

HOUSE BILL No. 5606

March 14, 1990, Introduced by Rep. Stupak and referred to the Committee on Judiciary.

A bill to authorize certain interceptions of telephone communications relating to certain controlled substance offenses; to provide for and regulate the application, issuance, and execution of electronic interception warrants; to create the intergovernmental drug enforcement commission and task force; 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; 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 any
3 intercepted telephone communication or a person against whom the
4 interception was directed.

1 (b) "Attorney general" means the attorney general of this
2 state, himself or herself, and does not mean an assistant to, or
3 a person designated or authorized by, the attorney general.

4 (c) "Aural transfer" means a transfer containing the human
5 voice at any point between the point of origin and the point of
6 reception, including the point of origin and the point of
7 reception.

8 (d) "Commission" means the intergovernmental drug enforce-
9 ment commission created under section 6.

10 (e) "Contents" means, when used with respect to a telephone
11 communication, any information concerning the substance, purport,
12 or meaning of the communication.

13 (f) "Electronic, mechanical, or other device" means a device
14 or apparatus that can be used to intercept a telephone communica-
15 tion, other than either of the following:

16 (i) A telephone instrument, equipment, or facility, or any
17 component thereof, that is 1 or more of the following:

18 (A) Furnished to the subscriber or user by a provider of
19 wire or electronic communication service in the ordinary course
20 of its business and is being used by the subscriber or user in
21 the ordinary course of its business.

22 (B) Furnished by the subscriber or user for connection to
23 the facilities of a provider of wire or electronic service and is
24 being used in the ordinary course of the business of the sub-
25 scriber or user.

26 (C) Being used by a provider of wire or electronic
27 communication service in the ordinary course of its business.

1 (ii) A hearing aid or similar device that is used to correct
2 subnormal hearing to not better than normal.

3 (g) "Electronic storage" means either of the following:

4 (i) Temporary, intermediate storage of a telephone communi-
5 cation incidental to the electronic transmission of the
6 communication.

7 (ii) Storage of a telephone communication by an electronic
8 communication service for the purpose of backup protection of the
9 communication.

10 (h) "Intercept" means the aural or other acquisition of the
11 contents of a telephone communication through the use of an elec-
12 tronic, mechanical, or other device.

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

16 (j) "Political subdivision" means a county, city, township,
17 or village.

18 (k) "Slave device" means a device commonly known as a slave
19 that is used to connect a telephone line to a recording device.

20 (l) "Task force" means the intergovernmental drug enforce-
21 ment task force created under section 7.

22 (m) "User" means a person or entity who uses a telephone
23 communication service and is authorized by the provider of the
24 service to engage in that use.

25 (n) "Telephone communication" means any aural transfer made
26 in whole or in part through the use of a telephone and facilities
27 for the transmission of communications by wire, cable, or other

1 like connection between the point of origin and the point of
2 reception, including the use of such a connection in a switching
3 station, which facilities are furnished or operated by a person
4 engaged in providing or operating such facilities for the trans-
5 mission of communications. Telephone communication also includes
6 the electronic storage of a communication described in this
7 subdivision.

8 Sec. 2. The legislature makes the following findings:

9 (a) In order to protect effectively the privacy of communi-
10 cations and to protect the integrity of court proceedings, it is
11 necessary for the legislature to define on a uniform basis the
12 circumstances and conditions under which the interception of com-
13 munications may be authorized and to prohibit an unauthorized
14 interception of the communications and the use of the contents of
15 intercepted communications in evidence in court proceedings.

16 (b) Major drug dealers make extensive use of telephone com-
17 munications in their criminal activities. The interception of
18 these communications to obtain evidence of the commission of cer-
19 tain serious controlled substance offenses or to prevent their
20 commission may be of some limited aid to law enforcement and the
21 administration of justice.

22 (c) Absent consent, to safeguard the privacy of innocent
23 persons, the interception of communications should be allowed
24 only when authorized by a court of competent jurisdiction and
25 should remain under the control and supervision of the authoriz-
26 ing court. Interception of communications should also be limited
27 to use in the investigation of the drug offenses described in

1 section 8, when there are assurances that the interception is
2 justified and that the information obtained by intercepting the
3 communications will not be misused. Interception of communica-
4 tions is inherently susceptible to abuse by law enforcement per-
5 sonnel, and therefore such personnel should be strictly liable
6 for such abuse.

7 Sec. 3. (1) Except as provided in subsection (2) or as
8 authorized or approved under this act or section 802 of title III
9 of the omnibus crime control and safe streets act of 1968, Public
10 Law 90-351, 18 U.S.C. 2510 to 2513 and 2515 to 2521, a person
11 shall not commit any of the following acts:

12 (a) Intentionally intercept, endeavor to intercept, or pro-
13 cure another person to intercept or endeavor to intercept a tele-
14 phone communication.

15 (b) Intentionally use, endeavor to use, or procure another
16 person to use or endeavor to use an electronic, mechanical, or
17 other device to intercept a telephone communication.

18 (c) Intentionally disclose or endeavor to disclose to
19 another person the contents of a telephone communication, knowing
20 or having reason to know that the information was obtained
21 through the interception of a telephone communication in viola-
22 tion of this section.

23 (d) Intentionally use or endeavor to use the contents of a
24 telephone communication, knowing or having reason to know that
25 the information was obtained through the interception of the com-
26 munication in violation of this section.

1 (2) This act does not prohibit the interception, disclosure,
2 or use of a telephone communication by an operator of a
3 switchboard, or an officer, employee, or agent of a provider of
4 telephone communication service in the normal course of his or
5 her employment while engaged in an activity that is a necessary
6 incident to the rendition of his or her service or to the protec-
7 tion of the rights or property of the service provider, unless
8 the interception results from the use by the service provider of
9 telephone communication service of random monitoring for purposes
10 other than mechanical or service quality control checks.

11 (3) A person who violates subsection (1) is guilty of a
12 felony.

13 Sec. 4. If a telephone communication has been intercepted,
14 the contents of the communication and any evidence derived from
15 the communication shall not be received in evidence in a trial,
16 hearing, or other proceeding in or before a court, grand jury,
17 department, officer, agency, regulatory body, legislative commit-
18 tee, or other authority of this state or a political subdivision
19 of this state, if the disclosure of the communication or evidence
20 would violate this act.

21 Sec. 5. (1) A task force member who, by any means autho-
22 rized by this act, has obtained knowledge of the contents of a
23 telephone communication or evidence derived from a telephone com-
24 munication may disclose the contents of the communication or the
25 evidence to another investigative or law enforcement officer, or
26 to an officer, agent, or official of a law enforcement agency of
27 the United States government, to the extent that the disclosure

1 is appropriate to the proper performance of the official duties
2 of the persons making and receiving the disclosure.

3 (2) A task force member who, by any means authorized by this
4 act, has obtained knowledge of the contents of a telephone commu-
5 nication or evidence derived from a telephone communication may
6 use the contents of the communication or the evidence to the
7 extent the use is appropriate to the proper performance of his or
8 her official duties.

9 (3) A person who has received, by any means authorized by
10 this act, any information a telephone communication intercepted
11 in accordance with this act or evidence derived from the communi-
12 cation may disclose the contents of the communication or the evi-
13 dence if giving testimony under oath or affirmation in a criminal
14 proceeding held under the authority of the United States, this
15 state, or a political subdivision of this state or in a civil
16 proceeding pursuant to section 13.

17 (4) A privileged telephone communication intercepted in
18 accordance with or in violation of this act shall not lose its
19 privileged character and shall not be disclosed.

20 (5) If a member of the task force, while engaged in inter-
21 cepting a telephone communication in the manner authorized by
22 this act, intercepts a telephone communication relating to an
23 offense, other than an offense specified in the order of authori-
24 zation, that is related to a violation of section 7401(2)(a),
25 (b), (e), or (f) or 7403(2)(a)(i), (ii), or (iii) of the public
26 health code, Act No. 368 of the Public Acts of 1978, being
27 sections 333.7401 and 333.7403 of the Michigan Compiled Laws, and

1 is punishable by imprisonment for more than 4 years may disclose
2 or use the contents of the communication and evidence derived
3 from the communication as follows:

4 (a) As provided in subsections (1) and (2).

5 (b) As provided in subsection (3) only if authorized or
6 approved by the judge who issued the original order of
7 authorization. The judge may authorize or approve the disclosure
8 or use of the intercepted communication if the judge finds on
9 subsequent application that the communication was otherwise
10 intercepted in accordance with this act. The subsequent applica-
11 tion shall be made as soon as practicable after the interception
12 of the communication.

13 Sec. 6. (1) The intergovernmental drug enforcement commis-
14 sion is created within the office of the attorney general. The
15 commission shall consist of the following members:

16 (a) The attorney general.

17 (b) The director of the department of state police.

18 (c) Two persons appointed by the governor who are members of
19 the state bar of Michigan, 1 of whom is a member of the wolverine
20 bar association.

21 (2) The term of each appointed member of the commission
22 shall be 3 years.

23 (3) The commission shall oversee the operations of the
24 intergovernmental drug enforcement task force created under
25 section 7.

26 (4) The commission by majority vote, at the request of a
27 task force member, may authorize an application by the attorney

1 general to a judge of the circuit court for the county of Ingham
2 for an order authorizing or approving the interception of a tele-
3 phone communication.

4 Sec. 7. (1) The intergovernmental drug enforcement task
5 force is created within the office of the attorney general. The
6 task force shall be composed of the attorney general, the direc-
7 tor of the department of state police, employees of the office of
8 the attorney general assigned by the attorney general, and mem-
9 bers of the department of state police assigned by the director
10 of the department of state police.

11 (2) The task force shall investigate and prosecute suspected
12 violations described in section 8.

13 (3) The task force shall have the exclusive authority,
14 through 1 or more members of the task force, to do the
15 following:

16 (a) Request of the commission the authorization described in
17 section 6(4).

18 (b) Conduct an interception of a telephone communication in
19 the manner prescribed by section 10, including the installation
20 of the slave device.

21 Sec. 8. The attorney general, if authorized by the commis-
22 sion, may apply to a judge of the circuit court for the county of
23 Ingham for, and the judge may grant in conformity with this act,
24 an order authorizing or approving the interception of a telephone
25 communication by a task force member, if the interception may
26 provide or has provided evidence of any of the following
27 offenses:

1 (a) A violation of section 7401(2)(a)(i) or 7403(2)(a)(i) of
2 the public health code, Act No. 368 of the Public Acts of 1978,
3 being sections 333.7401 and 333.7403 of the Michigan Compiled
4 Laws.

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

7 Sec. 9. (1) Each application for an order authorizing or
8 approving the interception of a telephone communication shall be
9 made in writing upon oath or affirmation to a judge of the cir-
10 cuit court for the county of Ingham and shall state the
11 applicant's authority to make the application. Each application
12 shall include the following information, which shall be handwrit-
13 ten or typed and shall not be preprinted on a form:

14 (a) A full and complete statement of the facts and circum-
15 stances relied upon by the attorney general to justify his or her
16 belief that an order should be issued, including all of the
17 following:

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

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

23 (iii) A particular description of the type of communication
24 sought to be intercepted.

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

1 (v) A statement of the facts indicating the specific
2 instances of conduct that demonstrate probable cause to believe
3 that the particular offense has been, is being, or is about to be
4 committed.

5 (b) A full and complete statement as to whether other inves-
6 tigative procedures have been tried and have failed.

7 (c) A statement of the period of time for which the inter-
8 ception is required to be maintained. If the nature of the
9 investigation is such that the authorization for interception
10 should not automatically terminate when the described type of
11 communication has been first obtained, the application shall
12 include a particular description of facts establishing probable
13 cause to believe that additional communications of the same type
14 will occur thereafter.

15 (d) A full and complete statement of the facts concerning
16 all previous applications, known to the commission, the attorney
17 general, or the task force, made to any court for authorization
18 to intercept or for approval of an interception of a communica-
19 tion involving any of the same persons, facilities, or places
20 specified in the application, and the action taken by the court
21 on each application.

22 (e) If the application is for the extension of an order, a
23 statement setting forth the results thus far obtained from the
24 interception or a reasonable explanation of the failure to obtain
25 such results.

1 (2) The judge to whom the application is made under
2 subsection (1) may require the applicant to furnish additional
3 testimony or documentary evidence in support of the application.

4 (3) The judge to whom the application is made under
5 subsection (1) shall appoint an attorney to appear before the
6 judge and argue against the issuance of an order authorizing or
7 approving the interception of a telephone communication. A copy
8 of the application shall be served on this attorney and proof of
9 that service shall be filed with the judge along with the
10 application. The state shall reimburse the county at the rate of
11 \$50.00 per hour for the fees paid to the attorney for his or her
12 services pursuant to this subsection.

13 (4) Based upon an application made pursuant to subsection
14 (1), the judge may enter an order, as requested or as modified,
15 authorizing or approving interception of a telephone communica-
16 tion, if the judge determines on the basis of the facts submitted
17 by the applicant all of the following:

18 (a) There is probable cause to believe that an individual is
19 committing, has committed, or is about to commit a particular
20 offense enumerated in section 8.

21 (b) There is probable cause to believe that particular com-
22 munications concerning that offense will be obtained through the
23 interception.

24 (c) Normal investigative procedures have been tried and have
25 failed.

26 (d) There is probable cause to believe that the facilities
27 from which, or the place where, the telephone communication is to

1 be intercepted are being used, or are about to be used, in
2 connection with the commission of the offense, or are leased to,
3 listed in the name of, or commonly used by the person described
4 in subsection (1)(a)(iv).

5 (5) Each order authorizing or approving the interception of
6 a telephone communication shall specify all of the following:

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

9 (b) The nature and location of the communication facilities
10 as to which, or the place where, authority to intercept is
11 granted.

12 (c) A particular description of the type of communication
13 sought to be intercepted and a statement of the particular
14 offense to which it relates.

15 (d) The identity of the task force member authorized to
16 intercept the communication.

17 (e) The period of time during which the interception is
18 authorized or approved, including a statement as to whether the
19 interception shall automatically terminate when the described
20 communication has been first obtained.

21 (6) An order entered under this section shall not authorize
22 or approve the interception of a telephone communication for a
23 period longer than is necessary to achieve the objective of the
24 authorization, or in any event for longer than 30 days. The
25 30-day period begins on the day on which the task force member
26 first begins to conduct an interception under the order or 10
27 days after the order is entered, whichever day is earlier.

1 Extensions of an order may be granted, but only upon application
2 for an extension made in accordance with subsection (1) and upon
3 the judge making the findings required by subsection (4). The
4 period of extension shall be no longer than the judge considers
5 necessary to achieve the purposes for which the order was granted
6 or, in any event, no longer than 30 days. Not more than 2 exten-
7 sions of an order may be granted. Upon termination of a second
8 extension of an order, an investigative or law enforcement offi-
9 cer may apply for and be granted, in the manner provided in this
10 section, an order authorizing the interception of a wire or oral
11 communication based on the information contained in the applica-
12 tion for the terminated order only if new evidence, in addition
13 to that described in the previous application, justifying the
14 officer's belief that an order should be issued, is included in
15 the new application.

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

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

1 (9) The contents of a telephone communication intercepted by
2 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 telephone communication under this subsection shall be done
5 in a way that will protect the recording from editing or other
6 alterations. Immediately upon the expiration of the period of
7 each order and each extension of an order, all recordings shall
8 be 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 telephone communication or evidence derived from the
18 communication.

19 (10) 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. Except as otherwise
22 provided in subsection (11), the applications and orders shall be
23 disclosed only upon a showing of good cause before a judge of the
24 court of appeals and shall not be destroyed except on order of
25 the judge and, in any event, shall be retained for 10 years.

26 (11) Upon the filing of a civil or criminal action in which
27 a violation of this act is alleged, any application, order,

1 materials provided to the judge of the court of appeals who
2 authorized or approved the interception in support of an applica-
3 tion, or recording described in subsection (9), relating to the
4 alleged violation, are subject to disclosure as necessary for the
5 civil or criminal action. A copy or duplicate of any of these
6 documents, recordings, or materials shall be provided to any
7 party to the civil or criminal action upon request to the judge
8 of the court of appeals.

9 (12) Within a reasonable time, but not later than 90 days
10 after the filing of an application for an order of approval under
11 this section which is denied or the termination of the period of
12 an order or extension of an order, the judge shall cause to be
13 served on the persons named in the order or the application and
14 all other parties to intercepted communications an inventory,
15 which shall include notice of all of the following:

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

17 (b) The date of the entry of the order and the period of
18 authorized, approved, or disapproved interception, or the denial
19 of the application.

20 (c) The fact that during the period telephone communications
21 were or were not intercepted.

22 (13) Upon the request of a person given an inventory pursu-
23 ant to subsection (12), the judge shall make available to the
24 person or his or her counsel for inspection the portions of the
25 intercepted communications to which the person was a party and
26 the portions of the applications and orders pertaining to
27 communications to which the person was a party.

1 (14) The contents of a telephone communication intercepted
2 pursuant to this act or evidence derived from the communication
3 shall not be received in evidence or otherwise disclosed in a
4 trial, hearing, preliminary examination, or other proceeding in a
5 court unless each party, not less than 21 days before the trial,
6 hearing, or proceeding or not less than 10 days before a prelimi-
7 nary examination, has been furnished with a copy of the applica-
8 tion and order that authorized or approved the interception.

9 (15) An aggrieved person in a trial, hearing, or other pro-
10 ceeding in or before a court, department, officer, agency, regu-
11 latory body, or other authority of this state or a political sub-
12 division of this state may move to suppress the contents of a
13 telephone communication intercepted pursuant to this act, or evi-
14 dence derived from the communication, on 1 or more of the follow-
15 ing grounds:

16 (a) The communication was unlawfully intercepted.

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

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

21 (16) A motion made pursuant to subsection (15) shall be made
22 before the trial, hearing, or other proceeding unless there is
23 not an opportunity to make the motion before the trial, hearing,
24 or other proceeding or the aggrieved person making the motion is
25 not aware of the grounds of the motion before the trial, hearing,
26 or other proceeding. A copy of the motion shall be filed with
27 the judge of the court of appeals who authorized or approved the

1 interception. The judge of the court of appeals, upon the filing
2 of the motion by the aggrieved person, shall make available to
3 the aggrieved person or his or her attorney for inspection all
4 relevant portions of the intercepted communication or evidence
5 derived from the intercepted communication. If the motion made
6 pursuant to subsection (15) is granted, the intercepted telephone
7 communication or evidence derived from the communication shall be
8 treated as having been obtained in violation of this act.

9 (17) In addition to any other right to appeal, the attorney
10 general or an assistant to the attorney general may appeal from
11 an order granting a motion to suppress made under subsection
12 (15), or the denial of an application for an order of approval,
13 if the attorney general certifies to the judge or other official
14 granting the motion or denying the application that the appeal is
15 not taken for purposes of delay. The appeal shall be taken
16 within the time prescribed by court rule and shall be diligently
17 prosecuted.

18 (18) A violation of subsection (9) or (10) may be punished
19 as contempt of the judge who approved or denied the application
20 for interception of a telephone communication.

21 Sec. 10. (1) An interception authorized or approved under
22 section 9 may be conducted only by a member of the task force.

23 (2) All slave devices to be used in conducting interceptions
24 pursuant to this act shall be kept in the Lansing office of the
25 attorney general in a secured location. Each slave device shall
26 be identified by a number that is inscribed on the device. If
27 authorization for an interception is granted under section 9, a

1 member of the task force may obtain a slave device from the
2 attorney general's office. A log shall be kept in the secured
3 location where the slave devices are kept and shall contain the
4 number of each slave device provided to a member of the task
5 force, the name and signature of the task force member receiving
6 the device, the date the device is received by the task force
7 member, information identifying the court order authorizing the
8 interception for which the slave device is obtained, the date the
9 slave device is returned to the attorney general's office, and
10 the signature of the person receiving the device upon its return
11 to the attorney general's office.

12 Sec. 11. (1) Within 30 days after the expiration of an
13 order, or each extension of an order, entered under section 9, or
14 the denial of an order authorizing or approving an interception
15 of a telephone communication, the issuing or denying judge shall
16 report all of the following information to the administrative
17 office of the United States courts and to the commission:

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

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

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

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

24 (e) The offense specified in the order or application or
25 extension of the order.

26 (f) The identity of the applying task force member making
27 the application.

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

3 (2) In January of each year, the commission shall report to
4 the administrative office of the United States courts, the major-
5 ity leader and the judiciary committee of the state senate, the
6 speaker and the judiciary committee of the state house of repre-
7 sentatives, and the governor, all of the following:

8 (a) The information required by subsection (1) with respect
9 to each application for an order or extension authorizing or
10 approving an interception of a telephone communication made
11 during the preceding calendar year.

12 (b) A general description of the interceptions made under
13 each order or extension described in subdivision (a), including
14 all of the following:

15 (i) The approximate nature and frequency of incriminating
16 communications intercepted.

17 (ii) The approximate nature and frequency of other communi-
18 cations intercepted.

19 (iii) The approximate number of persons whose communications
20 were intercepted.

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

23 (c) The number of arrests resulting from interceptions made
24 under an order or extension described in subdivision (a) and the
25 offenses for which arrests were made.

26 (d) The number of trials resulting from the interceptions
27 described in subdivision (c).

1 (e) The number of motions to suppress made with respect to
2 the interceptions described in subdivision (c) and the number
3 granted or denied.

4 (f) The number of convictions resulting from the intercep-
5 tions described in subdivision (c) and the offenses for which the
6 convictions were obtained and a general assessment of the impor-
7 tance of the interceptions.

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

11 Sec. 12. An officer, employee, or agent of a provider of
12 telephone communication service who, whether in the course of his
13 or her employment or otherwise, learns of the existence of an
14 electronic, mechanical, or other device shall report the exis-
15 tence of the device to the task force. The task force shall
16 determine whether the placement of the device is authorized by
17 court order. If the placement of the device is not authorized by
18 court order, the task force shall immediately inform the person
19 whose communication was intercepted or intended to be intercepted
20 by the device of the existence of the device.

21 Sec. 13. (1) A person whose telephone communication is
22 intercepted, disclosed, or used in violation of this act shall
23 have a civil cause of action against any person who intercepts,
24 discloses, or uses, or who procures any other person to inter-
25 cept, disclose, or use the communication or its contents. In the
26 civil cause of action, the person is entitled to recover all of
27 the following:

1 (a) Actual damages, but not less than \$10,000.00 a day for
2 each day of a violation.

3 (b) Exemplary damages.

4 (c) Reasonable attorney fees and other litigation costs rea-
5 sonably incurred.

6 (2) A person employed by the state or a political subdivi-
7 sion of the state who is found liable in a civil action under
8 subsection (1) shall immediately be discharged from his or her
9 employment with the state or political subdivision and shall for-
10 feit all accrued benefits of a pension, annuity, or retirement
11 plan or system and other rights attributable to that employment.

12 Sec. 14. This act is repealed effective upon the expiration
13 of 3 years after the date of its enactment.