

service proposed and identification of the agency or person proposed to provide the service. ~~The plan shall specify;~~

~~(e)~~ A statement describing how the county proposes to make the following services available for persons identified by the county as in need of services: daytime developmental achievement services for children, day training and habilitation services for adults, subacute detoxification services, residential services and nonresidential social support services as appropriate for the groups identified in section 256E.03, subdivision 2;

~~(f)~~ A statement describing how the county is fulfilling its responsibility to establish a comprehensive and coordinated system of early intervention services as required under section 120.17, subdivisions 11a, 12, and 14;

~~(g)~~ The amount of money proposed to be allocated to each service;

~~(h)~~ An inventory of public and private resources including associations of volunteers which are available to the county for social services;

~~(g)~~ (i) Evidence that serious consideration was given to the purchase of services from private and public agencies; and

~~(h)~~ (j) Methods whereby community social service programs will be monitored and evaluated by the county.

Approved April 20, 1988

CHAPTER 577—S.F.No. 2402

An act relating to criminal procedure; updating the wiretap law to conform to modern electronic communication technologies; providing procedures for interception of wire, electronic, or oral communication; regulating use of pen registers and trap and trace devices; prescribing penalties; amending Minnesota Statutes 1986, section 626A.01, subdivisions 3, 4, 5, 6, 8, 9, and by adding subdivisions; 626A.02, subdivisions 1, 2, and by adding subdivisions; 626A.03, subdivisions 1, and 2; 626A.05, subdivision 1; 626A.06, subdivisions 3, 4, 5, 6, and by adding subdivisions; 626A.08, subdivision 1; 626A.09, subdivisions 1, 2, 3, 4, and 5; 626A.10, subdivisions 1 and 2; 626A.11, subdivisions 1 and 2, and by adding a subdivision; 626A.12, subdivision 1, and by adding a subdivision; 626A.13; Minnesota Statutes 1987 Supplement, section 626A.05, subdivision 2; proposing coding for new law in Minnesota Statutes, chapter 626A; repealing Minnesota Statutes 1986, sections 626A.01 to 626A.04; 626A.05, as amended; and 626A.06 to 626A.23.

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

Section 1. Minnesota Statutes 1986, section 626A.01, subdivision 3, is amended to read:

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Subd. 3. **WIRE COMMUNICATIONS.** "Wire communication" means any ~~communication~~ aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception, including the use of such connection in a switching station. "Wire communication" includes any electronic storage of the communication, but does not include the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit.

Sec. 2. Minnesota Statutes 1986, section 626A.01, subdivision 4, is amended to read:

Subd. 4. **ORAL COMMUNICATION.** "Oral communication" means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation, but the term does not include any electronic communication.

Sec. 3. Minnesota Statutes 1986, section 626A.01, subdivision 5, is amended to read:

Subd. 5. **INTERCEPT.** "Intercept" means the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device.

Sec. 4. Minnesota Statutes 1986, section 626A.01, subdivision 6, is amended to read:

Subd. 6. **ELECTRONIC, MECHANICAL OR OTHER DEVICE.** "Electronic, mechanical, or other device" means any device or apparatus which can be used to intercept a wire, electronic, or oral communication other than

(a) any telephone or telegraph instrument, equipment or facility, or any component thereof, (i) furnished to the subscriber or user by a ~~communications common carrier~~ provider or wire or electronic communications service in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business or furnished by a subscriber or user for connection to the facilities of service and used in the ordinary course of its business; or (ii) being used by a communications common carrier in the ordinary course of its business, or by an investigative or law enforcement officer in the ordinary course of duties;

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

(c) that which is specifically designed to only record conversations to which the operator of the device is a party;

(d) that which is used in the normal course of broadcasting by radio or television; or

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(e) that which is otherwise commonly used for a purpose or purposes other than overhearing or recording conversations.

In determining whether a device which is alleged to be an electronic, mechanical or other device is, in fact, such a device there shall be taken into account, among other things, the size, appearance, directivity, range, sensitivity, frequency, power, or intensity, and the representations of the maker or manufacturer as to its performance and use.

Sec. 5. Minnesota Statutes 1986, section 626A.01, subdivision 8, is amended to read:

Subd. 8. **CONTENTS.** "Contents", when used with respect to any wire, electronic, or oral communication, includes any information concerning the ~~identity of the parties to such communication or the existence~~, substance, purpose, or meaning of that communication.

Sec. 6. Minnesota Statutes 1986, section 626A.01, subdivision 9, is amended to read:

Subd. 9. **AGGRIEVED PERSON.** "Aggrieved person" means a person who was a party to any intercepted wire, electronic, or oral communication or a person against whom the interception was directed.

Sec. 7. Minnesota Statutes 1986, section 626A.01, is amended by adding a subdivision to read:

Subd. 14. ELECTRONIC COMMUNICATION. "Electronic communication" means transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photooptical system but does not include:

(1) the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit;

(2) a wire or oral communication;

(3) a communication made through a tone-only paging device; or

(4) a communication from a tracking device, defined as an electronic or mechanical device which permits the tracking of the movement of a person or object.

Sec. 8. Minnesota Statutes 1986, section 626A.01, is amended by adding a subdivision to read:

Subd. 15. USER. "User" means a person or entity who:

(1) uses an electronic communication service; and

(2) is duly authorized by the provider of the service to engage in the use.

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Sec. 9. Minnesota Statutes 1986, section 626A.01, is amended by adding a subdivision to read:

Subd. 16. ELECTRONIC COMMUNICATIONS SYSTEM. "Electronic communications system" means a wire, radio, electromagnetic, photooptical, or photoelectronic facility for the transmission of electronic communications, and a computer facility or related electronic equipment for the electronic storage of communications.

Sec. 10. Minnesota Statutes 1986, section 626A.01, is amended by adding a subdivision to read:

Subd. 17. ELECTRONIC COMMUNICATION SERVICE. "Electronic communication service" means a service that provides to users of the service the ability to send or receive wire or electronic communications.

Sec. 11. Minnesota Statutes 1986, section 626A.01, is amended by adding a subdivision to read:

Subd. 18. READILY ACCESSIBLE TO THE GENERAL PUBLIC. "Readily accessible to the general public" means, with respect to a radio communication, that the communication is not:

(1) scrambled or encrypted;

(2) transmitted using modulation techniques whose essential parameters have been withheld from the public with the intention of preserving the privacy of the communication;

(3) carried on a subcarrier or other signal subsidiary to a radio transmission;

(4) transmitted over a communication system provided by a common carrier, unless the communication is a tone only paging system communication; or

(5) transmitted on frequencies allocated under part 25, subpart D, E, or F of part 74, or part 94 of title 47 of the Code of Federal Regulations, unless in the case of a communication transmitted on a frequency allocated under part 74 of title 47 of the Code of Federal Regulations that is not exclusively allocated to broadcast auxiliary services, the communication is a two-way voice communication by radio.

Sec. 12. Minnesota Statutes 1986, section 626A.01, is amended by adding a subdivision to read:

Subd. 19. ELECTRONIC STORAGE. "Electronic storage" means:

(1) a temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission of the communication; and

(2) a storage of communication described in clause (1) by an electronic communication service for purposes of backup protection of the communication.

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Sec. 13. Minnesota Statutes 1986, section 626A.01, is amended by adding a subdivision to read:

Subd. 20. AURAL TRANSFER. "Aural transfer" means a transfer containing the human voice at any point between and including the point of origin and the point of reception.

Sec. 14. Minnesota Statutes 1986, section 626A.02, subdivision 1, is amended to read:

Subdivision 1. **OFFENSES.** Except as otherwise specifically provided in sections 626A.01 to 626A.23 any person who

(a) ~~willfully~~ intentionally intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept, any wire, electronic, or oral communication;

(b) ~~willfully~~ intentionally uses, endeavors to use, or procures any other person to use or endeavor to use any electronic, mechanical, or other device to intercept any oral communication when

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

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

(c) ~~willfully~~ intentionally discloses, or endeavors to disclose, to any other person the contents of any wire, electronic, or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire, electronic, or oral communication in violation of this subdivision; or

(d) ~~willfully~~ intentionally uses, or endeavors to use, the contents of any wire, electronic, or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire, electronic, or oral communication in violation of this subdivision; ~~shall be fined not more than \$20,000 or imprisoned not more than five years, or both shall be punished as provided in section 17, or shall be subject to suit as provided in section 18.~~

Sec. 15. Minnesota Statutes 1986, section 626A.02, subdivision 2, is amended to read:

Subd. 2. **EXEMPTIONS.** (a) It ~~shall is~~ not be unlawful under sections 626A.01 to 626A.23 for an operator of a switchboard, or an officer, employee, or agent of ~~any communication common carrier~~ a provider of wire or electronic communication service, whose facilities are used in the transmission of a wire communication, to intercept, disclose, or use that communication in the normal course of employment while engaged in any activity which is a necessary incident to the rendition of service or to the protection of the rights or property of

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~~the carrier of such communication; provided, that said communication com-~~
~~mon carriers of the provider of that service, except that a provider of wire~~
~~communication service to the public shall not utilize service observing or ran-~~
~~dom monitoring except for mechanical or service quality control checks.~~

(b) ~~It shall is not be~~ unlawful under sections 626A.01 to 626A.23 for an officer, employee, or agent of the Federal Communications Commission, in the normal course of employment and in discharge of the monitoring responsibilities exercised by the commission in the enforcement of chapter 5 of title 47 of the United States Code, to intercept a wire or electronic communication, or oral communication transmitted by radio, or to disclose or use the information thereby obtained.

(c) ~~It shall is not be~~ unlawful under sections 626A.01 to 626A.23 for a person acting under color of law to intercept a wire, electronic, or oral communication, where such person is a party to the communication or one of the parties to the communication has given prior consent to such interception.

(d) ~~It shall is not be~~ unlawful under ~~this chapter~~ sections 626A.01 to 626A.23 for a person not acting under color of law to intercept a wire, electronic, or oral communication where such person is a party to the communication or where one of the parties to the communication has given prior consent to such interception unless such communication is intercepted for the purpose of committing any 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.~~

(e) It is not a violation of sections 626A.01 to 626A.23 or sections 47 to 55 for a person:

(1) to intercept or access an electronic communication made through an electronic communication system that is configured so that the electronic communication is readily accessible to the general public;

(2) to intercept any radio communication that is transmitted:

(i) by a station for the use of the general public, or that relates to ships, aircraft, vehicles, or persons in distress;

(ii) by a governmental, law enforcement, civil defense, private land mobile, or public safety communications system, including police and fire, readily accessible to the general public;

(iii) by a station operating on an authorized frequency within the bands allocated to the amateur, citizens band, or general mobile radio services; or

(iv) by a marine or aeronautical communications system;

(3) to engage in any conduct which:

(i) is prohibited by section 553 of title 47 of the United States Code; or

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(ii) is excepted from the application of section 605(a) of title 47 of the United States Code by section 605(b) of that title;

(4) to intercept a wire or electronic communication the transmission of which is causing harmful interference to any lawfully operating station or consumer electronic equipment, to the extent necessary to identify the source of such interference; or

(5) for other users of the same frequency to intercept any radio communication made through a system that utilizes frequencies monitored by individuals engaged in the provision or the use of such system, if the communication is not scrambled or encrypted.

(f) It is not unlawful under sections 626A.01 to 626A.23:

(1) to use a pen register or a trap and trace device as those terms are defined by section 60; or

(2) for a provider of electronic communication service to record the fact that a wire or electronic communication was initiated or completed in order to protect the provider, another provider furnishing service toward the completion of the wire or electronic communication, or a user of that service, from fraudulent, unlawful, or abusive use of the service.

Sec. 16. Minnesota Statutes 1986, section 626A.02, is amended by adding a subdivision to read:

Subd. 3. DISCLOSING COMMUNICATIONS. (a) Except as provided in paragraph (b) of this subdivision, a person or entity providing an electronic communications service to the public must not intentionally divulge the contents of any communication other than one to the person or entity, or an agent of the person or entity, while in transmission on that service to a person or entity other than an addressee or intended recipient of the communication or an agent of the addressee or intended recipient.

(b) A person or entity providing electronic communication service to the public may divulge the contents of a communication:

(1) as otherwise authorized in subdivision 2, paragraph (a), and section 626A.09;

(2) with the lawful consent of the originator or any addressee or intended recipient of the communication;

(3) to a person employed or authorized, or whose facilities are used, to forward the communication to its destination; or

(4) that were inadvertently obtained by the service provider and that appear to pertain to the commission of a crime, if divulgence is made to a law enforcement agency.

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Sec. 17. Minnesota Statutes 1986, section 626A.02, is amended by adding a subdivision to read:

Subd. 4. PENALTIES. (a) Except as provided in paragraph (b) of this subdivision or in section 18, whoever violates subdivision 1 of this section shall be fined not more than \$20,000 or imprisoned not more than five years, or both.

(b) If the offense is a first offense under paragraph (a) of this subdivision and is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain, and the wire or electronic communication with respect to which the offense under paragraph (a) is a radio communication that is not scrambled or encrypted, then:

(1) if the communication is not the radio portion of a cellular telephone communication, a public land mobile radio service communication or a paging service communication, and the conduct is not that described in section 18, the offender shall be fined not more than \$3,000 or imprisoned not more than one year, or both; and

(2) if the communication is the radio portion of a cellular telephone communication, a public land mobile radio service communication or a paging service communication, the offender shall be fined not more than \$500.

(c) Conduct otherwise an offense under this subdivision that consists of or relates to the interception of a satellite transmission that is not encrypted or scrambled and that is transmitted:

(1) to a broadcasting station for purposes of retransmission to the general public; or

(2) as an audio subcarrier intended for redistribution to facilities open to the public, but not including data transmissions or telephone calls,

is not an offense under this subdivision unless the conduct is for the purposes of direct or indirect commercial advantage or private financial gain.

Sec. 18. Minnesota Statutes 1986, section 626A.02, is amended by adding a subdivision to read:

Subd. 5. CIVIL ACTION. (a) (1) If the communication is:

(i) a private satellite video communication that is not scrambled or encrypted and the conduct in violation of this chapter is the private viewing of that communication and is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain; or

(ii) a radio communication that is transmitted on frequencies allocated under subpart D of part 74 of title 47 of the Code of Federal Regulations and that is not scrambled or encrypted and the conduct in violation of sections 626A.01 to 626A.23 is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain, then the person who engages in such conduct is subject to suit by the county or city attorney in whose jurisdiction the violation occurs.

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(2) In an action under this subdivision:

(i) if the violation of sections 626A.01 to 626A.23 is a first offense for the person under paragraph (a) of section 17, and the person has not been found liable in a civil action under section 626A.13, the city or county attorney is entitled to seek appropriate injunctive relief; and

(ii) if the violation of sections 626A.01 to 626A.23 is a second or subsequent offense under paragraph (a) of section 17, or the person has been found liable in a prior civil action under section 626A.13, the person is subject to a mandatory \$500 civil fine.

(b) The court may use any means within its authority to enforce an injunction issued under paragraph (a), clause (2)(i), and shall impose a civil fine of not less than \$500 for each violation of such an injunction.

Sec. 19. Minnesota Statutes 1986, section 626A.03, subdivision 1, is amended to read:

Subdivision 1. Except as otherwise specifically provided in sections 626A.01 to 626A.23, any person who ~~willfully~~ intentionally

(a) manufactures, assembles, possesses, or sells any electronic, mechanical, or other device, knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of wire, electronic, or oral communications;

(b) places in any newspaper, magazine, handbill, or other publication any advertisement of

(i) any electronic, mechanical, or other device knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of wire, electronic, or oral communications; or

(ii) any other electronic, mechanical, or other device, where such advertisement promotes the use of such device for the purposes of the surreptitious interception of wire, electronic, or oral communications, shall be fined not more than \$20,000 or imprisoned not more than five years, or both.

Sec. 20. Minnesota Statutes 1986, section 626A.03, subdivision 2, is amended to read:

Subd. 2. It ~~shall~~ is not ~~be~~ unlawful under this section for

(a) a provider of wire or electronic communications common carrier service or an officer, agent or employee of, or a person under contract with, a ~~communications common carrier provider~~, in the normal course of the ~~communications common carrier's~~ business of providing that wire or electronic communications service, or

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(b) an officer, agent, or employee of, or a person under contract with, the United States, a state, or a political subdivision thereof, in the normal course of the activities of the United States, a state, or a political subdivision thereof, to manufacture, assemble, possess, or sell any electronic, mechanical, or other device knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of wire, electronic, or oral communication.

Sec. 21. Minnesota Statutes 1986, section 626A.05, subdivision 1, is amended to read:

Subdivision 1. **APPLICATION FOR WARRANT.** The attorney general, or not more than one assistant or special assistant attorney general specifically designated by the attorney general, or a county attorney of any county, or not more than one assistant county attorney specifically designated by the county attorney, may make application as provided in section 626A.06, to a judge of the district court, of the court of appeals, or of the supreme court for a warrant authorizing or approving the interception of wire, electronic, or oral communications by investigative or law enforcement officers having responsibility for the investigation of the offense as to which the application is made. No court commissioner shall issue a warrant under sections 626A.01 to 626A.23.

Sec. 22. Minnesota Statutes 1987 Supplement, section 626A.05, subdivision 2, is amended to read:

Subd. 2. **OFFENSES FOR WHICH INTERCEPTION OF WIRE OR ORAL COMMUNICATION MAY BE AUTHORIZED.** A warrant authorizing interception of wire, electronic, or oral communications by investigative or law enforcement officers may only be issued when the interception may provide evidence of the commission of, or of an attempt or conspiracy to commit, any of the following offenses:

(1) a felony offense involving murder, manslaughter, assault in the first, second, and third degrees, aggravated robbery, kidnapping, criminal sexual conduct in the first, second, and third degrees, prostitution, bribery, perjury, escape from custody, theft, receiving stolen property, embezzlement, burglary in the first, second, and third degrees, forgery, aggravated forgery, check forgery, or financial transaction card fraud, as punishable under sections 609.185, 609.19, 609.195, 609.20, 609.221, 609.222, 609.223, 609.2231, 609.245, 609.25, 609.321 to 609.324, 609.342, 609.343, 609.344, 609.42, 609.48, 609.485, subdivision 4, clause (1), 609.52, 609.53, 609.54, 609.582, 609.625, 609.63, 609.631, 609.821, and 609.825; ~~or~~

(2) an offense relating to gambling or controlled substances, as punishable under section 609.76 or chapter 152; or

(3) an offense relating to restraint of trade defined in section 325D.53, subdivision 1 or 2, as punishable under section 325D.56, subdivision 2.

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Sec. 23. Minnesota Statutes 1986, section 626A.06, subdivision 1, is amended to read:

Subdivision 1. THE APPLICATIONS. Each application for a warrant authorizing or approving the interception of a wire, electronic, or oral communication shall be made in writing upon oath or affirmation to a judge of the district court or of the supreme court and shall state the applicant's authority to make such application. Each application shall include the following information:

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

(b) a full and complete statement of the facts and circumstances relied upon by the applicant, to justify the applicant's belief that an order should be issued, including (i) details as to the particular offense that has been, is being, or is about to be committed, (ii) except as provided in section 29, a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted, (iii) a particular description of the type of communications sought to be intercepted, (iv) the identity of the person, if known, committing the offense and whose communications are to be intercepted;

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

(d) a statement of the period of time for which the interception is required to be maintained. If the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter;

(e) a full and complete statement of the facts concerning all previous applications known to the individual authorizing and making the application, made to any judge for authorization to intercept, or for approval of interceptions of, wire, electronic, or oral communications involving any of the same persons, facilities, or places specified in the application, and the action taken by the judge on each such application;

(f) where statements in the application are solely upon the information or belief of the applicant, the grounds for the belief must be given; and

(g) the names of persons submitting affidavits in support of the application.

Sec. 24. Minnesota Statutes 1986, section 626A.06, subdivision 3, is amended to read:

Subd. 3. FINDING OF PROBABLE CAUSE BY THE JUDGE. Upon such application the judge may enter an ex parte order, as requested or as

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modified, authorizing or approving interception of wire, electronic, or oral communications within the territorial jurisdiction of the court in which the judge is sitting, if the judge determines on the basis of the facts submitted by the applicant that:

(a) there is probable cause for belief that an individual is committing, has committed, or is about to commit a particular offense enumerated in section 626A.05, subdivision 2;

(b) there is probable cause for belief that particular communications concerning that offense will be obtained through such interception;

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

(d) except as provided in section 29, there is probable cause for belief that the facilities from which, or the place where, the wire, electronic, or oral communications are to be intercepted are being used, or are about to be used, in connection with the commission of such offense, or are leased to, listed in the name of, or commonly used by such person.

Nothing in sections 626A.01 to 626A.23 is to be considered as modifying in any way the existence or scope of those privileged communications defined in chapter 595. In acting upon an application for a warrant for intercepting communications, the potential contents of any such future communications that are within the provisions of chapter 595 shall not be considered by the court in making its finding as to the probability that material evidence will be obtained by such interception of communications.

Sec. 25. Minnesota Statutes 1986, section 626A.06, subdivision 4, is amended to read:

Subd. 4. **THE WARRANT.** Each warrant to intercept communications shall be directed to a law enforcement officer, commanding the officer to hold the recording of all intercepted communications conducted under said warrant in custody subject to the further order of the court issuing the warrant. The warrant shall contain the grounds for its issuance with findings, as to the existence of the matters contained in subdivision 1 and shall also specify:

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

(b) the nature and location of the communications facilities as to which, or the place where, authority to intercept is granted, and in the case of telephone or telegraph communications the general designation of the particular line or lines involved;

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

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(d) the identity of the law enforcement office or agency authorized to intercept the communications, the name of the officer or officers thereof authorized to intercept communications, and of the person authorizing the application;

(e) the period of time during which such interception is authorized, including a statement as to whether or not the interception shall automatically terminate when the described communication has been first obtained;

(f) any other limitations on the interception of communications being authorized, for the protection of the rights of third persons;

(g) a statement that using, divulging, or disclosing any information concerning such application and warrant for intercepting communications is prohibited and that any violation is punishable by the penalties of sections 626A.01 to 626A.23.

(h) a statement that the warrant shall be executed as soon as practicable, shall be executed in such a way as to minimize the interception of communications not otherwise subject to interception under sections 626A.01 to 626A.23 and must terminate upon attainment of the authorized objective, or in any event in ten days. The ten-day period begins on the earlier of the day on which the investigative or law enforcement officer first begins to conduct an interception under the order or ten days after the order is received. In the event the intercepted communication is in a code or foreign language, and an expert in that foreign language or code is not reasonably available during the interception period, minimization may be accomplished as soon as practicable after such interception.

An order authorizing the interception of a wire, oral, or electronic communication under sections 626A.01 to 626A.23 must, upon request of the applicant, direct that a provider of wire or electronic communication service, landlord, custodian, or other person shall furnish the applicant immediately all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that the service provider, landlord, custodian, or person is according the person whose communications are to be intercepted. A provider of wire or electronic communication service, landlord, custodian, or other person furnishing facilities or technical assistance must be compensated by the applicant for reasonable expenses incurred in providing the facilities or assistance.

Denial of an application for a warrant to intercept communications or of an application for renewal of such warrant shall be by written order that shall include a statement as to the offense or offenses designated in the application, the identity of the official applying for the warrant and the name of the law enforcement office or agency.

Sec. 26. Minnesota Statutes 1986, section 626A.06, is amended by adding a subdivision to read:

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Subd. 4a. PERSONNEL USED. An interception under sections 626A.01 to 626A.23 may be conducted in whole or in part by employees of the state or any subdivision of the state, or by an individual operating under a contract with the state or one of its subdivisions, acting under the supervision of an investigative or law enforcement officer authorized to conduct the investigation.

Sec. 27. Minnesota Statutes 1986, section 626A.06, subdivision 5, is amended to read:

Subd. 5. **DURATION OF WARRANT.** No warrant entered under this section may authorize or approve the interception of any wire, electronic, or oral communication for any period longer than is necessary to achieve the objective of the authorization, nor in any event longer than ten days.

The effective period of any warrant for intercepting communications shall terminate immediately when any person named in the warrant has been charged with an offense specified in the warrant.

Sec. 28. Minnesota Statutes 1986, section 626A.06, subdivision 6, is amended to read:

Subd. 6. **EXTENSIONS.** Any judge of the district court, of the court of appeals, or of the supreme court may grant extensions of a warrant, but only upon application for an extension made in accordance with subdivision 1 and the court making the findings required by subdivision 3. The period of extension shall be no longer than the authorizing judge deems necessary to achieve the purposes for which it was granted and in no event for longer than ten days. In addition to satisfying the requirements of subdivision 1, an application for a renewal of any warrant for intercepting communications shall also:

(a) contain a statement that all interception of communications under prior warrants has been in compliance with sections 626A.01 to 626A.23;

(b) contain a statement setting forth the results thus far obtained from the interception or a reasonable explanation of the failure to obtain results;

(c) state the continued existence of the matters contained in subdivision 1; and

(d) specify the facts and circumstances of the interception of communications under prior warrants which are relied upon by the applicant to show that such continued interception of communications is necessary and in the public interest.

Any application to intercept communications of a person previously the subject of such a warrant for any offense designated in a prior warrant shall constitute a renewal of such warrant.

Sec. 29. Minnesota Statutes 1986, section 626A.06, is amended by adding a subdivision to read:

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Subd. 11. REQUIREMENTS INAPPLICABLE. The requirements of subdivision 1, clause (b)(ii), and subdivision 3, clause (d), relating to the specification of the facilities from which, or the place where, the communication is to be interpreted do not apply if:

(1) in the case of an application with respect to the interception of an oral communication:

(i) the application contains a full and complete statement as to why the specification is not practical and identifies the person committing the offense and whose communications are to be intercepted; and

(ii) the judge finds that the specification is not practical.

(2) in the case of an application with respect to a wire or electronic communication:

(i) the application identifies the person believed to be committing the offense and whose communications are to be intercepted and the applicant makes a showing of a purpose, on the part of that person, to thwart interception by changing facilities; and

(ii) the judge finds that the purpose has been adequately shown.

Sec. 30. Minnesota Statutes 1986, section 626A.06, is amended by adding a subdivision to read:

Subd. 12. MOTION TO QUASH ORDER. An interception of a communication under an order with respect to which the requirements of subdivision 1, clause (b)(ii), and subdivision 3, clause (d), of this section do not apply by reason of section 29 must not begin until the facilities from which, or the place where, the communication is to be intercepted is ascertained by the person implementing the interception order. A provider of wire or electronic communications service that has received an order as provided for in section 29, clause (2), may move the court to modify or quash the order on the ground that its assistance with respect to the interception cannot be performed in a timely or reasonable fashion. The court, upon notice to the attorney applying for the warrant, shall decide a motion expeditiously.

Sec. 31. Minnesota Statutes 1986, section 626A.08, subdivision 1, is amended to read:

Subdivision 1. **MATERIAL OBTAINED.** Every part of any wire, oral, or electronic communication; ~~conversation; or discussion overheard~~ intercepted pursuant to sections 626A.01 to 626A.23 shall be completely recorded on tape or wire or other comparable device and shall be done in such manner as will protect the recording from editing or other alterations. Immediately upon the expiration of the period of the order, or extensions thereof, such recordings shall be made available to the judge issuing such order and sealed under the judge's directions. Custody of the recordings shall be wherever the judge orders. They

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shall not be destroyed except upon an order of the issuing or denying judge or a successor and in any event shall be kept for ten years. Duplicate recordings may be made for use or disclosure pursuant to the provisions of section 626A.09 for investigations. The presence of the seal provided for by this subdivision, or a satisfactory explanation for the absence thereof, shall be a prerequisite for the use or disclosure of the contents of any wire, electronic, or oral communication or evidence derived therefrom under section 626A.09.

Sec. 32. Minnesota Statutes 1986, section 626A.09, subdivision 1, is amended to read:

Subdivision 1. Any investigative or law enforcement officer who, by any means authorized by sections 626A.01 to 626A.23, has obtained knowledge of the contents of any wire, electronic, or oral communication, or evidence derived therefrom may disclose such contents to another investigative or law enforcement officer to the extent that such disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure.

Sec. 33. Minnesota Statutes 1986, section 626A.09, subdivision 2, is amended to read:

Subd. 2. Any investigative or law enforcement officer who, by any means authorized by sections 626A.01 to 626A.23, has obtained knowledge of the contents of any wire, electronic, or oral communication or evidence derived therefrom may use such contents to the extent such use is appropriate to the proper performance of official duties.

Sec. 34. Minnesota Statutes 1986, section 626A.09, subdivision 3, is amended to read:

Subd. 3. Any person who has received, by any means authorized by sections 626A.01 to 626A.23, any information concerning a wire, electronic, or oral communication, or evidence derived therefrom intercepted in accordance with the provisions of sections 626A.01 to 626A.23 may disclose the contents of that communication or such derivative evidence while giving testimony under oath or affirmation in any criminal proceeding in any court of the United States or of any state or in any federal or state grand jury proceeding.

Sec. 35. Minnesota Statutes 1986, section 626A.09, subdivision 4, is amended to read:

Subd. 4. No otherwise privileged wire, electronic, or oral communication intercepted in accordance with, or in violation of, the provisions of sections 626A.01 to 626A.23 shall lose its privileged character.

Sec. 36. Minnesota Statutes 1986, section 626A.09, subdivision 5, is amended to read:

Subd. 5. When an investigative or law enforcement officer, while engaged

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in intercepting wire, electronic, or oral communications in the manner authorized herein, intercepts wire, electronic, or oral communications relating to offenses other than those specified in the order of authorization or approval, the contents thereof, and evidence derived therefrom, may be disclosed or used as provided in subdivisions 1 and 2. Such contents and any evidence derived therefrom may be used under subdivision 3 when authorized or approved by a judge of the district court where such judge finds on subsequent application that the contents were otherwise intercepted in accordance with the provisions of sections 626A.01 to 626A.23. Such application shall be made as soon as practicable.

Sec. 37. Minnesota Statutes 1986, section 626A.10, subdivision 1, is amended to read:

Subdivision 1. **NOTICE OF ORDER.** Within a reasonable time but not later than 90 days after the termination of the period of a warrant or extensions thereof, the issuing or denying judge shall cause to be served, on the persons named in the warrant and the application, and such other parties to intercepted communications as the judge may determine that is in the interest of justice, an inventory which shall include notice of:

- (1) the fact of the issuance of the warrant or the application;
- (2) the date of the issuance and the period of authorized, approved or disapproved interception, or the denial of the application; and
- (3) the fact that during the period wire, electronic, or oral communications were or were not intercepted.

Sec. 38. Minnesota Statutes 1986, section 626A.10, subdivision 2, is amended to read:

Subd. 2. **NOTICE OF INTENT TO USE EVIDENCE OBTAINED BY INTERCEPTION OF WIRE OR ORAL COMMUNICATION.** The contents of any intercepted wire, electronic, or oral communication or evidence derived therefrom shall not be received in evidence otherwise disclosed in any 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 or approved. This ten-day period may be waived by the judge if the judge 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 such information.

Sec. 39. Minnesota Statutes 1986, section 626A.11, subdivision 1, is amended to read:

Subdivision 1. **ILLEGALLY OBTAINED EVIDENCE INADMISSIBLE.** Evidence obtained by any act of intercepting wire or oral communications, in

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violation of section 626A.02, and all evidence obtained through or resulting from information obtained by any such act, shall be inadmissible for any purpose in any action, proceeding, or hearing; provided, however, that any such evidence shall be admissible in any civil or criminal action, proceeding, or hearing against the person who has, or is alleged to have, violated sections 626A.01 to 626A.23.

Sec. 40. Minnesota Statutes 1986, section 626A.11, subdivision 2, is amended to read:

Subd. 2. **OFFICIAL AVAILABLE AS A WITNESS.** No evidence obtained as a result of intercepting wire or oral communications pursuant to a warrant issued under section 626A.06 shall be admissible in any proceeding unless the ~~law enforcement official or officials~~ person or persons overhearing or recording such communication, conversation, or discussion be called or made available as witnesses subject to cross examination by the party against whom such intercepted evidence is being offered. The provisions of this clause shall not apply if the trial court finds that such ~~law enforcement official~~ person is dead; or is out of the state; or is unable to attend or testify because of age, sickness, infirmity, or imprisonment; or that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting such persons in open court, to allow the evidence to be received.

Sec. 41. Minnesota Statutes 1986, section 626A.11, is amended by adding a subdivision to read:

Subd. 4. REMEDIES AND SANCTIONS. The remedies and sanctions described in sections 626A.01 to 626A.23 with respect to the interception of electronic communications are the only judicial remedies and sanctions for nonconstitutional violations of sections 626A.01 to 626A.23 involving communications.

Sec. 42. Minnesota Statutes 1986, section 626A.12, subdivision 1, is amended to read:

Subdivision 1. **THE MOTION.** Any aggrieved person may move to suppress the contents of any intercepted wire or oral communication, or evidence derived therefrom on the grounds that:

- (i) the wire or oral communication was unlawfully intercepted;
- (ii) the order of authorization or approval under which it was intercepted is insufficient on its face;
- (iii) the interception was not made in conformity with the order of authorization or approval;
- (iv) there was not probable cause for believing the existence of the grounds on which the warrant was issued; or

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(v) the evidence was otherwise illegally obtained.

The court shall hear evidence upon any issue of fact necessary to a determination of the motion.

If the motion is granted, the contents of the intercepted wire or oral communication, or evidence derived therefrom, shall be treated as having been obtained in violation of sections 626A.01 to 626A.23.

If the motion is denied, the order denying such may be reviewed on appeal from a judgment of conviction notwithstanding the fact that such judgment of conviction is predicated upon a plea of guilty.

Sec. 43. Minnesota Statutes 1986, section 626A.12, is amended by adding a subdivision to read:

Subd. 1a. MOTION TO SUPPRESS. Any aggrieved person may move to suppress the contents of any intercepted electronic communication on the ground that there was a constitutional violation.

Sec. 44. Minnesota Statutes 1986, section 626A.13, is amended to read:

626A.13 CIVIL REMEDIES.

Any person whose wire or oral communication is intercepted, disclosed, or used in violation of sections 626A.01 to 626A.23 shall (1) have a civil cause of action against any person who intercepts, discloses, or uses, or procures any other person to intercept, disclose, or use such communications; and (2) be entitled to the following remedies:

(a) to an injunction by any court of competent jurisdiction prohibiting further interception or use or divulgence by the person involved;

(b) to treble damages against the person or persons committing such interception, divulgence, or use, but in no event shall such recovery be less than \$1,000;

(c) to any punitive damages that may be awarded by the court or jury; and

(d) a reasonable attorney's fee and other litigation costs reasonably incurred.

A good faith reliance on a court order shall constitute a complete defense to any civil or criminal action brought under sections 626A.01 to 626A.23. Good faith reliance by a telephone or telegraph company on a warrant issued pursuant to sections 626A.01 to 626A.23, or on provisions of sections 626A.01 to 626A.23 requiring action by such company, shall constitute a complete defense to any civil action brought under sections 626A.01 to 626A.23.

Subdivision 1. IN GENERAL. Except as provided in section 2511 (2)(a)(ii) of title 18 of the United States Code, a person whose wire, oral, or electronic communication is intercepted, disclosed, or intentionally used in violation of sections 626A.01 to 626A.23 may in a civil action recover from the person or entity that engaged in that violation relief as may be appropriate.

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Subd. 2. RELIEF. In an action under this section, appropriate relief includes:

(1) temporary and other equitable or declaratory relief as may be appropriate;

(2) damages under subdivision 3 and punitive damages in appropriate cases; and

(3) a reasonable attorney's fee and other litigation costs reasonably incurred.

Subd. 3. COMPUTATION OF DAMAGES. (a) In an action under this section, if the conduct in violation of sections 626A.01 to 626A.23 is the private viewing of a private satellite video communication that is not scrambled or encrypted or if the communication is a radio communication that is transmitted on frequencies allocated under subpart D of part 74 of title 47 of the Code of Federal Regulations that is not scrambled or encrypted and the conduct is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain, then the court shall assess damages as follows:

(1) If the person who engaged in that conduct has not previously been enjoined under section 18, subdivision 5, and has not been found liable in a prior civil action under this section, the court shall assess the greater of the sum of actual damages suffered by the plaintiff, or statutory damages of not less than \$50 and not more than \$500.

(2) If, on one prior occasion, the person who engaged in that conduct has been enjoined under section 18, subdivision 5, or has been found liable in a civil action under this section, the court shall assess the greater of the sum of actual damages suffered by the plaintiff, or statutory damages of not less than \$100 and not more than \$1,000.

(b) In any other action under this section, the court may assess as damages whichever is the greater of:

(1) the sum of three times the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation; or

(2) statutory damages of whichever is the greater of \$100 a day for each day of violation or \$10,000.

Subd. 4. DEFENSE. A good faith reliance on:

(1) a court warrant or order, a grand jury subpoena, a legislative authorization, or a statutory authorization;

(2) a request of an investigative or law enforcement officer under United States Code, title 18, section 2518(7); or

(3) a good faith determination that section 626A.02, subdivision 3, permitted the conduct complained of;

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is a complete defense against any civil or criminal action brought under sections 626A.01 to 626A.23 or any other law.

Subd. 5. LIMITATION. A civil action under this section may not be begun later than two years after the date upon which the claimant first has a reasonable opportunity to discover the violation.

Sec. 45. [626A.24] MOBILE TRACKING DEVICES.

Subdivision 1. WARRANT. When an investigative or law enforcement officer, under sections 626.04 to 626.17, applies to the district court for a warrant or other order authorizing the installation of a mobile tracking device, the warrant or other order may authorize the use of the mobile tracking device within the jurisdiction of the court and outside of that jurisdiction as long as the device is installed in the jurisdiction.

Subd. 2. DEFINITION. As used in this section, the term "tracking device," means an electronic or mechanical device that permits the tracking of the movement of a person or object.

Sec. 46. [626A.25] INJUNCTION AGAINST ILLEGAL INTERCEPTION.

Whenever it appears that a person is engaged or is about to engage in an act that constitutes or will constitute a felony violation of sections 626A.01 to 626A.23, the attorney general or a county attorney may initiate a civil action in district court to enjoin the violation. The court shall proceed as soon as practicable to the hearing and determination of the civil action, and may, at any time before final determination, enter a restraining order or prohibition, or take other action, as is warranted to prevent a continuing and substantial injury to the state, any of its subdivisions, or to a person or class of persons for whose protection the action is brought. A proceeding under this section is governed by the Rules of Civil Procedure, except that, if the defendant has been charged with the felony, discovery against that defendant is governed by the Rules of Criminal Procedure.

Sec. 47. [626A.26] UNLAWFUL ACCESS TO STORED COMMUNICATIONS.

Subdivision 1. OFFENSE. Except as provided in subdivision 3, whoever:

(1) intentionally accesses without authorization a facility through which an electronic communication service is provided; or

(2) intentionally exceeds an authorization to access that facility;

and thereby obtains, alters, or prevents authorized access to a wire or electronic communication while it is in the electronic storage in a system must be punished as provided in subdivision 2.

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Subd. 2. PUNISHMENT. The punishment for an offense under subdivision 1 is:

(1) if the offense is committed for purposes of commercial advantage, malicious destruction or damage, or private commercial gain:

(i) a fine of not more than \$250,000 or imprisonment for not more than one year, or both, in the case of a first offense under this clause; and

(ii) a fine of not more than \$250,000 or imprisonment for not more than two years, or both, for any subsequent offense under this clause;

(2) a fine of not more than \$5,000 or imprisonment for not more than six months, or both, in any other case.

Subd. 3. EXCEPTIONS. Subdivision 1 does not apply with respect to conduct authorized:

(1) by the person or entity providing a wire or electronic communications service;

(2) by a user of that service with respect to a communication of or intended for that user; or

(3) in sections 626A.05 to 626A.09, section 49 or 50.

Sec. 48. [626A.27] DISCLOSURE OF CONTENTS.

Subdivision 1. PROHIBITIONS. Except as provided in subdivision 2:

(1) a person or entity providing an electronic communication service to the public must not knowingly divulge to a person or entity the contents of a communication while in electronic storage by that service; and

(2) a person or entity providing remote computing service to the public must not knowingly divulge to a person or entity the contents of any communication that is carried or maintained on that service:

(i) on behalf of, and received by means of electronic transmission from, or created by means of computer processing of communications received by means of electronic transmission, from a subscriber or customer of the service; and

(ii) solely for the purpose of providing storage or computer processing services to the subscriber or customer, if the provider is not authorized to access the contents of any communications for purposes of providing any services other than storage or computer processing.

Subd. 2. EXCEPTIONS. A person or entity may divulge the contents of a communication:

(1) to an addressee or intended recipient of the communication or an agent of the addressee or intended recipient;

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(2) as otherwise authorized in sections 626A.02; subdivision 2, paragraph (a); 626A.05; or section 49;

(3) with the lawful consent of the originator or an addressee or intended recipient of the communication, or the subscriber in the case of remote computing service;

(4) to a person employed or authorized or whose facilities are used to forward a communication to its destination;

(5) as may be necessarily incident to the rendition of the service or to the protection of the rights or property of the provider of that service; or

(6) to a law enforcement agency, if the contents:

(i) were inadvertently obtained by the service provider; and

(ii) appear to pertain to the commission of a crime.

Sec. 49. [626A.28] REQUIREMENTS FOR GOVERNMENTAL ACCESS.

Subdivision 1. CONTENTS OF ELECTRONIC COMMUNICATIONS IN ELECTRONIC STORAGE. A governmental entity may require the disclosure by a provider of electronic communication service of the contents of an electronic communication that is in electronic storage in an electronic communications system for 180 days or less only under a warrant. A government entity may require the disclosure by a provider of electronic communications services of the contents of an electronic communication that has been in electronic storage in an electronic communications system for more than 180 days by the means available under subdivision 2.

Subd. 2. CONTENTS OF ELECTRONIC COMMUNICATIONS IN A REMOTE COMPUTING SERVICE. (a) A governmental entity may require a provider of remote computing service to disclose the contents of electronic communication to which this paragraph is made applicable by paragraph (b):

(1) without required notice to the subscriber or customer, if the governmental entity obtains a warrant; or

(2) with prior notice if the governmental entity:

(i) uses an administrative subpoena authorized by statute or a grand jury subpoena; or

(ii) obtains a court order for such disclosure under subdivision 4;

except that delayed notice may be given under section 51.

(b) Paragraph (a) is applicable with respect to any electronic communication that is held or maintained on that service;

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(1) on behalf of, and received by means of electronic transmission from, or created by means of computer processing of communications received by means of electronic transmission from, a subscriber or customer of such remote computing service; and

(2) solely for the purpose of providing storage or computer processing services to the subscriber or customer, if the provider is not authorized to access the contents of any communications for purposes of providing any services other than storage or computer processing.

Subd. 3. RECORDS CONCERNING ELECTRONIC COMMUNICATION SERVICE OR REMOTE COMPUTING SERVICE.

(a) (1) Except as provided in clause (2), a provider of electronic communication service or remote computing service may disclose a record or other information pertaining to a subscriber to or customer of the service, not including the contents of communications covered by subdivision 1 or 2, to any person other than a governmental entity.

(2) A provider of electronic communication service or remote computing service may disclose a record or other information pertaining to a subscriber to or customer of the service, not including the contents of communications covered by subdivision 1 or 2, to a governmental entity only when the governmental entity:

(i) uses an administrative subpoena authorized by statute, or a grand jury subpoena;

(ii) obtains a warrant;

(iii) obtains a court order for such disclosure under subdivision 4; or

(iv) has the consent of the subscriber or customer to the disclosure.

(b) A governmental entity receiving records or information under this subdivision is not required to provide notice to a subscriber or customer.

Subd. 4. REQUIREMENTS FOR COURT ORDER. A court order for disclosure under subdivision 2 or 3 must issue only if the governmental entity shows that there is reason to believe the contents of a wire or electronic communication, or the records or other information sought, are relevant to a legitimate law enforcement inquiry. A court issuing an order pursuant to this section, on a motion made promptly by the service provider, may quash or modify such order, if the information or records requested are unusually voluminous in nature or compliance with such order otherwise would cause an undue burden on such provider.

Subd. 5. NO CAUSE OF ACTION AGAINST A PROVIDER DISCLOSING CERTAIN INFORMATION. No cause of action lies in any court against any provider of wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or

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assistance in accordance with the terms of a court order, warrant, subpoena, or certification under sections 47 to 55.

Sec. 50. **[626A.29] BACKUP PRESERVATION.**

Subdivision 1. BACKUP COPY. (a) A governmental entity acting under section 49, subdivision 2, paragraph (b), may include in its subpoena or court order a requirement that the service provider to whom the request is directed create a backup copy of the contents of the electronic communications sought in order to preserve those communications. Without notifying the subscriber or customer of the subpoena or court order, the service provider shall create a backup copy, as soon as practicable, consistent with its regular business practices and shall confirm to the governmental entity that the backup copy has been made. The backup copy must be created within two business days after receipt by the service provider of the subpoena or court order.

(b) Notice to the subscriber or customer must be made by the governmental entity within three days after receipt of the confirmation, unless notice is delayed under section 51, subdivision 1.

(c) The service provider must not destroy a backup copy until the later of:

(1) the delivery of the information; or

(2) the resolution of any proceedings, including appeals of any proceeding, concerning the subpoena or court order.

(d) The service provider shall release the backup copy to the requesting governmental entity no sooner than 14 days after the governmental entity's notice to the subscriber or customer if the service provider:

(1) has not received notice from the subscriber or customer that the subscriber or customer has challenged the governmental entity's request; and

(2) has not initiated proceedings to challenge the request of the governmental entity.

(e) A governmental entity may seek to require the creation of a backup copy under subdivision 1, paragraph (a), if in its sole discretion the entity determines that there is reason to believe that notification under section 49 of the existence of the subpoena or court order may result in destruction of or tampering with evidence. This determination is not subject to challenge by the subscriber or customer or service provider.

Subd. 2. CUSTOMER CHALLENGES. (a) Within 14 days after notice by the governmental entity to the subscriber or customer under subdivision 1, paragraph (b), the subscriber or customer may file a motion to quash the subpoena or vacate the court order, with copies served upon the governmental entity and with written notice of the challenge to the service provider. A motion to vacate a court order must be filed in the court which issued the order. A motion

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to quash a subpoena must be filed in the district court of the county in which the governmental entity issuing the subpoena is located. The motion or application must contain an affidavit or sworn statement:

(1) stating that the applicant is a customer or subscriber to the service from which the contents of electronic communications maintained for him have been sought; and

(2) stating the applicant's reasons for believing that the records sought are not relevant to a legitimate law enforcement inquiry or that there has not been substantial compliance with the provisions of this chapter in some other respect.

(b) Service must be made under this section upon a governmental entity by delivering or mailing by registered or certified mail a copy of the papers to the person, office, or department specified in the notice which the customer has received under sections 47 to 55. For the purposes of this section, the term "delivery" means handing it to the person specified in the notice or handing it to the person, or his designee, in charge of the office or department specified in the notice.

(c) If the court finds that the customer has complied with paragraphs (a) and (b), the court shall order the governmental entity to file a sworn response. The response may be filed in camera if the governmental entity includes in its response the reasons that make in camera review appropriate. If the court is unable to determine the motion or application on the basis of the parties' initial allegations and response, the court may conduct additional proceedings as it considers appropriate. Proceedings must be completed and the motion or application decided as soon as practicable after the filing of the governmental entity's response.

(d) If the court finds that the applicant is not the subscriber or customer for whom the communications sought by the governmental entity are maintained, or that there is a reason to believe that the law enforcement inquiry is legitimate and that the communications sought are relevant to that inquiry, it shall deny the motion or application and order the process enforced. If the court finds that the applicant is the subscriber or customer for whom the communications sought by the governmental entity are maintained, and that there is not a reason to believe that the communications sought are relevant to a legitimate law enforcement inquiry, or that there has not been substantial compliance with the provisions of sections 47 to 55, it shall order the process quashed.

(e) A court order denying a motion or application under this section shall not be deemed a final order and no interlocutory appeal may be taken therefrom by the customer.

Sec. 51. [626A.30] DELAYED NOTICE.

Subdivision 1. DELAY OF NOTIFICATION. (a) A governmental entity acting under section 49, subdivision 2, may:

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(1) where a court order is sought, include in the application a request, which the court shall grant, for an order delaying the notification required under section 49, subdivision 2, for a period not to exceed 90 days, if the court determines that there is reason to believe that notification of the existence of the court order may have an adverse result described in paragraph (b) of this subdivision; or

(2) where an administrative subpoena or a grand jury subpoena is obtained, delay the notification required under section 49 for a period not to exceed 90 days upon the execution of a written certification of a supervisory official that there is reason to believe that notification of the existence of the subpoena may have an adverse result described in paragraph (b) of this subdivision.

(b) An adverse result for the purposes of paragraph (a) of this subdivision is:

(1) endangering the life or physical safety of an individual;

(2) flight from prosecution;

(3) destruction of or tampering with evidence;

(4) intimidation of potential witnesses; or

(5) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

(c) The governmental entity shall maintain a true copy of certification under paragraph (a), clause (2).

(d) Extensions of the delay of notification provided in section 49 of up to 90 days each may be granted by the court upon application, or by certification by a governmental entity, but only in accordance with subdivision 2.

(e) Upon expiration of the period of delay of notification under paragraph (a) or (d) of this subdivision, the governmental entity shall serve upon, or deliver by registered or first-class mail to, the customer or subscriber a copy of the process or request together with notice that:

(1) states with reasonable specificity the nature of the law enforcement inquiry; and

(2) informs the customer or subscriber:

(i) that information maintained for the customer or subscriber by the service provider named in the process or request was supplied to or requested by that governmental authority and the date on which the supplying or request took place;

(ii) that notification of the customer or subscriber was delayed;

(iii) what governmental entity or court made the certification or determination under which that delay was made; and

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(iv) which provision of sections 47 to 55 allowed such delay.

(f) As used in this subdivision, the term "supervisory official" means a peace officer with the rank of sergeant, or its equivalent, or above, a special agent in charge from the bureau of criminal apprehension, the attorney general, the head of the attorney general's criminal division, a county attorney, or the head of a county attorney's criminal division.

Subd. 2. PRECLUSION OF NOTICE TO SUBJECT OF GOVERNMENTAL ACCESS. A governmental entity acting under section 49 when it is not required to notify the subscriber or customer under section 49, subdivision 2, paragraph (a), or to the extent that it may delay notice under subdivision 1, may apply to a court for an order commanding a provider of electronic communications service or remote computing service to whom a warrant, subpoena, or court order is directed, for a period as the court considers appropriate, not to notify any other person of the existence of the warrant, subpoena, or court order. The court shall enter an order if it determines that there is reason to believe that notification of the existence of the warrant, subpoena, or court order will result in:

- (1) endangering the life or physical safety of an individual;
- (2) flight from prosecution;
- (3) destruction of or tampering with evidence;
- (4) intimidation of potential witnesses; or
- (5) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

Sec. 52. [626A.31] COST REIMBURSEMENT.

Subdivision 1. PAYMENT. Except as otherwise provided in subdivision 3, a governmental entity obtaining the contents of communications, records, or other information under sections 48, 49, and 50 shall pay to the person or entity assembling or providing the information a fee for reimbursement for costs that are reasonably necessary and that have been directly incurred in searching for, assembling, reproducing, or otherwise providing the information. The reimbursable costs must include any costs due to necessary disruption of normal operations of the electronic communication service or remote computing service in which the information may be stored.

Subd. 2. AMOUNT. The amount of the fee provided by subdivision 1, must be as mutually agreed by the governmental entity and the person or entity providing the information, or, in the absence of agreement, must be as determined by the court that issued the order for production of the information or the court before which a criminal prosecution relating to the information would be brought, if no court order was issued for production of the information.

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Subd. 3. INAPPLICABILITY. The requirement of subdivision 1 does not apply with respect to records or other information maintained by a communications common carrier that relate to telephone toll records and telephone listings obtained under section 49. The court may, however, order a payment as described in subdivision 1 if the court determines the information required is unusually voluminous in nature or otherwise caused an undue burden on the provider.

Sec. 53. [626A.32] CIVIL ACTION.

Subdivision 1. CAUSE OF ACTION. Except as provided in section 49, subdivision 5, a provider of electronic communication service, subscriber, or customer aggrieved by a violation of this chapter in which the conduct constituting the violation is engaged in with a knowing or intentional state of mind may, in a civil action, recover from the person or entity which engaged in that violation relief as may be appropriate.

Subd. 2. RELIEF. In a civil action under this section, appropriate relief includes:

(1) temporary and other equitable or declaratory relief as may be appropriate;

(2) damages under subdivision 3; and

(3) a reasonable attorney's fee and other litigation costs reasonably incurred.

Subd. 3. DAMAGES. The court may assess as damages in a civil action under this section the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation, but in no case is a person entitled to recover to receive less than the sum of \$1,000.

Subd. 4. DEFENSE. A good faith reliance on:

(1) a court warrant or order, a grand jury subpoena, a legislative authorization, or a statutory authorization; or

(2) a good faith determination that section 626A.02, subdivision 3, permitted the conduct complained of;

is a complete defense to a civil or criminal action brought under sections 47 to 55 or any other law.

Subd. 5. LIMITATION. A civil action under this section may not be commenced later than two years after the date upon which the claimant first discovered or had a reasonable opportunity to discover the violation.

Sec. 54. [626A.33] EXCLUSIVITY OF REMEDIES.

The remedies and sanctions described in sections 47 to 55 are the only judicial remedies and sanctions for nonconstitutional violations of sections 47 to 55.

New language is indicated by underline, deletions by ~~strikeout~~.

Sec. 55. **[626A.34] DEFINITIONS.**

As used in sections 47 to 55, the term "remote computing service" means the provision to the public of computer storage or processing services by means of an electronic communication system.

Sec. 56. **[626A.35] GENERAL PROHIBITION ON PEN REGISTER AND TRAP AND TRACE DEVICE USE; EXCEPTION.**

Subdivision 1. IN GENERAL. Except as provided in this section, no person may install or use a pen register or a trap and trace device without first obtaining a court order under section 58.

Subd. 2. EXCEPTION. The prohibition of subdivision 1 does not apply with respect to the use of a pen register or a trap and trace device by a provider of electronic or wire communication service:

(1) relating 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, or to the protection of users of that service from abuse of service or unlawful use of service; or

(2) to record the fact that a wire or electronic communication was initiated or completed in order to protect the provider, another provider furnishing service toward the completion of the wire communication, or a user of that service, from fraudulent, unlawful, or abusive use of service; or

(3) where the consent of the user of that service has been obtained.

Subd. 3. PENALTY. Whoever knowingly violates subdivision 1 shall be fined not more than \$3,000 or imprisoned not more than one year, or both.

Sec. 57. **[626A.36] APPLICATION FOR AN ORDER FOR A PEN REGISTER OR A TRAP AND TRACE DEVICE.**

Subdivision 1. APPLICATION. An investigative or law enforcement officer may make application for an order or an extension of an order under section 58 authorizing or approving the installation and use of a pen register or a trap and trace device under sections 56 to 60, in writing under oath or equivalent affirmation, to a district court.

Subd. 2. CONTENTS OF APPLICATION. An application under subdivision 1 must include:

(1) the identity of the law enforcement or investigative officer making the application and the identity of the law enforcement agency conducting the investigation; and

(2) a certification by the applicant that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by that agency.

New language is indicated by underline, deletions by ~~strikeout~~.

Sec. 58. [626A.37] ISSUANCE OF AN ORDER FOR A PEN REGISTER OR A TRAP AND TRACE DEVICE.

Subdivision 1. IN GENERAL. Upon an application made under section 57, the court shall enter an ex parte order authorizing the installation and use of a pen register or a trap and trace device within the jurisdiction of the court if the court finds that the law enforcement or investigative officer has certified to the court that the information likely to be obtained by the installation and use is relevant to an ongoing criminal investigation.

Subd. 2. CONTENTS OF ORDER. (a) An order issued under this section must specify:

(1) the identity, if known, of the person to whom is leased or in whose name is listed the telephone line to which the pen register or trap and trace device is to be attached;

(2) the identity, if known, of the person who is the subject of the criminal investigation;

(3) the number and, if known, physical location of the telephone line to which the pen register or trap and trace device is to be attached and, in the case of a trap and trace device, the geographic limits of the trap and trace order; and

(4) a statement of the offense to which the information likely to be obtained by the pen register or trap and trace device relates.

(b) An order issued under this section must direct, upon the request of the applicant, the furnishing of information, facilities, and technical assistance necessary to accomplish the installation of the pen register or trap and trace device under section 59.

Subd. 3. TIME PERIOD AND EXTENSIONS. (a) An order issued under this section must authorize the installation and use of a pen register or a trap and trace device for a period not to exceed sixty days.

(b) Extensions of an order may be granted, but only upon an application for an order under section 57 and upon the judicial finding required by subdivision 1. The period of extension must be for a period not to exceed sixty days.

Subd. 4. NONDISCLOSURE OF EXISTENCE OF PEN REGISTER OR A TRAP AND TRACE DEVICE. An order authorizing or approving the installation and use of a pen register or a trap and trace device must direct that:

(1) the order be sealed until otherwise ordered by the court; and

(2) the person owning or leasing the line to which the pen register or a trap and trace device is attached, or who has been ordered by the court to provide assistance to the applicant, not disclose the existence of the pen register or trap and trace device or the existence of the investigation to the listed subscriber, or to any other person, unless or until otherwise ordered by the court.

New language is indicated by underline, deletions by ~~strikeout~~.

Sec. 59. [626A.38] ASSISTANCE IN INSTALLATION AND USE OF A PEN REGISTER OR A TRAP AND TRACE DEVICE.

Subdivision 1. PEN REGISTERS. Upon the request of an officer of a law enforcement agency authorized to install and use a pen register under sections 56 to 60, a provider of wire or electronic communication service, landlord, custodian, or other person shall furnish the investigative or law enforcement officer immediately 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 services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place, if the assistance is directed by a court order as provided in section 58, subdivision 2, paragraph (b).

Subd. 2. TRAP AND TRACE DEVICE. Upon the request of an officer of a law enforcement agency authorized to receive the results of a trap and trace device under sections 56 to 60, a provider of a wire or electronic communication service, landlord, custodian, or other person shall install the device immediately on the appropriate line and shall furnish the investigative or law enforcement officer 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, if the installation and assistance is directed by a court order as provided in section 58, subdivision 2, paragraph (b). Unless otherwise ordered by the court, the results of the trap and trace device shall be furnished to the officer of a law enforcement agency, designated by the court, at reasonable intervals during regular business hours for the duration of the order.

Subd. 3. COMPENSATION. A provider of a wire or electronic communication service, landlord, custodian, or other person who furnishes facilities or technical assistance under this section must be reasonably compensated for reasonable expenses incurred in providing facilities and assistance.

Subd. 4. NO CAUSE OF ACTION AGAINST A PROVIDER DISCLOSING CERTAIN INFORMATION. No cause of action lies in any court against a 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 sections 56 to 60.

Subd. 5. DEFENSE. A good faith reliance on a court order, a legislative authorization, or a statutory authorization is a complete defense against a civil or criminal action brought under sections 56 to 60 or any other law.

Sec. 60. [626A.39] DEFINITIONS.

Subdivision 1. APPLICABILITY. The terms in this section apply to sections 56 to 60.

New language is indicated by underline, deletions by ~~strikeout~~.

Subd. 2. WIRE COMMUNICATION; ELECTRONIC COMMUNICATION; ELECTRONIC COMMUNICATION SERVICE. The terms "wire communication," "electronic communication," and "electronic communication service" have the meanings set forth for the terms in section 626A.01.

Subd. 3. PEN REGISTER. "Pen register" means a device that records or decodes electronic or other impulses that identify the number dialed or otherwise transmitted on the telephone line to which the device is attached, but the term does not include a device used by a provider or customer of a wire or electronic communications service for billing, or recording as an incident to billing, for communications services provided by the provider or a 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.

Subd. 4. TRAP AND TRACE DEVICE. "Trap and trace device" means a device which captures the incoming electronic or other impulses that identify the originating number of an instrument or device from which a wire or electronic communication was transmitted.

Sec. 61. [626A.40] SUBJECT TO OTHER LAWS.

Nothing in sections 45 to 60 must be considered to authorize conduct constituting a violation of any law of the United States.

Sec. 62. REPEALER.

Minnesota Statutes 1986, sections 626A.01, 626A.02, 626A.03, 626A.04, 626A.05, as amended by Laws 1987, chapters 217, section 3; 329, section 17; and 384, article 2, section 112, 626A.06, 626A.07, 626A.08, 626A.09, 626A.10, 626A.11, 626A.12, 626A.13, 626A.14, 626A.15, 626A.16, 626A.17, 626A.18, 626A.19, 626A.20, 626A.21, 626A.22, 626A.23, and sections 1 to 61 are repealed.

Sec. 63. EFFECTIVE DATE.

Sections 1 to 61 are effective August 1, 1988, and apply to crimes committed on or after that date. Section 62 is effective August 1, 1989.

Approved April 20, 1988

CHAPTER 578—H.F.No. 236

An act relating to elections; requiring fair campaign practices; imposing penalties; amending Minnesota Statutes 1986, sections 201.275; 204C.04; and 383A.297; Minnesota Statutes 1987 Supplement, sections 200.01; and 383B.041; proposing coding for new law as Minnesota Statutes, chapters 211A and 211B; repealing Minnesota Statutes 1986, chapter 210A, as amended.

New language is indicated by underline, deletions by ~~strikeout~~.