

HOUSE BILL No. 4037

February 1, 1989, Introduced by Rep. Middaugh and referred to the Committee on Judiciary.

A bill to authorize certain interceptions of communications and the use of interception devices for offenses involving controlled substances; to provide for and regulate the application, issuance, and execution of electronic interception warrants; to prescribe the powers and duties of certain agencies, officers, and employees; to regulate the use and disclosure of communications and evidence intercepted or obtained pursuant to this act; to provide remedies and penalties; to repeal certain acts and parts of acts; and to repeal certain parts of this act on specific dates.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. As used in this act:

2 (a) "Aggrieved person" means a person who was a party to any
3 intercepted wire or oral communication or a person against whom
4 the interception was directed.

1 (b) "Communication common carrier" means a person engaged as
2 a common carrier for hire in communication by wire or radio or in
3 radio transmission of energy; but a person engaged in radio
4 broadcasting shall not, while so engaged, be considered a commu-
5 nication common carrier.

6 (c) "Contents" means, when used with respect to a wire or
7 oral communication, any information concerning the identity of
8 the parties to the communication or the existence, substance,
9 purport, or meaning of the communication.

10 (d) "Electronic, mechanical, or other device" means a device
11 or apparatus that may be used to intercept a wire or oral commu-
12 nication, other than either of the following:

13 (i) A telephone or telegraph instrument, equipment, or
14 facility, or any component thereof, furnished to the subscriber
15 or user by a communication common carrier in the ordinary course
16 of the carrier's business and which is used by any of the
17 following:

18 (A) The subscriber or user in the ordinary course of its
19 business.

20 (B) A communication common carrier in the ordinary course of
21 its business.

22 (C) An investigative or law enforcement officer in the ordi-
23 nary course of his or her duties.

24 (ii) A hearing aid or similar device which is used to cor-
25 rect subnormal hearing to not better than normal.

1 (e) "Intercept" means the aural acquisition of the contents
2 of any wire or oral communication through the use of any
3 electronic, mechanical, or other device.

4 (f) "Investigative or law enforcement officer" means any
5 officer of this state or a political subdivision of this state
6 who is empowered by law to conduct investigations of or to make
7 arrests for offenses enumerated in section 6 and who is certified
8 pursuant to section 8.

9 (g) "Judge of competent jurisdiction" means a supreme court
10 justice, a court of appeals judge, or a judge of the circuit
11 court.

12 (h) "Oral communication" means an oral communication uttered
13 by a person exhibiting an expectation that the communication is
14 not subject to interception under circumstances justifying the
15 expectation.

16 (i) "Person" means an employee or agent of this state or a
17 political subdivision of this state or an individual, partner-
18 ship, association, or corporation, or other legal entity.

19 (j) "Political subdivision" means a county, city, township,
20 or village.

21 (k) "Prosecutor" means the attorney general of this state or
22 the attorney general's designee; or the principal prosecuting
23 attorney, or his or her designee, of the county in which the
24 facility or place where the communication is to be intercepted is
25 located.

26 (l) "Wire communication" means a communication made in whole
27 or in part through the use of facilities for the transmission of

1 communications by wire, cable, or other like connection between
2 the point of origin and the point of reception furnished or oper-
3 ated by a person engaged as a communication common carrier.

4 Sec. 2. (1) Except as provided in subsections (2), (3),
5 (4), and (5), and sections 5, 6, and 10, a person shall not
6 commit any of the following acts:

7 (a) Willfully intercept, endeavor to intercept, or procure
8 another person to intercept or endeavor to intercept a wire or
9 oral communication.

10 (b) Willfully use, endeavor to use, or procure another
11 person to use or endeavor to use an electronic, mechanical, or
12 other device to intercept an oral communication if 1 or more of
13 the following occur:

14 (i) The device is affixed to, or otherwise transmits a
15 signal through, a wire, cable, or other like connection used in
16 wire communication.

17 (ii) The device transmits, or interferes with the transmis-
18 sion of, communications by radio.

19 (c) Willfully disclose or endeavor to disclose to another
20 person the contents of a wire or oral communication, knowing or
21 having reason to know that the information was obtained through
22 the interception of a wire or oral communication in violation of
23 this section.

24 (d) Willfully use or endeavor to use the contents of a wire
25 or oral communication, knowing or having reason to know that the
26 wire or oral communication was intercepted in violation of this
27 section.

1 (2) An operator of a switchboard or an officer, employee, or
2 agent of a communication common carrier whose facilities are used
3 in the transmission of a wire communication may intercept, dis-
4 close, or use that communication in the normal course of his or
5 her employment if engaged in an activity that is a necessary
6 incident to the rendition of service or to the protection of the
7 rights or property of the carrier of the communication, unless
8 the interception results from the communication common carrier's
9 use of service observing or random monitoring for purposes other
10 than mechanical or service quality control checks.

11 (3) An officer, employee, or agent of a communication common
12 carrier may provide information, facilities, or technical assist-
13 ance to an investigative or law enforcement officer who is autho-
14 rized by this act to intercept a wire or oral communication.

15 (4) A person acting under color of law may intercept a wire
16 or oral communication if the person is a party to the communica-
17 tion or if 1 of the parties to the communication has given prior
18 consent to the interception.

19 (5) A person not acting under color of law may intercept a
20 wire or oral communication if the person is a party to the commu-
21 nication unless the communication is intercepted for the purpose
22 of committing any criminal or tortious act in violation of the
23 constitution or laws of the United States or of this state or for
24 the purpose of committing any other injurious act.

25 (6) A person who violates subsection (1) is guilty of a
26 felony.

1 Sec. 3. (1) Except as provided in subsection (2) or (3), a
2 person shall not commit any of the following acts:

3 (a) Manufacture, assemble, possess, or sell an electronic,
4 mechanical, or other device, knowing or having reason to know
5 that the design of the device renders it primarily useful for the
6 surreptitious interception of wire or oral communications.

7 (b) Place in a newspaper, magazine, handbill, or other pub-
8 lication an advertisement of an electronic, mechanical, or other
9 device knowing or having reason to know that the design of the
10 device renders it primarily useful for the surreptitious inter-
11 ception of wire or oral communications.

12 (c) Place in a newspaper, magazine, handbill, or other pub-
13 lication an advertisement that promotes the use of an electronic,
14 mechanical, or other device for the surreptitious interception of
15 wire or oral communications.

16 (2) A communication common carrier or an officer, agent, or
17 employee of, or a person under contract with, a communication
18 common carrier, in the normal course of the communication common
19 carrier's business, may manufacture, assemble, possess, or sell
20 an electronic, mechanical, or other device, knowing or having
21 reason to know that the design of the device renders it primarily
22 useful for the surreptitious interception of wire or oral
23 communications.

24 (3) An officer, agent, or employee of, or a person under
25 contract with, the United States, this state, or a political sub-
26 division of this state, in the normal course of the activities of
27 the United States, this state, or a political subdivision of this

1 state, may manufacture, assemble, possess, or sell any
2 electronic, mechanical, or other device, knowing or having reason
3 to know that the design of the device renders it primarily useful
4 for the surreptitious interception of wire or oral
5 communications.

6 (4) A person who violates subsection (1) is guilty of a
7 felony.

8 Sec. 4. If a wire or oral communication has been intercept-
9 ed, the contents of the communication and any evidence derived
10 from the communication shall not be received in evidence in a
11 trial, hearing, or other proceeding in or before a court, grand
12 jury, department, officer, agency, regulatory body, legislative
13 committee, or other authority of this state or a political subdi-
14 vision of this state, if the disclosure of the communication or
15 evidence would violate this act.

16 Sec. 5. (1) An investigative or law enforcement officer
17 who, by any means authorized by this act, has obtained knowledge
18 of the contents of a wire or oral communication or evidence
19 derived from a wire or oral communication may disclose the con-
20 tents of the communication or the evidence to another investiga-
21 tive or law enforcement officer, or to an officer, agent, or
22 official of a law enforcement agency of the United States govern-
23 ment, to the extent that the disclosure is appropriate to the
24 proper performance of the official duties of the persons making
25 and receiving the disclosure.

26 (2) An investigative or law enforcement officer who, by any
27 means authorized by this act, has obtained knowledge of the

1 contents of a wire or oral communication or evidence derived from
2 a wire or oral communication may use the contents of the communi-
3 cation or the evidence to the extent the use is appropriate to
4 the proper performance of his or her official duties.

5 (3) A person who has received, by any means authorized by
6 this act, any information concerning a wire or oral communication
7 intercepted in accordance with this act or evidence derived from
8 the communication may disclose the contents of the communication
9 or the evidence if giving testimony under oath or affirmation in
10 a proceeding held under the authority of the United States, this
11 state, or a political subdivision of this state.

12 (4) A privileged wire or oral communication intercepted in
13 accordance with or in violation of this act shall not lose its
14 privileged character.

15 (5) Except as otherwise provided in this subsection, if an
16 investigative or law enforcement officer, while engaged in inter-
17 cepting a wire or oral communication in the manner authorized by
18 this act, intercepts a wire or oral communication relating to an
19 offense other than those specified in the order of authorization
20 or approval, the contents of the communication and evidence
21 derived from the communication may be disclosed or used as pro-
22 vided in subsections (1) and (2). The contents of the communica-
23 tion and any evidence derived from the communication may be used
24 under subsection (3) if authorized or approved by a judge of com-
25 petent jurisdiction, if the judge finds on subsequent application
26 that the contents were otherwise intercepted in accordance with
27 this act. The subsequent application shall be made as soon as

1 practicable after the interception of the communication. This
2 subsection does not authorize the disclosure or use in any manner
3 of the contents of, or evidence derived from, a wire or oral com-
4 munication relating to a violation of section 158 of the Michigan
5 penal code, Act No. 328 of the Public Acts of 1931, being
6 section 750.158 of the Michigan Compiled Laws, or to an offense
7 that is punishable by imprisonment for 4 years or less or punish-
8 able only by fine.

9 Sec. 6. A prosecutor may authorize an application to a
10 judge of competent jurisdiction for, and the judge may grant in
11 conformity with this act, an order authorizing or approving the
12 interception of a wire or oral communication by the investigative
13 or law enforcement officer having responsibility for the investi-
14 gation of the offense as to which the application is made, if the
15 interception may provide or has provided evidence of any of the
16 following offenses:

17 (a) A violation of section 7401(2)(a), 7401(2)(b),
18 7402(2)(a), 7403(2)(a)(i), 7403(2)(a)(ii), or 7403(2)(a)(iii) of
19 the public health code, Act No. 368 of the Public Acts of 1978,
20 being sections 333.7401, 333.7402, and 333.7403 of the Michigan
21 Compiled Laws.

22 (b) A conspiracy to commit an offense described in subdivi-
23 sion (a).

24 Sec. 7. (1) Each application for an order authorizing or
25 approving the interception of a wire or oral communication shall
26 be made in writing upon oath or affirmation to a judge of
27 competent jurisdiction and shall state the applicant's authority

1 to make the application. Each application shall include the
2 following information:

3 (a) The identity of the investigative or law enforcement
4 officer making the application, and the prosecutor authorizing
5 the application.

6 (b) A full and complete statement of the facts and circum-
7 stances relied upon by the applicant to justify his or her belief
8 that an order should be issued, including all of the following:

9 (i) Details as to the particular offense that has been, is
10 being, or is about to be committed.

11 (ii) A particular description of the nature and location of
12 the facilities from which, or the place where, the communication
13 is to be intercepted.

14 (iii) A particular description of the type of communication
15 sought to be intercepted.

16 (iv) The identity, if known, of the person committing the
17 offense and whose communication is to be intercepted.

18 (c) A full and complete statement as to whether other inves-
19 tigative procedures have been tried and failed or why other
20 investigative procedures reasonably appear to be unlikely to suc-
21 ceed or to be too dangerous.

22 (d) A statement of the period of time for which the inter-
23 ception is required to be maintained. If the nature of the
24 investigation is such that the authorization for interception
25 should not automatically terminate when the described type of
26 communication has been first obtained, a particular description

1 of facts establishing probable cause to believe that additional
2 communications of the same type will occur thereafter.

3 (e) A full and complete statement of the facts concerning
4 all previous applications, known to the individuals authorizing
5 and making the application, made to any judge for authorization
6 to intercept or for approval of an interception of a wire or oral
7 communication involving any of the same persons, facilities, or
8 places specified in the application, and the action taken by the
9 judge on each application.

10 (f) If the application is for the extension of an order, a
11 statement setting forth the results thus far obtained from the
12 interception or a reasonable explanation of the failure to obtain
13 such results.

14 (2) The judge of competent jurisdiction may require the
15 applicant to furnish additional testimony or documentary evidence
16 in support of the application.

17 (3) Based upon an application made pursuant to subsection
18 (1), the judge of competent jurisdiction may enter an ex parte
19 order, as requested or as modified, authorizing or approving
20 interception of a wire or oral communication, if the judge deter-
21 mines on the basis of the facts submitted by the applicant all of
22 the following:

23 (a) There is probable cause to believe that an individual is
24 committing, has committed, or is about to commit a particular
25 offense enumerated in section 6.

1 (b) There is probable cause to believe that particular
2 communications concerning that offense will be obtained through
3 the interception.

4 (c) Normal investigative procedures have been tried and have
5 failed or these procedures reasonably appear to be unlikely to
6 succeed or to be too dangerous.

7 (d) There is probable cause to believe that the facilities
8 from which, or the place where, the wire or oral communication is
9 to be intercepted are being used, or are about to be used, in
10 connection with the commission of the offense, or are leased to,
11 listed in the name of, or commonly used by the person identified
12 in subsection (1)(b)(iv).

13 (4) Each order authorizing or approving the interception of
14 a wire or oral communication shall specify all of the following:

15 (a) The identity, if known, of the person whose communica-
16 tion is to be intercepted.

17 (b) The nature and location of the communication facilities
18 as to which, or the place where, authority to intercept is
19 granted.

20 (c) A particular description of the type of communication
21 sought to be intercepted and a statement of the particular
22 offense to which it relates.

23 (d) The identity of the agency authorized to intercept the
24 communication and of the person authorizing the application.

25 (e) The period of time during which the interception is
26 authorized or approved, including a statement as to whether the

1 interception shall automatically terminate when the described
2 communication has been first obtained.

3 (5) An order entered under this section shall not authorize
4 or approve the interception of a wire or oral communication for a
5 period longer than is necessary to achieve the objective of the
6 authorization, or in any event for longer than 30 days.

7 Extensions of an order may be granted, but only upon application
8 for an extension made in accordance with subsection (1) and upon
9 the judge of competent jurisdiction making the findings required
10 by subsection (3). The period of extension shall be no longer
11 than the judge of competent jurisdiction considers necessary to
12 achieve the purposes for which the order was granted or, in any
13 event, no longer than 30 days.

14 (6) Each order and extension shall contain a provision that
15 the authorization to intercept shall be executed as soon as prac-
16 ticable, shall be conducted in such a way as to minimize the
17 interception of communications not otherwise subject to intercep-
18 tion under this act, and shall terminate upon attainment of the
19 authorized objective or, in any event, in 30 days.

20 (7) If an order authorizing interception is entered pursuant
21 to this act, the order may require reports to be made to the
22 judge of competent jurisdiction who issued the order showing what
23 progress has been made toward achievement of the authorized
24 objective and the need for continued interception. The reports
25 shall be made at such intervals as the judge of competent juris-
26 diction requires.

1 (8) The contents of a wire or oral communication intercepted
2 by any means authorized by this act shall be recorded on tape or
3 wire or other comparable device. The recording of the contents
4 of a wire or oral communication under this subsection shall be
5 done in a way that will protect the recording from editing or
6 other alterations. Immediately upon the expiration of the period
7 of the order or extensions of the order, all recordings shall be
8 made available to the judge issuing the order and sealed under
9 his or her directions. Custody of the recordings shall be wher-
10 ever the judge orders. The recordings shall not be destroyed
11 except upon an order of the judge and shall be retained for 10
12 years. Duplicate recordings may be made for use or disclosure
13 pursuant to section 5(1) and (2) for investigations. The pres-
14 ence of the seal provided for by this subsection, or a satisfac-
15 tory explanation for the absence of a seal, shall be a prerequi-
16 site for the use or disclosure under section 5(3) of the contents
17 of a wire or oral communication or evidence derived from the
18 communication.

19 (9) Applications made and orders granted under this act
20 shall be sealed by the judge. Custody of the applications and
21 orders shall be wherever the judge directs. The applications and
22 orders shall be disclosed only upon a showing of good cause
23 before a judge of competent jurisdiction and shall not be
24 destroyed except on order of the judge and, in any event, shall
25 be retained for 10 years.

26 (10) Within a reasonable time, but not later than 90 days
27 after the filing of an application for an order of approval under

1 section 7 which is denied or the termination of the period of an
2 order or extension of an order, the judge shall cause to be
3 served on the persons named in the order or the application, and
4 such other parties to intercepted communications as the judge
5 determines in his or her discretion is in the interest of jus-
6 tice, an inventory which shall include notice of all of the
7 following:

8 (a) The fact of the entry of the order or the application.

9 (b) The date of the entry of the order and the period of
10 authorized, approved, or disapproved interception, or the denial
11 of the application.

12 (c) The fact that during the period wire or oral communica-
13 tions were or were not intercepted.

14 (11) The judge, upon the filing of a motion by a person
15 given an inventory pursuant to subsection (10), may in his or her
16 discretion make available to the person or his or her counsel for
17 inspection such portions of the intercepted communications,
18 applications, and orders as the judge determines to be in the
19 interest of justice. On an ex parte showing of good cause to a
20 judge of competent jurisdiction, the serving of the inventory
21 required by subsection (10) may be postponed.

22 (12) The contents of a wire or oral communication inter-
23 cepted pursuant to this act or evidence derived from the communi-
24 cation shall not be received in evidence or otherwise disclosed
25 in a trial, hearing, or other proceeding in a court unless each
26 party, not less than 10 days before the trial, hearing, or
27 proceeding, has been furnished with a copy of the application and

1 order that authorized or approved the interception. This 10-day
2 period may be waived by the court if the court finds that it was
3 not possible to furnish the party with the application and order
4 10 days before the trial, hearing, or proceeding and that the
5 party will not be prejudiced by the delay in receiving the appli-
6 cation and order.

7 (13) An aggrieved person in a trial, hearing, or other pro-
8 ceeding in or before a court, department, officer, agency, regu-
9 latory body, or other authority of this state or a political sub-
10 division of this state may move to suppress the contents of a
11 wire or oral communication intercepted pursuant to this act, or
12 evidence derived from the communication, on 1 or more of the fol-
13 lowing grounds:

14 (a) The communication was unlawfully intercepted.

15 (b) The order of authorization or approval under which the
16 communication was intercepted is insufficient on its face.

17 (c) The interception was not made in conformity with the
18 order of authorization or approval.

19 (14) A motion made pursuant to subsection (13) shall be made
20 before the trial, hearing, or other proceeding unless there is
21 not an opportunity to make the motion before the trial, hearing,
22 or other proceeding or the aggrieved person making the motion is
23 not aware of the grounds of the motion before the trial, hearing,
24 or other proceeding. The judge, upon the filing of the motion by
25 the aggrieved person, may, in his or her discretion, make avail-
26 able to the aggrieved person or his or her attorney for
27 inspection, such portion of the intercepted communication or

1 evidence derived from the intercepted communication as the judge
2 determines to be in the interests of justice. If the motion made
3 pursuant to subsection (13) is granted, the intercepted wire or
4 oral communication or evidence derived from the communication
5 shall be treated as having been obtained in violation of this
6 act.

7 (15) In addition to any other right to appeal, the prosecu-
8 tor may appeal from an order granting a motion to suppress made
9 under subsection (13), or the denial of an application for an
10 order of approval, if the prosecutor certifies to the judge or
11 other official granting the motion or denying the application
12 that the appeal is not taken for purposes of delay. The appeal
13 shall be taken within 30 days after the date the order granting
14 the motion to suppress was entered or the application was denied
15 and shall be diligently prosecuted.

16 (16) A violation of subsection (8) or (9) may be punished as
17 contempt of the judge who approved or denied the application for
18 interception of a wire or oral communication.

19 (17) An order authorizing the interception of a wire or oral
20 communication under this act shall, upon request of the appli-
21 cant, direct that a communication common carrier, landlord, cus-
22 todian, or other person immediately shall furnish the applicant
23 all information, facilities, and technical assistance necessary
24 to accomplish the interception unobtrusively and with a minimum
25 of interference with the services that the carrier, landlord,
26 custodian, or person is according the person whose communications
27 are to be intercepted. A communication common carrier, landlord,

1 custodian, or other person furnishing facilities or technical
2 assistance shall be compensated therefor by the applicant at the
3 prevailing rates.

4 Sec. 8. The attorney general and the director of the
5 department of state police shall establish a course of training
6 in the legal and technical aspects of wiretapping and electronic
7 surveillance, shall establish such regulations as they find nec-
8 essary and proper for the training program, and shall establish
9 minimum standards for the certification and periodic recertifica-
10 tion of state investigative officers or officers of a law
11 enforcement agency who are eligible to conduct wiretapping or
12 electronic surveillance under this act. The director of the
13 department of state police shall charge each officer who enrolls
14 in this training program a reasonable enrollment fee to offset
15 the costs of training.

16 Sec. 9. (1) Within 30 days after the expiration of an
17 order, or each extension of an order, entered under section 7, or
18 the denial of an order approving an interception of a wire or
19 oral communication, the issuing or denying judge shall report all
20 of the following information to the administrative office of the
21 United States courts and to the state court administrator:

22 (a) The fact that an order or extension was applied for.

23 (b) The kind of order or extension applied for.

24 (c) The fact that the order or extension was granted as
25 applied for, was modified, or was denied.

26 (d) The period of the interception authorized by the order
27 and the number and duration of any extensions of the order.

1 (e) The offense specified in the order or application or
2 extension of the order.

3 (f) The identity of the applying investigative or law
4 enforcement officer and agency making the application and the
5 prosecutor authorizing the application.

6 (g) The nature of the facilities from which, or the place
7 where, communications were to be intercepted.

8 (2) In January of each year the attorney general shall
9 report to the administrative office of the United States courts,
10 to the state court administrator, and to the judiciary committees
11 of the state senate and the state house of representatives all of
12 the following regarding applications, orders, and interceptions
13 of wire or oral communications:

14 (a) The information required by subsection (1) with respect
15 to each application for an order or extension approving an inter-
16 ception of a wire or oral communication made during the preceding
17 calendar year.

18 (b) A general description of the interceptions made under an
19 order or extension to intercept a wire or oral communication,
20 including all of the following:

21 (i) The approximate nature and frequency of incriminating
22 communications intercepted.

23 (ii) The approximate nature and frequency of other communi-
24 cations intercepted.

25 (iii) The approximate number of persons whose communications
26 were intercepted.

1 (iv) The approximate nature, amount, and cost of the
2 manpower and other resources used in the interceptions.

3 (c) The number of arrests resulting from interceptions made
4 under an order or extension and the offenses for which arrests
5 were made.

6 (d) The number of trials resulting from the interceptions.

7 (e) The number of motions to suppress made with respect to
8 the interceptions and the number granted or denied.

9 (f) The number of convictions resulting from the intercep-
10 tions and the offenses for which the convictions were obtained
11 and a general assessment of the importance of the interceptions.

12 (g) The information required by subdivisions (b) to (f) with
13 respect to orders or extensions for interception of wire or oral
14 communications obtained in a preceding calendar year.

15 (3) On or before January 10 of each year, the principal
16 prosecuting attorney of each county shall report to the attorney
17 general all of the information regarding applications, orders,
18 and interceptions of wire or oral communications required under
19 subsection (2).

20 (4) A judge required to file a report with the administra-
21 tive office of the United States courts and with the state court
22 administrator pursuant to this section shall forward a copy of
23 the report to the attorney general of this state. On or before
24 March 1 of each year, the attorney general shall submit to the
25 governor, the clerk of the house of representatives, and the sec-
26 retary of the senate a report of all interceptions of wire or

1 oral communications conducted pursuant to this act and terminated
2 during the preceding calendar year.

3 Sec. 10. An officer, employee, or agent of a communication
4 common carrier who, whether in the course of his or her employ-
5 ment or otherwise, learns of the existence of an electronic,
6 mechanical, or other device shall report the existence of the
7 device to the principal prosecuting attorney of the county in
8 which the device is located. The prosecuting attorney shall
9 determine whether the placement of the device is authorized by
10 court order. If the placement of the device is not authorized by
11 court order, the prosecuting attorney shall immediately inform
12 the person whose wire or oral communication was intercepted or
13 intended to be intercepted by the device of the existence of the
14 device. This section does not diminish or excuse any obligation
15 of the prosecuting attorney, the officer, employee, or agent of
16 the communication common carrier, or any other person to remove
17 the device or to take any other actions required by law, regula-
18 tion, or policy.

19 Sec. 11. (1) Except as provided in section 12, a person
20 whose wire or oral communication is intercepted, disclosed, or
21 used in violation of this act shall have a civil cause of action
22 against any person who intercepts, discloses, uses, or who pro-
23 cures any other person to intercept, disclose, or use the commu-
24 nication or its contents. In the civil cause of action, the
25 person is entitled to recover all of the following:

26 (a) Actual damages, but not less than \$1,000.00 a day for
27 each day of a violation.

1 (b) Exemplary damages.

2 (c) Reasonable attorney fees and other litigation costs rea-
3 sonably incurred.

4 (2) A good faith reliance on a court order or a legislative
5 authorization shall be a complete defense to any civil or crimi-
6 nal action brought under this act or under any other law.

7 Sec. 12. Section 11 shall not apply to the following:

8 (a) An operator of a switchboard or an officer, employee, or
9 agent of a communication common carrier whose facilities are used
10 in the transmission of a wire communication who intercepts a com-
11 munication or discloses or uses an intercepted communication in
12 the normal course of employment if engaged in an activity that is
13 a necessary incident to the rendition of service or to the pro-
14 tection of the rights or property of the carrier of the communi-
15 cation, unless the interception results from the communication
16 common carrier's use of service observing or random monitoring
17 for purposes other than mechanical or service quality control
18 checks.

19 (b) An officer, employee, or agent of a communication common
20 carrier who provides information, facilities, or technical
21 assistance to an investigative or law enforcement officer who is
22 authorized as provided by this act to intercept a wire or oral
23 communication.

24 (c) A person acting under color of law who intercepts a wire
25 or oral communication if the person is a party to the communica-
26 tion or if 1 of the parties to the communication has given prior
27 consent to the interception.

1 (d) A person not acting under color of law who intercepts a
2 wire or oral communication if the person is a party to the commu-
3 nication unless the communication is intercepted for the purpose
4 of committing any criminal or tortious act in violation of the
5 constitution or laws of the United States or of this state or for
6 the purpose of committing any other injurious act.

7 Sec. 13. If this act contains provisions which are the same
8 as or similar to provisions of chapter 119 of part I of title 18
9 of the United States Code, 18 U.S.C. 2510 to 2521, the courts of
10 this state in construing those provisions shall follow the con-
11 struction given to the same or similar provisions by the United
12 States supreme court or the United States court of appeals of the
13 sixth circuit.

14 Sec. 14. Sections 539a to 539i of the Michigan penal code,
15 Act No. 328 of the Public Acts of 1931, being sections 750.539a
16 to 750.539i of the Michigan Compiled Laws, are repealed.

17 Sec. 15. This act is repealed effective upon the expiration
18 of 3 years after the date of its enactment.