

# HOUSE BILL No. 4015

January 31, 1991, 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 this act on a specific date.

## 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 an  
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 is not, while so engaged, a communication common  
5 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 of that instrument, equipment, or  
15 facility, furnished to the subscriber or user by a communication  
16 common carrier in the ordinary course of the carrier's business  
17 that is used by any of the 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 a wire or oral communication through the use of any  
3 electronic, mechanical, or other device.

4 (f) "Investigative or law enforcement officer" means an  
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, 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 an electronic,  
2 mechanical, or other device, knowing or having reason to know  
3 that the design of the device renders it primarily useful for the  
4 surreptitious interception of wire or oral communications.

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

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

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

25 (2) An investigative or law enforcement officer who, by any  
26 means authorized by this act, has obtained knowledge of the  
27 contents of a wire or oral communication or evidence derived from

1 a wire or oral communication may use the contents of the  
2 communication or the evidence to the extent the use is appropri-  
3 ate to the proper performance of his or her official duties.

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

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

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



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

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

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

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

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

1 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 after that time.

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 intervals as the judge of competent jurisdiction  
26 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, is a prerequisite for  
16 the use or disclosure under section 5(3) of the contents of a  
17 wire or oral communication or evidence derived from the  
18 communication.

19       (9) The judge shall seal applications made and orders  
20 granted under this act. Custody of the applications and orders  
21 shall be wherever the judge directs. The applications and orders  
22 shall be disclosed only upon a showing of good cause before a  
23 judge of competent jurisdiction and shall not be destroyed except  
24 on order of the judge and, in any event, shall be retained for 10  
25 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 that 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 other parties to intercepted communications that the judge deter-  
5 mines is in the interest of justice, an inventory that includes  
6 notice of all of the following:

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

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

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

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

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

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

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

13       (a) The communication was unlawfully intercepted.

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

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

18       (14) A motion made pursuant to subsection (13) shall be made  
19 before the trial, hearing, or other proceeding unless there is no  
20 opportunity to make the motion before the trial, hearing, or  
21 other proceeding or the aggrieved person making the motion is not  
22 aware of the grounds of the motion before the trial, hearing, or  
23 other proceeding. The judge, upon the filing of the motion by  
24 the aggrieved person, may make available to the aggrieved person  
25 or his or her attorney for inspection, any portion of the inter-  
26 cepted communication or evidence derived from the intercepted  
27 communication that the judge determines is in the interests of



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

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

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

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

1 assistance shall be compensated for the facilities or technical  
2 assistance by the applicant at the prevailing rates.

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

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

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

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

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

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

26       (e) The offense specified in the order or application or  
27 extension of the order.

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

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

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

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

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

19 (i) The approximate nature and frequency of incriminating  
20 communications intercepted.

21 (ii) The approximate nature and frequency of other communi-  
22 cations intercepted.

23 (iii) The approximate number of persons whose communications  
24 were intercepted.

25 (iv) The approximate nature, amount, and cost of the man-  
26 power and other resources used in the interceptions.

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

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

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

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

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

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

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

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

17       Sec. 11. (1) Except as provided in section 12, a person  
18 whose wire or oral communication is intercepted, disclosed, or  
19 used in violation of this act has a civil cause of action against  
20 any person who intercepts, discloses, uses, or who procures any  
21 other person to intercept, disclose, or use the communication or  
22 its contents. In the civil cause of action, the person is enti-  
23 tled to recover all of the following:

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

26       (b) Exemplary damages.

1 (c) Reasonable attorney fees and other litigation costs  
2 reasonably incurred.

3 (2) A good faith reliance on a court order or a legislative  
4 authorization is a complete defense to any civil or criminal  
5 action brought under this act or under any other law.

6 Sec. 12. Section 11 does not apply to the following:

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

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

23 (c) A person acting under color of law who intercepts a wire  
24 or oral communication if the person is a party to the communica-  
25 tion or if 1 of the parties to the communication has given prior  
26 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  
3 communication unless the communication is intercepted for the  
4 purpose of committing any criminal or tortious act in violation  
5 of the constitution or laws of the United States or of this state  
6 or for 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.