

# Senate Study Bill 1132

## Bill Text

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1 1 Section 1. Section [808B.1](#), subsections 1 and 2, Code 1999,  
1 2 are amended to read as follows:  
1 3 1. "Aggrieved person" means a person who was a party to an  
1 4 intercepted wire,

~~communication or~~

~~oral, or electronic~~

1 5 communication or a person against whom the interception was  
1 6 directed.

1 7 2. "Contents", when used with respect to a wire,

1 8

~~communication or~~

~~oral, or electronic~~ communication, includes

1 9 any information concerning the identity of the parties to the  
1 10 communication or the existence, substance, purpose, or meaning  
1 11 of that communication.

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

1 14 NEW SUBSECTION. 3A. "Electronic communication" means any  
1 15 transfer of signals, signs, writing, images, sounds, data, or  
1 16 intelligence of any nature transmitted in whole or in part by  
1 17 a wire, radio, electromagnetic, photoelectronic or  
1 18 photooptical system that affects intrastate, interstate, or  
1 19 foreign commerce, but excludes the following:

1 20 a. Wire or oral communication.

1 21 b. Communication made through a tone only paging device.

1 22 c. Communication from a tracking device.

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

1 25 "Electronic, mechanical, or other device" means a device or  
1 26 apparatus which can be used to intercept a wire,

~~communication~~

~~-~~

1 27

~~or~~

~~oral, or electronic~~ communication other than either of the  
1 28 following:

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

1 31 5. "Intercept" or "interception" means the aural  
1 32 acquisition of the contents of a wire,

~~communication or~~

~~oral,~~

1 33 or electronic communication through the use of an electronic,  
1 34 mechanical, or other device.

1 35 Sec. 5. Section [808B.1](#), Code 1999, is amended by adding  
2 1 the following new subsections:

2 2 NEW SUBSECTION. 7A. "Pen register" means a device which  
2 3 records or decodes electronic or other impulses which identify  
2 4 the numbers dialed or otherwise transmitted on the telephone  
2 5 line to which such device is attached. However, such term  
2 6 excludes any device used by a provider or customer of a wire

2 7 or electronic communication service for billing, or recording  
2 8 as an incident to billing, for communications services  
2 9 provided by such provider of any device used by a provider, or  
2 10 any device used by a provider or customer of a wire  
2 11 communication service for cost accounting or other like  
2 12 purposes in the ordinary course of its business.

2 13 NEW SUBSECTION. 8A. "Trap and trace device" means a  
2 14 device which captures the incoming electronic or other  
2 15 impulses which identify the originating number of an  
2 16 instrument or device from which a wire or electronic  
2 17 communication was transmitted.

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

2 20 a. Willfully intercepts, endeavors to intercept, or pro-  
2 21 cures any other person to intercept or endeavor to intercept,  
2 22 a wire,

~~communication or~~  
- oral, or electronic communication.

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

2 25 c. Willfully discloses, or endeavors to disclose, to any  
2 26 other person the contents of a wire,

~~communication or~~  
- oral, or  
2 27 electronic communication, knowing or having reason to know  
2 28 that the information was obtained through the interception of  
2 29 a wire,

~~communication or~~  
- oral, or electronic communication in  
2 30 violation of this subsection.  
2 31 d. Willfully uses, or endeavors to use, the contents of a  
2 32 wire,

~~communication or~~  
- oral, or electronic communication,  
2 33 knowing or having reason to know that the information was  
2 34 obtained through the interception of a wire,

~~communication or~~  
-  
2 35 oral, or electronic communication in violation of this  
3 1 subsection.  
3 2 Sec. 8. Section 808B.2, subsection 2, paragraphs b and c,  
3 3 Code 1999, are amended to read as follows:  
3 4 b. It is not unlawful under this chapter for a person  
3 5 acting under color of law to intercept a wire,

~~communication~~  
-  
3 6

~~or~~  
- oral, or electronic communication, if the person is a party  
3 7 to the communication or one of the parties to the  
3 8 communication has given prior consent to the interception.  
3 9 c. It is not unlawful under this chapter for a person not  
3 10 acting under color of law to intercept a wire,

~~communication~~  
-  
3 11

~~or~~  
- oral, or electronic communication if the person is a party

3 12 to the communication or if one of the parties to the  
3 13 communication has given prior consent to the interception,  
3 14 unless the communication is intercepted for the purpose of  
3 15 committing a criminal or tortious act in violation of the  
3 16 Constitution or laws of the United States or of any state or  
3 17 for the purpose of committing any other injurious act.

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

3 20 3. An operator of a switchboard, or an officer, employee,  
3 21 or agent of a communications common carrier, whose facilities  
3 22 are used in the transmission or interception of a wire,

~~or~~

3 23 oral, ~~or electronic~~ communication shall not disclose the  
3 24 existence of any transmission or interception or the device  
3 25 used to accomplish the transmission or interception with  
3 26 respect to a court order under this chapter, except as may  
3 27 otherwise be required by legal process or court order.  
3 28 Violation of this subsection is a class "D" felony.

3 29 Sec. 10. Section [808B.3](#), Code 1999, is amended to read as  
3 30 follows:

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

3 32 The attorney general shall authorize and prepare any  
3 33 application for an order authorizing the interception of wire,  
3 34

~~communications or~~

~~oral, or electronic~~ communications. The

3 35 attorney general may apply to any district court of this  
4 1 state, or request that the county attorney in the district  
4 2 where application is to be made deliver the application of the  
4 3 attorney general, for an order authorizing the interception of  
4 4 wire,

~~communications or~~

~~oral, or electronic~~ communications,

4 5 and the court may grant, subject to this chapter, an order  
4 6 authorizing the interception of wire,

~~communications or~~

~~oral,~~

4 7 ~~or electronic~~ communications by special state agents having  
4 8 responsibility for the investigation of the offense as to  
4 9 which application is made, when the interception may provide  
4 10 or has provided evidence of the

~~commission of felony offenses~~

4 11

~~involving dealing in controlled substances, as defined in~~

4 12

~~section 124.101, subsection 5.~~

~~following:~~

4 13 1. A felony offense involving dealing in controlled  
4 14 substances, as defined in section 124.101.

4 15 2. A felony offense involving ongoing criminal conduct, in  
4 16 violation of chapter 706A.

4 17 3. A felony offense involving money laundering, in  
4 18 violation of chapter 706B.

4 19 Sec. 11. Section [808B.4](#), Code 1999, is amended to read as  
4 20 follows:

4 21 808B.4 PERMISSIBLE DISCLOSURE AND USE.

4 22 1. A special state agent who, by any means authorized by

4 23 this chapter, has obtained knowledge of the contents of a  
4 24 wire,

~~communication or~~

- oral, or electronic communication, or

4 25 has obtained evidence derived from a wire,

~~communication or~~

-  
4 26 oral, or electronic communication, may disclose the contents  
4 27 to another investigative or law enforcement officer to the  
4 28 extent that the disclosure is appropriate to the proper  
4 29 performance of the official duties of the officer making or  
4 30 receiving the disclosure.

4 31 2. An investigative or law enforcement officer who, by any  
4 32 means authorized by this chapter, has obtained knowledge of  
4 33 the contents of a wire,

~~communication or~~

- oral, or electronic

4 34 communication or has obtained evidence derived from a wire,

4 35

~~communication or~~

- oral, or electronic communication may use the

5 1 contents to the extent the use is appropriate to the proper  
5 2 performance of the officer's official duties.

5 3 3. A person who has received, by any means authorized by  
5 4 this chapter, any information concerning a wire,

~~communication~~

-  
5 5

~~or~~

- oral, or electronic communication, or evidence derived from

5 6 a wire,

~~communication or~~

- oral, or electronic communication

5 7 intercepted in accordance with this chapter may disclose the  
5 8 contents of that communication or derivative evidence while  
5 9 giving testimony under oath or affirmation in a criminal  
5 10 proceeding in any court of the United States or of this state  
5 11 or in any federal or state grand jury proceeding.

5 12 4. An otherwise privileged wire,

~~communication or~~

- oral, or

5 13 electronic communication intercepted in accordance with, or in  
5 14 violation of, the provisions of this chapter does not lose its  
5 15 privileged character.

5 16 5. If a special state agent, while engaged in intercepting  
5 17 a wire,

~~communication or~~

- oral, or electronic communication in

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

5 28 Sec. 12. Section [808B.5](#), subsection 1, unnumbered  
5 29 paragraph 1, Code 1999, is amended to read as follows:  
5 30 An application for an order authorizing or approving the  
5 31 interception of a wire\_

~~communication or~~

~~oral, or electronic~~

5 32 communication shall be made in writing upon oath or  
5 33 affirmation to a court and shall state the applicant's  
5 34 authority to make the application. An application shall  
5 35 include the following information:

6 1 Sec. 13. Section [808B.5](#), subsection 1, paragraph e, Code  
6 2 1999, is amended to read as follows:

6 3 e. A full and complete statement of the facts concerning  
6 4 all previous applications known to the individuals authorizing  
6 5 and making the application, made to any court for  
6 6 authorization to intercept, or for approval of interceptions  
6 7 of, wire\_

~~communications or~~

~~oral, or electronic~~ communications

6 8 involving any of the same persons, facilities or places  
6 9 specified in the application, and the action taken by the  
6 10 court on those applications.

6 11 Sec. 14. Section [808B.5](#), subsection 3, unnumbered  
6 12 paragraph 1, Code 1999, is amended to read as follows:

6 13 Upon application the court may enter an ex parte order, as  
6 14 requested or as modified, authorizing interception of wire\_  
6 15

~~communications or~~

~~oral, or electronic~~ communications within

6 16 the territorial jurisdiction of the court, if the court finds  
6 17 on the basis of the facts submitted by the applicant all of  
6 18 the following:

6 19 Sec. 15. Section [808B.5](#), subsection 3, paragraph d, Code  
6 20 1999, is amended to read as follows:

6 21 d. There is probable cause for belief that the facilities  
6 22 from which, or the place where, the wire\_

~~communications or~~

~~oral, or electronic~~ communications are to be intercepted are  
6 24 being used, or are about to be used, in connection with the  
6 25 commission of the offense, or are leased to, listed in the  
6 26 name of, or commonly used by the person whose communications  
6 27 are to be intercepted.

6 28 Sec. 16. Section [808B.5](#), subsection 4, unnumbered  
6 29 paragraph 1, Code 1999, is amended to read as follows:

6 30 Each order authorizing the interception of a wire\_  
6 31

~~communication or~~

~~oral, or electronic~~ communication shall

6 32 specify all of the following:

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

6 35 5. Each order authorizing the interception of a wire\_  
7 1

~~communication or~~

~~oral, or electronic~~ communication shall, upon

7 2 request of the applicant, direct that a communications common  
7 3 carrier, landlord, custodian, or other person shall furnish to  
7 4 the applicant all information, facilities, and technical  
7 5 assistance necessary to accomplish the interception  
7 6 inconspicuously and with a minimum of interference with the

7 7 services that the carrier, landlord, custodian, or person is  
7 8 giving to the person whose communications are to be  
7 9 intercepted. Any communications common carrier, landlord,  
7 10 custodian, or other person furnishing facilities or technical  
7 11 assistance shall be compensated by the applicant at the  
7 12 prevailing rates.  
7 13 6. An order entered under this section shall not authorize  
7 14 the interception of a wire,

~~communication or~~

~~oral, or~~

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

7 35 Sec. 18. Section 808B.5, subsection 8, unnumbered  
8 1 paragraph 1, Code 1999, is amended to read as follows:

8 2 The contents of a wire,

~~communication or~~

~~oral, or~~

8 3 electronic communication intercepted by a means authorized by  
8 4 this chapter shall, if possible, be recorded on tape or wire  
8 5 or other comparable device. The recording of the contents of  
8 6 a wire,

~~communication or~~

~~oral, or electronic~~ communication

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

~~communication or~~

~~oral, or~~

8 22 electronic communication or evidence derived from a  
8 23 communication under section 808B.4, subsection 3.

8 24 Sec. 19. Section 808B.5, subsection 9, paragraph b,  
8 25 subparagraph (3), Code 1999, is amended to read as follows:

8 26 (3) Whether, during the period, wire,

~~or~~

- oral, or

8 27 electronic communications were or were not intercepted.  
8 28 Sec. 20. Section [808B.5](#), subsection 10, Code 1999, is  
8 29 amended to read as follows:  
8 30 10. The contents of an intercepted wire,

~~communication or~~

8 31 oral, or electronic communication or evidence derived from the  
8 32 wire,

~~communication or~~

- oral, or electronic communication shall

8 33 not be received in evidence or otherwise disclosed in a trial,  
8 34 hearing, or other proceeding in a federal or state court  
8 35 unless each party, not less than ten days before the trial,  
9 1 hearing, or proceeding, has been furnished with a copy of the  
9 2 court order, and accompanying application, under which the  
9 3 interception was authorized. This ten-day period may be  
9 4 waived by the court if it finds that it was not possible to  
9 5 furnish the party with the above information ten days before  
9 6 the trial, hearing, or proceeding and that the party will not  
9 7 be prejudiced by the delay in receiving the information. If  
9 8 the ten-day period is waived by the court, the court may grant  
9 9 a continuance, or enter such other order as it deems just  
9 10 under the circumstances.

9 11 Sec. 21. Section [808B.5](#), subsection 11, Code 1999, is  
9 12 amended to read as follows:

9 13 11. An aggrieved person in a trial, hearing, or proceeding  
9 14 in or before any court, department, officer, agency,  
9 15 regulatory body, or other authority of this state, may move to  
9 16 suppress the contents of an intercepted wire,

~~communication or~~

9 17 oral, or electronic communication, or evidence derived from  
9 18 the wire,

~~communication or~~

- oral, or electronic communication,

9 19 on the grounds that the communication was unlawfully  
9 20 intercepted, the order of authorization under which it was  
9 21 intercepted was insufficient on its face, or the interception  
9 22 was not made in conformity with the order of authorization.  
9 23 The motion shall be made before the trial, hearing, or  
9 24 proceeding unless there was no opportunity to make the motion  
9 25 or the person was not aware of the grounds of the motion. If  
9 26 the motion is granted, the contents of the intercepted wire,  
9 27

~~communication or~~

- oral, or electronic communication, or

9 28 evidence derived from the wire communication or oral  
9 29 communication, shall be treated as having been obtained in  
9 30 violation of this chapter.

9 31 Sec. 22. Section [808B.7](#), Code 1999, is amended to read as  
9 32 follows:

9 33 808B.7 CONTENTS OF INTERCEPTED WIRE,

~~OR~~

- ORAL, OR

9 34 ELECTRONIC COMMUNICATION AS EVIDENCE.

9 35 The contents or any part of the contents of an intercepted  
10 1 wire,

~~communication or~~  
- oral, or electronic communication and  
10 2 any evidence derived from the wire,

~~communication or~~  
- oral, or  
10 3 electronic communication shall not be received in evidence in  
10 4 a trial, hearing, or other proceeding in or before a court,  
10 5 grand jury, department, officer, agency, regulatory body,  
10 6 legislative committee, or other authority of the United  
10 7 States, a state, or political subdivision of a state if the  
10 8 disclosure of that information would be in violation of this  
10 9 chapter.  
10 10 Sec. 23. Section 808B.8, subsection 1, unnumbered  
10 11 paragraph 1, Code 1999, is amended to read as follows:  
10 12 A person whose wire,

~~communication or~~  
- oral, or electronic  
10 13 communication is intercepted, disclosed, or used in violation  
10 14 of this chapter shall:  
10 15 Sec. 24. Section 808B.8, subsection 3, Code 1999, is  
10 16 amended to read as follows:  
10 17 3. A person whose wire,

~~communication or~~  
- oral, or  
10 18 electronic communication is intercepted, disclosed, or used in  
10 19 violation of this chapter may seek an injunction, either  
10 20 temporary or permanent, against any person who violates this  
10 21 chapter.  
10 22 Sec. 25. NEW SECTION. 808B.10 RESTRICTIONS ON USE AND  
10 23 INSTALLATION OF A PEN REGISTER OR A TRAP AND TRACE DEVICE.  
10 24 1. A person shall not install or use a pen register or a  
10 25 trap and trace device without first obtaining a court order  
10 26 pursuant to either section 808B.11 or 808B.12. However, a pen  
10 27 register or a trap and trace device may be used or installed  
10 28 without court order if any of the following apply:  
10 29 a. It relates to the operation, maintenance, and testing  
10 30 of a wire or electronic communication service or to the  
10 31 protection of the rights or property of the provider of the  
10 32 service, or to the protection of users of the service from  
10 33 abuse of the service or unlawful use of the service.  
10 34 b. If a wire or electronic communication was initiated or  
10 35 completed in order to protect the provider of the wire or  
11 1 electronic communication service, another provider furnishing  
11 2 service toward the completion of the wire or electronic  
11 3 communication, or a user of the service, from fraudulent,  
11 4 unlawful, or abusive use of the service.  
11 5 c. If consent was obtained from the user of the electronic  
11 6 or wire communication service.  
11 7 2. A person who knowingly violates this section commits a  
11 8 serious misdemeanor.  
11 9 Sec. 26. NEW SECTION. 808B.11 APPLICATION AND ORDER TO  
11 10 INSTALL AND USE A PEN REGISTER OR TRAP AND TRACE DEVICE.  
11 11 1. An application for an order or an extension of an order  
11 12 authorizing or approving the installation and use of a pen  
11 13 register or a trap and trace device shall be made in writing  
11 14 upon oath or affirmation to a district court. A special state  
11 15 agent may only conduct an investigation authorized under this  
11 16 section or section 808B.12. An application shall include the  
11 17 following information:  
11 18 a. The identity of the prosecuting attorney, and the  
11 19 identity of the special state agent authorized to conduct the  
11 20 investigation.  
11 21 b. A certified statement by the special state agent that  
11 22 the information likely to be obtained is relevant to an



11 23 ongoing criminal investigation of an offense listed under  
11 24 section 808B.3 or an offense that may lead to immediate death  
11 25 or serious bodily injury of a person.

11 26 2. Upon application the court may enter an ex parte order  
11 27 or an ex parte extension of an order, authorizing the  
11 28 installation and use of a pen register or trap and trace  
11 29 device within the territorial jurisdiction of the court, if  
11 30 the court finds that the special state agent has certified to  
11 31 the court that the information likely to be obtained by the  
11 32 use of a pen register or trap and trace device is relevant to  
11 33 an ongoing criminal investigation of an offense listed under  
11 34 section 808B.3 or an offense that may lead to the immediate  
11 35 death of or serious bodily injury of a person.

12 1 3. Each order authorizing the interception of a  
12 2 communication under this section shall specify all of the  
12 3 following:

12 4 a. The identity of the person, if known, who owns or  
12 5 leases the telephone line where the pen register or trap and  
12 6 trace device will be attached.

12 7 b. The identity of the person, if known, who is the  
12 8 subject of the criminal investigation.

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

12 13 d. Upon request of the applicant, direct the furnishing of  
12 14 information, facilities, and technical assistance necessary to  
12 15 accomplish the installation of a pen register or trap and  
12 16 trace device.

12 17 e. The period of time during which the use of the pen  
12 18 register or trap and trace device is authorized, which shall  
12 19 be no greater than sixty days.

12 20 f. If the application is for the extension of an order and  
12 21 after a judicial finding required under subsection 2,  
12 22 authorize the extension of an order. Each extension of an  
12 23 order shall not exceed sixty days.

12 24 4. Any order granted under this section shall be sealed  
12 25 until otherwise ordered by the court.

12 26 a. Any person owning or leasing the telephone line to  
12 27 which the pen register or trap and trace device is attached,  
12 28 or who has been ordered by the court to furnish information  
12 29 facilities, or technical assistance to the applicant, shall  
12 30 not disclose the existence of the pen register or trap and  
12 31 trace device or the existence of the investigation of the  
12 32 listed subscriber, to any person, unless or until otherwise  
12 33 ordered by the court.

12 34 b. Notwithstanding subsection 4, a prosecuting attorney or  
12 35 special state agent may utilize or share any information  
13 1 obtained from the use of a pen register or trap and trace  
13 2 device with other prosecuting attorneys or law enforcement  
13 3 agencies while acting within the scope of their employment.

13 4 c. A violation of this subsection may be punished as  
13 5 contempt of court.

13 6 Sec. 27. NEW SECTION. 808B.12 EMERGENCY APPLICATION AND  
13 7 ORDER.

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

13 19 a. The court reasonably determines that an emergency

13 20 situation exists that involves immediate danger of death or  
13 21 serious bodily injury to any person.

13 22 b. A written order approving the installation or use of a  
13 23 pen register or trap and trace device is obtained under  
13 24 section 808B.11 within forty-eight hours of the issuance of an  
13 25 order under this section.

13 26 2. In the absence of an authorizing order, under section  
13 27 808B.11, an emergency order shall immediately terminate upon  
13 28 the earlier of obtainment of the information sought, denial of  
13 29 the application under section 808B.11, or the lapse of forty-  
13 30 eight hours after the authorization of the installation of the  
13 31 pen register or trap and trace device under subsection 1.

13 32 3. An investigative or law enforcement officer who  
13 33 knowingly uses a pen register or trap and trace device  
13 34 pursuant to this section after the effectiveness of the  
13 35 authorizing order has terminated pursuant to subsection 2 due  
14 1 to the lapse of the forty-eight hours commits a serious  
14 2 misdemeanor.

14 3 4. A provider for a wire or electronic communication  
14 4 service, landlord, custodian, or other person who furnishes  
14 5 facilities or technical assistance pursuant to this section  
14 6 shall be reasonably compensated for such reasonable expenses  
14 7 incurred in providing such facilities and assistance.

14 8 Sec. 28. NEW SECTION. 808B.13 ASSISTANCE IN INSTALLATION  
14 9 AND USE OF A PEN REGISTER OR A TRAP AND TRACE DEVICE.

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

14 21 2. Upon the request of the prosecuting attorney or the  
14 22 special state agent authorized to receive the results of a  
14 23 trap and trace device under this chapter, and as directed by  
14 24 court order, a provider of a wire or electronic communication  
14 25 service, landlord, custodian, or other person shall install  
14 26 such device forthwith on the appropriate telephone line and  
14 27 shall furnish such investigative or law enforcement officer  
14 28 with all additional information, facilities, and technical  
14 29 assistance including installation and operation of the device  
14 30 unobtrusively and with a minimum of interference with the  
14 31 services that the person so ordered by the court accords the  
14 32 party with respect to whom the installation and use is to take  
14 33 place. Unless otherwise ordered by the court, the results of  
14 34 the trap and trace device shall be furnished, to the  
14 35 authorized law enforcement agency designated in the court  
15 1 order, at reasonable intervals during regular business hours  
15 2 for the duration of the order.

15 3 3. A provider of a wire or electronic communication  
15 4 service, landlord, custodian, or other person who furnishes  
15 5 facilities or technical assistance pursuant to this section  
15 6 shall be compensated for reasonable expenses incurred in  
15 7 providing such facilities and assistance.

15 8 4. A cause of action shall not lie in any court against  
15 9 any provider of a wire or electronic communication service,  
15 10 its officers, employees, agents, or other specified persons  
15 11 for providing information, facilities, or assistance in  
15 12 accordance with the terms of a court order under section  
15 13 808B.11 or 808B.12.

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

15 17 statute.

15 18 Sec. 29. NEW SECTION. 808B.14 REPORTING INSTALLATION AND  
15 19 USE OF PEN REGISTERS AND TRAP AND TRACE DEVICES.

15 20 In January of each year, the attorney general and the  
15 21 county attorneys of this state shall report, to the state  
15 22 court administrator, the number of pen register orders and  
15 23 orders for trap and trace devices applies for an obtained by  
15 24 their offices during the preceding calendar year.

15 25 EXPLANATION

15 26 This bill amends Code chapter 808B regarding the  
15 27 interception of communications.

15 28 The bill provides that law enforcement authorities may  
15 29 intercept an electronic communication, if prior court approval  
15 30 is obtained. Existing law only permits the interception of  
15 31 wire or oral communications. An electronic communication is  
15 32 generally, any alpha numeric transmission by a pager.

15 33 The bill also authorizes under state law the use of a pen  
15 34 register or a trap and trace device by law enforcement  
15 35 authorities. A pen register is a device used to identify any  
16 1 telephone number dialed from a certain telephone number. A  
16 2 trap and trace device is a device used to identify the  
16 3 telephone number of any incoming call to a certain telephone  
16 4 number.

16 5 The bill provides that a pen register or trap and trace  
16 6 device shall not be installed unless prior court authorization  
16 7 is obtained. However, a pen register or trap and trace device  
16 8 may be used without a court order, if it relates to the  
16 9 operation, protection, or maintenance of telephone service, or  
16 10 if consent is obtained from the person being monitored.

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

16 19 The bill also establishes the procedure for obtaining an  
16 20 emergency order to use a pen register or trap and trace  
16 21 device. The applicant may telephone the court to obtain an  
16 22 oral order authorizing the use of a pen register or trap and  
16 23 trace device if an emergency situation exists that may lead to  
16 24 the immediate death or serious bodily injury of a person. An  
16 25 emergency order may only be in effect for forty-eight hours.

16 26 The bill provides that the court may also, upon the request  
16 27 of law enforcement, order a common communications carrier,  
16 28 landlord, or any other person to assist law enforcement in the  
16 29 installation and use of a pen register or trap and trace  
16 30 device. Any person assisting law enforcement shall be  
16 31 compensated for the services provided and shall not be held  
16 32 liable for compliance with the statute or with a court order  
16 33 issued pursuant to the statute.

16 34 Any authorized order issued pursuant to this bill is  
16 35 effective for only 60 days. However, the court may authorize  
17 1 an extension of its order for up to an additional 60 days.

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