

HOUSE BILL No. 5805

April 22, 2004, Introduced by Reps. Gielegem, Bieda, Nofs, Garfield, Gaffney, Ward, Brandenburg, Sak, Condino, Meisner, Howell, Accavitti, Dennis, O'Neil, Hood, Smith, Anderson, Rocca, Hune, Plakas, Adamini, Lipsey, Gleason, Gillard, Elkins, Richardville and Acciavatti and referred to the Committee on Criminal Justice.

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

6 **(b)** ~~—(2)—~~ "Eavesdrop" or "eavesdropping" means to overhear,
7 record, amplify or transmit any part of the private discourse of
8 others without the permission of all persons engaged in the
9 discourse. Neither this definition or any other provision of

1 this act shall modify or affect any law or regulation concerning
2 interception, divulgence or recording of messages transmitted by
3 communications common carriers.

4 (c) ~~-(3)-~~ "Surveillance" means to secretly observe the
5 activities of another person for the purpose of spying upon and
6 invading the privacy of the person observed.

7 (d) ~~-(4)-~~ "Person" means any individual, partnership,
8 corporation or association.

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

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

15 (b) Hearing a communication transmitted by common carrier
16 facilities by an employee of a communications common carrier when
17 acting in the course of his or her employment.

18 (c) The recording by a public utility of telephone
19 communications to it requesting service or registering a
20 complaint by a customer, if a record of the communications is
21 required for legitimate business purposes and the agents,
22 servants, and employees of the public utility are aware of the
23 practice or surveillance by an employee safeguarding property
24 owned by, or in custody of, his or her employer on his or her
25 employer's property.

26 (d) The routine monitoring, including recording, by employees
27 of the department of corrections of telephone communications on

1 telephones available for use by prisoners in state correctional
2 facilities, if the monitoring is conducted in the manner
3 prescribed by section 70 of ~~Act No. 232 of the Public Acts of~~
4 ~~1953, being section 791.270 of the Michigan Compiled Laws~~ **the**
5 **corrections code of 1953, 1953 PA 232, MCL 791.270, and rules**
6 promulgated under that section.

7 (e) Eavesdropping conducted by an investigative or law
8 enforcement officer in an emergency situation as allowed under
9 section 539j.

10 Sec. 539j. (1) An investigative or law enforcement officer,
11 upon approval of the attorney general or an assistant attorney
12 general, or without that approval if a reasonable effort has been
13 made to contact the attorney general or an assistant attorney
14 general, may use an eavesdropping device in an emergency
15 situation as described in subsection (4). The use of the
16 eavesdropping device must be in accordance with this section and
17 may be allowed only where the investigative or law enforcement
18 officer reasonably believes that an order permitting the use of
19 the device would issue if a prior hearing had been held.

20 (2) In all cases described in subsection (1), an application
21 for an order approving the previous or continuing use of an
22 eavesdropping device shall be made within 48 hours after the
23 commencement of that use. If an order approving the previous or
24 continued use is not obtained, or if the court denies issuance of
25 the order, the investigative or law enforcement officer shall
26 immediately terminate any continuing use of the eavesdropping
27 device. Before a judge may issue an order approving the

1 emergency use, the judge must make a determination as to both of
2 the following:

3 (a) That the order would have been granted had the
4 information been before the court prior to the use of the
5 device.

6 (b) That there was an emergency situation as described in
7 subsection (4).

8 (3) If an application for approval under subsection (2) is
9 denied, the contents of the conversations overheard or recorded
10 shall be treated as having been obtained in violation of this
11 section.

12 (4) An emergency situation exists when, without previous
13 notice to the investigative or law enforcement officer sufficient
14 to obtain prior judicial approval, either or both of the
15 following apply:

16 (a) The use of the device is necessary for the protection of
17 the investigative or law enforcement officer.

18 (b) The conversation to be overheard or recorded will occur
19 in a situation involving a clear and present danger of imminent
20 death or great bodily harm to persons resulting from either of
21 the following:

22 (i) A kidnapping or the holding of a hostage by force or the
23 threat of the imminent use of force.

24 (ii) The occupation by force, or the threat of the imminent
25 use of force, of any premises, place, vehicle, vessel, or
26 aircraft.