Department of Legislative Services

Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1188 (Delegate Adams)
Economic Matters

Interception of Communication - Financial Institutions

This bill establishes that it is lawful under the wiretapping and electronic surveillance statutes (Title 10, Subtitle 4 of the Courts and Judicial Proceedings Article) for an employee or agent of a financial institution that accepts deposits in the State to intercept and record an oral communication of a person who is (1) on the property of the financial institution or (2) at or near an automated teller machine operated by the financial institution. **The bill takes effect June 1, 2019.**

Fiscal Summary

State Effect: The bill does not materially affect State finances or operations.

Local Effect: The bill does not materially affect local finances or operations.

Small Business Effect: None.

Analysis

Bill Summary: The financial institution must display a clearly visible written notice that an audio recording of an oral communication may be in progress. The financial institution must also retain the audio recording for at least 30 calendar days. The recording may be made as an audio-only recording or as a video recording.

Upon written request, the recording may be made available to a law enforcement officer, a State's Attorney, or an agent of the Federal Bureau of Investigation to assist in an ongoing criminal investigation of a robbery under State law or any other criminal act carried out in furtherance of a robbery.

The financial institution must adopt a specified record retention policy.

Current Law: The wiretapping and electronic surveillance statutes prohibit specified interceptions of communications, contain exceptions to general prohibitions on interceptions of communications, and establish procedures for interception of communications by law enforcement.

In general, except as otherwise specified in statute, it is unlawful for a person to:

- willfully intercept, endeavor to intercept, or procure any other person to intercept a wire, oral, or electronic communication;
- willfully disclose, or endeavor to disclose, to any other person the contents of a wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through an illegal intercept; or
- willfully use, or endeavor to use, the contents of a wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through an illegal intercept.

A person who violates these prohibitions is guilty of a felony and subject to maximum penalties of imprisonment for five years and/or a $10,000 fine.

An exception to the prohibitions on intercepting communications applies if the interceptor is a party to the communication and where all of the parties to the communication have given prior consent to the interception, unless the communication is intercepted for the purpose of committing any illegal criminal or tortious act.

Any person whose wire, oral, or electronic communication is intercepted, disclosed, or used in violation of the wiretapping and electronic surveillance statutes has a civil cause of action against any person who intercepts, discloses, or uses the communications or procures any other person to engage in these activities and may recover (1) actual damages, within specified limits; (2) punitive damages; and (3) reasonable attorney's fees and other reasonable litigation costs. A good faith reliance on a court order or legislative authorization is a complete defense to any civil or criminal action brought under the relevant statutory provisions or under any other law.

Additional Information

Prior Introductions: HB 791 of 2018, an identical bill as amended, passed the House and subsequently passed the Senate with amendments, but no further action was taken. Its cross file, SB 748 of 2018, passed the House as amended, and was referred to the House Economic Matters Committee, but no further action was taken. A similar bill, HB 1518 of

2017, received a hearing in the House Judiciary Committee, but no further action was taken.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Maryland State's Attorneys' Association; Department of State Police; Department of Legislative Services

Fiscal Note History: First Reader - February 18, 2019
mm/kdm

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