

Sec. 3. Section 805.8, subsection 10, paragraph b, Code 1999, is amended to read as follows:

b. For violations of ~~section~~ under sections 321.284 and 321.284A, the scheduled fine is fifty dollars.

Approved April 28, 1999

CHAPTER 78

INTERCEPTION OF COMMUNICATIONS

S.F. 309

AN ACT relating to the interception of communications and providing penalties.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 808B.1, subsections 1 and 2, Code 1999, are amended to read as follows:

1. "Aggrieved person" means a person who was a party to an intercepted wire, ~~communication~~ or oral, or electronic communication or a person against whom the interception was directed.

2. "Contents", when used with respect to a wire, ~~communication~~ or oral, or electronic communication, includes any information concerning the identity of the parties to the communication or the existence, substance, purpose, or meaning of that communication.

Sec. 2. Section 808B.1, Code 1999, is amended by adding the following new subsection: NEW SUBSECTION. 3A. "Electronic communication" means any transfer of signals, signs, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photooptical system that affects intrastate, interstate, or foreign commerce, but excludes the following:

- a. Wire or oral communication.
- b. Communication made through a tone only paging device.
- c. Communication from a tracking device.

Sec. 3. Section 808B.1, subsection 4, unnumbered paragraph 1, Code 1999, is amended to read as follows:

"Electronic, mechanical, or other device" means a device or apparatus which can be used to intercept a wire, ~~communication~~ or oral, or electronic communication other than either of the following:

Sec. 4. Section 808B.1, subsection 5, Code 1999, is amended to read as follows:

5. "Intercept" or "interception" means the aural acquisition of the contents of a wire, ~~communication~~ or oral, or electronic communication through the use of an electronic, mechanical, or other device.

Sec. 5. Section 808B.1, Code 1999, is amended by adding the following new subsections:

NEW SUBSECTION. 7A. "Pen register" means a device which records or decodes electronic or other impulses which identify the numbers dialed or otherwise transmitted on the telephone line to which such device is attached. However, such term excludes any device used by a provider or customer of a wire or electronic communication service for billing, or recording as an incident to billing, for communications services provided by such provider

of any device used by a provider, or any device used by a provider or customer of a wire communication service for cost accounting or other like purposes in the ordinary course of its business.

NEW SUBSECTION. 8A. "Trap and trace device" means a device which captures the incoming electronic or other impulses which identify the originating number of an instrument or device from which a wire or electronic communication was transmitted.

Sec. 6. Section 808B.2, subsection 1, paragraph a, Code 1999, is amended to read as follows:

a. Willfully intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept, a wire, ~~communication or oral,~~ or electronic communication.

Sec. 7. Section 808B.2, subsection 1, paragraphs c and d, Code 1999, are amended to read as follows:

c. Willfully discloses, or endeavors to disclose, to any other person the contents of a wire, ~~communication or oral,~~ or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, ~~communication or oral,~~ or electronic communication in violation of this subsection.

d. Willfully uses, or endeavors to use, the contents of a wire, ~~communication or oral,~~ or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, ~~communication or oral,~~ or electronic communication in violation of this subsection.

Sec. 8. Section 808B.2, subsection 2, paragraphs b and c, Code 1999, are amended to read as follows:

b. It is not unlawful under this chapter for a person acting under color of law to intercept a wire, ~~communication or oral,~~ or electronic communication, if the person is a party to the communication or one of the parties to the communication has given prior consent to the interception.

c. It is not unlawful under this chapter for a person not acting under color of law to intercept a wire, ~~communication or oral,~~ or electronic communication if the person is a party to the communication or if one of the parties to the communication has given prior consent to the interception, unless the communication is intercepted for the purpose of committing a criminal or tortious act in violation of the Constitution or laws of the United States or of any state or for the purpose of committing any other injurious act.

Sec. 9. Section 808B.2, subsection 3, Code 1999, is amended to read as follows:

3. An operator of a switchboard, or an officer, employee, or agent of a communications common carrier, whose facilities are used in the transmission or interception of a wire, ~~or~~ or electronic communication shall not disclose the existence of any transmission or interception or the device used to accomplish the transmission or interception with respect to a court order under this chapter, except as may otherwise be required by legal process or court order. Violation of this subsection is a class "D" felony.

Sec. 10. Section 808B.3, Code 1999, is amended to read as follows:

808B.3 COURT ORDER FOR INTERCEPTION BY SPECIAL AGENTS.

The attorney general shall authorize and prepare any application for an order authorizing the interception of wire, ~~communications or oral,~~ or electronic communications. The attorney general may apply to any district court of this state, or request that the county attorney in the district where application is to be made deliver the application of the attorney general, for an order authorizing the interception of wire, ~~communications or oral,~~ or electronic communications, and the court may grant, subject to this chapter, an order authorizing the interception of wire, ~~communications or oral,~~ or electronic communications by special state agents having responsibility for the investigation of the offense as to which application is made, when the interception may provide or has provided evidence of the ~~commission of~~

~~felony offenses involving dealing in controlled substances, as defined in section 124.101, subsection 5, following:~~

1. A felony offense involving dealing in controlled substances, as defined in section 124.101.

2. A felony offense involving money laundering, in violation of chapter 706B.

Sec. 11. Section 808B.4, Code 1999, is amended to read as follows:

808B.4 PERMISSIBLE DISCLOSURE AND USE.

1. A special state agent who, by any means authorized by this chapter, has obtained knowledge of the contents of a wire, ~~communication or oral, or electronic~~ communication, or has obtained evidence derived from a wire, ~~communication or oral, or electronic~~ communication, may disclose the contents to another investigative or law enforcement officer to the extent that the disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure.

2. An investigative or law enforcement officer who, by any means authorized by this chapter, has obtained knowledge of the contents of a wire, ~~communication or oral, or electronic~~ communication or has obtained evidence derived from a wire, ~~communication or oral, or electronic~~ communication may use the contents to the extent the use is appropriate to the proper performance of the officer's official duties.

3. A person who has received, by any means authorized by this chapter, any information concerning a wire, ~~communication or oral, or electronic~~ communication, or evidence derived from a wire, ~~communication or oral, or electronic~~ communication intercepted in accordance with this chapter may disclose the contents of that communication or derivative evidence while giving testimony under oath or affirmation in a criminal proceeding in any court of the United States or of this state or in any federal or state grand jury proceeding.

4. An otherwise privileged wire, ~~communication or oral, or electronic~~ communication intercepted in accordance with, or in violation of, the provisions of this chapter does not lose its privileged character.

5. If a special state agent, while engaged in intercepting a wire, ~~communication or oral, or electronic~~ communication in the manner authorized, intercepts a communication relating to an offense other than those specified in the order of authorization, the contents of the communication, and the evidence derived from the communication, may be disclosed or used as provided in subsections 1 and 2. The contents of and the evidence derived from the communication may be used under subsection 3 when authorized by a court if the court finds on subsequent petition that the contents were otherwise intercepted in accordance with this chapter. The petition shall be made as soon as practicable.

Sec. 12. Section 808B.5, subsection 1, unnumbered paragraph 1, Code 1999, is amended to read as follows:

An application for an order authorizing or approving the interception of a wire, ~~communication or oral, or electronic~~ communication shall be made in writing upon oath or affirmation to a court and shall state the applicant's authority to make the application. An application shall include the following information:

Sec. 13. Section 808B.5, subsection 1, paragraph e, Code 1999, is amended to read as follows:

e. A full and complete statement of the facts concerning all previous applications known to the individuals authorizing and making the application, made to any court for authorization to intercept, or for approval of interceptions of, wire, ~~communications or oral, or electronic~~ communications involving any of the same persons, facilities or places specified in the application, and the action taken by the court on those applications.

Sec. 14. Section 808B.5, subsection 3, unnumbered paragraph 1, Code 1999, is amended to read as follows:

Upon application the court may enter an ex parte order, as requested or as modified, authorizing interception of wire, ~~communications~~ or oral, or electronic communications within the territorial jurisdiction of the court, if the court finds on the basis of the facts submitted by the applicant all of the following:

Sec. 15. Section 808B.5, subsection 3, paragraph d, Code 1999, is amended to read as follows:

d. There is probable cause for belief that the facilities from which, or the place where, the wire, ~~communications~~ or oral, or electronic communications are to be intercepted are being used, or are about to be used, in connection with the commission of the offense, or are leased to, listed in the name of, or commonly used by the person whose communications are to be intercepted.

Sec. 16. Section 808B.5, subsection 4, unnumbered paragraph 1, Code 1999, is amended to read as follows:

Each order authorizing the interception of a wire, ~~communication~~ or oral, or electronic communication shall specify all of the following:

Sec. 17. Section 808B.5, subsections 5 and 6, Code 1999, are amended to read as follows:

5. Each order authorizing the interception of a wire, ~~communication~~ or oral, or electronic communication shall, upon request of the applicant, direct that a communications common carrier, landlord, custodian, or other person shall furnish to the applicant all information, facilities, and technical assistance necessary to accomplish the interception inconspicuously and with a minimum of interference with the services that the carrier, landlord, custodian, or person is giving to the person whose communications are to be intercepted. Any communications common carrier, landlord, custodian, or other person furnishing facilities or technical assistance shall be compensated by the applicant at the prevailing rates.

6. An order entered under this section shall not authorize the interception of a wire, ~~communication~~ or oral, or electronic communication for a period longer than is necessary to achieve the objective of the authorized interception, or in any event longer than thirty days. The thirty-day period shall commence on the date specified in the order upon which the commencement of the interception is authorized or ten days after the order is entered, whichever is earlier. An extension of an order may be granted, but only upon application for an extension made in accordance with subsection 1 and the court making the findings required by subsection 3. The period of extension shall be no longer than the authorizing court deems necessary to achieve the purposes for which it was granted and in no event longer than thirty days. Every order and its extension shall contain a provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under this section and sections 808B.1 through 808B.4, 808B.6, and 808B.7, and shall terminate upon attainment of the authorized objective, or in any event in thirty days.

Sec. 18. Section 808B.5, subsection 8, unnumbered paragraph 1, Code 1999, is amended to read as follows:

The contents of a wire, ~~communication~~ or oral, or electronic communication intercepted by a means authorized by this chapter shall, if possible, be recorded on tape or wire or other comparable device. The recording of the contents of a wire, ~~communication~~ or oral, or electronic communication under this subsection shall be done in a way which will protect the recording from editing or other alterations. Immediately upon the expiration of the period of the order, or extensions of it, the recordings shall be made available to the court issuing the order and shall be sealed under the court's directions. Custody of the recordings shall be in accordance with the court order. Recordings shall be kept for five years and shall then be destroyed unless it is necessary to keep the recordings due to a continued legal

process or court order, but the recordings shall not be kept for longer than ten years. Duplicate recordings may be made for disclosure or use pursuant to section 808B.4, subsections 1 and 2. The presence of a seal, or a satisfactory explanation for its absence, is a prerequisite for the disclosure or use of the contents of a wire, ~~communication or oral, or electronic~~ communication or evidence derived from a communication under section 808B.4, subsection 3.

Sec. 19. Section 808B.5, subsection 9, paragraph b, subparagraph (3), Code 1999, is amended to read as follows:

(3) Whether, during the period, wire, ~~or oral, or electronic~~ communications were or were not intercepted.

Sec. 20. Section 808B.5, subsection 10, Code 1999, is amended to read as follows:

10. The contents of an intercepted wire, ~~communication or oral, or electronic~~ communication or evidence derived from the wire, ~~communication or oral, or electronic~~ communication shall not be received in evidence or otherwise disclosed in a trial, hearing, or other proceeding in a federal or state court unless each party, not less than ten days before the trial, hearing, or proceeding, has been furnished with a copy of the court order, and accompanying application, under which the interception was authorized. This ten-day period may be waived by the court if it finds that it was not possible to furnish the party with the above information ten days before the trial, hearing, or proceeding and that the party will not be prejudiced by the delay in receiving the information. If the ten-day period is waived by the court, the court may grant a continuance, or enter such other order as it deems just under the circumstances.

Sec. 21. Section 808B.5, subsection 11, Code 1999, is amended to read as follows:

11. An aggrieved person in a trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority of this state, may move to suppress the contents of an intercepted wire, ~~communication or oral, or electronic~~ communication, or evidence derived from the wire, ~~communication or oral, or electronic~~ communication, on the grounds that the communication was unlawfully intercepted, the order of authorization under which it was intercepted was insufficient on its face, or the interception was not made in conformity with the order of authorization. The motion shall be made before the trial, hearing, or proceeding unless there was no opportunity to make the motion or the person was not aware of the grounds of the motion. If the motion is granted, the contents of the intercepted wire, ~~communication or oral, or electronic~~ communication, or evidence derived from the wire communication or oral communication,* shall be treated as having been obtained in violation of this chapter.

Sec. 22. Section 808B.7, Code 1999, is amended to read as follows:

808B.7 CONTENTS OF INTERCEPTED WIRE, ~~OR ORAL, OR ELECTRONIC~~ COMMUNICATION AS EVIDENCE.

The contents or any part of the contents of an intercepted wire, ~~communication or oral, or electronic~~ communication and any evidence derived from the wire, ~~communication or oral, or electronic~~ communication shall not be received in evidence in a trial, hearing, or other proceeding in or before a court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the United States, a state, or political subdivision of a state if the disclosure of that information would be in violation of this chapter.

Sec. 23. Section 808B.8, subsection 1, unnumbered paragraph 1, Code 1999, is amended to read as follows:

A person whose wire, ~~communication or oral, or electronic~~ communication is intercepted, disclosed, or used in violation of this chapter shall:

Sec. 24. Section 808B.8, subsection 3, Code 1999, is amended to read as follows:

* See chapter 208, §63 herein

3. A person whose wire, ~~communication~~ or oral, or electronic communication is intercepted, disclosed, or used in violation of this chapter may seek an injunction, either temporary or permanent, against any person who violates this chapter.

Sec. 25. NEW SECTION. 808B.10 RESTRICTIONS ON USE AND INSTALLATION OF A PEN REGISTER OR A TRAP AND TRACE DEVICE.

1. A person shall not install or use a pen register or a trap and trace device without first obtaining a court order pursuant to either section 808B.11 or 808B.12. However, a pen register or a trap and trace device may be used or installed without court order if any of the following apply:

a. It relates to the operation, maintenance, and testing of a wire or electronic communication service or to the protection of the rights or property of the provider of the service, or to the protection of users of the service from abuse of the service or unlawful use of the service.

b. If a wire or electronic communication was initiated or completed in order to protect the provider of the wire or electronic communication service, another provider furnishing service toward the completion of the wire or electronic communication, or a user of the service, from fraudulent, unlawful, or abusive use of the service.

c. If consent was obtained from the user of the electronic or wire communication service.

2. A person who knowingly violates this section commits a serious misdemeanor.

Sec. 26. NEW SECTION. 808B.11 APPLICATION AND ORDER TO INSTALL AND USE A PEN REGISTER OR TRAP AND TRACE DEVICE.

1. An application for an order or an extension of an order authorizing or approving the installation and use of a pen register or a trap and trace device shall be made in writing upon oath or affirmation to a district court. A special state agent may only conduct an investigation authorized under this section or section 808B.12. An application shall include the following information:

a. The identity of the prosecuting attorney, and the identity of the special state agent authorized to conduct the investigation.

b. A certified statement by the special state agent that the information likely to be obtained is relevant to an ongoing criminal investigation of an offense listed under section 808B.3 or an offense that may lead to immediate death or serious bodily injury of a person.

2. Upon application the court may enter an ex parte order or an ex parte extension of an order, authorizing the installation and use of a pen register or trap and trace device within the territorial jurisdiction of the court, if the court finds that the special state agent has certified to the court that the information likely to be obtained by the use of a pen register or trap and trace device is relevant to an ongoing criminal investigation of an offense listed under section 808B.3 or an offense that may lead to the immediate death of or serious bodily injury of a person.*

3. Each order authorizing the interception of a communication under this section shall specify all of the following:

a. The identity of the person, if known, who owns or leases the telephone line where the pen register or trap and trace device will be attached.

b. The identity of the person, if known, who is the subject of the criminal investigation.

c. The telephone number if known, and the physical location of the telephone line where the pen register or trap and trace device will be attached, and the geographic limits of the trap and trace device.

d. Upon request of the applicant, direct the furnishing of information, facilities, and technical assistance necessary to accomplish the installation of a pen register or trap and trace device.

e. The period of time during which the use of the pen register or trap and trace device is authorized, which shall be no greater than sixty days.

f. If the application is for the extension of an order and after a judicial finding required under subsection 2, authorize the extension of an order. Each extension of an order shall not exceed sixty days.

* See chapter 208, §64 herein

4. Any order granted under this section shall be sealed until otherwise ordered by the court.

a. Any person owning or leasing the telephone line to which the pen register or trap and trace device is attached, or who has been ordered by the court to furnish information, facilities, or technical assistance to the applicant, shall not disclose the existence of the pen register or trap and trace device or the existence of the investigation of the listed subscriber, to any person, unless or until otherwise ordered by the court.

b. Notwithstanding subsection 4, a prosecuting attorney or special state agent may utilize or share any information obtained from the use of a pen register or trap and trace device with other prosecuting attorneys or law enforcement agencies while acting within the scope of their employment.

c. A violation of this subsection may be punished as contempt of court.*

Sec. 27. NEW SECTION. 808B.12 EMERGENCY APPLICATION AND ORDER.

1. Notwithstanding any other provision of this chapter, the issuance of an order under this section may be based upon sworn oral testimony communicated by the director of the division of criminal investigation, the director of the division of narcotics enforcement, a special state agent authorized by the prosecuting attorney, or the prosecuting attorney, via the telephone, if the judge who is asked to issue the order is satisfied that the circumstances make it reasonable to dispense with a written affidavit. A pen register or trap and trace device may only be installed and used if both of the following occur:

a. The court reasonably determines that an emergency situation exists that involves immediate danger of death or serious bodily injury to any person.**

b. A written order approving the installation or use of a pen register or trap and trace device is obtained under section 808B.11 within forty-eight hours of the issuance of an order under this section.

2. In the absence of an authorizing order, under section 808B.11, an emergency order shall immediately terminate upon the earlier of obtainment of the information sought, denial of the application under section 808B.11, or the lapse of forty-eight hours after the authorization of the installation of the pen register or trap and trace device under subsection 1.

3. An investigative or law enforcement officer who knowingly uses a pen register or trap and trace device pursuant to this section after the effectiveness of the authorizing*** order has terminated pursuant to subsection 2 due to the lapse of the forty-eight hours commits a serious misdemeanor.

4. A provider for a wire or electronic communication service, landlord, custodian, or other person who furnishes facilities or technical assistance pursuant to this section shall be reasonably compensated for such reasonable expenses incurred in providing such facilities and assistance.

Sec. 28. NEW SECTION. 808B.13 ASSISTANCE IN INSTALLATION AND USE OF A PEN REGISTER OR A TRAP AND TRACE DEVICE.

1. Upon the request of the prosecuting attorney or the special state agent authorized to install and use a pen register under this chapter, and as directed by court order, a provider of a wire or electronic communication service, landlord, custodian, or other person shall furnish such investigative or law enforcement officer forthwith with all information, facilities, and technical assistance necessary to accomplish the installation of the pen register unobtrusively and with a minimum of interference with the service that the person so ordered by the court accords the party with respect to whom the installation and use is to take place.

2. Upon the request of the prosecuting attorney or the special state agent authorized to receive the results of a trap and trace device under this chapter, and as directed by court order, a provider of a wire or electronic communication service, landlord, custodian, or other person shall install such device forthwith on the appropriate telephone line and shall furnish such investigative or law enforcement officer with all additional information, facilities,

* See chapter 208, §65 herein

** See chapter 208, §66 herein

*** See chapter 208, §67 herein

and technical assistance including installation and operation of the device unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place. Unless otherwise ordered by the court, the results of the trap and trace device shall be furnished, to the authorized law enforcement agency designated in the court order, at reasonable intervals during regular business hours for the duration of the order.

3. A provider of a wire or electronic communication service, landlord, custodian, or other person who furnishes facilities or technical assistance pursuant to this section shall be compensated for reasonable expenses incurred in providing such facilities and assistance.

4. A cause of action shall not lie in any court against any provider of a wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order under section 808B.11 or 808B.12.

5. A good faith reliance on a court order under section 808B.11 or 808B.12 is a complete defense against any civil or criminal action brought under this chapter or any other statute.

Sec. 29. NEW SECTION. 808B.14 REPORTING INSTALLATION AND USE OF PEN REGISTERS AND TRAP AND TRACE DEVICES.

In January of each year, the attorney general and the county attorneys of this state shall report, to the state court administrator, the number of pen register orders and orders for trap and trace devices applied for and obtained by their offices during the preceding calendar year.

Approved April 28, 1999

CHAPTER 79

MECHANICS' LIENS

S.F. 429

AN ACT relating to notification of forfeited and cancelled mechanics' liens, challenging a mechanic's lien, and providing a remedy.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 572.23, Code 1999, is amended to read as follows:

572.23 ACKNOWLEDGMENT OF SATISFACTION OF CLAIM.

1. When a mechanic's lien is satisfied by payment of the claim, the claimant shall acknowledge satisfaction thereof upon the mechanic's lien book, or otherwise in writing, and, if the claimant neglects to do so for thirty days after demand in writing is personally served upon the claimant, the claimant shall forfeit and pay twenty-five dollars to the owner or contractor, and be liable to any person injured to the extent of the injury.

2. If acknowledgment of satisfaction is not filed within thirty days after service of the demand in writing, the party serving the demand or causing the demand to be served may file for record with the clerk of the district court a copy of the demand with proofs of service attached and endorsed and, in case of service by publication, a personal affidavit that personal service could not be made within this state. Upon completion of the requirements of this subsection, the record shall be constructive notice to all parties of the due forfeiture and cancellation of the lien. Upon the filing of the forfeiture of the lien, the clerk of the district court shall mail a file-stamped copy of the cancellation to both parties.