

HOUSE BILL No. 4033

January 28, 2003, Introduced by Rep. Caul and referred to the Committee on Criminal Justice.

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
by amending sections 539a, 539b, 539c, 539d, 539e, 539f, 539g,
539h, and 539i (MCL 750.539a, 750.539b, 750.539c, 750.539d,
750.539e, 750.539f, 750.539g, 750.539h, and 750.539i), section
539g as amended by 1993 PA 227, and by adding section 539j.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 539a. As used in sections 539a to ~~539i~~ 539j:

~~(1) "Private place" means a place where one may reasonably
expect to be safe from casual or hostile intrusion or
surveillance but does not include a place to which the public or
substantial group of the public has access.~~

(1) ~~(2)~~ "Eavesdrop" or "eavesdropping" means to overhear,
record, amplify or transmit any part of the private discourse of
others without the permission of all persons engaged in the

1 discourse. Neither this definition or any other provision of
2 this act shall modify or affect any law or regulation concerning
3 interception, divulgence or recording of messages transmitted by
4 communications common carriers.

5 (2) "Peep" and "peeping" mean any looking of a clandestine,
6 surreptitious, prying, or secretive nature, regardless of whether
7 the person peeping commits a trespass or is on private or public
8 property.

9 (3) "Person" means an individual, partnership, corporation,
10 or association.

11 (4) "Private place" means a place where a reasonable person
12 would expect to be safe from casual or hostile intrusion or
13 surveillance. Private place does not include a place to which
14 the public or a substantial group of the public has access.

15 (5) ~~-(3) "Surveillance" means~~ "Surveil" and "surveillance"
16 mean to secretly observe the activities of another person for the
17 purpose of spying upon and invading the privacy of the person
18 observed.

19 ~~-(4) "Person" means any individual, partnership, corporation,~~
20 ~~or association.~~

21 Sec. 539b. A person who trespasses on property owned or
22 under the control of any other person, to subject that person to
23 eavesdropping or surveillance is guilty of a ~~misdemeanor~~ **felony**
24 **punishable by imprisonment for not more than 2 years or a fine of**
25 **not more than \$2,000.00, or both.**

26 Sec. 539c. (1) Any person who is present or who is not
27 present during a private conversation and who ~~wilfully~~

1 **willfully** uses any device to eavesdrop upon the conversation
 2 without the consent of all parties ~~thereto~~ **to that**
 3 **conversation**, or who knowingly aids, employs, or procures another
 4 person to do the same in violation of this section, is guilty of
 5 a felony punishable by imprisonment ~~in a state prison~~ for not
 6 more than ~~2~~ 5 years or ~~by~~ a fine of not more than ~~\$2,000.00~~
 7 **\$5,000.00**, or both.

8 (2) A person who willfully uses any device to surveil and
 9 record or capture the image of another person in any private
 10 place is guilty of a felony punishable by imprisonment for not
 11 more than 5 years or a fine of not more than **\$5,000.00**, or both.

12 Sec. 539d. ~~Any~~ A person who installs, **places, or uses** in
 13 any private place, without the consent of the person or persons
 14 entitled to privacy ~~there~~ **in that place**, any device for
 15 observing, photographing, or eavesdropping upon the sounds or
 16 events in ~~such~~ **that** place, ~~or uses any such unauthorized~~
 17 ~~installation,~~ is guilty of a felony punishable by imprisonment
 18 in a state prison for not more than ~~2~~ 5 years or ~~by~~ a fine of
 19 not more than ~~\$2,000.00~~ **\$5,000.00**, or both.

20 Sec. 539e. ~~Any~~ A person who uses or divulges any
 21 information ~~which~~ **or any recorded or captured sound or image**
 22 **that** he **or she** knows or reasonably should know was obtained in
 23 violation of ~~sections~~ **section** 539b, 539c, or 539d is guilty of
 24 a felony ~~—~~ punishable by imprisonment ~~in a state prison~~ **for**
 25 not more than ~~2~~ 5 years ~~—~~ or ~~by~~ a fine of not more than
 26 ~~\$2,000.00~~ **\$5,000.00**.

27 Sec. 539f. ~~Any~~ A person who manufactures, possesses, or

1 transfers to another **person** any device ~~—, contrivance, machine or~~
2 ~~apparatus—~~ designed or commonly used for eavesdropping **or**
3 **surveillance** with the intent to unlawfully use or ~~employ or~~
4 allow ~~the same~~ **that device** to be ~~so~~ used ~~or employed~~ for
5 eavesdropping **or surveillance**, and knowing the ~~same~~ **device** is
6 intended to be ~~so~~ used **for eavesdropping or surveillance**, is
7 guilty of a felony ~~—, punishable by imprisonment in a state~~
8 ~~prison for~~ not more than ~~2~~ 5 years ~~—, or by~~ a fine of not
9 more than ~~\$2,000.00~~ **\$5,000.00**, or both.

10 Sec. 539g. Sections 539a to 539f do not prohibit any of the
11 following:

12 (a) Eavesdropping or surveillance not otherwise prohibited by
13 law by a peace officer of this state or of the federal
14 government, or the officer's agent, while in the performance of
15 the officer's duties.

16 (b) Eavesdropping or surveillance not otherwise prohibited by
17 law by a representative of the media while in the performance of
18 his or her duties as a representative of the media.

19 (c) ~~(b) Hearing a communication transmitted by common~~
20 ~~carrier facilities by an~~ **An** employee of a communications common
21 carrier **hearing a communication transmitted by common carrier**
22 **facilities** when acting in the course of his or her employment
23 **with that common carrier.**

24 (d) ~~(c) The recording by a~~ **A** public utility ~~of recording~~
25 telephone communications to ~~it~~ **that utility** requesting service
26 or registering a complaint by a customer, if a record of the
27 communications is required for legitimate business purposes and

1 the agents, servants, and employees of the public utility are
2 aware of the practice or surveillance by an employee safeguarding
3 property owned by, or in custody of, his or her employer on his
4 or her employer's property.

5 **(e)** ~~—(d)—~~ The routine monitoring, including recording, by
6 employees of the department of corrections of telephone
7 communications on telephones available for use by prisoners in
8 state correctional facilities, if the monitoring is conducted in
9 the manner prescribed by section 70 of ~~Act No. 232 of the Public~~
10 ~~Acts of 1953, being section 791.270 of the Michigan Compiled~~
11 ~~Laws~~ **1953 PA 232, MCL 791.270**, and rules promulgated under that
12 section.

13 Sec. 539h. ~~Any parties~~ **Each party** to ~~any~~ **a** conversation
14 upon which eavesdropping is practiced ~~contrary to~~ **in violation**
15 **of** this act ~~shall be~~ **is** entitled to the following civil
16 remedies:

17 (a) An injunction by a court of record prohibiting further
18 eavesdropping.

19 (b) All actual damages against the person who eavesdrops.

20 (c) Punitive damages as determined by the court or by a
21 jury.

22 Sec. 539i. In any criminal or civil action, proof of the
23 installation, **placement, or use** in any private place of any
24 device ~~which~~ **that** may be used for the purposes of violating
25 ~~the provisions of~~ this act ~~shall be~~ **is** prima facie evidence
26 of a violation of section 539d.

27 **Sec. 539j. (1) A person shall not do either of the**

1 following:

2 (a) Peep into a private place.

3 (b) Trespass on property owned or occupied by another person
4 to subject any person to peeping.

5 (2) A person who violates this section is guilty of a
6 misdemeanor punishable by imprisonment for not more than 1 year
7 or a fine of not more than \$100.00, or both.