Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1518   (Delegate Adams, *et al.*)

Judiciary

Interception of Communication - Financial Institutions

This bill establishes that it is lawful under the wiretapping and electronic surveillance statutes (Title 10, Subtitle 4 of the Courts and Judicial Proceedings Article) for an employee or agent of a "financial institution," as defined under the bill, to intercept and record an oral communication of a person who is on the property of the financial institution if the oral interception is made as part of a video recording and the financial institution displays a clearly visible written notice that an audio recording of an oral interception is being made.

The financial institution may retain the audio recording only in connection with a specific felony for which there is probable cause for investigation or prosecution and may only provide an audio recording to a law enforcement officer, a State's Attorney, an individual whose conversation is recorded, or that individual's legal representative. However, access to the audio recording must be limited to the portion of the audio recording that is pertinent to the felony that is the subject of the investigation or prosecution.

Fiscal Summary

State Effect: The bill does not materially affect State finances.

Local Effect: The bill does not materially affect local finances.

Small Business Effect: None.

Analysis

Current Law: The wiretapping and electronic surveillance statutes prohibit specified interceptions of communications, contain exceptions to general prohibitions on

interceptions of communications, and establish procedures for interception of communications by law enforcement.

In general, except as otherwise provided in statute, it is unlawful for a person to:

- willfully intercept, endeavor to intercept, or procure any other person to intercept a wire, oral, or electronic communication;

- willfully disclose, or endeavor to disclose, to any other person the contents of a wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through an illegal intercept; or

- willfully use, or endeavor to use, the contents of a wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through an illegal intercept.

A person who violates these prohibitions is guilty of a felony and subject to imprisonment for up to five years and/or a $10,000 maximum fine.

An exception to the prohibitions on intercepting communications applies if the interceptor is a party to the communication and where all of the parties to the communication have given prior consent to the interception, unless the communication is intercepted for the purpose of committing any illegal criminal or tortious act.

Any person whose wire, oral, or electronic communication is intercepted, disclosed, or used in violation of the wiretapping and electronic surveillance statutes has a civil cause of action against any person who intercepts, discloses, or uses the communications or procures any other person to engage in these activities and may recover (1) actual damages, within specified limits; (2) punitive damages; and (3) reasonable attorney's fees and other reasonable litigation costs. A good faith reliance on a court order or legislative authorization is a complete defense to any civil or criminal action brought under the relevant statutory provisions or under any other law.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore City; Caroline and Montgomery counties; City of Bowie; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; State's Attorneys' Association; Department of State Police; Department of Legislative Services

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