identified as a law
28 enforcement officer to the other parties to the oral communication prior to any
29 interception;
- 30 4. The law enforcement officer informs all other parties to
31 the communication of the interception at the beginning of the communication; and
- 32 5. The oral interception is being made as part of a video tape
33 recording.

34 (ii) If all of the requirements of subparagraph (i) of this paragraph
35 are met, an interception is lawful even if a person becomes a party to the
36 communication following:

- 1 1. The identification required under subparagraph (i)3 of
2 this paragraph; or
- 3 2. The informing of the parties required under subparagraph
4 (i)4 of this paragraph.

5 (5) It is lawful under this subtitle for an officer, employee, or agent of a
6 governmental emergency communications center to intercept a wire, oral, or
7 electronic communication where the officer, agent or employee is a party to a
8 conversation concerning an emergency.

9 (6) (i) It is lawful under this subtitle for law enforcement personnel to
10 utilize body wires to intercept oral communications in the course of a criminal
11 investigation if there is reasonable cause to believe that a law enforcement officer's
12 safety may be in jeopardy.

13 (ii) Communications intercepted under this paragraph may not be
14 recorded, and may not be used against the defendant in a criminal proceeding.

15 (7) It is lawful under this subtitle for a person:

16 (i) To intercept or access an electronic communication made
17 through an electronic communication system that is configured so that the electronic
18 communication is readily accessible to the general public;

19 (ii) To intercept any radio communication that is transmitted:

20 1. By any station for the use of the general public, or that
21 relates to ships, aircraft, vehicles, or persons in distress;

22 2. By any governmental, law enforcement, civil defense,
23 private land mobile, or public safety communications system, including police and
24 fire, readily accessible to the general public;

25 3. By a station operating on an authorized frequency within
26 the bands allocated to the amateur, citizens band, or general mobile radio services; or

27 4. By any marine or aeronautical communications system;

28 (iii) To intercept any wire or electronic communication the
29 transmission of which is causing harmful interference to any lawfully operating
30 station or consumer electronic equipment, to the extent necessary to identify the
31 source of the interference; or

32 (iv) For other users of the same frequency to intercept any radio
33 communication made through a system that utilizes frequencies monitored by
34 individuals engaged in the provision or the use of the system, if the communication is
35 not scrambled or encrypted.

36 (8) It is lawful under this subtitle:

1 (i) To use a pen register or trap and trace device as defined under
2 § 10-4B-01 of this title; or

3 (ii) For a provider of electronic communication service to record the
4 fact that a wire or electronic communication was initiated or completed in order to
5 protect the provider, another provider furnishing service toward the completion of the
6 wire or electronic communication, or a user of that service, from fraudulent, unlawful,
7 or abusive use of the service.

8 (9) It is lawful under this subtitle for a person to intercept a wire or
9 electronic communication in the course of a law enforcement investigation of possible
10 telephone solicitation theft if:

11 (i) The person is an investigative or law enforcement officer or is
12 acting under the direction of an investigative or law enforcement officer; and

13 (ii) The person is a party to the communication and participates in
14 the communication through the use of a telephone instrument.

15 (10) IT IS LAWFUL UNDER THIS SUBTITLE FOR A PERSON TO INTERCEPT A
16 WIRE, ORAL, OR ELECTRONIC COMMUNICATION IN THE COURSE OF A LAW
17 ENFORCEMENT INVESTIGATION IN ORDER TO PROVIDE EVIDENCE OF THE
18 COMMISSION OF VEHICLE THEFT IF:

19 (I) THE PERSON IS AN INVESTIGATIVE OR LAW ENFORCEMENT
20 OFFICER OR IS ACTING UNDER THE DIRECTION OF AN INVESTIGATIVE OR LAW
21 ENFORCEMENT OFFICER; AND

22 (II) THE DEVICE THROUGH WHICH THE INTERCEPTION IS MADE
23 HAS BEEN PLACED WITHIN A VEHICLE BY *OR AT THE DIRECTION OF* LAW
24 ENFORCEMENT PERSONNEL UNDER CIRCUMSTANCES IN WHICH IT IS THOUGHT
25 THAT VEHICLE THEFT MAY OCCUR.

26 (d) (1) Except as provided in paragraph (2) of this subsection, a person or
27 entity providing an electronic communication service to the public may not
28 intentionally divulge the contents of any communication (other than one to the person
29 or entity providing the service, or an agent of the person or entity) while in
30 transmission on that service to any person or entity other than an addressee or
31 intended recipient of the communication or an agent of the addressee or intended
32 recipient.

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

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

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

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

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

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

13 (i) The communication is not the radio portion of a cellular
14 telephone communication, a public land mobile radio service communication, or a
15 paging service communication, the offender is subject to a fine of not more than
16 \$1,000 or imprisonment for not more than one year, or both; or

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

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

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

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

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

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

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

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

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

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

13 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
14 October 1, 2005.