

LEGISLATIVE BILL 899

Approved by the Governor April 8, 1988

Introduced by Judiciary Committee, Chizek, 31,
Chairperson; Ashford, 6; Nelson, 35;
Pirsch, 10; Korshoj, 16; McFarland, 28;
Conway, 17; Chambers, 11

AN ACT relating to intercepted communications; to amend sections 86-701 to 86-705 and 86-707, Reissue Revised Statutes of Nebraska, 1943; to define and redefine terms; to change provisions relating to unlawful acts; to permit certain acts relating to intercepted communications; to change provisions relating to the privileged use of intercepted communications; to change provisions relating to orders for intercepting communications; to prohibit the manufacture, distribution, and possession of certain intercepting devices; to provide for the recovery of civil damages as prescribed; to authorize pen register and trap-and-trace devices as prescribed; to prohibit interference with satellite transmissions; to authorize warrants for mobile tracking devices; to prohibit access to and provide for disclosure of certain communications; to provide penalties; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 86-701, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

86-701. As used in sections 86-701 to 86-707 and sections 7 to 21 of this act, unless the context otherwise requires:

(1) Aggrieved person shall mean a person who was a party to any intercepted wire, electronic, or oral communication or a person against whom the interception was directed;

(2) Aural transfer shall mean a transfer containing the human voice at any point between and including the point of origin and the point of reception;

(3) Contents, when used with respect to any wire, electronic, or oral communication, shall include

any information concerning the substance, purport, or meaning of that communication; Wire communication shall mean any communication 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 furnished or operated by any person engaged as a common carrier in providing or operating such facilities for the transmission of communications;

(2) Oral communication shall mean any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation;

(3) Intercept shall mean the aural acquisition of the contents of any wire or oral communication through the use of any electronic, mechanical, or other device;

(4) Electronic, mechanical, or other device shall mean 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 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 such subscriber or user for connection to the facilities of such service and used by the subscriber or user in the ordinary course of its business or (ii) being used by a communications common carrier provider in the ordinary course of its business; or by an investigative or law enforcement officer in the ordinary course of his or her duties; or (b) a hearing aid or similar device being used to correct subnormal hearing to not better than normal;

(5) Electronic communication shall mean any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectric, or photooptical system but shall not include:

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

(b) Any wire or oral communication;

(c) Any communication made through a tone-only mobile paging device; or

(d) Any communication from a mobile tracking

device as defined in section 14 of this act;

(6) Electronic communication service shall mean any service which provides to users thereof the ability to send or receive wire or electronic communications;

(7) Electronic communications system shall mean any wire, radio, electromagnetic, photooptical, or photoelectronic facilities for the transmission of electronic communications and any computer facilities or related electronic equipment for the electronic storage of such communications;

(8) Electronic storage shall mean:

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

(b) Any storage of such communication by an electronic communication service for purposes of backup protection of such communication;

(9) Intercept shall mean 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;

(10) Investigative or law enforcement officer shall mean any officer of the State of Nebraska or political subdivision thereof, who is empowered by law to conduct investigations of or to make arrests for criminal offenses, the Attorney General and any county attorney authorized by law to prosecute or participate in the prosecution of such offenses, and for purposes of sections 86-701 to 86-706 only, special agents of the Federal Bureau of Investigation;

(6) Contents, when used with respect to any wire or oral communication, shall include any information concerning the identity of the parties to such communication or the existence, substance, purport, or meaning of that communication;

(7) Judge of competent jurisdiction shall mean a judge of a district court of Nebraska; and

(8) Aggrieved person shall mean a person who was a party to any intercepted wire or oral communication or a person against whom the interception was directed a law enforcement officer as defined in section 81-1401 and shall include the Attorney General and his or her deputies or assistants, a county attorney and his or her deputies, and agents of the United States Federal Bureau of Investigation, Drug Enforcement Administration, Marshals Service, Secret Service, Bureau of Alcohol, Tobacco, and Firearms, Treasury Department, Customs Service, Justice Department, and Internal

Revenue Service:

(11) Mobile phone communication shall mean a radio communication that is transmitted on frequencies allocated under the rules of the Federal Communications Commission;

(12) Oral communication shall mean any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation but shall not include any electronic communication;

(13) Pen register shall mean a device which records or decodes electronic or other impulses which identify the numbers dialed or otherwise transmitted on the telephone line to which such device is attached but shall not include any device used by a provider or customer of an electronic communication service for billing or recording as an incident to billing for communications services provided by such provider or any device used by a provider or customer of an electronic communication service for cost accounting or other like purposes in the ordinary course of its business;

(14) Provider shall mean any person who provides an electronic communication service and who has authorized access to or possession or control of the facilities or equipment necessary to implement the order to intercept a wire or electronic communication or the order to install a pen register or a trap-and-trace device;

(15) Readily accessible to the general public shall mean, with respect to a radio communication, that such communication is not:

(a) Scrambled or encrypted;

(b) Transmitted using modulation techniques the essential parameters of which have been withheld from the public with the intention of preserving the privacy of such communication;

(c) Carried on a subcarrier or other signal subsidiary to a radio transmission;

(d) Transmitted over an electronic communications system by a provider unless the communication is a tone-only paging system communication; or

(e) Transmitted on frequencies allocated under part 25, subpart D, E, or F of part 74, or part 94 of the rules of the Federal Communications Commission unless, in the case of a communication transmitted on a frequency allocated under part 74 that is not exclusively allocated to broadcast auxiliary services,

the communication is a two-way voice communication by radio;

(16) Trap-and-trace device shall mean a device which captures the incoming electronic or other impulses which identify the originating number of an instrument or device from which a wire or electronic communication was transmitted;

(17) User shall mean any person or entity who:

(a) Uses an electronic communication service;

and

(b) Is duly authorized by the provider of such service to engage in such use; and

(18) Wire communication shall mean any 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, including the use of such connection in a switching station, between the point of origin and the point of reception furnished or operated by any person engaged in providing or operating such facilities for the transmission of communications. Wire communication shall include any electronic storage of such communication but shall not include the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit.

Sec. 2. That section 86-702, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

86-702. (1) Except as otherwise specifically provided in sections 86-701 to 86-707, any person who it shall be unlawful to: (a) willfully intercepts Intentionally intercept, endeavors endeavor to intercept, or procures procure any other person to intercept or endeavor to intercept, any wire, electronic, or oral communication; (b) willfully uses intentionally use, endeavors endeavor to use, or procures procure 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 discloses; intentionally disclose or endeavors endeavor 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 subsection; ~~or~~ (d) ~~willfully uses; intentionally use or endeavors endeavor~~ 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 subsection; or (e) having knowledge that an investigative or law enforcement officer has been authorized or has applied for authorization under sections 86-701 to 86-712 to intercept a wire, oral, or electronic communication, give notice or attempt to give notice of the possible interception to any person in order to obstruct, impede, or prevent such interception. 7 shall be guilty of a Class IV felony. Except as provided in subdivisions (4)(a) and (5)(b) of this section, any person who violates this subsection shall be guilty of a Class IV felony.

(2)(a) It shall not be unlawful under sections 86-701 to 86-707 for an employer on his, her, or its business premises, for an operator of a switchboard, or for an officer, employee, or agent of any communication common carrier provider, whose the facilities of which are used in the transmission of a wire communication, to intercept, disclose, or use that communication in the normal course of his, her, or its employment while engaged in any activity which is a necessary incident to the rendition of his, her, or its service or to the protection of the rights or property of the carrier or provider of such communication services. Such employers and providers 7 PROVIDED; that such communication common carriers shall not utilize service observing or random monitoring except for mechanical, or service quality, or performance control checks as long as reasonable notice of the policy of random monitoring is provided to their employees.

(b) It shall not be unlawful under sections 86-701 to 86-707 for a person acting under color of law to intercept a wire, electronic, or oral communication; ~~where when~~ such person is a party to the communication or one of the parties to the communication has given prior consent to such interception.

(c) It shall not be unlawful under sections 86-701 to 86-707 for a person not acting under color of law to intercept a wire, electronic, or oral communication ~~where when~~ such person is a party to the communication or ~~where when~~ 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.~~

(d) It shall not be unlawful under sections 86-701 to 86-707:

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

(ii) To intercept any radio communication which is transmitted:

(A) By any station for the use of the general public or that relates to ships, aircraft, vehicles, or persons in distress;

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

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

(D) By any marine or aeronautical communications system;

(iii) To engage in any conduct which:

(A) Is prohibited by section 633 of the Communications Act of 1934, 47 U.S.C. 151 et seq.; or

(B) Is excepted from the application of section 705(a) of the Communications Act of 1934, 47 U.S.C. 151 et seq., by section 705(b) of such act;

(iv) To intercept any 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

(v) 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 such communication is not scrambled or encrypted.

(e) It shall not be unlawful under sections 86-701 to 86-707 and sections 9 to 12 of this act:

(i) To use a pen register or a trap-and-trace device; or

(ii) For a provider of an electronic communication service to record the fact that a wire or electronic communication was initiated or completed in order to protect such 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 such service.

(3)(a) Except as provided in subsection (1) of this section and subdivision (b) of this subsection, a person or entity providing an electronic communication service to the public shall not intentionally divulge the contents of any communication, other than one to such person or entity or an agent thereof, while in transmission on such service to any person or entity other than an addressee or intended recipient of such communication or an agent of such addressee or intended recipient.

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

(i) As otherwise authorized in subdivision (a) of this subsection or section 86-704;

(ii) With the lawful consent of the originator or any addressee or intended recipient of such communication;

(iii) To a person employed or authorized, or whose facilities are used, to forward such communication to its destination; or

(iv) Which was inadvertently obtained by the provider and which appears to pertain to the commission of a crime if such divulgence is made to a law enforcement officer.

(4)(a) If the offense is a first offense under subsection (1) of this section 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 the offense under subsection (1) of this section is a radio communication that is not scrambled or encrypted, then:

(i) 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 subsection (5) of this section, the offender shall be guilty of a Class I misdemeanor; or

(ii) 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 guilty of a Class III misdemeanor.

(b) Conduct, otherwise an offense under this subsection that consists of or relates to the interception of a satellite transmission that is not encrypted or scrambled and that is transmitted: (i) To a

broadcasting station for purposes of retransmission to the general public; or (ii) as an audio subcarrier intended for redistribution to facilities open to the public but not including data transmissions or telephone calls, shall not be an offense under this subsection unless the conduct is for the purposes of direct or indirect commercial advantage or private financial gain.

(5)(a) If the communication is: (i) A private satellite video communication that is not scrambled or encrypted and the conduct in violation of sections 86-701 to 86-707 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 the rules of the Federal Communications Commission and that is not scrambled or encrypted and the conduct in violation of sections 86-701 to 86-707 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 shall be subject to suit by the state in a court of competent jurisdiction.

(b) In an action under this subsection:

(i) If the violation is a first offense by the person under subsection (1) of this section and such person has not been found liable in a civil action under section 8 of this act, the state shall be entitled to appropriate injunctive relief; and

(ii) If the violation is a second or subsequent offense under subsection (1) of this section or such person has been found liable in any prior civil action under section 8 of this act, the person shall be subject to a mandatory five-hundred-dollar civil fine.

(c) The court may use any means within its authority to enforce an injunction issued under this subsection and shall impose a civil fine of not less than five hundred dollars for each violation of such an injunction.

Sec. 3. That section 86-703, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

86-703. The Attorney General or any county attorney may make application to any district court of this state for an order authorizing or approving the interception of wire, electronic, or oral communications, and such court may grant, subject to the provisions of sections 86-701 to 86-707, an order

authorizing or approving the interception of wire, electronic, or oral communications by law enforcement officers having responsibility for the investigation of the offense as to which application is made, when such interception may provide or has provided evidence of the commission of the offense of murder, kidnaping, robbery, bribery, extortion, dealing in narcotic or other dangerous drugs, ~~gambling~~, or any conspiracy to commit any of the foregoing such offenses.

At the same time a county attorney first makes application to the district court for an initial order authorizing or approving the interception of wire, electronic, or oral communications, the county attorney shall submit the application to the Attorney General or his or her designated deputy or assistant. Within twenty-four hours of receipt by the office of the Attorney General of the application from the county attorney, the Attorney General or his or her designated deputy or assistant, as the case may be, shall state to the district court where the order is sought his or her recommendation as to whether the order should be granted. The court shall not issue the order until it has received the recommendation or until seventy-two hours after receipt of the application from the county attorney, whichever is sooner, unless the court finds exigent circumstances existing which necessitate the immediate issuance of the order. The court may issue the order and disregard the recommendation of the Attorney General or his or her designated deputy or assistant.

Sec. 4. That section 86-704, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

86-704. (1) Any investigative or law enforcement officer who, by any means authorized by sections 86-701 to 86-707, 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.

(2) Any investigative or law enforcement officer who, by any means authorized by sections 86-701 to 86-707, 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 his

or her official duties.

(3) Any person who has received, by any means authorized by sections 86-701 to 86-707, any information concerning a wire, electronic, or oral communication; or evidence derived therefrom intercepted in accordance with the provisions of sections 86-701 to 86-707 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 held under the authority of the United States, or of this state, or of any other state. or in any federal or state grand jury proceeding.

(4) No otherwise privileged wire, electronic, or oral communication intercepted in accordance with, or in violation of, the provisions of sections 86-701 to 86-707 shall lose its privileged character.

(5) When an investigative or law enforcement officer, while engaged 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 subsections (1) and (2) of this section. Such contents and any evidence derived therefrom may be used under subsection (3) of this section when authorized or approved by a judge of competent jurisdiction where a district court when such judge finds on subsequent application that the contents were otherwise intercepted in accordance with the provisions of sections 86-701 to 86-707. Such application shall be made as soon as practicable.

Sec. 5. That section 86-705, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

86-705. (1) Each application for an order 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 a district court and shall state the applicant's authority to make such application. Each application shall include the following information:

(a) The identity of the law enforcement officer making the application, and the officer authorizing the application applicant;

(b) A full and complete statement of the facts and circumstances relied upon by the applicant to justify his or her belief that an order should be issued, including details as to the particular offense

that has been, is being, or is about to be committed, a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted except as otherwise provided in subsection (13) of this section, a particular description of the type of communications sought to be intercepted, and 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; and

(f) Where When the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception; or a reasonable explanation of the failure to obtain such results.

(2) The judge may require the applicant to furnish additional testimony or documentary evidence in support of the application.

(3) Upon such application the judge may enter an ex parte order, as requested or as modified, authorizing or approving interception of wire, electronic, or oral communications or mobile phone 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 86-703; (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; and (d) except as otherwise provided in subsection (13) of this section, 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.

(4) Each order authorizing or approving the interception of any wire, electronic, or oral communication shall specify: (a) ~~the~~ The identity of the person, if known, whose communications are to be intercepted; (b) except as otherwise provided in subsection (13) of this section, the nature and location of the communications facilities as to which, or the place where, authority to intercept is granted; (c) a particular description of the type of communication sought to be intercepted; and a statement of the particular offense to which it relates; (d) the identity of the agency authorized to intercept the communications; and of the person authorizing the application; and (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.

(5) Each order authorizing the interception of a wire, electronic, or oral communication, shall, upon request of the applicant, direct that a ~~communication~~ common carrier provider, landlord, custodian, or other person ~~shall~~ furnish to the applicant all information, facilities, and technical assistance necessary to accomplish the interception inconspicuously and with a minimum of interference with the services that such ~~provider~~ carrier, landlord, custodian, or person is giving to the person whose communications are to be intercepted. Any ~~communication~~ common carrier provider, landlord, custodian, or other person furnishing such facilities or technical assistance shall be compensated therefor by the applicant for expenses incurred in providing such facilities or assistance at the prevailing rates. A provider that has received an order as provided in this subsection may, under seal, 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 General or county attorney as the case may be, shall decide such a motion expeditiously.

(6) No order 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 thirty days. Extensions of an order may be granted; but only upon application for an extension made in accordance with subsection (1) of this section and the court making the findings required by subsection (3) of this section. 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 thirty days. Every order and extension thereof shall contain a provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted in such a way as to avoid and prevent interception of confidential communications to or from persons of the classes described in sections 20-146; ~~25-1204; and 25-1206~~ and 27-503 to 27-506 unless there exists probable cause to believe such persons have committed, are committing, or are conspiring to commit offenses specified in section 86-703, and shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under sections 86-701 to 86-707, and ~~must~~ shall terminate upon attainment of the authorized objective; or in any event in thirty days. Upon a showing of good cause as set forth in the application, in the event the intercepted communication is in a foreign language and an expert in that foreign language is not reasonably available during the interception period, minimization may be accomplished as soon as practicable after such interception.

(7)(a) Whenever an order authorizing interception is entered pursuant to sections 86-701 to 86-707, the order ~~may~~ shall, at a minimum, require reports to be ~~made to~~ filed with the judge who issued the order ~~no earlier than the twelfth day and no later than the sixteenth day after the order is issued and twelve to sixteen days thereafter~~ showing what progress has been made toward achievement of the authorized objective and the need for continued interception. ~~Such~~ Additional reports shall be ~~made~~ filed at such ~~other~~ intervals as the judge may require. Time computed under this subdivision shall commence on the first calendar

day after the order is issued.

(b) If the required reports are not filed, the judge shall exclude from evidence any communication intercepted after that date otherwise authorized by the order unless the person required to file the reports establishes that the failure was for good cause.

(8) The contents of any wire, electronic, or oral communication intercepted by any means authorized by sections 86-701 to 86-707 shall, if possible, be recorded on tape or wire or other comparable device. The recording of the contents of any wire, electronic, or oral communication under this subsection shall be done in such way 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 his or her directions. Custody of the recordings shall be wherever the judge orders. They shall not be destroyed except upon an order of the issuing or denying judge and in any event shall be kept for ten years. Duplicate recordings may be made for use or disclosure pursuant to the provisions of subsections (1) and (2) of section 86-704 for investigations. The presence of the seal provided for by this subsection, 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 subsection (3) of section 86-704.

Applications made and orders granted under sections 86-701 to 86-707 shall be sealed by the judge. Custody of the applications and orders shall be wherever the judge directs. Such applications and orders shall be disclosed only upon a showing of good cause before a judge of competent jurisdiction a district court, and shall not be destroyed except on order of the issuing or denying judge, and in any event shall be kept for ten years.

Any violation of the provisions of this subsection may be punished as contempt of the issuing or denying judge.

(9)(a) Within a reasonable time, but not longer than ninety days after the termination of the period of an order or extensions thereof, the issuing or denying judge shall cause the applicant to be served serve on the persons named in the order or the application {a} the names of and such other parties to intercepted communications which the judge may determine to be in the interest of justice, and {b} an inventory

which shall include: (i) ~~the~~ The entry of the order of application; (ii) the date of such entry and the period of authorized, or approved, ~~or disapproved~~ interception; or the denial of the application; and (iii) whether, during such period, wire, electronic, or oral communications were or were not intercepted.

(b) The judge, upon the filing of a motion by a person whose communications were intercepted, may make available to such person or his or her counsel for inspection such portions of the intercepted communications, applications, and orders as the judge determines to be in the interest of justice. On an ex parte showing of good cause application to a judge of competent jurisdiction a district court, the serving of the inventory required by this subsection may shall be postponed for ninety days. Thereafter, on an ex parte showing of good cause to a judge of a district court, the serving of the inventory required by this subsection may be further postponed.

(c) If the inventory is not served as required by this subsection, any communication intercepted under an order or extension thereof shall be excluded as evidence before all courts of this state unless the failure to serve such inventory was for good cause, the failure to serve the inventory did not substantially affect the rights of the defendant in the matter, or the serving of the inventory was postponed as allowed and ordered pursuant to subdivision (b) of this subsection.

Nothing in this subsection shall be construed to limit the judge's power of contempt.

(10) The contents of any intercepted wire, electronic, or oral communication or evidence derived therefrom shall not be received in evidence or 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 he or she finds that it was not possible to furnish the party with the above such information ten days before the trial, hearing, or proceeding and that the party will not be prejudiced by the delay in receiving such information.

(11) Any aggrieved person in any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority of this state, may move to suppress the contents of any intercepted wire, electronic, or oral

communication; or evidence derived therefrom; on the grounds that the communication was unlawfully intercepted, the order of authorization or approval under which it was intercepted is insufficient on its face, or the interception was not made in conformity with the order of authorization or approval. Such motion shall be made before the trial, hearing, or proceeding unless there was no opportunity to make such motion or the person was not aware of the grounds of the motion. If the motion is granted, the contents of the intercepted wire, electronic, or oral communication; or evidence derived therefrom; shall be treated as having been obtained in violation of sections 86-701 to 86-707. The judge, upon the filing of such motion by the aggrieved person, may in his or her discretion make available to the aggrieved person or his or her counsel for inspection such portions of the intercepted communication or evidence derived therefrom as the judge determines to be in the interests of justice.

(12) In addition to any other right to appeal, the Attorney General or any county attorney shall have the right to appeal from an order granting a motion to suppress made under subsection (11) of this section; or the denial of an application for an order of approval; if the Attorney General or the county attorney ~~shall~~ certify certifies to the judge granting such motion or denying such application that the appeal is not taken for purposes of delay. Such appeal shall be taken within thirty days after the date the order was entered and shall be diligently prosecuted.

(13) The requirements of subdivisions (1)(b), (3)(d), and (4)(b) of this section relating to the specification of the facilities from which or the place where the communication is to be intercepted shall not apply if:

(a) In the case of an application with respect to the interception of an oral communication:

(i) The application is approved by both the Attorney General and the county attorney where the application is sought or a deputy attorney general or designated deputy county attorney if the Attorney General or county attorney is outside of his or her respective jurisdiction;

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

(iii) The judge finds that such specification

is not practical; and

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

(i) The application is approved by both the Attorney General and the county attorney where the application is sought or a deputy attorney general or designated deputy county attorney if the Attorney General or county attorney is outside of his or her respective jurisdiction;

(ii) 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

(iii) The judge finds that such purpose has been adequately shown.

(14) An interception of a communication under an order with respect to which the requirements of subdivisions (1)(b), (3)(d), and (4)(b) of this section do not apply by reason of subsection (13) of this section shall not begin until the facility from which or the place where the communication is to be intercepted is ascertained by the person implementing the interception order.

(15) As used in subdivisions (7)(b) and (9)(c) of this section, good cause shall include a showing that the failure to file the report or serve the inventory was not intentional and that a substantial reason or special circumstance, including an act of God, reasonable unavailability of the applicant or necessary law enforcement officer due to death, medical condition, incapacitation, inaccessibility, or location, or other substantial reason or special circumstance as the court in its discretion determines, excused the failure to file the report or serve the inventory.

Sec. 6. That section 86-707, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

86-707. It shall be unlawful for any person to (1) willfully intentionally and without lawful authority cut, break, tap, or make connection with any telegraph or telephone line, wire, cable, or instrument, or electronic, mechanical, or other device or read or copy, in any unauthorized manner, any message, communication, or report passing over it, in this state, (2) willfully intentionally and without lawful authority prevent, obstruct, or delay, by any means or contrivance whatsoever, the sending, transmission, conveyance, or

delivery in this state of any authorized message, communication, or report by or through any telegraph or telephone line, wire, or cable under the control of any telegraph or telephone company doing business in this state, (3) aid, agree with, employ, or conspire with any person or persons to unlawfully do or perform, or cause to be done, any of the ~~above-mentioned~~ acts described in subdivisions (1) and (2) of this section, or (4) occupy, use a line, or knowingly permit another to occupy, use a line, room, table, establishment, or apparatus to unlawfully do or cause to be done any of the ~~above-mentioned~~ acts described in this section. Any person who violates the provisions of this section shall be guilty of a Class IV felony.

Sec. 7. (1) Except as otherwise specifically provided in sections 86-701 to 86-707 and this section, any person who intentionally:

(a) Sends in intrastate commerce 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 unlawful surreptitious interception of wire, electronic, or oral communications, shall be guilty of a Class IV felony; or

(b) 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 unlawful surreptitious interception of wire, electronic, or oral communications and that such device or any component thereof has been or will be transported in intrastate commerce, shall be guilty of a Class IV felony.

(2) This section shall not be construed to prohibit the exchange of electronic, mechanical, or other devices between law enforcement officers or federally funded law enforcement associations.

(3) It shall be unlawful for a provider or an officer, agent, or employee of or a person under contract with a provider, in the normal course of the business of providing electronic communication service, to send or carry in intrastate commerce, 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 unlawful surreptitious interception of wire, oral, or electronic communications. Any person who violates this subsection shall be guilty of a Class IV felony.

(4) It shall be lawful for 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 send or carry in intrastate commerce, 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 unlawful surreptitious interception of wire, electronic, or oral communications.

Sec. 8. (1) Any person whose wire, electronic, or oral communication is intercepted, disclosed, or intentionally used in violation of sections 86-701 to 86-707 and sections 9 to 14 of this act may in a civil action recover from the person or entity which engaged in that violation such relief as may be appropriate.

(2) In an action under this section, appropriate relief shall include:

(a) Such preliminary and other equitable or declaratory relief as may be appropriate;

(b) Damages under subsection (3) of this section; and

(c) Reasonable attorney's fees and other litigation costs reasonably incurred.

(3)(a) In an action under this section, if the conduct in violation of sections 86-701 to 86-707 and sections 9 to 14 of this act 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 the rules of the Federal Communications Commission 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:

(i) If the person who engaged in such conduct has not previously been enjoined under subsection (5) of section 86-702 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 fifty dollars and not more than five hundred dollars; or

(ii) If on one prior occasion the person who engaged in such conduct has been enjoined under subsection (5) of section 86-702 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 one hundred dollars and not more than one thousand dollars.

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

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

(ii) Statutory damages of whichever is the greater of one hundred dollars a day for each day of violation or ten thousand dollars.

(4) A good faith reliance on (a) a court warrant or order, a grand jury subpoena, a legislative authorization, or a statutory authorization, (b) a request of an investigative or law enforcement officer under section 86-705, or (c) a good faith determination that section 86-702 permitted the conduct complained of shall be a complete defense against any civil or criminal action brought under sections 86-701 to 86-707 and sections 9 to 14 of this act or any other law.

(5) 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. 9. (1) 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 11 of this act. Nothing in sections 86-701 to 86-707 and sections 7 to 14 of this act shall be construed to prohibit an emergency operator from conducting a trap or trace of a phone number during an emergency.

(2) The prohibition of subsection (1) of this section shall not apply with respect to the use of a pen register or a trap-and-trace device by a provider:

(a) Relating to the operation, maintenance, and testing of an electronic communication service, to the protection of the rights or property of such provider or to the protection of users of that service from abuse of service or unlawful use of service;

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

(c) When the consent of the user of such service has been obtained.

(3) Whoever knowingly violates subsection (1) of this section shall be guilty of a Class I misdemeanor.

Sec. 10. (1) An investigative or law enforcement officer may make application for an order or an extension of an order under section 11 of this act authorizing or approving the installation and use of a pen register or a trap-and-trace device under sections 9 to 12 of this act to a county or district court. Such application shall be in writing and shall be under oath or affirmation.

(2) An application under subsection (1) of this section shall include:

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

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

Sec. 11. (1) Upon an application made under section 10 of this act, 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 investigative or law enforcement officer has certified to the court that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation.

(2) An order issued under this section:

(a) Shall specify:

(i) 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;

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

(iii) 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 order; and

(iv) A statement of the offense to which the information likely to be obtained by the pen register or trap-and-trace device relates; and

(b) Shall 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.

(3)(a) An order issued under this section shall 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 such an order may be granted but only upon an application for an order under section 10 of this act and upon the judicial finding required by subsection (1) of this section. The period of extension shall be for a period not to exceed sixty days.

(4) An order issued under this section shall direct that:

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

(b) The person owning or leasing the line to which the pen register or a trap-and-trace device is attached or the person 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.

Sec. 12. (1) Upon the request of an investigative or law enforcement officer authorized to install and use a pen register under sections 9 to 12 of this act, a provider, landlord, custodian, or other person shall furnish such investigative or law enforcement officer forthwith 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 such assistance is directed by a court order as provided in section 11 of this act.

(2) Upon the request of an investigative or law enforcement officer authorized to receive the results of a trap-and-trace device under sections 9 to 12 of this act, a provider, landlord, custodian, or other person shall install such device forthwith on the appropriate line and shall furnish such 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 such installation and assistance is directed by a court order as provided in section 11 of this act. Unless otherwise ordered by the court, the results of the trap-and-trace device shall be furnished to the investigative or law enforcement officer, designated in the court order, at reasonable intervals during regular business hours for the duration of the order.

(3) A provider, landlord, custodian, or other person who furnishes facilities or technical assistance pursuant to this section shall be reasonably compensated for such reasonable expenses incurred in providing such facilities and assistance.

(4) No cause of action shall lie in any court against any provider, its officers, employees, or agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order under sections 9 to 12 of this act.

(5) A good faith reliance on a court order, a legislative authorization, or a statutory authorization shall be a complete defense against any civil or criminal action brought under sections 9 to 12 of this act or any other law.

Sec. 13. (1) Whoever, without the authority of the satellite operator, intentionally or maliciously interferes with the authorized operation of a communications or weather satellite or obstructs or hinders any satellite transmission shall be guilty of a Class IV felony.

(2) This section shall not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States or this state.

Sec. 14. (1) A district court may issue a warrant or other order for the installation of a mobile tracking device, and such order may authorize the use of that device within the jurisdiction of the court and outside that jurisdiction if the device is installed in that jurisdiction.

(2) As used in this section, mobile tracking device shall mean an electronic or mechanical device which permits the tracking of the movement of a person or object.

Sec. 15. (1) Except as provided in subsection (3) of this section, whoever (a) intentionally accesses without authorization a facility through which an electronic communication service is provided or (b)

intentionally exceeds an authorization to access the facility and thereby obtains, alters, or prevents authorized access to a wire or electronic communication while it is in electronic storage in such service shall be punished as provided in subsection (2) of this section.

(2) The punishment for an offense under subsection (1) of this section shall be (a) if the offense is committed for purposes of commercial advantage, malicious destruction or damage, or private commercial gain (i) a Class I misdemeanor for the first offense and (ii) a fine or imprisonment for not more than two years, or both, for any subsequent offense and (b) a Class IV felony for any other offense.

(3) Subsection (1) of this section shall not apply with respect to conduct authorized (a) by the person or entity providing an electronic communication service, (b) by a user of that service with respect to a communication of or intended for that user, or (c) by section 18 of this act or section 86-705.

Sec. 16. (1) Except as provided in subsection (2) of this section, (a) a person or entity providing an electronic communication service to the public shall not knowingly divulge to any person or entity the contents of a communication while in electronic storage by the service and (b) a person or entity providing remote computing service to the public shall not knowingly divulge to any person or entity the contents of any communication which is carried or maintained on the 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 to or customer of such service and (ii) solely for the purpose of providing storage or computer processing services to such subscriber or customer, if the provider is not authorized to access the contents of any such communications for purposes of providing any services other than storage of computer processing.

(2) A person or entity may divulge the contents of a communication:

(a) To an addressee or intended recipient of such communication or an agent of such addressee or intended recipient;

(b) As otherwise authorized in section 17 of this act or section 86-702 or 86-704;

(c) With the lawful consent of the originator or an addressee or intended recipient of such communication or the subscriber in the case of remote

computing service;

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

(e) As may be necessarily incident to the rendition of the service or to the protection of the rights or property of the provider of the service; or

(f) To a law enforcement officer if such contents (i) were inadvertently obtained by the provider and (ii) appear to pertain to the commission of a crime.

Sec. 17. (1) 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 one hundred eighty days or less, only pursuant to a warrant. A governmental entity may require the disclosure by a provider of the contents of an electronic communication that has been in electronic storage in an electronic communications system for more than one hundred eighty days by the means available under subsection (2) of this section.

(2)(a) A governmental entity may require a provider of remote computing service to disclose the contents of any electronic communication to which this subsection is made applicable by subdivision (2)(b) of this section (i) without required notice to the subscriber or customer if the governmental entity obtains a warrant or (ii) with prior notice from the governmental entity to the subscriber or customer if the governmental entity (A) uses an administrative subpoena or (B) obtains a court order for such disclosure under subsection (4) of this section, except that delayed notice may be given pursuant to section 19 of this act.

(b) Subdivision (2)(a) of this section shall apply to any electronic communication that is held 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 to or customer of such remote computing service and (ii) solely for the purpose of providing storage or computer processing services to such subscriber or customer, if the provider is not authorized to access the contents of any such communications for purposes of providing any services other than storage or computer processing.

(3)(a)(i) Except as provided in subdivision (3)(a)(ii) of this section, 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 such service not including the contents of communications covered by subsection (1) or (2) of this section to any person other than a governmental entity.

(ii) A provider of electronic communication service or remote computing service shall disclose a record or other information pertaining to a subscriber to or customer of such service not including the contents of communications covered by subsection (1) or (2) of this section to a governmental entity only when the governmental entity (A) uses an administrative subpoena, (B) obtains a warrant, (C) obtains a court order for such disclosure under subsection (4) of this section, or (D) has the consent of the subscriber or customer to such disclosure.

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

(4) A court order for disclosure under subsection (2) or (3) of this section shall 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 provider, may quash or modify such order if the information or records requested are unusually voluminous in nature or compliance with such order would otherwise cause an undue burden on such provider.

(5) No cause of action shall lie in any court against any provider, its officers, employees, or agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order, warrant, subpoena, or certification under sections 15 to 21 of this act.

Sec. 18. (1)(a) A governmental entity acting under subsection (2) of section 17 of this act may include in its subpoena or court order a requirement that the 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 such subpoena or court order, such provider shall create such backup copy as soon as practicable consistent with its regular business practices and shall confirm to the governmental entity that such backup copy

has been made. Such backup copy shall be created within two business days after receipt by the provider of the subpoena or court order.

(b) Notice to the subscriber or customer shall be made by the governmental entity within three days after receipt of such confirmation unless such notice is delayed pursuant to section 19 of this act.

(c) The provider shall not destroy such backup copy until the later of (i) the delivery of the information or (ii) the resolution of any proceedings including appeals of any proceeding concerning the subpoena or court order.

(d) The provider shall release such backup copy to the requesting governmental entity no sooner than fourteen days after the governmental entity's notice to the subscriber or customer if such provider (i) has not received notice from the subscriber or customer that the subscriber or customer has challenged the governmental entity's request and (ii) 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 (a) of this subsection if in its sole discretion such entity determines that there is reason to believe that notification under this section and section 17 of this act of the existence of the subpoena or court order may result in destruction of or tampering with evidence. This determination shall not be subject to challenge by the subscriber, customer, or provider.

(2)(a) Within fourteen days after notice by the governmental entity to the subscriber or customer under subdivision (1)(b) of this section, such subscriber or customer may file a motion to quash such subpoena or vacate such court order, with copies served upon the governmental entity and with written notice of such challenge to the provider. A motion to vacate a court order shall be filed in the court which issued such order. A motion to quash a subpoena shall be filed in the appropriate court. Such motion or application shall contain an affidavit or sworn statement (i) stating that the applicant is a subscriber to or customer of the service from which the contents of electronic communications maintained for him or her have been sought and (ii) 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 sections 15 to 21 of this act in some other respect.

(b) Service shall 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 subscriber or customer has received pursuant to sections 17 to 19 of this act. For purposes of this section, the term delivery shall have the meaning given that term in the Nebraska Rules of Civil Procedure.

(c) If the court finds that the subscriber or customer has complied with subdivisions (a) and (b) of this subsection, the court shall order the governmental entity to file a sworn response, which may be filed in camera if the governmental entity includes in its response the reasons which 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 such additional proceedings as it deems appropriate. All such proceedings shall 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 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 such 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 reason to believe that the communications sought are relevant to a legitimate law enforcement inquiry or that there has not been substantial compliance with sections 15 to 21 of this act, 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 subscriber or customer.

Sec. 19. (1)(a) A governmental entity acting under subsection (2) of section 17 of this act shall (i) when a court order is sought, include in the application a request, which the court shall grant, for an order delaying the notification required under such subsection for a period not to exceed ninety 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 or (ii) when an administrative

subpoena is obtained, delay the notification required under such subsection for a period not to exceed ninety 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.

(b) For purposes of this section:

(i) Adverse result shall mean:

(A) Endangering the life or physical safety of an individual;

(B) Flight from prosecution;

(C) Destruction of or tampering with evidence;

(D) Intimidation of potential witnesses; or

(E) Otherwise seriously jeopardizing an investigation or unduly delaying a trial; and

(ii) Supervisory official shall mean the investigative agent in charge, the assistant investigative agent in charge, an equivalent of an investigating agency's headquarters or regional office, the chief prosecuting attorney, the first assistant prosecuting attorney, or an equivalent of a prosecuting attorney's headquarters or regional office.

(c) The governmental entity shall maintain a true copy of certification under subdivision (a)(ii) of this subsection.

(d) Extensions of the delay of notification provided in sections 17 and 18 of this act of up to ninety days each may be granted by the court upon application, or by certification by a governmental entity, but only in accordance with subsection (2) of this section.

(e) Upon expiration of the period of delay of notification under subdivision (a) or (d) of this subsection, 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:

(i) States with reasonable specificity the nature of the law enforcement inquiry; and

(ii) Informs such customer or subscriber:

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

(B) That notification of such customer or subscriber was delayed;

(C) What governmental entity or court made the certification or determination pursuant to which that

delay was made; and

(D) Which provision of sections 15 to 21 of this act allowed such delay.

(2) A governmental entity acting under section 17 of this act, when it is not required to notify the subscriber or customer under subdivision (2)(a) of section 17 of this act or to the extent that it may delay such notice pursuant to subsection (1) of this section, may apply to a court for an order commanding a provider of electronic communication service or remote computing service to whom a warrant, subpoena, or court order is directed, for such period as the court deems appropriate, not to notify any other person of the existence of the warrant, subpoena, or court order. The court shall enter such 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 an adverse result.

Sec. 20. (1) Except as otherwise provided in subsection (3) of this section, a governmental entity obtaining the contents of communications, records, or other information under sections 15 to 21 of this act, shall pay to the person or entity assembling or providing such information a fee for reimbursement for such costs as are reasonably necessary and which have been directly incurred in searching for, assembling, reproducing, or otherwise providing such information. Such reimbursable costs shall include any costs due to necessary disruption of normal operations of any electronic communication service or remote computing service in which such information may be stored.

(2) The amount of the fee provided by subsection (1) of this section shall be as mutually agreed by the governmental entity and the person or entity providing the information or, in the absence of agreement, shall be as determined by the court which issued the order for production of such information or the court before which a criminal prosecution relating to such information would be brought if no court order was issued for production of the information.

(3) The requirement of subsection (1) of this section shall not apply with respect to records or other information maintained by a provider that relate to telephone toll records and telephone listings obtained under section 17 of this act. The court may, however, order a payment as described in subsection (1) of this section if the court determines the information required is unusually voluminous in nature or otherwise caused an undue burden on the provider.

Sec. 21. (1) Except as provided in subsection (5) of section 17 of this act, any provider, subscriber, or customer aggrieved by any violation of sections 15 to 21 of this act 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 such relief as may be appropriate.

(2) In a civil action under this section, appropriate relief shall include:

(a) Such preliminary and other equitable or declaratory relief as may be appropriate;

(b) Damages under subsection (3) of this section; and

(c) Reasonable attorney's fees and other litigation costs reasonably incurred.

(3) 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 shall a person entitled to recover receive less than the sum of one thousand dollars.

(4) A good faith reliance on (a) a court warrant or order, a grand jury subpoena, a legislative authorization, or a statutory authorization, (b) a request of an investigative or law enforcement officer under section 86-705, or (c) a good faith determination that section 86-702 permitted the conduct complained of shall be a complete defense to any civil or criminal action brought under sections 15 to 21 of this act.

(5) 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. 22. That original sections 86-701 to 86-705 and 86-707, Reissue Revised Statutes of Nebraska, 1943, are repealed.