

77-23a-4 Offenses -- Criminal and civil -- Lawful interception.

- (1)
 - (a) Except as otherwise specifically provided in this chapter, any person who violates Subsection (1)(b) is guilty of an offense and is subject to punishment under Subsection (10), or when applicable, the person is subject to civil action under Subsection (11).
 - (b) A person commits a violation of this subsection who:
 - (i) intentionally or knowingly intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept any wire, electronic, or oral communication;
 - (ii) intentionally or knowingly uses, endeavors to use, or procures any other person to use or endeavor to use any electronic, mechanical, or other device to intercept any oral communication, when the device is affixed to, or otherwise transmits a signal through a wire, cable, or other like connection used in wire communication or when the device transmits communications by radio, or interferes with the transmission of the communication;
 - (iii) intentionally or knowingly discloses or endeavors to disclose to any other person the contents of any wire, electronic, or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire, electronic, or oral communication in violation of this section; or
 - (iv) intentionally or knowingly uses or endeavors to use the contents of any wire, electronic, or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire, electronic, or oral communication in violation of this section.
- (2) The operator of a switchboard, or an officer, employee, or agent of a provider of wire or electronic communication service whose facilities are used in the transmission of a wire communication may intercept, disclose, or use that communication in the normal course of his employment while engaged in any activity which is a necessary incident to the rendition of his service or to the protection of the rights or property of the provider of that service. However, a provider of wire communications service to the public may not utilize service observing or random monitoring except for mechanical or service quality control checks.
- (3)
 - (a) Providers of wire or electronic communications service, their officers, employees, or agents, and any landlords, custodians, or other persons may provide information, facilities, or technical assistance to persons authorized by law to intercept wire, oral, or electronic communications or to conduct electronic surveillance if the provider and its officers, employees, or agents, and any landlords, custodians, or other specified persons have been provided with:
 - (i) a court order directing the assistance signed by the authorizing judge; or
 - (ii) a certification in writing by a person specified in Subsection 77-23a-10(7), or by the attorney general or an assistant attorney general, or by a county attorney or district attorney or his deputy that no warrant or court order is required by law, that all statutory requirements have been met, and that the specified assistance is required.
 - (b) The order or certification under this subsection shall set the period of time during which the provision of the information, facilities, or technical assistance is authorized and shall specify the information, facilities, or technical assistance required.
- (4)
 - (a) The providers of wire or electronic communications service, their officers, employees, or agents, and any landlords, custodians, or other specified persons may not disclose the existence of any interception or surveillance or the device used to accomplish the interception or surveillance regarding which the person has been furnished an order or certification

under this section except as is otherwise required by legal process, and then only after prior notification to the attorney general or to the county attorney or district attorney of the county in which the interception was conducted, as is appropriate.

- (b) Any disclosure in violation of this subsection renders the person liable for civil damages under Section 77-23a-11.
- (5) A cause of action does not lie in any court against any provider of wire or electronic communications service, its officers, employees, or agents, or any landlords, custodians, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order or certification under this chapter.
- (6) Subsections (3), (4), and (5) supersede any law to the contrary.
- (7)
 - (a) A person acting under color of law may intercept a wire, electronic, or oral communication if that person is a party to the communication or one of the parties to the communication has given prior consent to the interception.
 - (b) A person not acting under color of law may intercept a wire, electronic, or oral communication if that person is a party to the communication or one of the parties to the communication has given prior consent to the interception, unless the communication is intercepted for the purpose of committing any criminal or tortious act in violation of state or federal laws.
 - (c) An employee of a telephone company may intercept a wire communication for the sole purpose of tracing the origin of the communication when the interception is requested by the recipient of the communication and the recipient alleges that the communication is obscene, harassing, or threatening in nature. The telephone company and its officers, employees, and agents shall release the results of the interception, made under this subsection, upon request of the local law enforcement authorities.
- (8) A person may:
 - (a) intercept or access an electronic communication made through an electronic communications system that is configured so that the electronic communication is readily accessible to the general public;
 - (b) intercept any radio communication transmitted by:
 - (i) any station for the use of the general public, or that relates to ships, aircraft, vehicles, or persons in distress;
 - (ii) any government, law enforcement, civil defense, private land mobile, or public safety communications system, including police and fire, readily accessible to the general public;
 - (iii) a station operating on an authorized frequency within the bands allocated to the amateur, citizens' band, or general mobile radio services; or
 - (iv) by a marine or aeronautics communications system;
 - (c) intercept any wire or electronic communication, the transmission of which is causing harmful interference to any lawfully operating station or consumer electronic equipment, to the extent necessary to identify the source of the interference; or
 - (d) as one of a group of users of the same frequency, intercept any radio communication made through a system that utilizes frequencies monitored by individuals engaged in the provision or the use of the system, if the communication is not scrambled or encrypted.
- (9)
 - (a) Except under Subsection (9)(b), a person or entity providing an electronic communications service to the public may not intentionally divulge the contents of any communication, while in transmission of that service, to any person or entity other than an addressee or intended recipient of the communication or his agent.

- (b) A person or entity providing electronic communications service to the public may divulge the contents of any communication:
 - (i) as otherwise authorized under this section or Section 77-23a-9;
 - (ii) with lawful consent of the originator or any addressee or intended recipient of the communication;
 - (iii) to a person employed or authorized or whose facilities are used to forward the communication to its destination; or
 - (iv) that is inadvertently obtained by the service provider and appears to pertain to the commission of a crime, if the divulgence is made to a law enforcement agency.

(10)

- (a) Except under Subsection (10)(b) or (11), a violation of Subsection (1) is a third degree felony.
- (b) If the offense is a first offense under this section and is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain, and the wire or electronic communication regarding which the offense was committed is a radio communication that is not scrambled or encrypted:
 - (i) if the communication is not the radio portion of a cellular telephone communication, a public land mobile radio service communication, or paging service communication, and the conduct is not under Subsection (11), the offense is a class A misdemeanor; and
 - (ii) if the communication is the radio portion of a cellular telephone communication, a public land mobile radio service communication, or a paging service communication, the offense is a class B misdemeanor.
- (c) Conduct otherwise an offense under this section is not an offense if the conduct was not done for the purpose of direct or indirect commercial advantage or private financial gain, and consists of or relates to the interception of a satellite transmission that is not encrypted or scrambled, and is either transmitted:
 - (i) to a broadcasting station for purposes of retransmission to the general public; or
 - (ii) as an audio subcarrier intended for redistribution to facilities open to the public, but in any event not including data transmissions or telephone calls.

(11)

- (a) A person is subject to civil suit initiated by the state in a court of competent jurisdiction when his conduct is prohibited under Subsection (1) and the conduct involves a:
 - (i) private satellite video communication that is not scrambled or encrypted, and the conduct in violation of this chapter is the private viewing of that communication and is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain; or
 - (ii) radio communication that is transmitted on frequencies allocated under Subpart D, Part 74, Rules of the Federal Communication Commission, that is not scrambled or encrypted and the conduct in violation of this chapter is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain.
- (b) In an action under Subsection (11)(a):
 - (i) if the violation of this chapter is a first offense under this section and the person is not found liable in a civil action under Section 77-23a-11, the state may seek appropriate injunctive relief; or
 - (ii) if the violation of this chapter is a second or subsequent offense under this section, or the person has been found liable in any prior civil action under Section 77-23a-11, the person is subject to a mandatory \$500 civil penalty.

- (c) The court may use any means within its authority to enforce an injunction issued under Subsection (11)(b)(i), and shall impose a civil fine of not less than \$500 for each violation of the injunction.

Amended by Chapter 340, 2011 General Session