

**77-23a-11 Civil remedy for unlawful interception -- Action for relief.**

- (1) Except under Subsections 77-23a-4(3), (4), and (5), a person whose wire, electronic, or oral communication is intercepted, disclosed, or intentionally used in violation of this chapter may in a civil action recover relief as appropriate from the person or entity that engaged in the violation.
- (2) In an action under this section appropriate relief includes:
  - (a) preliminary and other equitable or declaratory relief as is appropriate;
  - (b) damages under Subsection (3) and punitive damages in appropriate cases; and
  - (c) a reasonable attorney's fee and reasonably incurred litigation costs.
- (3)
  - (a) In an action under this section, if the conduct in violation of this chapter is the private viewing of a private satellite video communication that is not scrambled or encrypted, or if the communication is a radio communication that is transmitted on frequencies allocated under Subpart (D), Part 74, Rules of the Federal Communications Commission, that is not scrambled or encrypted, and the conduct is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain, the court shall assess damages as follows:
    - (i) if the person who engaged in the conduct has not previously been enjoined under Subsection 77-23a-4(11) and has not been found liable in a prior civil action under this section, the court shall assess the greater of the sum of actual damages suffered by the plaintiff, or the statutory damages of not less than \$50 nor more than \$500;
    - (ii) if on one prior occasion the person who engaged in the conduct has been enjoined under Subsection 77-23a-4(11) or has been liable in a civil action under this section, the court shall assess the greater of the sum of actual damages suffered by the plaintiff, or statutory damages of not less than \$100 and not more than \$1,000;
  - (b) in any other action under this section, the court may assess as damages whichever is the greater of:
    - (i) the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violations; or
    - (ii) statutory damages of \$100 a day for each day of violation, or \$10,000, whichever is greater.
- (4) A good faith reliance on any of the following is a complete defense against any civil or criminal action brought under this chapter or any other law:
  - (a) a court order, a warrant, a grand jury subpoena, a legislative authorization, or a statutory authorization;
  - (b) a request of an investigative or law enforcement officer under Subsection 77-23a-10(7); or
  - (c) a good faith determination that Section 77-23a-4 permitted the conduct complained of.
- (5) A civil action under this section may not be commenced later than two years after the date upon which the claimant first has a reasonable opportunity to discover the violation.
- (6) The remedies and sanctions described in this chapter regarding the interception of electronic communications are the only judicial remedies and sanctions for nonconstitutional violations of this chapter involving these communications.

Amended by Chapter 122, 1989 General Session