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McKibben  
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SSB-1132  
Judiciary  
Succeeded by  
(SF) HF 309

SENATE/HOUSE FILE \_\_\_\_\_  
BY (PROPOSED ATTORNEY GENERAL  
BILL)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act relating to the interception of communications and  
2 providing penalties.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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~~Section 808B.1~~

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

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

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

12 Sec. 2. Section 808B.1, Code 1999, is amended by adding  
13 the following new subsection:

14 NEW SUBSECTION. 3A. "Electronic communication" means any  
15 transfer of signals, signs, writing, images, sounds, data, or  
16 intelligence of any nature transmitted in whole or in part by  
17 a wire, radio, electromagnetic, photoelectronic or  
18 photooptical system that affects intrastate, interstate, or  
19 foreign commerce, but excludes the following:

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

23 Sec. 3. Section 808B.1, subsection 4, unnumbered paragraph  
24 1, Code 1999, is amended to read as follows:

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

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

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

35 Sec. 5. Section 808B.1, Code 1999, is amended by adding

1 the following new subsections:

2 NEW SUBSECTION. 7A. "Pen register" means a device which  
3 records or decodes electronic or other impulses which identify  
4 the numbers dialed or otherwise transmitted on the telephone  
5 line to which such device is attached. However, such term  
6 excludes any device used by a provider or customer of a wire  
7 or electronic communication service for billing, or recording  
8 as an incident to billing, for communications services  
9 provided by such provider of any device used by a provider, or  
10 any device used by a provider or customer of a wire  
11 communication service for cost accounting or other like  
12 purposes in the ordinary course of its business. \_\_\_\_\_

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

18 Sec. 6. Section 808B.2, subsection 1, paragraph a, Code  
19 1999, is amended to read as follows:

20 a. Willfully intercepts, endeavors to intercept, or pro-  
21 cures any other person to intercept or endeavor to intercept,  
22 a wire, communication-or oral, or electronic communication.

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

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

31 d. Willfully uses, or endeavors to use, the contents of a  
32 wire, communication-or oral, or electronic communication,  
33 knowing or having reason to know that the information was  
34 obtained through the interception of a wire, communication-or  
35 oral, or electronic communication in violation of this

1 subsection.

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

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

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

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

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

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

31 808B.3 COURT ORDER FOR INTERCEPTION BY SPECIAL AGENTS.

32 The attorney general shall authorize and prepare any  
33 application for an order authorizing the interception of wire,  
34 ~~communications~~-or oral, or electronic communications. The  
35 attorney general may apply to any district court of this

1 state, or request that the county attorney in the district  
 2 where application is to be made deliver the application of the  
 3 attorney general, for an order authorizing the interception of  
 4 wire, communications-or oral, or electronic communications,  
 5 and the court may grant, subject to this chapter, an order  
 6 authorizing the interception of wire, communications-or oral,  
 7 or electronic communications by special state agents having  
 8 responsibility for the investigation of the offense as to  
 9 which application is made, when the interception may provide  
 10 or has provided evidence of the commission-of-felony-offenses  
 11 involving-dealing-in-controlled-substances, as-defined-in  
 12 section-124.101, subsection-5: following:

- 13 1. A felony offense involving dealing in controlled
- 14 substances, as defined in section 124.101.
- 15 2. A felony offense involving ongoing criminal conduct, in
- 16 violation of chapter 706A.
- 17 3. A felony offense involving money laundering, in
- 18 violation of chapter 706B.

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

- 21 808B.4 PERMISSIBLE DISCLOSURE AND USE.
- 22 1. A special state agent who, by any means authorized by
- 23 this chapter, has obtained knowledge of the contents of a
- 24 wire, communication-or oral, or electronic communication, or
- 25 has obtained evidence derived from a wire, communication-or
- 26 oral, or electronic communication, may disclose the contents
- 27 to another investigative or law enforcement officer to the
- 28 extent that the disclosure is appropriate to the proper
- 29 performance of the official duties of the officer making or
- 30 receiving the disclosure.
- 31 2. An investigative or law enforcement officer who, by any
- 32 means authorized by this chapter, has obtained knowledge of
- 33 the contents of a wire, communication-or oral, or electronic
- 34 communication or has obtained evidence derived from a wire,
- 35 communication-or oral, or electronic communication may use the

1 contents to the extent the use is appropriate to the proper  
2 performance of the officer's official duties.

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

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

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

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

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

1 Sec. 13. Section 808B.5, subsection 1, paragraph e, Code  
2 1999, is amended to read as follows:

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

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

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

19 Sec. 15. Section 808B.5, subsection 3, paragraph d, Code  
20 1999, is amended to read as follows:

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

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

30 Each order authorizing the interception of a wire,  
31 communication-or oral, or electronic communication shall  
32 specify all of the following:

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

35 5. Each order authorizing the interception of a wire,

1 communication-or oral, or electronic communication shall, upon  
2 request of the applicant, direct that a communications common  
3 carrier, landlord, custodian, or other person shall furnish to  
4 the applicant all information, facilities, and technical  
5 assistance necessary to accomplish the interception  
6 inconspicuously and with a minimum of interference with the  
7 services that the carrier, landlord, custodian, or person is  
8 giving to the person whose communications are to be  
9 intercepted. Any communications common carrier, landlord,  
10 custodian, or other person furnishing facilities or technical  
11 assistance shall be compensated by the applicant at the  
12 prevailing rates.

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

35 Sec. 18. Section 808B.5, subsection 8, unnumbered



1 paragraph 1, Code 1999, is amended to read as follows:

2 The contents of a wire, communication-or oral, or  
3 electronic communication intercepted by a means authorized by  
4 this chapter shall, if possible, be recorded on tape or wire  
5 or other comparable device. The recording of the contents of  
6 a wire, communication-or oral, or electronic communication  
7 under this subsection shall be done in a way which will  
8 protect the recording from editing or other alterations.

9 Immediately upon the expiration of the period of the order, or  
10 extensions of it, the recordings shall be made available to  
11 the court issuing the order and shall be sealed under the  
12 court's directions. Custody of the recordings shall be in  
13 accordance with the court order. Recordings shall be kept for  
14 five years and shall then be destroyed unless it is necessary  
15 to keep the recordings due to a continued legal process or  
16 court order, but the recordings shall not be kept for longer  
17 than ten years. Duplicate recordings may be made for  
18 disclosure or use pursuant to section 808B.4, subsections 1  
19 and 2. The presence of a seal, or a satisfactory explanation  
20 for its absence, is a prerequisite for the disclosure or use  
21 of the contents of a wire, communication-or oral, or  
22 electronic communication or evidence derived from a  
23 communication under section 808B.4, subsection 3.

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

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

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

30 10. The contents of an intercepted wire, communication-or  
31 oral, or electronic communication or evidence derived from the  
32 wire, communication-or oral, or electronic communication shall  
33 not be received in evidence or otherwise disclosed in a trial,  
34 hearing, or other proceeding in a federal or state court  
35 unless each party, not less than ten days before the trial,

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

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

13 11. An aggrieved person in a trial, hearing, or proceeding  
14 in or before any court, department, officer, agency,  
15 regulatory body, or other authority of this state, may move to  
16 suppress the contents of an intercepted wire, communication-or  
17 oral, or electronic communication, or evidence derived from  
18 the wire, communication-or oral, or electronic communication,  
19 on the grounds that the communication was unlawfully  
20 intercepted, the order of authorization under which it was  
21 intercepted was insufficient on its face, or the interception  
22 was not made in conformity with the order of authorization.  
23 The motion shall be made before the trial, hearing, or  
24 proceeding unless there was no opportunity to make the motion  
25 or the person was not aware of the grounds of the motion. If  
26 the motion is granted, the contents of the intercepted wire,  
27 communication-or oral, or electronic communication, or  
28 evidence derived from the wire communication or oral  
29 communication, shall be treated as having been obtained in  
30 violation of this chapter.

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

33 808B.7 CONTENTS OF INTERCEPTED WIRE, OR ORAL, OR  
34 ELECTRONIC COMMUNICATION AS EVIDENCE.

35 The contents or any part of the contents of an intercepted

1 wire, communication-or oral, or electronic communication and  
 2 any evidence derived from the wire, communication-or oral, or  
 3 electronic communication shall not be received in evidence in  
 4 a trial, hearing, or other proceeding in or before a court,  
 5 grand jury, department, officer, agency, regulatory body,  
 6 legislative committee, or other authority of the United  
 7 States, a state, or political subdivision of a state if the  
 8 disclosure of that information would be in violation of this  
 9 chapter.

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

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

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

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

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

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

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

34 b. If a wire or electronic communication was initiated or  
 35 completed in order to protect the provider of the wire or

1 electronic communication service, another provider furnishing  
2 service toward the completion of the wire or electronic  
3 communication, or a user of the service, from fraudulent,  
4 unlawful, or abusive use of the service.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 b. Notwithstanding subsection 4, a prosecuting attorney or  
35 special state agent may utilize or share any information

1 obtained from the use of a pen register or trap and trace  
2 device with other prosecuting attorneys or law enforcement  
3 agencies while acting within the scope of their employment.

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

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

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

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

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

26 2. In the absence of an authorizing order, under section  
27 808B.11, an emergency order shall immediately terminate upon  
28 the earlier of obtainment of the information sought, denial of  
29 the application under section 808B.11, or the lapse of forty-  
30 eight hours after the authorization of the installation of the  
31 pen register or trap and trace device under subsection 1.

32 3. An investigative or law enforcement officer who  
33 knowingly uses a pen register or trap and trace device  
34 pursuant to this section after the effectiveness of the  
35 authorizing order has terminated pursuant to subsection 2 due

1 to the lapse of the forty-eight hours commits a serious  
2 misdemeanor.

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

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

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

21 2. Upon the request of the prosecuting attorney or the  
22 special state agent authorized to receive the results of a  
23 trap and trace device under this chapter, and as directed by  
24 court order, a provider of a wire or electronic communication  
25 service, landlord, custodian, or other person shall install  
26 such device forthwith on the appropriate telephone line and  
27 shall furnish such investigative or law enforcement officer  
28 with all additional information, facilities, and technical  
29 assistance including installation and operation of the device  
30 unobtrusively and with a minimum of interference with the  
31 services that the person so ordered by the court accords the  
32 party with respect to whom the installation and use is to take  
33 place. Unless otherwise ordered by the court, the results of  
34 the trap and trace device shall be furnished, to the  
35 authorized law enforcement agency designated in the court

1 order, at reasonable intervals during regular business hours  
2 for the duration of the order.

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

8 4. A cause of action shall not lie in any court against  
9 any provider of a wire or electronic communication service,  
10 its officers, employees, agents, or other specified persons  
11 for providing information, facilities, or assistance in  
12 accordance with the terms of a court order under section  
13 808B.11 or 808B.12.

14 5. A good faith reliance on a court order under section  
15 808B.11 or 808B.12 is a complete defense against any civil or  
16 criminal action brought under this chapter or any other  
17 statute.

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

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

25 EXPLANATION

26 This bill amends Code chapter 808B regarding the  
27 interception of communications.

28 The bill provides that law enforcement authorities may  
29 intercept an electronic communication, if prior court approval  
30 is obtained. Existing law only permits the interception of  
31 wire or oral communications. An electronic communication is  
32 generally, any alpha numeric transmission by a pager.

33 The bill also authorizes under state law the use of a pen  
34 register or a trap and trace device by law enforcement  
35 authorities. A pen register is a device used to identify any



1 telephone number dialed from a certain telephone number. A  
2 trap and trace device is a device used to identify the  
3 telephone number of any incoming call to a certain telephone  
4 number.

5 The bill provides that a pen register or trap and trace  
6 device shall not be installed unless prior court authorization  
7 is obtained. However, a pen register or trap and trace device  
8 may be used without a court order, if it relates to the  
9 operation, protection, or maintenance of telephone service, or  
10 if consent is obtained from the person being monitored.

11 The bill establishes the procedure for obtaining  
12 authorization from the court to use a pen register or trap and  
13 trace device. The applicant must provide information under  
14 oath and in writing to the court, that the information likely  
15 to be obtained is relevant to an ongoing criminal  
16 investigation. The court must find that relevant information  
17 to an ongoing criminal investigation is likely to be obtained  
18 from the use of a pen register or trap and trace device.

19 The bill also establishes the procedure for obtaining an  
20 emergency order to use a pen register or trap and trace  
21 device. The applicant may telephone the court to obtain an  
22 oral order authorizing the use of a pen register or trap and  
23 trace device if an emergency situation exists that may lead to  
24 the immediate death or serious bodily injury of a person. An  
25 emergency order may only be in effect for forty-eight hours.

26 The bill provides that the court may also, upon the request  
27 of law enforcement, order a common communications carrier,  
28 landlord, or any other person to assist law enforcement in the  
29 installation and use of a pen register or trap and trace  
30 device. Any person assisting law enforcement shall be  
31 compensated for the services provided and shall not be held  
32 liable for compliance with the statute or with a court order  
33 issued pursuant to the statute.

34 Any authorized order issued pursuant to this bill is  
35 effective for only 60 days. However, the court may authorize

1 an extension of its order for up to an additional 60 days.

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THOMAS J. MILLER  
ATTORNEY GENERAL

## Department of Justice

ADDRESS REPLY TO:  
HOOVER BUILDING  
DES MOINES, IOWA 50319  
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### MEMORANDUM

**TO:** Members of the General Assembly  
**FROM:** Anne Bunz, Legislative Liaison  
**DATE:** September 27, 1998  
**SUBJECT:** Interception of Communication, Iowa Code Chapter 808B

The Iowa Attorney General's Office is submitting a bill request for legislation dealing with the interception of communication, (Iowa Code, 808B). This bill updates Chapter 808B. These updates reflect the 1994 federal wiretap law, "Communications Law Enforcement Assistance Act", as well as the model law which was put forth by a bipartisan group, called "The President's Commission on Model State Drug Laws." This Commission was convened under the Bush Administration and concluded its work in 1993 under the Clinton Administration.

Court-approved surveillance is one of the most important, not to mention the most powerful tool that law enforcement has to prevent or solve criminal activity. Evidence and information obtained through court-authorized electronic surveillance generally can not be obtained through other methods or investigative techniques.

The major thrust of this bill allows authorized law enforcement, subject to court order, to intercept any wire, oral, or electronic communication that is being used in specified criminal activity. There are three sections to the bill: technology, authorization, and pen registers and trap and trace devices.

#### **I. Technology**

Iowa law fails to address the inception of pagers, cellular phones, and other new wireless and electronic technologies. This proposal will provide authorized law enforcement with the technical assistance necessary to conduct lawful interceptions of communications. The current law only provides for wire communication and oral communications, this proposal expands this section to include electronic communication.

## **II. Authorization**

Currently, 808B only allows for authorized persons to obtain a court order for interception of communication when there is evidence of a felony drug offense. This proposal expands the law to include evidence of felony offenses of money laundering or ongoing criminal conduct.

## **III. Pen Registers/Trap and Trace Devices**

Part three of the proposal allows for authorized law enforcement to use pen registers or trap and trace devices when there is evidence of felony offenses regarding drugs, money laundering or ongoing criminal conduct. Iowa is already using pen registers and trap and trace devices, however pursuant to federal law.

The pen register only identifies the numbers dialed from the telephone line to which the device is attached. The trap and trace device identifies the numbers of the incoming calls to which the device is attached. The use of pen registers and/or trap and trace devices are less intrusive than an ordinary wiretap. They are less intrusive, because conversations are not being recorded – just numbers. These devices are also less expensive than wiretaps. The devices require little monitoring and less manpower.

This section also allows for the use of pen registers and trap and trace devices to be used when an emergency situation exists that involves immediate danger of death or serious bodily injury to any person.

FILED

MAR 4 1999

H-3/18/99 Judiciary  
H-3/30/99 Do Pass

SENATE FILE **309**  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 1132)

Passed Senate, Date <sup>(p.625)</sup> 3-16-99 Passed House, Date <sup>(p.1187)</sup> 4/12/99  
Vote: Ayes 44 Nays 5 Vote: Ayes 89 Nays 4  
Approved April 28, 1999

A BILL FOR

1 An Act relating to the interception of communications and  
2 providing penalties.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SF 309

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

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

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

12 Sec. 2. Section 808B.1, Code 1999, is amended by adding  
13 the following new subsection:

14 NEW SUBSECTION. 3A. "Electronic communication" means any  
15 transfer of signals, signs, writing, images, sounds, data, or  
16 intelligence of any nature transmitted in whole or in part by  
17 a wire, radio, electromagnetic, photoelectronic or  
18 photooptical system that affects intrastate, interstate, or  
19 foreign commerce, but excludes the following:

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

23 Sec. 3. Section 808B.1, subsection 4, unnumbered paragraph  
24 1, Code 1999, is amended to read as follows:

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

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

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

35 Sec. 5. Section 808B.1, Code 1999, is amended by adding

1 the following new subsections:

2 NEW SUBSECTION. 7A. "Pen register" means a device which  
3 records or decodes electronic or other impulses which identify  
4 the numbers dialed or otherwise transmitted on the telephone  
5 line to which such device is attached. However, such term  
6 excludes any device used by a provider or customer of a wire  
7 or electronic communication service for billing, or recording  
8 as an incident to billing, for communications services  
9 provided by such provider of any device used by a provider, or  
10 any device used by a provider or customer of a wire  
11 communication service for cost accounting or other like  
12 purposes in the ordinary course of its business.

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

18 Sec. 6. Section 808B.2, subsection 1, paragraph a, Code  
19 1999, is amended to read as follows:

20 a. Willfully intercepts, endeavors to intercept, or pro-  
21 cures any other person to intercept or endeavor to intercept,  
22 a wire, communication-or oral, or electronic communication.

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

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

31 d. Willfully uses, or endeavors to use, the contents of a  
32 wire, communication-or oral, or electronic communication,  
33 knowing or having reason to know that the information was  
34 obtained through the interception of a wire, communication-or  
35 oral, or electronic communication in violation of this

1 subsection.

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

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

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

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

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

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

31 808B.3 COURT ORDER FOR INTERCEPTION BY SPECIAL AGENTS.

32 The attorney general shall authorize and prepare any  
33 application for an order authorizing the interception of wire,  
34 communications-or oral, or electronic communications. The  
35 attorney general may apply to any district court of this



1 state, or request that the county attorney in the district  
2 where application is to be made deliver the application of the  
3 attorney general, for an order authorizing the interception of  
4 wire, ~~communications-or~~ oral, or electronic communications,  
5 and the court may grant, subject to this chapter, an order  
6 authorizing the interception of wire, ~~communications-or~~ oral,  
7 or electronic communications by special state agents having  
8 responsibility for the investigation of the offense as to  
9 which application is made, when the interception may provide  
10 or has provided evidence of the ~~commission-of-felony-offenses~~  
11 ~~involving-dealing-in-controlled-substances,-as-defined-in~~  
12 ~~section-124.101,-subsection-5:~~ following:

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

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

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

19 808B.4 PERMISSIBLE DISCLOSURE AND USE.

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

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

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

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

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

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

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

34 Sec. 13. Section 808B.5, subsection 1, paragraph e, Code  
35 1999, is amended to read as follows:

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

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

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

17 Sec. 15. Section 808B.5, subsection 3, paragraph d, Code  
18 1999, is amended to read as follows:

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

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

28 Each order authorizing the interception of a wire,  
29 communication-or oral, or electronic communication shall  
30 specify all of the following:

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

33 5. Each order authorizing the interception of a wire,  
34 communication-or oral, or electronic communication shall, upon  
35 request of the applicant, direct that a communications common

1 carrier, landlord, custodian, or other person shall furnish to  
2 the applicant all information, facilities, and technical  
3 assistance necessary to accomplish the interception  
4 inconspicuously and with a minimum of interference with the  
5 services that the carrier, landlord, custodian, or person is  
6 giving to the person whose communications are to be  
7 intercepted. Any communications common carrier, landlord,  
8 custodian, or other person furnishing facilities or technical  
9 assistance shall be compensated by the applicant at the  
10 prevailing rates.

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

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

35 The contents of a wire, ~~communication-or~~ oral, or

1 electronic communication intercepted by a means authorized by  
2 this chapter shall, if possible, be recorded on tape or wire  
3 or other comparable device. The recording of the contents of  
4 a wire, communication-or oral, or electronic communication  
5 under this subsection shall be done in a way which will  
6 protect the recording from editing or other alterations.  
7 Immediately upon the expiration of the period of the order, or  
8 extensions of it, the recordings shall be made available to  
9 the court issuing the order and shall be sealed under the  
10 court's directions. Custody of the recordings shall be in  
11 accordance with the court order. Recordings shall be kept for  
12 five years and shall then be destroyed unless it is necessary  
13 to keep the recordings due to a continued legal process or  
14 court order, but the recordings shall not be kept for longer  
15 than ten years. Duplicate recordings may be made for  
16 disclosure or use pursuant to section 808B.4, subsections 1  
17 and 2. The presence of a seal, or a satisfactory explanation  
18 for its absence, is a prerequisite for the disclosure or use  
19 of the contents of a wire, communication-or oral, or  
20 electronic communication or evidence derived from a  
21 communication under section 808B.4, subsection 3.

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

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

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

28 10. The contents of an intercepted wire, communication-or  
29 oral, or electronic communication or evidence derived from the  
30 wire, communication-or oral, or electronic communication shall  
31 not be received in evidence or otherwise disclosed in a trial,  
32 hearing, or other proceeding in a federal or state court  
33 unless each party, not less than ten days before the trial,  
34 hearing, or proceeding, has been furnished with a copy of the  
35 court order, and accompanying application, under which the

1 interception was authorized. This ten-day period may be  
2 waived by the court if it finds that it was not possible to  
3 furnish the party with the above information ten days before  
4 the trial, hearing, or proceeding and that the party will not  
5 be prejudiced by the delay in receiving the information. If  
6 the ten-day period is waived by the court, the court may grant  
7 a continuance, or enter such other order as it deems just  
8 under the circumstances.

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

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

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

31 808B.7 CONTENTS OF INTERCEPTED WIRE, OR ORAL, OR  
32 ELECTRONIC COMMUNICATION AS EVIDENCE.

33 The contents or any part of the contents of an intercepted  
34 wire, ~~communication-or~~ oral, or electronic communication and  
35 any evidence derived from the wire, ~~communication-or~~ oral, or

1 electronic communication shall not be received in evidence in  
2 a trial, hearing, or other proceeding in or before a court,  
3 grand jury, department, officer, agency, regulatory body,  
4 legislative committee, or other authority of the United  
5 States, a state, or political subdivision of a state if the  
6 disclosure of that information would be in violation of this  
7 chapter.

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

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

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

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

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

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

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

32 b. If a wire or electronic communication was initiated or  
33 completed in order to protect the provider of the wire or  
34 electronic communication service, another provider furnishing  
35 service toward the completion of the wire or electronic

1 communication, or a user of the service, from fraudulent,  
2 unlawful, or abusive use of the service.

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

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

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

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

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

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

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

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



1 following:

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

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

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

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

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

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

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

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

32 b. Notwithstanding subsection 4, a prosecuting attorney or  
33 special state agent may utilize or share any information  
34 obtained from the use of a pen register or trap and trace  
35 device with other prosecuting attorneys or law enforcement

1 agencies while acting within the scope of their employment.

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

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

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

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

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

24 2. In the absence of an authorizing order, under section  
25 808B.11, an emergency order shall immediately terminate upon  
26 the earlier of obtainment of the information sought, denial of  
27 the application under section 808B.11, or the lapse of forty-  
28 eight hours after the authorization of the installation of the  
29 pen register or trap and trace device under subsection 1.

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

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

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

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

19 2. Upon the request of the prosecuting attorney or the  
20 special state agent authorized to receive the results of a  
21 trap and trace device under this chapter, and as directed by  
22 court order, a provider of a wire or electronic communication  
23 service, landlord, custodian, or other person shall install  
24 such device forthwith on the appropriate telephone line and  
25 shall furnish such investigative or law enforcement officer  
26 with all additional information, facilities, and technical  
27 assistance including installation and operation of the device  
28 unobtrusively and with a minimum of interference with the  
29 services that the person so ordered by the court accords the  
30 party with respect to whom the installation and use is to take  
31 place. Unless otherwise ordered by the court, the results of  
32 the trap and trace device shall be furnished, to the  
33 authorized law enforcement agency designated in the court  
34 order, at reasonable intervals during regular business hours  
35 for the duration of the order.

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

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

12 5. A good faith reliance on a court order under section  
13 808B.11 or 808B.12 is a complete defense against any civil or  
14 criminal action brought under this chapter or any other  
15 statute.

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

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

23 EXPLANATION

24 This bill amends Code chapter 808B regarding the  
25 interception of communications.

26 The bill provides that law enforcement authorities may  
27 intercept an electronic communication, if prior court approval  
28 is obtained. Existing law only permits the interception of  
29 wire or oral communications. An electronic communication is,  
30 generally, any alphanumeric transmission by a pager. A wire,  
31 oral, or electronic communication may be intercepted for drug-  
32 related or money laundering offenses.

33 The bill also authorizes under state law the use of a pen  
34 register or a trap and trace device by law enforcement  
35 authorities. A pen register is a device used to identify any

1 telephone number dialed from a certain telephone number. A  
2 trap and trace device is a device used to identify the  
3 telephone number of any incoming call to a certain telephone  
4 number.

5 The bill provides that a pen register or trap and trace  
6 device shall not be installed unless prior court authorization  
7 is obtained. However, a pen register or trap and trace device  
8 may be used without a court order, if it relates to the  
9 operation, protection, or maintenance of telephone service, or  
10 if consent is obtained from the person using the service.

11 The bill establishes the procedure for obtaining  
12 authorization from the court to use a pen register or trap and  
13 trace device. The applicant must provide information under  
14 oath and in writing to the court, that the information likely  
15 to be obtained is relevant to an ongoing criminal  
16 investigation. The court must find that relevant information  
17 to an ongoing criminal investigation is likely to be obtained  
18 from the use of a pen register or trap and trace device.

19 The bill also establishes the procedure for obtaining an  
20 emergency order to use a pen register or trap and trace  
21 device. The applicant may telephone the court to obtain an  
22 oral order authorizing the use of a pen register or trap and  
23 trace device if an emergency situation exists that may lead to  
24 the immediate death or serious bodily injury of a person. An  
25 emergency order may only be in effect for 48 hours.

26 The bill provides that the court may also, upon the request  
27 of law enforcement, order a common communications carrier,  
28 landlord, or any other person to assist law enforcement in the  
29 installation and use of a pen register or trap and trace  
30 device. Any person assisting law enforcement shall be  
31 compensated for the services provided and shall not be held  
32 liable for compliance with the statute or with a court order  
33 issued pursuant to the statute.

34 Any authorized order issued pursuant to this bill is  
35 effective for only 60 days. However, the court may authorize

1 an extension of its order for up to an additional 60 days.

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## 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, photoelectric 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. 9A. "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 oral, 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:

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.

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 of 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, 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.

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MARY E. KRAMER  
President of the Senate

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RON J. CORBETT  
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 309, Seventy-eighth General Assembly.

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MICHAEL E. MARSHALL  
Secretary of the Senate

Approved April 28, 1999

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THOMAS J. VILSACK  
Governor