

HOUSE BILL NO. 794

2/12 Introduced
2/12 Referred to Judiciary
2/21 Hearing
2/23 Committee Report-Bill Pass As Amended
2/25 2nd Reading Do Not Pass
2/25 Bill Killed

HOUSE BILL NO. 794

INTRODUCED BY

Cobb O'Hara Keller Reddy
Bundick

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR AND REGULATE THE INTERCEPTION BY LAW ENFORCEMENT AUTHORITIES OF WIRE OR ORAL COMMUNICATIONS."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Definitions. In [this act], the following definitions apply:

(1) "Aggrieved person" means a person who was a party to any illegally intercepted wire or oral communication or a person against whom the interception was illegally directed.

(2) "Communications common carrier" means any person engaged as a common carrier for hire in intrastate, interstate, or foreign communication by wire or radio or in intrastate, interstate, or foreign radio transmission of energy.

(3) "Contents", when used with respect to any wire or oral communication, include any information concerning the identity of the parties to such communication or the existence, substance, purport, or meaning of that communication.

(4) "Electronic, mechanical, or other device" means any device or apparatus that can be used to intercept a wire

or oral communication other than:

(a) any telephone or telegraph instrument, equipment, or facility or any component thereof furnished to the subscriber or user by a communications common carrier in the ordinary course of its business or being used by a communications common carrier in the ordinary course of its business or by an investigative or law enforcement officer in the ordinary course of his duties; or

(b) a hearing aid or similar device being used to correct subnormal hearing to not better than normal.

(5) "Intercept" or "interception" means the aural acquisition of the contents of any wire or oral communication through the use of any electronic, mechanical, or other device.

(6) "Investigative or law enforcement officer" means any officer of the state of Montana who is empowered by law to conduct investigations of, or to make arrests for, offenses enumerated in [this act] and any attorney authorized by law to prosecute or participate in the prosecution of such offenses.

(7) "Judge" means a judge of a district court.

(8) "Oral communication" means any oral communication uttered by a person under circumstances justifying an expectation that the communication is not subject to interception.

1 (9) "Person" means any employee or agent of the state
 2 or any political subdivision thereof and any individual,
 3 partnership, association, joint stock company, trust,
 4 cooperative, or corporation.

5 (10) "Wire communication" means any communication made
 6 in whole or in part through the use of facilities for the
 7 transmission of communications by the aid of wire, cable, or
 8 other like connection between the point of origin and the
 9 point of reception, furnished or operated by any person
 10 engaged as a common carrier in providing or operating such
 11 facilities for the transmission of intrastate, interstate,
 12 or foreign communications.

13 Section 2. Interception and disclosure of wire or oral
 14 communications prohibited. (1) Except as otherwise
 15 specifically provided in [this act], it is unlawful for any
 16 person to:

17 (a) willfully intercept, endeavor to intercept, or
 18 procure any other person to intercept or endeavor to
 19 intercept any wire or oral communication;

20 (b) willfully use, endeavor to use, or procure any
 21 other person to use or endeavor to use any electronic,
 22 mechanical, or other device to intercept any oral
 23 communication when:

24 (i) such device is affixed to or otherwise transmits a
 25 signal through a wire, cable, or other like connection used

1 in wire communication; or

2 (ii) such device transmits communications by radio or
 3 interferes with the transmission of such communication;

4 (c) willfully disclose or endeavor to disclose to any
 5 other person the contents of any wire or oral communication,
 6 knowing or having reason to know that the information was
 7 obtained through the interception of a wire or oral
 8 communication in violation of this subsection (1);

9 (d) willfully use or endeavor to use the contents of
 10 any wire or oral communication, knowing or having reason to
 11 know that the information was obtained through the
 12 interception of a wire or oral communication in violation of
 13 this subsection (1); or

14 (e) intercept any communication for the purpose of
 15 committing any criminal act.

16 (2) A person violating the provisions of subsection
 17 (1) is guilty of a felony and is punishable by imprisonment
 18 in the state prison for a term not to exceed 5 years or by a
 19 fine not to exceed \$5,000 or by both such fine and
 20 imprisonment.

21 (3) It is lawful under [this act]:

22 (a) for an operator of a switchboard or an officer,
 23 employee, or agent of any communications common carrier
 24 whose facilities are used in the transmission of a wire
 25 communication to intercept, disclose, or use that

1 communication in the normal course of his employment while
 2 engaged in any activity which is a necessary incident to the
 3 rendition of his service or to the protection of the rights
 4 or property of the carrier of such communication; however,
 5 such a communications common carrier may not utilize service
 6 observing or random monitoring except for mechanical or
 7 service quality control checks;

8 (b) for an officer, employee, or agent of the federal
 9 communications commission, in the normal course of his
 10 employment and in discharge of the monitoring
 11 responsibilities exercised by the commission in the
 12 enforcement of chapter 5 of Title 47, U.S.C., to intercept a
 13 wire communication or oral communication transmitted by
 14 radio or to disclose or use the information thereby
 15 obtained;

16 (c) for a law enforcement officer or a person acting
 17 under the direction of a law enforcement officer to
 18 intercept a wire or oral communication if such officer or
 19 person is a party to the communication or one of the parties
 20 to the communication has given prior consent to such
 21 interception;

22 (d) for an investigative or law enforcement officer to
 23 intercept a wire or oral communication if one of the parties
 24 to the communication has given prior consent to such
 25 interception;

1 (e) for an employee of a telephone company to
 2 intercept a wire communication for the sole purpose of
 3 tracing the origin of such communication if the interception
 4 is requested by an appropriate law enforcement agency or the
 5 recipient of the communication and the recipient alleges
 6 that the communication is obscene, harassing, or threatening
 7 in nature; and

8 (f) for an employee of a law enforcement agency, fire
 9 department, or ambulance service, while acting in the scope
 10 of his employment and while a party to the communication, to
 11 intercept and record incoming wire communications.

12 Section 3. Manufacture, distribution, possession, and
 13 sale of wire or oral communications intercepting devices
 14 prohibited -- penalty. (1) Except as otherwise specifically
 15 provided in [this act], it is unlawful for any person to
 16 willfully:

17 (a) send through the mail or send or carry any
 18 electronic, mechanical, or other device, knowing or having
 19 reason to know that the design of such device renders it
 20 primarily useful for the purpose of the illegal interception
 21 of wire or oral communications as specifically defined by
 22 [this act]; or

23 (b) manufacture, assemble, possess, or sell any
 24 electronic, mechanical, or other device, knowing or having
 25 reason to know that the design of such device renders it

1 primarily useful for the purpose of the illegal interception
2 of wire or oral communications as specifically defined by
3 [this act].

4 (2) A person violating subsection (1) is guilty of a
5 felony and is punishable by imprisonment in the state prison
6 for a term of 5 years or by a fine of \$5,000 or by both such
7 fine and imprisonment.

8 (3) It is lawful under this section for a
9 communications common carrier or an officer, agent, or
10 employee of, or a person under contract with, a
11 communications common carrier, in the normal course of the
12 communications common carrier's business, or an officer,
13 agent, or employee of, or a person under contract with,
14 bidding upon contracts with, or in the course of doing
15 business with the United States, a state, or a political
16 subdivision thereof, in the normal course of the activities
17 of the United States, a state, or a political subdivision
18 thereof, to send through the mail, send or carry in
19 interstate or foreign commerce, or manufacture, assemble,
20 possess, or sell any electronic, mechanical, or other
21 device, knowing or having reason to know that the design of
22 such device renders it primarily useful for the purpose of
23 the surreptitious interception of wire or oral
24 communication.

25 Section 4. Confiscation of wire or oral communication

1 intercepting devices. Any electronic, mechanical, or other
2 device used, sent, carried, manufactured, assembled,
3 possessed, or sold in violation of [this act] may be seized
4 and forfeited to the state.

5 Section 5. Prohibition of use as evidence of
6 intercepted wire or oral communications. Whenever any wire
7 or oral communication has been intercepted, no part of the
8 contents of such communication and no evidence derived
9 therefrom may be received in evidence in any trial, hearing,
10 or other proceeding in or before any court, grand jury,
11 department, officer, agency, regulatory body, legislative
12 committee, or other authority of the state, or a political
13 subdivision thereof, if the disclosure of that information
14 would be in violation of [this act].

15 Section 6. Authorization for interception of wire or
16 oral communications. The state attorney general or a county
17 attorney of any county may authorize an application to a
18 judge for an order authorizing or approving the interception
19 of wire or oral communications and may apply to such judge
20 for, and such judge may grant in conformity with 18 U.S.C.
21 2518 and in conformity with [this act], an order authorizing
22 or approving the interception of wire or oral communications
23 by investigative or law enforcement officers having
24 responsibility for the investigation of the offense as to
25 which the application is made if such interception may

1 provide or has provided evidence of the commission of an
2 offense punishable by imprisonment in the state prison for
3 more than 1 year.

4 Section 7. Authorization for disclosure and use of
5 intercepted wire or oral communications. (1) Any
6 investigative or law enforcement officer who, by any means
7 authorized by [this act], has obtained knowledge of the
8 contents of any wire or oral communication or evidence
9 derived therefrom may disclose such contents to another
10 investigative or law enforcement officer to the extent that
11 such disclosure is appropriate to the proper performance of
12 the official duties of the officer making or receiving the
13 disclosure.

14 (2) Any investigative or law enforcement officer who,
15 by any means authorized by [this act], has obtained
16 knowledge of the contents of any wire or oral communication
17 or evidence derived therefrom may use such contents to the
18 extent the use is appropriate to the proper performance of
19 his official duties.

20 (3) Any person who has received, by any means
21 authorized by [this act], any information concerning a wire
22 or oral communication or evidence derived therefrom
23 intercepted in accordance with the provisions of [this act]
24 may disclose the contents of that communication or such
25 derivative evidence while giving testimony under oath or

1 affirmation in any criminal proceeding in any court of this
2 state, of the United States, of any other state, or of any
3 political subdivision thereof.

4 (4) No otherwise privileged wire or oral communication
5 intercepted in accordance with, or in violation of, the
6 provisions of [this act] may lose its privileged character.

7 (5) When an investigative or law enforcement officer,
8 while engaged in intercepting wire or oral communications in
9 the manner authorized in [this act], intercepts wire or oral
10 communications relating to offenses other than those
11 specified in the order of authorization, the contents
12 thereof and evidence derived therefrom may be disclosed or
13 used as provided in subsections (1) through (3).

14 Section 8. Application for order authorizing
15 interception of wire or oral communications. (1) Each
16 application for an order authorizing the interception of a
17 wire or oral communication must be made in writing, upon
18 oath or affirmation, to a judge and shall state the
19 applicant's authority to make such application. Each
20 application must include the following information:

21 (a) the identity of the investigative or law
22 enforcement officer making the application, and the officer
23 authorizing the application;

24 (b) a full and complete statement of the facts and
25 circumstances relied upon by the applicant to justify his

1 belief that an order should be issued, including:

2 (i) details as to the particular offense that has
3 been, is being, or is about to be committed;

4 (ii) a particular description of the nature and
5 location of the facilities where the communication is to be
6 intercepted;

7 (iii) a particular description of the type of
8 communications sought to be intercepted;

9 (iv) the identity of the person, if known, committing
10 the offense and whose communications are to be intercepted;

11 (c) a full and complete statement as to whether or not
12 other investigative procedures have been tried and failed,
13 why they reasonably appear to be unlikely to succeed if
14 tried, or if they reasonably appear to be too dangerous;

15 (d) a statement of the period of time for which the
16 interception is required to be maintained. If the nature of
17 the investigation is such that the authorization for
18 interception should not automatically terminate when the
19 described type of communication has been first obtained, a
20 particular description of facts establishing probable cause
21 to believe that additional communications of the same type
22 will occur thereafter must be included in the application.

23 (e) a full and complete statement of the facts
24 concerning all previous applications known to the individual
25 authorizing and making the application made to any judge

1 for authorization to intercept wire or oral communications
2 involving any of the same persons, facilities, or places
3 specified in the application, and the action taken by the
4 judge on each such application; and

5 (f) whenever the application is for the extension of
6 an order, a statement setting forth the results thus far
7 obtained from the interception, or a reasonable explanation
8 of the failure to obtain such results.

9 (2) The judge may require the applicant to furnish
10 additional testimony or documentary evidence in support of
11 the application.

12 Section 9. When order authorizing interception may be
13 issued -- required contents. (1) Upon application, as
14 provided in [section 8], the judge may enter an ex parte
15 order, as requested or as modified, authorizing interception
16 of wire or oral communications within the state of Montana
17 if the judge determines on the basis of the facts submitted
18 by the applicant that:

19 (a) there is probable cause to believe that an
20 individual is committing, has committed, or is about to
21 commit a particular offense punishable by imprisonment in
22 the state prison for more than 1 year;

23 (b) there is probable cause to believe that particular
24 communications concerning that offense will be obtained
25 through such interception;

1 (c) normal investigative procedures have been tried
2 and have failed or reasonably appear to be unlikely to
3 succeed if tried or to be too dangerous;

4 (d) there is probable cause to believe that the
5 facilities where the wire or oral communications are to be
6 intercepted are being used or are about to be used in
7 connection with the commission of an offense described in
8 subsection (1)(a) or are leased to, listed in the name of,
9 or commonly used by an individual described in subsection
10 (1)(a).

11 (2) Each order authorizing the interception of any
12 wire or oral communication shall specify:

13 (a) the identity of the person, if known, whose
14 communications are to be intercepted;

15 (b) the nature and location of the communications
16 facilities where authority to intercept is granted;

17 (c) a particular description of the type of
18 communication sought to be intercepted and a statement of
19 the particular offense to which it relates;

20 (d) the identity of the agency authorized to intercept
21 the communications and of the person making the application;
22 and

23 (e) the period of time during which such interception
24 is authorized, including a statement as to whether or not
25 the interception automatically terminates when the described

1 communication has been first obtained.

2 Section 10. Required assistance from communications
3 common carrier and others. An order authorizing the
4 interception of a wire or oral communication shall, upon
5 request of the applicant, direct that a communications
6 common carrier, landlord, custodian, or other person furnish
7 the applicant forthwith all information, facilities, and
8 technical assistance necessary to accomplish the
9 interception unobtrusively and with a minimum of
10 interference with the services that such communications
11 common carrier, landlord, custodian, or person is providing
12 to the person whose communications are to be intercepted.
13 Any communications common carrier, landlord, custodian, or
14 other person furnishing such facilities or technical
15 assistance may be compensated therefor by the applicant at
16 the prevailing rate.

17 Section 11. Time limitation on order. (1) No order
18 entered under [section 9] may authorize the interception of
19 any wire or oral communication for any period longer than is
20 necessary to achieve the objective of the authorization, and
21 in no event longer than 30 days. Extensions of an order may
22 be granted, but only upon application for an extension made
23 in accordance with subsection (1) of [section 8] and upon
24 the judge's making the findings required by subsection (1)
25 of [section 9]. The periods of extension may be no longer

1 than the authorizing judge considers necessary to achieve
2 the purposes for which the extension was granted, and in no
3 event longer than 30 days for each extension.

4 (2) Each order and extension thereof must contain a
5 provision that the authorization to intercept must be
6 executed as soon as practicable, must be conducted in such a
7 way as to minimize the interception of communications not
8 otherwise subject to interception under [this act], and must
9 terminate upon attainment of the authorized objective, or in
10 any event within 30 days.

11 Section 12. Required reports. Whenever an order
12 authorizing interception is entered pursuant to [this act],
13 the order may require reports to be made to the judge who
14 issued the order, showing what progress has been made toward
15 achievement of the authorized objective and the need for
16 continued interception. Such reports must be made at such
17 intervals as the judge may require.

18 Section 13. When recording of intercepted
19 communication required. (1) The contents of any wire or
20 oral communication intercepted by any means authorized by
21 [this act] must, if possible, be recorded on tape, wire, or
22 other comparable device. The recording of the contents of
23 any wire or oral communication under this section must be
24 done in such way as will protect the recording from editing
25 or other alterations. Immediately upon the expiration of the

1 period of the order or extensions thereof, the recordings
2 must be made available to the judge issuing the order and
3 sealed under his direction. Custody of the recordings must
4 be wherever the judge orders. The recordings may not be
5 destroyed except upon an order of the issuing or denying
6 judge, and in any event must be kept for 10 years. Duplicate
7 recordings may be made for use or disclosure, pursuant to
8 the provisions of [section 7(1) and (2)], for
9 investigations. The presence of the seal provided for by
10 subsection (2) of this section, or a satisfactory
11 explanation for the absence thereof, is a prerequisite for
12 the use or disclosure of the contents of any wire or oral
13 communication or evidence derived therefrom under [section
14 7(3)].

15 (2) Applications made and orders granted under [this
16 act] must be sealed by the judge. Custody of the
17 applications and orders shall be wherever the judge directs.
18 Such applications and orders may be disclosed only upon a
19 showing of good cause before a judge and may not be
20 destroyed except on order of the issuing or denying judge,
21 and in any event must be kept for 10 years.

22 Section 14. Disclosure of interception. (1) Within a
23 reasonable time but not later than 90 days after the filing
24 of an application for an order of authorization which is
25 denied, or the termination of the period of an order or

1 extensions thereof, the issuing or denying judge shall cause
 2 to be served on the persons named in the order or the
 3 application and such other parties to intercepted
 4 communications as the judge may determine in the interest of
 5 justice, an inventory which shall include notice of:

6 (a) the fact of the entry of the order or the
 7 application;

8 (b) the date of the entry and the period of authorized
 9 interception, or the denial of the application; and

10 (c) the fact that during the period wire or oral
 11 communications were or were not intercepted.

12 (2) The judge, upon the filing of a motion, may in his
 13 discretion make available to such person or his counsel for
 14 inspection such portions of the intercepted communications,
 15 applications, and orders as he determines to be in the
 16 interest of justice.

17 (3) On an ex parte showing of good cause to a judge,
 18 the serving of the inventory required by subsection (1) may
 19 be postponed.

20 Section 15. When intercepted communication admissible
 21 in evidence. (1) The contents of any intercepted wire or
 22 oral communication or evidence derived therefrom may not be
 23 received in evidence or otherwise disclosed in any trial,
 24 hearing, or other proceeding in a federal or state court
 25 unless each party, not less than 10 days before the trial,

1 hearing, or proceeding, has been furnished with a copy of
 2 the court order and accompanying application under which the
 3 interception was authorized. This 10-day period may be
 4 waived by the judge if he finds that it was not possible to
 5 furnish the party with the above information 10 days before
 6 the trial, hearing, or proceeding and that the party will
 7 not be prejudiced by the delay in receiving such
 8 information.

9 (2) An aggrieved person in any trial, hearing, or
 10 proceeding in or before a judge, department, officer,
 11 agency, regulatory body, or other authority of the United
 12 States, a state, or a political subdivision thereof, may
 13 move to suppress the contents of any intercepted wire or
 14 oral communication or evidence derived therefrom on the
 15 grounds that:

16 (a) the communication was unlawfully intercepted;

17 (b) the order of authorization under which it was
 18 intercepted is insufficient on its face; or

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

21 (3) The motion to suppress must be made before the
 22 trial, hearing, or proceeding, pursuant to 46-13-302 or the
 23 hearing rules of the respective body, as applicable.

24 (4) In addition to any other right to appeal, the
 25 state of Montana may appeal an order granting a motion to

1 suppress made under subsection (2). Such appeal must be
2 made within 30 days after the date the order was entered.

3 Section 16. Violations punishable as contempt. Any
4 violation of the provisions of [sections 8 through 15] may
5 be punished as contempt by the issuing or denying judge.

6 Section 17. Recovery of civil damages authorized.
7 (1) A person whose wire or oral communication is
8 intercepted, disclosed, or used in violation of [this act]
9 has a civil cause of action against a person who intercepts,
10 discloses, uses, or procures another person to intercept,
11 disclose, or use such communications and is entitled to
12 recover from any such person:

13 (a) actual damages, but not less than liquidated
14 damages computed at the rate of \$100 a day for each day or
15 violation or \$1,000, whichever is higher;

16 (b) punitive damages; and

17 (c) a reasonable attorney fee and other litigation
18 costs reasonably incurred.

19 (2) A good faith reliance on a court order or
20 legislative authorization constitutes a complete defense to
21 any civil or criminal action under [this act].

22 Section 18. Severability. If a part of this act is
23 invalid, all valid parts that are severable from the invalid
24 part remain in effect. If a part of this act is invalid in
25 one or more of its applications, the part remains in effect

1 in all valid applications that are severable from the
2 invalid applications.

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

HOUSE BILL NO. 794

INTRODUCED BY COBB, O'HARA, KELLER, REHBERG, BRANDEWIE

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR AND
REGULATE THE INTERCEPTION BY LAW ENFORCEMENT AUTHORITIES OF
WIRE OR ORAL COMMUNICATIONS; AND PROVIDING A TERMINATION
DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Definitions. In [this act], the following
definitions apply:

(1) "Aggrieved person" means a person who was a party
to any illegally intercepted wire or oral communication or a
person against whom the interception was illegally directed.

(2) "Communications common carrier" means any person
engaged as a common carrier for hire in intrastate,
interstate, or foreign communication by wire or radio or in
intrastate, interstate, or foreign radio transmission of
energy.

(3) "Contents", when used with respect to any wire or
oral communication, include any information concerning the
identity of the parties to such communication or the
existence, substance, purport, or meaning of that
communication.

(4) "Electronic, mechanical, or other device" means

any device or apparatus that can be used to intercept a wire
or oral communication other than:

(a) any telephone or telegraph instrument, equipment,
or facility or any component thereof furnished to the
subscriber or user by a communications common carrier in the
ordinary course of its business or being used by a
communications common carrier in the ordinary course of its
business or by an investigative or law enforcement officer
in the ordinary course of his duties; or

(b) a hearing aid or similar device being used to
correct subnormal hearing to not better than normal.

(5) "Intercept" or "interception" means the aural
acquisition of the contents of any wire or oral
communication through the use of any electronic, mechanical,
or other device.

(6) "Investigative or law enforcement officer" means
any officer of the state of Montana who is empowered by law
to conduct investigations of, or to make arrests for,
offenses enumerated in [this act] and any attorney
authorized by law to prosecute or participate in the
prosecution of such offenses.

(7) "Judge" means a judge of a district court.

(8) "Oral communication" means any oral communication
uttered by a person under circumstances justifying an
expectation that the communication is not subject to

1 interception.

2 (9) "Person" means any employee or agent of the state
3 or any political subdivision thereof and any individual,
4 partnership, association, joint stock company, trust,
5 cooperative, or corporation.

6 (10) "Wire communication" means any communication made
7 in whole or in part through the use of facilities for the
8 transmission of communications by the aid of wire, cable, or
9 other like connection between the point of origin and the
10 point of reception, furnished or operated by any person
11 engaged as a common carrier in providing or operating such
12 facilities for the transmission of intrastate, interstate,
13 or foreign communications.

14 Section 2. Interception and disclosure of wire or oral
15 communications prohibited. (1) Except as otherwise
16 specifically provided in [this act], it is unlawful for any
17 person to:

18 (a) willfully PURPOSELY intercept, endeavor to
19 intercept, or procure any other person to intercept or
20 endeavor to intercept any wire or oral communication;

21 (b) willfully PURPOSELY use, endeavor to use, or
22 procure any other person to use or endeavor to use any
23 electronic, mechanical, or other device to intercept any
24 oral communication when:

25 (i) such device is affixed to or otherwise transmits a

1 signal through a wire, cable, or other like connection used
2 in wire communication; or

3 (ii) such device transmits communications by radio or
4 interferes with the transmission of such communication;

5 (c) willfully PURPOSELY disclose or endeavor to
6 disclose to any other person the contents of any wire or
7 oral communication, knowing or having reason to know that
8 the information was obtained through the interception of a
9 wire or oral communication in violation of this subsection
10 (1);

11 (d) willfully PURPOSELY use or endeavor to use the
12 contents of any wire or oral communication, knowing or
13 having reason to know that the information was obtained
14 through the interception of a wire or oral communication in
15 violation of this subsection (1); or

16 (e) intercept any communication for the purpose of
17 committing any criminal act.

18 (2) A person violating the provisions of subsection
19 (1) is guilty of a felony and is punishable by imprisonment
20 in the state prison for a term not to exceed 5 years or by a
21 fine not to exceed \$5,000 or by both such fine and
22 imprisonment.

23 (3) It is lawful under [this act]:

24 (a) for an operator of a switchboard or an officer,
25 employee, or agent of any communications common carrier

1 whose facilities are used in the transmission of a wire
 2 communication to intercept, disclose, or use that
 3 communication in the normal course of his employment while
 4 engaged in any activity which is a necessary incident to the
 5 rendition of his service or to the protection of the rights
 6 or property of the carrier of such communication; however,
 7 such a communications common carrier may not utilize service
 8 observing or random monitoring except for mechanical or
 9 service quality control checks;

10 (b) for an officer, employee, or agent of the federal
 11 communications commission, in the normal course of his
 12 employment and in discharge of the monitoring
 13 responsibilities exercised by the commission in the
 14 enforcement of chapter 5 of Title 47, U.S.C., to intercept a
 15 wire communication or oral communication transmitted by
 16 radio or to disclose or use the information thereby
 17 obtained;

18 (c) for a law enforcement officer or a person acting
 19 under the direction of a law enforcement officer to
 20 intercept a wire or oral communication if such officer or
 21 person is a party to the communication or one of the parties
 22 to the communication has given prior consent to such
 23 interception;

24 (d) for an investigative or law enforcement officer to
 25 intercept a wire or oral communication if one of the parties

1 to the communication has given prior consent to such
 2 interception;

3 (e) for an employee of a telephone company to
 4 intercept a wire communication for the sole purpose of
 5 tracing the origin of such communication if the interception
 6 is requested by an appropriate law enforcement agency or the
 7 recipient of the communication and the recipient alleges
 8 that the communication is obscene, harassing, or threatening
 9 in nature; and

10 (f) for an employee of a law enforcement agency, fire
 11 department, or ambulance service, while acting in the scope
 12 of his employment and while a party to the communication, to
 13 intercept and record incoming wire communications.

14 Section 3. Manufacture, distribution, possession, and
 15 sale of wire or oral communications intercepting devices
 16 prohibited -- penalty. (1) Except as otherwise specifically
 17 provided in [this act], it is unlawful for any person to
 18 willfully:

19 (a) send through the mail or send or carry any
 20 electronic, mechanical, or other device, knowing or having
 21 reason to know that the design of such device renders it
 22 primarily useful for the purpose of the illegal interception
 23 of wire or oral communications as specifically defined by
 24 [this act]; or

25 (b) manufacture, assemble, possess, or sell any

1 electronic, mechanical, or other device, knowing or having
 2 reason to know that the design of such device renders it
 3 primarily useful for the purpose of the illegal interception
 4 of wire or oral communications as specifically defined by
 5 [this act].

6 (2) A person violating subsection (1) is guilty of a
 7 felony and is punishable by imprisonment in the state prison
 8 for a term of 5 years or by a fine of \$5,000 or by both such
 9 fine and imprisonment.

10 (3) It is lawful under this section for a
 11 communications common carrier or an officer, agent, or
 12 employee of, or a person under contract with, a
 13 communications common carrier, in the normal course of the
 14 communications common carrier's business, or an officer,
 15 agent, or employee of, or a person under contract with,
 16 bidding upon contracts with, or in the course of doing
 17 business with the United States, a state, or a political
 18 subdivision thereof, in the normal course of the activities
 19 of the United States, a state, or a political subdivision
 20 thereof, to send through the mail, send or carry in
 21 interstate or foreign commerce, or manufacture, assemble,
 22 possess, or sell any electronic, mechanical, or other
 23 device, knowing or having reason to know that the design of
 24 such device renders it primarily useful for the purpose of
 25 the surreptitious interception of wire or oral

1 communication.

2 Section 4. Confiscation of wire or oral communications
 3 intercepting devices. Any electronic, mechanical, or other
 4 device used, sent, carried, manufactured, assembled,
 5 possessed, or sold in violation of [this act] may be seized
 6 and forfeited to the state.

7 Section 5. Prohibition of use as evidence of
 8 intercepted wire or oral communications. Whenever any wire
 9 or oral communication has been intercepted, no part of the
 10 contents of such communication and no evidence derived
 11 therefrom may be received in evidence in any trial, hearing,
 12 or other proceeding in or before any court, grand jury,
 13 department, officer, agency, regulatory body, legislative
 14 committee, or other authority of the state, or a political
 15 subdivision thereof, if the disclosure of that information
 16 would be in violation of [this act].

17 Section 6. Authorization for interception of wire or
 18 oral communications. The state attorney general or a county
 19 attorney of any county may authorize an application to a
 20 judge for an order authorizing or approving the interception
 21 of wire or oral communications and may apply to such judge
 22 for, and such judge may grant in conformity with 18 U.S.C.
 23 2518 and in conformity with [this act], an order authorizing
 24 or approving the interception of wire or oral communications
 25 by investigative or law enforcement officers having

1 responsibility for the investigation of the offense as to
 2 which the application is made if such interception may
 3 provide or has provided evidence of the commission of an
 4 offense punishable by imprisonment in the state prison for
 5 more than 1 year.

6 Section 7. Authorization for disclosure and use of
 7 intercepted wire or oral communications. (1) Any
 8 investigative or law enforcement officer who, by any means
 9 authorized by [this act], has obtained knowledge of the
 10 contents of any wire or oral communication or evidence
 11 derived therefrom may disclose such contents to another
 12 investigative or law enforcement officer to the extent that
 13 such disclosure is appropriate to the proper performance of
 14 the official duties of the officer making or receiving the
 15 disclosure.

16 (2) Any investigative or law enforcement officer who,
 17 by any means authorized by [this act], has obtained
 18 knowledge of the contents of any wire or oral communication
 19 or evidence derived therefrom may use such contents to the
 20 extent the use is appropriate to the proper performance of
 21 his official duties.

22 (3) Any person who has received, by any means
 23 authorized by [this act], any information concerning a wire
 24 or oral communication or evidence derived therefrom
 25 intercepted in accordance with the provisions of [this act]

1 may disclose the contents of that communication or such
 2 derivative evidence while giving testimony under oath or
 3 affirmation in any criminal proceeding in any court of this
 4 state, of the United States, of any other state, or of any
 5 political subdivision thereof.

6 (4) No otherwise privileged wire or oral communication
 7 intercepted in accordance with, or in violation of, the
 8 provisions of [this act] may lose its privileged character.

9 (5) When an investigative or law enforcement officer,
 10 while engaged in intercepting wire or oral communications in
 11 the manner authorized in [this act], intercepts wire or oral
 12 communications relating to offenses other than those
 13 specified in the order of authorization, the contents
 14 thereof and evidence derived therefrom may be disclosed or
 15 used as provided in subsections (1) through (3).

16 Section 8. Application for order authorizing
 17 interception of wire or oral communications. (1) Each
 18 application for an order authorizing the interception of a
 19 wire or oral communication must be made in writing, upon
 20 oath or affirmation, to a judge and shall state the
 21 applicant's authority to make such application. Each
 22 application must include the following information:

23 (a) the identity of the investigative or law
 24 enforcement officer making the application, and the officer
 25 authorizing the application;

1 (b) a full and complete statement of the facts and
2 circumstances relied upon by the applicant to justify his
3 belief that an order should be issued, including:

4 (i) details as to the particular offense that has
5 been, is being, or is about to be committed;

6 (ii) a particular description of the nature and
7 location of the facilities where the communication is to be
8 intercepted;

9 (iii) a particular description of the type of
10 communications sought to be intercepted;

11 (iv) the identity of the person, if known, committing
12 the offense and whose communications are to be intercepted;

13 (c) a full and complete statement as to whether or not
14 other investigative procedures have been tried and failed,
15 why they reasonably appear to be unlikely to succeed if
16 tried, or if they reasonably appear to be too dangerous;

17 (d) a statement of the period of time for which the
18 interception is required to be maintained. If the nature of
19 the investigation is such that the authorization for
20 interception should not automatically terminate when the
21 described type of communication has been first obtained, a
22 particular description of facts establishing probable cause
23 to believe that additional communications of the same type
24 will occur thereafter must be included in the application.

25 (e) a full and complete statement of the facts

1 concerning all previous applications known to the individual
2 authorizing and making the application, made to any judge
3 for authorization to intercept wire or oral communications
4 involving any of the same persons, facilities, or places
5 specified in the application, and the action taken by the
6 judge on each such application; and

7 (f) whenever the application is for the extension of
8 an order, a statement setting forth the results thus far
9 obtained from the interception, or a reasonable explanation
10 of the failure to obtain such results.

11 (2) The judge may require the applicant to furnish
12 additional testimony or documentary evidence in support of
13 the application.

14 Section 9. When order authorizing interception may be
15 issued -- required contents. (1) Upon application, as
16 provided in [section 8], the judge may enter an ex parte
17 order, as requested or as modified, authorizing interception
18 of wire or oral communications within the state of Montana
19 if the judge determines on the basis of the facts submitted
20 by the applicant that:

21 (a) there is probable cause to believe that an
22 individual is committing, has committed, or is about to
23 commit a particular offense punishable by imprisonment in
24 the state prison for more than 1 year;

25 (b) there is probable cause to believe that particular

1 communications concerning that offense will be obtained
2 through such interception;

3 (c) normal investigative procedures have been tried
4 and have failed or reasonably appear to be unlikely to
5 succeed if tried or to be too dangerous; AND

6 (d) there is probable cause to believe that the
7 facilities where the wire or oral communications are to be
8 intercepted are being used or are about to be used in
9 connection with the commission of an offense described in
10 subsection (1)(a) or are leased to, listed in the name of,
11 or commonly used by an individual described in subsection
12 (1)(a).

13 (2) Each order authorizing the interception of any
14 wire or oral communication shall specify:

15 (a) the identity of the person, if known, whose
16 communications are to be intercepted;

17 (b) the nature and location of the communications
18 facilities where authority to intercept is granted;

19 (c) a particular description of the type of
20 communication sought to be intercepted and a statement of
21 the particular offense to which it relates;

22 (d) the identity of the agency authorized to intercept
23 the communications and of the person making the application;
24 and

25 (e) the period of time during which such interception

1 is authorized, including a statement as to whether or not
2 the interception automatically terminates when the described
3 communication has been first obtained.

4 Section 10. Required assistance from communications
5 common carrier and others. An order authorizing the
6 interception of a wire or oral communication shall, upon
7 request of the applicant, direct that a communications
8 common carrier, landlord, custodian, or other person furnish
9 the applicant forthwith all information, facilities, and
10 technical assistance necessary to accomplish the
11 interception unobtrusively and with a minimum of
12 interference with the services that such communications
13 common carrier, landlord, custodian, or person is providing
14 to the person whose communications are to be intercepted.
15 Any communications common carrier, landlord, custodian, or
16 other person furnishing such facilities or technical
17 assistance may be compensated therefor by the applicant at
18 the prevailing rate.

19 Section 11. Time limitation on order. (1) No order
20 entered under [section 9] may authorize the interception of
21 any wire or oral communication for any period longer than is
22 necessary to achieve the objective of the authorization, and
23 in no event longer than 30 days. Extensions of an order may
24 be granted, but only upon application for an extension made
25 in accordance with subsection (1) of [section 8] and upon

1 the judge's making the findings required by subsection (1)
 2 of [section 9]. The periods of extension may be no longer
 3 than the authorizing judge considers necessary to achieve
 4 the purposes for which the extension was granted, and in no
 5 event longer than 30 days for each extension.

6 (2) Each order and extension thereof must contain a
 7 provision that the authorization to intercept must be
 8 executed as soon as practicable, must be conducted in such a
 9 way as to minimize the interception of communications not
 10 otherwise subject to interception under [this act], and must
 11 terminate upon attainment of the authorized objective, or in
 12 any event within 30 days.

13 Section 12. Required reports. Whenever an order
 14 authorizing interception is entered pursuant to [this act],
 15 the order may require reports to be made to the judge who
 16 issued the order, showing what progress has been made toward
 17 achievement of the authorized objective and the need for
 18 continued interception. Such reports must be made at such
 19 intervals as the judge may require.

20 Section 13. When recording of intercepted
 21 communication required. (1) The contents of any wire or
 22 oral communication intercepted by any means authorized by
 23 [this act] must, if possible, be recorded on tape, wire, or
 24 other comparable device. The recording of the contents of
 25 any wire or oral communication under this section must be

1 done in such way as will protect the recording from editing
 2 or other alterations. Immediately upon the expiration of the
 3 period of the order or extensions thereof, the recordings
 4 must be made available to the judge issuing the order and
 5 sealed under his direction. Custody of the recordings must
 6 be wherever the judge orders. The recordings may not be
 7 destroyed except upon an order of the issuing or denying
 8 judge, and in any event must be kept for 10 years. Duplicate
 9 recordings may be made for use or disclosure, pursuant to
 10 the provisions of [section 7(1) and (2)], for
 11 investigations. The presence of the seal provided for by
 12 subsection (2) of this section, or a satisfactory
 13 explanation for the absence thereof, is a prerequisite for
 14 the use or disclosure of the contents of any wire or oral
 15 communication or evidence derived therefrom under [section
 16 7(3)].

17 (2) Applications made and orders granted under [this
 18 act] must be sealed by the judge. Custody of the
 19 applications and orders shall be wherever the judge directs.
 20 Such applications and orders may be disclosed only upon a
 21 showing of good cause before a judge and may not be
 22 destroyed except on order of the issuing or denying judge,
 23 and in any event must be kept for 10 years.

24 Section 14. Disclosure of interception. (1) Within a
 25 reasonable time but not later than 90 days after the filing

1 of an application for an order of authorization which is
 2 denied, or the termination of the period of an order or
 3 extensions thereof, the issuing or denying judge shall cause
 4 to be served on the persons named in the order or the
 5 application and such other parties to intercepted
 6 communications as the judge may determine in the interest of
 7 justice, an inventory which shall include notice of:

8 (a) the fact of the entry of the order or the
 9 application;

10 (b) the date of the entry and the period of authorized
 11 interception, or the denial of the application; and

12 (c) the fact that during the period wire or oral
 13 communications were or were not intercepted.

14 (2) The judge, upon the filing of a motion, may in his
 15 discretion make available to such person or his counsel for
 16 inspection such portions of the intercepted communications,
 17 applications, and orders as he determines to be in the
 18 interest of justice.

19 (3) On an ex parte showing of good cause to a judge,
 20 the serving of the inventory required by subsection (1) may
 21 be postponed.

22 Section 15. When intercepted communication admissible
 23 in evidence. (1) The contents of any intercepted wire or
 24 oral communication or evidence derived therefrom may not be
 25 received in evidence or otherwise disclosed in any trial,

1 hearing, or other proceeding in a federal or state court
 2 unless each party, not less than 10 days before the trial,
 3 hearing, or proceeding, has been furnished with a copy of
 4 the court order and accompanying application under which the
 5 interception was authorized AND A DUPLICATE RECORDING OR
 6 TRANSCRIPT OF THE CONTENTS OF THE COMMUNICATION. This 10-day
 7 period may be waived by the judge if he finds that it was
 8 not possible to furnish the party with the above information
 9 10 days before the trial, hearing, or proceeding and that
 10 the party will not be prejudiced by the delay in receiving
 11 such information.

12 (2) An aggrieved person in any trial, hearing, or
 13 proceeding in or before a judge, department, officer,
 14 agency, regulatory body, or other authority of the United
 15 States, a state, or a political subdivision thereof, may
 16 move to suppress the contents of any intercepted wire or
 17 oral communication or evidence derived therefrom on the
 18 grounds that:

19 (a) the communication was unlawfully intercepted;

20 (b) the order of authorization under which it was
 21 intercepted is insufficient on its face; or

22 (c) the interception was not made in conformity with
 23 the order of authorization.

24 (3) The motion to suppress must be made before the
 25 trial, hearing, or proceeding, pursuant to 46-13-302 or the

1 hearing rules of the respective body, as applicable.

2 (4) In addition to any other right to appeal, the
3 state of Montana may appeal an order granting a motion to
4 suppress made under subsection (2). Such appeal must be
5 made within 30 days after the date the order was entered.

6 Section 16. Violations punishable as contempt. Any
7 violation of the provisions of [sections 8 through 15] may
8 be punished as contempt by the issuing or denying judge.

9 Section 17. Recovery of civil damages authorized.

10 (1) A person whose wire or oral communication is
11 intercepted, disclosed, or used in violation of [this act]
12 has a civil cause of action against a person who intercepts,
13 discloses, uses, or procures another person to intercept,
14 disclose, or use such communications and is entitled to
15 recover from any such person:

16 (a) actual damages, but not less than liquidated
17 damages computed at the rate of \$100 a day for each day or
18 violation or \$1,000, whichever is higher;

19 (b) punitive damages; and

20 (c) a reasonable attorney fee and other litigation
21 costs reasonably incurred.

22 (2) A good faith reliance on a court order or
23 legislative authorization constitutes a complete defense to
24 any civil or criminal action under [this act].

25 Section 18. Severability. If a part of this act is

1 invalid, all valid parts that are severable from the invalid
2 part remain in effect. If a part of this act is invalid in
3 one or more of its applications, the part remains in effect
4 in all valid applications that are severable from the
5 invalid applications.

6 SECTION 19. TERMINATION DATE. THIS ACT TERMINATES JULY
7 1, 1977.

-End-