

SENATE BILL 766

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0lr2544
CF HB 826

By: **Senators Gladden, Exum, Forehand, Kelley, and Madaleno**

Introduced and read first time: February 10, 2010

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Wiretapping and Electronic Surveillance – Location of a Mobile**
3 **Communications Device**

4 FOR the purpose of modifying a certain definition to include the location of a mobile
5 communications device; authorizing a provider of wireless telecommunications
6 service to disclose to certain persons location information transmitted by a
7 mobile communications device for a certain period of time under certain
8 emergency circumstances; requiring a public safety official or emergency service
9 provider to provide a certain notice to a certain person within a certain period of
10 time under certain circumstances; and generally relating to wiretapping and
11 electronic surveillance and stored wire and electronic communications and
12 transactional records access.

13 BY repealing and reenacting, without amendments,
14 Article – Courts and Judicial Proceedings
15 Section 10–401(1), (2), and (11) and 10–402(a) and (b)
16 Annotated Code of Maryland
17 (2006 Replacement Volume and 2009 Supplement)

18 BY repealing and reenacting, with amendments,
19 Article – Courts and Judicial Proceedings
20 Section 10–401(7) and 10–4A–03
21 Annotated Code of Maryland
22 (2006 Replacement Volume and 2009 Supplement)

23 BY adding to
24 Article – Courts and Judicial Proceedings
25 Section 10–402(c)(11)
26 Annotated Code of Maryland
27 (2006 Replacement Volume and 2009 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 **Article – Courts and Judicial Proceedings**

4 10–401.

5 As used in this subtitle the following terms have the meanings indicated:

6 (1) “Wire communication” means any aural transfer made in whole or
7 in part through the use of facilities for the transmission of communications by the aid
8 of wire, cable, or other like connection between the point of origin and the point of
9 reception (including the use of a connection in a switching station) furnished or
10 operated by any person licensed to engage in providing or operating such facilities for
11 the transmission of communications.

12 (2) (i) “Oral communication” means any conversation or words
13 spoken to or by any person in private conversation.

14 (ii) “Oral communication” does not include any electronic
15 communication.

16 (7) “Contents”, when used with respect to any wire, oral, or electronic
17 communication, includes any information concerning:

18 **(I) [the] THE identity of the parties to the communication;**

19 **(II) THE LOCATION OF A MOBILE COMMUNICATIONS**
20 **DEVICE; or**

21 **(III) [the] THE existence, substance, purport, or meaning of**
22 **[that] THE communication.**

23 (11) (i) “Electronic communication” means any transfer of signs,
24 signals, writing, images, sounds, data, or intelligence of any nature transmitted in
25 whole or in part by a wire, radio, electromagnetic, photoelectronic, or photooptical
26 system.

27 (ii) “Electronic communication” does not include:

28 1. Any wire or oral communication;

29 2. Any communication made through a tone-only paging
30 device; or

31 3. Any communication from a tracking device.

1 10-402.

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

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

7 (2) Willfully 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) Willfully use, or endeavor to use, the contents of any wire, oral, or
12 electronic communication, knowing or having reason to know that the information was
13 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) **(11) (i) IT IS LAWFUL UNDER THIS SUBTITLE FOR A PROVIDER
19 OF WIRELESS TELECOMMUNICATIONS SERVICE, FOR A PERIOD OF NOT LONGER
20 THAN 24 HOURS, TO DISCLOSE TO A PUBLIC SAFETY OFFICIAL OR EMERGENCY
21 SERVICE PROVIDER LOCATION INFORMATION TRANSMITTED BY A MOBILE
22 COMMUNICATIONS DEVICE IF AN EMERGENCY INVOLVING DANGER OF DEATH
23 OR SERIOUS PHYSICAL INJURY REQUIRES SUCH DISCLOSURE WITHOUT DELAY.**

24 **(ii) THE PUBLIC SAFETY OFFICIAL OR EMERGENCY SERVICE
25 PROVIDER SHALL PROVIDE NOTICE OF DISCLOSURE UNDER THIS PARAGRAPH
26 TO THE MOBILE COMMUNICATIONS DEVICE CUSTOMER WITHIN 10 DAYS AFTER
27 THE CONCLUSION OF THE DISCLOSURE.**

28 10-4A-03.

29 (a) (1) Except as provided in subsection (b) of this section, a person or
30 entity providing an electronic communication service to the public may not knowingly
31 divulge to any other person or entity the contents of a communication while the
32 communication is in electronic storage by that service.

33 (2) Except as provided in subsection (b) of this section, a person or
34 entity providing remote computing service to the public may not knowingly divulge to
35 any other person or entity the contents of any communication which is carried or
36 maintained on that service:

1 (i) On behalf of, and received by means of electronic
2 transmission from, or created by means of computer processing of communications
3 received by means of electronic transmission from, a subscriber or customer of the
4 service; and

5 (ii) Solely for the purpose of providing storage or computer
6 processing services to a subscriber or customer, if the provider is not authorized to
7 access the contents of any communications for purposes of providing any services other
8 than storage or computer processing.

9 (b) A person or entity may divulge the contents of a communication:

10 (1) To an addressee or intended recipient of the communication or an
11 agent of the addressee or intended recipient;

12 (2) If authorized under the provisions of this subtitle;

13 (3) With the lawful consent of the originator or an addressee or
14 intended recipient of the communication, or the subscriber in the case of remote
15 computing service;

16 (4) To a person employed or authorized or whose facilities are used to
17 forward the communication to its destination;

18 (5) If necessarily incident to the rendition of the service or to the
19 protection of the rights or property of the provider of that service; or

20 (6) To a law enforcement agency, if the contents:

21 (i) Were inadvertently obtained by the service provider; and

22 (ii) Appear to pertain to the commission of a crime.

23 **(C) (1) A PROVIDER OF WIRELESS TELECOMMUNICATIONS SERVICE**
24 **MAY DISCLOSE TO A PUBLIC SAFETY OFFICIAL OR EMERGENCY SERVICE**
25 **PROVIDER, FOR A PERIOD OF NOT LONGER THAN 24 HOURS, LOCATION**
26 **INFORMATION TRANSMITTED BY A MOBILE COMMUNICATIONS DEVICE IF AN**
27 **EMERGENCY INVOLVING DANGER OF DEATH OR SERIOUS PHYSICAL INJURY**
28 **REQUIRES SUCH DISCLOSURE WITHOUT DELAY.**

29 **(2) THE PUBLIC SAFETY OFFICIAL OR EMERGENCY SERVICE**
30 **PROVIDER SHALL PROVIDE NOTICE OF DISCLOSURE UNDER THIS SUBSECTION**
31 **TO THE MOBILE COMMUNICATIONS DEVICE CUSTOMER WITHIN 10 DAYS AFTER**
32 **THE CONCLUSION OF THE DISCLOSURE.**

33 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
34 October 1, 2010.