

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILLS NOS. 1112 & 854

91ST GENERAL ASSEMBLY

Reported from the Committee on Pensions and General Laws, March 13, 2002, with recommendation that the Senate Committee Substitute do pass.

TERRY L. SPIELER, Secretary.

3660S.06C

AN ACT

To repeal sections 44.023, 306.124, 307.177, 542.400, 542.402, 542.404, 542.406, 542.408, 542.410, 542.412, 542.414, 542.416, 542.418, 542.420, 542.422, 570.030, 571.020, 574.105, 574.115, 575.080, 578.008 and 610.021, RSMo, relating to terrorism, and to enact in lieu thereof twenty-six new sections relating to the same subject, with an emergency clause and penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 44.023, 306.124, 307.177, 542.400, 542.402, 542.404, 542.406, 542.408, 542.410, 542.412, 542.414, 542.416, 542.418, 542.420, 542.422, 570.030, 571.020, 574.105, 574.115, 575.080, 578.008 and 610.021, RSMo, are repealed and twenty-six new sections enacted in lieu thereof, to be known as sections 38.050, 44.023, 304.370, 306.124, 307.177, 542.400, 542.402, 542.404, 542.406, 542.408, 542.410, 542.412, 542.414, 542.416, 542.418, 542.420, 542.422, 569.072, 570.030, 571.020, 574.105, 574.115, 575.080, 576.080, 578.008 and 610.021, to read as follows:

38.050. 1. There is established a joint committee of the general assembly to be known as the "Joint Committee on Terrorism, Bioterrorism and Homeland Security" to be composed of seven members of the senate and seven members of the house of representatives. The senate members of the joint committee shall be appointed by the president pro tem and minority floor leader of the senate and the house members shall be appointed by the speaker and minority floor leader of the house of representatives. The appointment of each member shall continue during the member's term of office as a member of the general assembly or until a successor has been

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

appointed to fill the member's place when his or her term of office as a member of the general assembly has expired. No major party shall be represented by more than four members from the house of representatives nor more than four members from the senate. A majority of the committee shall constitute a quorum, but the concurrence of a majority of the members shall be required for the determination of any matter within the committee's duties.

2. The joint committee shall:

(1) Make a continuing study and analysis of all state government terrorism, bioterrorism and homeland security efforts;

(2) Devise a standard reporting system to obtain data on each state government agency that will provide information on each agency's terrorism, bioterrorism and homeland security status at least biennially;

(3) Determine from its study and analysis the need for changes in statutory law;

(4) Make any other recommendation to the general assembly necessary to provide adequate terrorism, bioterrorism and homeland security to the citizens of the state of Missouri.

3. The joint committee shall meet within ten days after its creation and organize by selecting a chairperson and a vice chairperson, one of whom shall be a member of the senate and the other a member of the house of representatives. The chairperson shall alternate between members of the house and senate every two years after the committee's organization.

4. The regular meetings of the committee shall be in Jefferson City, Missouri, and after its inception and organization it shall meet at least quarterly. The committee may meet at locations other than Jefferson City when the committee deems it necessary.

5. The committee may employ such personnel as is deemed necessary to assist the committee in the performance of its duties.

6. The members of the committee shall serve without compensation but shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of their official duties.

7. It shall be the duty of the committee to compile a full report of its activities for submission to the general assembly. The report shall first be submitted by January 15, 2003, and not later than the fifteenth of January of each year thereafter in which the general assembly convenes in regular session and shall include any recommendations which the committee may have for legislative action as well as any recommendations for administrative or procedural changes in the internal

management or organization of state or local government agencies and departments. Copies of the report containing such recommendations shall be sent to the appropriate directors of state or local government agencies or departments included in the report.

8. The provisions of this section shall expire on December 31, 2007.

44.023. 1. The Missouri state emergency management agency shall establish and administer an emergency volunteer program to be activated in the event of [an earthquake or other natural] a disaster whereby volunteer architects and professional engineers registered under chapter 327, RSMo, and construction contractors, equipment dealers and other owners and operators of construction equipment may volunteer the use of their services and equipment, either manned or unmanned, for up to three days as requested and needed by the state emergency management agency.

2. In the event of [an earthquake or other natural] a disaster, the enrolled volunteers shall, where needed, assist local jurisdictions and local building inspectors to provide essential demolition, cleanup or other related services and to determine whether buildings affected by [an earthquake or other natural] a disaster:

- (1) Have not sustained serious damage and may be occupied;
- (2) Must be vacated temporarily pending repairs; or
- (3) Must be demolished in order to avoid hazards to occupants or other persons.

3. Any person when utilized as a volunteer under the emergency volunteer program shall have his incidental expenses paid by the local jurisdiction for which the volunteer service is provided.

4. Architects and professional engineers, construction contractors, equipment dealers and other owners and operators of construction equipment and the companies with which they are employed, working under the emergency volunteer program shall not be personally liable either jointly or separately for any act or acts committed in the performance of their official duties as emergency volunteers except in the case of willful misconduct or gross negligence.

5. Any individuals, employers, partnerships, corporations or proprietorships, that are working under the emergency volunteer program providing demolition, cleanup, removal or other related services, shall not be liable for any acts committed in the performance of their official duties as emergency volunteers except in the case of willful misconduct or gross negligence.

304.370. 1. For purposes of this section, "hazardous materials" shall be as defined pursuant to Part 397, Title 49, Code of Federal Regulations, as adopted and amended.

2. No person shall transport hazardous materials in or through any highway tunnel in this state.

3. No person shall park a vehicle containing hazardous materials within three

hundred feet of any highway tunnel in this state except as provided pursuant to Part 397, Title 49, Code of Federal Regulations, as adopted and amended.

4. Any person who is found or pleads guilty to a violation of this section shall be guilty of a class B misdemeanor. Any person who is found or pleads guilty to a second or subsequent violation of this section shall be guilty of a class A misdemeanor. Violations of this section shall be enforced pursuant to section 390.201, RSMo.

306.124. 1. (1) "Aids to navigation" means buoys, beacons or other fixed objects in the water which are used to mark obstructions to navigation or to direct navigation through safe channels.

(2) "Regulatory markers" means any anchored or fixed markers in or on the water or signs on the shore or on bridges over the water other than aids to navigation and shall include but not be limited to bathing markers, speed zone markers, information markers, danger zone markers, boat keep-out areas, and mooring buoys.

2. The Missouri state water patrol after a public hearing pursuant to notice thereof published not less than ten days prior thereto in each county to be affected may provide for the uniform marking of the water areas in this state through the placement of aids to navigation and regulatory markers. The Missouri state water patrol shall establish a marking system compatible with the system of aids to navigation prescribed by the United States Coast Guard. No city, county, or person shall mark or obstruct the water of this state in any manner so as to endanger the operation of watercraft or conflict with the marking system prescribed by the state water patrol.

3. Whenever, due to any actual or imminent man-made or natural disaster, the navigation or use of any waters of this state presents an unreasonable danger to persons or property, the Missouri state water patrol may, with the consent of the director of the department of public safety, close such waters by the placement of regulatory markers.

[3.] **4.** The operation of any watercraft within prohibited areas that are marked shall be prima facie evidence of negligent operation.

[4.] **5.** It shall be unlawful for any person to operate a watercraft on the waters of this state in a manner other than that prescribed or permitted by regulatory markers.

[5.] **6.** No person shall moor or fasten a watercraft to or willfully damage, tamper, remove, obstruct, or interfere with any aid to navigation or regulatory marker established pursuant to sections 306.010 to 306.126.

307.177. 1. It is unlawful for any person to operate any bus, truck, truck-tractor and trailer combination, or other commercial motor vehicle and trailer upon any highway of this state, whether intrastate transportation or interstate transportation, transporting materials defined and

classified as hazardous by the United States Department of Transportation pursuant to Title 49 of the Code of Federal Regulations, as such regulations have been and may periodically be amended, unless such vehicle is equipped with the equipment required by and be operated in accordance with safety and hazardous materials regulations for such vehicles as adopted by the United States Department of Transportation.

2. Notwithstanding the provisions of subsection 1 of this section to the contrary, Part 391, Subpart E, Title 49, Code of Federal Regulations, relating to the physical requirements of drivers shall not be applicable to drivers in intrastate commerce, provided such drivers were licensed by this state as chauffeurs to operate commercial motor vehicles on May 13, 1988.

3. Failure to comply with the requirements of this section may result in the commercial motor vehicle and trailer and driver of such vehicle and trailer being placed out of service. Criteria used for placing drivers and vehicles out of service are the North American Uniform Out-of-Service Criteria adopted by the Commercial Vehicle Safety Alliance and the United States Department of Transportation, as such criteria have been and may periodically be amended.

4. Violation of this section shall be deemed a class A misdemeanor.

542.400. As used in sections 542.400 to 542.424, the following words and phrases mean:

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

(2) "Communication common carrier", an individual or corporation undertaking to transport messages for compensation;

(3) "Contents", when used with respect to any wire communication, includes any information concerning the identity of the parties, the substance, purport, or meaning of that communication;

(4) "Court of competent jurisdiction", any circuit court having general criminal jurisdiction within the territorial jurisdiction where the communication is to be intercepted including any circuit judge specially assigned by the supreme court of Missouri pursuant to section 542.404;

(5) "Electronic, mechanical, or other device", any device or apparatus which can be used to intercept a wire communication other than:

(a) Any telephone or telegraph instrument, equipment or facility, or any component thereof, owned by the user or furnished to the subscriber or user by a communications common carrier in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business or being used by a communications common carrier in the ordinary course of its business or by an investigative office or law enforcement officer in the ordinary course of his duties; or

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

(6) "Intercept", the aural acquisition of the contents of any wire communication through the use of any electronic or mechanical device, including but not limited to interception by one spouse of another spouse;

(7) "Investigative officer" or "law enforcement officer or agency", any officer or agency of this state or a political subdivision of this state, who is empowered by law to conduct investigations of or to make arrests for offenses enumerated in sections 542.400 to 542.424, and any attorney authorized by law to prosecute or participate in the prosecution of such offenses;

(8) "Oral communication", any communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation;

(9) "Person", any employee, or agent of this state or political subdivision of this state, and any individual, partnership, association, joint stock company, trust, or corporation;

(10) "Prosecuting attorney", the elected prosecuting attorney of the county or the circuit attorney of any city not contained within a county;

(11) "State", state of Missouri and political subdivisions of the state;

(12) "Wire communication", 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 including the use of such connection in a switching station furnished or operated by any person engaged as a common carrier in providing or operating such facilities for the transmission of local, state or interstate communications.

542.402. 1. Except as otherwise specifically provided in sections 542.400 to 542.424, a person is guilty of a class D felony and upon conviction shall be punished as provided by law, if such person:

(1) Knowingly intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept, any wire communication;

(2) Knowingly 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 such device transmits communications by radio or interferes with the transmission of such communication; provided, however, that nothing in sections 542.400 to 542.424 shall be construed to prohibit the use by law enforcement officers of body microphones and transmitters in undercover investigations for the acquisition of evidence and the protection of law enforcement officers and others

working under their direction in such investigations;

(3) Knowingly discloses, or endeavors to disclose, to any other person the contents of any wire communication, when he knows or has reason to know that the information was obtained through the interception of a wire communication in violation of this subsection; or

(4) Knowingly uses, or endeavors to use, the contents of any wire communication, when he knows or has reason to know that the information was obtained through the interception of a wire communication in violation of this subsection.

2. It is not unlawful under the provisions of sections 542.400 to 542.424:

(1) For an operator of a switchboard, or an officer, employee, or agent of any communication common carrier, whose facilities are used in the transmission of a wire communication, to intercept, disclose, or use that communication in the normal course of his employment while engaged in any activity which is a necessary incident to the rendition of his service or to the protection of the rights or property of the carrier of such communication, however, communication common carriers shall not utilize service observing or random monitoring except for mechanical or service quality control checks;

(2) For a person acting under law to intercept a wire 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;

(3) For a person not acting under law to intercept a wire 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.

542.404. 1. The elected prosecuting attorney of the county with the written authorization of the attorney general of the state of Missouri may make application for an order authorizing the interception of a wire communication. The supreme court of Missouri, upon notice that the attorney general of the state of Missouri has authorized application for an interception of a wire communication, shall appoint a circuit court from a circuit other than the circuit where the application originates to approve or deny the application and to issue any necessary orders. Such court may grant in conformity with sections 542.400 to 542.424, an order authorizing the interception of wire communications by the law enforcement agency having responsibility for the investigation of the offense if there is probable cause to believe that the interception may provide evidence of:

(1) A felony which involves the manufacture, importation, receiving, possession, buying, selling, prescription, administration, dispensation, distribution, compounding or otherwise having in a person's control any controlled substance, as the term "controlled substance" is defined by section 195.010, RSMo; or

(2) Any dangerous felony as defined in section 558.016, RSMo; or

(3) Any terrorist threat as defined in section 574.115, RSMo; or

(4) Any conspiracy to commit any of the offenses listed in subdivisions (1), (2) or (3) of this subsection.

2. Any order entered pursuant to the provisions of sections 542.400 to 542.424 shall require live monitoring by appropriate law enforcement personnel of the interception of any wire communication.

542.406. 1. Any investigative officer or law enforcement officer who, by any means authorized by sections 542.400 to 542.424, has lawfully obtained knowledge of the contents of any wire communication, or evidence derived therefrom, may disclose such contents to another investigative officer or law enforcement officer to the extent that such disclosure is necessary to the proper performance of the official duties of the officer making or receiving the disclosure for investigative purposes only.

2. Any investigative officer or law enforcement officer who, by any means authorized by sections 542.400 to 542.424, has lawfully obtained knowledge of the contents of any wire or oral communication, or evidence derived therefrom, may use such contents to the extent such use is necessary to the proper performance of his official duties.

3. Any person who has received, by any means authorized by sections 542.400 to 542.424, any information concerning a wire communication, or evidence derived therefrom, intercepted in accordance with the provisions of sections 542.400 to 542.424 shall disclose the contents of that communication or such derivative evidence while giving testimony under oath or affirmation in any criminal proceeding, including deposition in any court or in any grand jury proceeding, subject to the rules of evidence.

4. No otherwise privileged wire communication intercepted in accordance with, or in violation of, the provisions of sections 542.400 to 542.424 shall lose its privileged character and shall be suppressed upon motion.

542.408. 1. Each application for an order authorizing or approving the interception of a wire communication shall be made in writing and shall be submitted to the attorney general for his review and approval. If the attorney general approves the application, he shall join such application, which shall be submitted upon oath or affirmation to a court of competent jurisdiction and shall state the applicant's

authority to make such application. Each application shall include the following information:

(1) The identity of the prosecuting attorney making the application together with the identities of the law enforcement agency or agencies that are to conduct the interception;

(2) A full and complete statement of the facts and circumstances relied upon by the applicant to justify his belief that an order should be issued, including:

(a) Details as to the particular offense that has been, is being, or is about to be committed;

(b) A particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted;

(c) A particular description of the type of communications sought to be intercepted; and

(d) The identity of the person and employment, if known, committing the offense and whose communications are to be intercepted;

(e) That the application is sought solely for detection of the crimes enumerated in section 542.404;

(3) A full and complete statement as to whether 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;

(4) 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 the 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;

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

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

(7) A statement that adequate resources are available to perform the interception and the estimated number of persons required to accomplish the

interception.

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

3. Upon such application the court may enter an ex parte order, as requested or as modified, authorizing or approving interception of wire communications within the territorial jurisdiction of the court, if the court determines on the basis of the facts submitted by the applicant that:

(1) Probable cause exists to believe that an individual is committing, has committed, or is about to commit a particular offense enumerated in section 542.404;

(2) Probable cause exists to believe that particular communications concerning that offense will be obtained through such interception;

(3) 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

(4) Probable cause exists to believe that the facilities from which, or the place where, the wire 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 communication shall specify:

(1) The identity of the person and employment, if known, whose communications are to be intercepted;

(2) The nature and location of the communication facilities as to which, or the place where, authority to intercept is granted including whether the interception involves a cellular or other wireless device;

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

(4) The identity of the agency authorized to intercept the communications, and of the person authorizing the application;

(5) 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. No order entered under this section may authorize or approve the interception of any wire 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 court deems necessary to achieve the purposes for which it was granted and in no event 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 minimize the interception of communications not otherwise subject to interception under sections 542.400 to 542.424, and shall terminate upon attainment of the authorized objective, or in any event in thirty days.

6. Whenever an order authorizing interception is entered pursuant to the provisions of sections 542.400 to 542.424, the order may require reports to be made to the court who issued the order showing what progress has been made toward achievement of the authorized objective and the need for continued interception. Such reports shall be made at such intervals as the court may require, but in no case longer than thirty days.

7. Notwithstanding any other provisions of sections 542.400 to 542.424, any law enforcement officer with the approval of the prosecuting attorney may request an order of an appropriate court whenever reasonable grounds therefor exist to have a pen register placed in effect, which pen register will only determine the phone number to which the call is placed.

8. Notwithstanding any other provision of law to the contrary, communication common carriers, and their officers, employees and agents, may provide information, facilities or technical assistance to persons authorized by law to intercept wire communications, if the communication common carrier, its officers, employees or agents have been provided with a court order directing such assistance signed by the authorizing court. The court order shall set forth the period of time during which the provision of the information, facilities or technical assistance is authorized and specifying the information, facilities, or technical assistance required. No cause of action shall lie in any court against any communication common carrier, its officers, employees, and agents for providing information, facilities or assistance in accordance with the terms of an order under this subsection. Any communication common carrier furnishing such facilities or technical assistance shall be compensated therefor by the prosecuting attorney at the prevailing rates.

542.410. 1. The contents of any wire communication intercepted by any means authorized by sections 542.400 to 542.424 shall be recorded on tape or wire or other comparable device. The recording of the contents of any wire or oral communication as required by this section 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 court

issuing such order and shall be sealed under its directions. Custody of the recordings shall be wherever the court orders. The recordings shall not be destroyed except upon an order of the issuing court and in any event shall be kept for ten years. Duplicate recordings shall be made for use for disclosure pursuant to the provisions of subsections 1 and 2 of section 542.406 for investigations and discovery in accordance with applicable supreme court rules. The presence of the seal provided for by subsection 2 of this section, or a satisfactory explanation for the absence thereof, shall be a prerequisite for the use or disclosure of the contents of any wire communication or evidence derived therefrom under the provisions of subsection 3 of section 542.406.

2. Applications made and orders granted under sections 542.400 to 542.424 shall be sealed by the court. Custody of the applications and orders shall be wherever the court directs. Such applications and orders shall be disclosed only upon a showing of good cause before a court of competent jurisdiction and shall not be destroyed except on order of the issuing or denying court, and in any event shall be kept for ten years.

3. Any violation of the provisions of this section shall be punishable as a class A misdemeanor.

4. Within a reasonable time but not later than ninety days after the filing of an application for an order of approval under the provisions of sections 542.400 to 542.424 or the termination of the period of an order or extensions thereof, whichever is later, the issuing or denying court shall cause to be served, on the persons named in the order or the application, and such other parties to intercepted communications an inventory which shall include notice of:

- (1) The fact of the entry of the order or the application;
- (2) The date of the entry and the period of authorized, approved interception;
- (3) The fact that during the period oral communications were or were not intercepted; and
- (4) The nature of said conversations.

The court, upon the filing of a motion, shall make available to such person or his counsel for inspection and copying such intercepted communications, applications and orders.

542.412. 1. The contents of any intercepted wire communications or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in federal or state court nor in any administrative proceeding unless each party, in compliance with supreme court rules relating to discovery in criminal cases, hearings and proceedings, has been furnished with a copy

of the court order and accompanying application under which the interception was authorized or approved and a transcript of any intercepted wire communication or evidence derived therefrom.

2. If the defense in its request designates material or information not in the possession or control of the state, but which is, in fact, in the possession or control of other governmental personnel, the state shall use diligence and make good faith efforts to cause such materials to be made available to the defendant's counsel, and if the state's efforts are unsuccessful and such material or other governmental personnel are subject to the jurisdiction of the court, the court, upon request, shall issue suitable subpoenas or orders to cause such material or information to be made available to the state for disclosure to the defense.

542.414. 1. Any aggrieved person in any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, the state, or a political subdivision thereof, may move to suppress the contents of any intercepted wire communication, or evidence derived therefrom, on the grounds that:

(1) The communication was unlawfully intercepted;

(2) The order of authorization or approval under which it was intercepted is insufficient on its face;

(3) The interception was not made in conformity with the order of authorization or approval; or

(4) The communication was intercepted in violation of the provisions of the Constitution of the United States or the state of Missouri or in violation of a state statute. Such motion shall be made before the trial, hearing, or proceeding unless there was no reasonable opportunity to make such motion or the person was not aware of the existence of grounds for the motion. If the motion is granted, the contents of the intercepted wire communication, or evidence derived therefrom or the contents of any communication intercepted as a result of any extension of the original order authorizing or approving the interception of wire communication, and any evidence derived therefrom, shall be treated as having been obtained in violation of sections 542.400 to 542.424.

2. In addition to any other right to appeal, the state shall have the right to appeal from an order granting a motion to suppress made under subsection 1 of this section if the prosecuting attorney shall certify to the court or other official granting such motion that the appeal be taken within thirty days after the date the order was entered and shall be diligently prosecuted.

542.416. 1. Within thirty days after the expiration of an order or each

extension thereof entered pursuant to the provisions of section 542.408, the issuing court shall report to the state courts administrator:

- (1) The fact that an order or extension was applied for;**
- (2) The kind of order or extension applied for;**
- (3) The fact that the order or extension was granted as applied for, was modified, or was denied;**
- (4) The period of interceptions authorized by the order, and the number and duration of any extensions of the order;**
- (5) The offense specified in the order or application, or extension of an order;**
- (6) The identity of the applying investigative officer or law enforcement officer and agency making the application and the person authorizing the application; and**
- (7) The nature of the facilities from which or the place where communications were to be intercepted.**

2. In January of each year, the principal prosecuting attorney for any political subdivision of the state shall report to the state courts administrator:

(1) The information required by subdivisions (1) through (7) of subsection 1 of this section with respect to each application for an order or extension made during the preceding calendar year;

(2) A general description of the interceptions made under such order or extension, including:

(a) The approximate nature and frequency of incriminating communications intercepted;

(b) The approximate nature and frequency of other communications intercepted;

(c) The approximate number of persons whose communications were intercepted; and

(d) The approximate nature, amount, and cost of the manpower and other resources used in the interceptions;

(3) The number of arrests resulting from interceptions made under such order or extension, and the offenses for which arrests were made;

(4) The number of trials resulting from such interceptions;

(5) The number of motions to suppress made with respect to such interceptions, and the number granted or denied;

(6) The number of convictions resulting from such interceptions and the offenses for which the convictions were obtained and a general assessment of the importance of the interceptions; and

(7) The information required by subdivisions (2) through (6) of this subsection

with respect to orders or extensions obtained in the preceding calendar year.

3. In April of each year the state courts administrator shall transmit to the Missouri general assembly a full and complete report concerning the number of applications for orders authorizing or approving the interception of wire communications and the number of orders and extensions granted or denied during the preceding calendar year. Such report shall include a summary and analysis of the data required to be filed with the state courts administrator by subsections 1 and 2 of this section. The state courts administrator may promulgate rules and regulations dealing with the content and form of the reports required to be filed by subsections 1 and 2 of this section.

542.418. 1. The contents of any wire communication or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any civil or administrative proceeding, except in civil actions brought pursuant to this section.

2. Any person whose wire communication is intercepted, disclosed, or used in violation of sections 542.400 to 542.424 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 recover from any such person:

(a) Actual damages, but not less than liquidated damages computed at the rate of one hundred dollars a day for each day of violation or ten thousand dollars whichever is greater;

(b) Punitive damages on a showing of a willful or intentional violation of sections 542.400 to 542.424; and

(c) A reasonable attorney's fee and other litigation costs reasonably incurred.

3. A good faith reliance on a court order or on the provisions of section 542.408 shall constitute a prima facie defense to any civil or criminal action brought under sections 542.400 to 542.424.

4. Nothing contained in this section shall limit any cause of action available prior to August 28, 1989.

542.420. Whenever any wire communication has been intercepted, no part of the contents of such communication and no evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the United States, a state, or a political subdivision thereof if the disclosure of that information would be in violation of sections 542.400 to 542.424.

542.422. Whenever it shall appear that any person is engaged or is about to

engage in any act which constitutes or will constitute a felony violation of sections 542.400 to 542.424, the attorney general may initiate a civil action in a circuit court to enjoin such violation. The court shall proceed as soon as practicable to the hearing and determination of such an action, and may, at any time before final determination, enter such a restraining order or prohibition, or take such other action, as is warranted to prevent a continuing and substantial injury to the state or to any 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 an indictment has been returned against the respondent, discovery is governed by the rules of criminal procedure.

569.072. 1. A person commits the crime of criminal water contamination if such person knowingly introduces any dangerous radiological, chemical or biological agent or substance into any public or private waters of the state or any water supply with the purpose of causing death or serious physical injury to another person.

2. Criminal water contamination is a class B felony.

570.030. 1. A person commits the crime of stealing if he or she appropriates property or services of another with the purpose to deprive him or her thereof, either without his or her consent or by means of deceit or coercion.

2. Evidence of the following is admissible in any criminal prosecution [under] **pursuant to** this section on the issue of the requisite knowledge or belief of the alleged stealer:

- (1) That he or she failed or refused to pay for property or services of a hotel, restaurant, inn or boardinghouse;
- (2) That he or she gave in payment for property or services of a hotel, restaurant, inn or boardinghouse a check or negotiable paper on which payment was refused;
- (3) That he or she left the hotel, restaurant, inn or boardinghouse with the intent to not pay for property or services;
- (4) That he or she surreptitiously removed or attempted to remove his or her baggage from a hotel, inn or boardinghouse.

3. Stealing is a class C felony if:

- (1) The value of the property or services appropriated is seven hundred fifty dollars or more; or
 - (2) The actor physically takes the property appropriated from the person of the victim;
- or
- (3) The property appropriated consists of:
 - (a) Any motor vehicle, watercraft or aircraft; or
 - (b) Any will or unrecorded deed affecting real property; or
 - (c) Any credit card or letter of credit; or

- (d) Any firearms; or
- (e) A United States national flag designed, intended and used for display on buildings or stationary flagstaffs in the open; or
- (f) Any original copy of an act, bill or resolution, introduced or acted upon by the legislature of the state of Missouri; or
- (g) Any pleading, notice, judgment or any other record or entry of any court of this state, any other state or of the United States; or
- (h) Any book of registration or list of voters required by chapter 115, RSMo; or
- (i) Any animal of the species of horse, mule, ass, cattle, swine, sheep, or goat; or
- (j) Live fish raised for commercial sale with a value of seventy-five dollars; or
- (k) Any controlled substance as defined by section 195.010, RSMo; **or**

(l) Ammonium nitrate.

4. If an actor appropriates any material with a value less than one hundred fifty dollars in violation of this section with the intent to use such material to manufacture, compound, produce, prepare, test or analyze amphetamine or methamphetamine or any of their analogues, then such violation is a class D felony. The theft of any amount of anhydrous ammonia or liquid nitrogen, or any attempt to steal any amount of anhydrous ammonia or liquid nitrogen, is a class C felony. The theft of any amount of anhydrous ammonia by appropriation of a tank truck, tank trailer, rail tank car, bulk storage tank, field (nurse) tank or field applicator is a class A felony.

5. The theft of any item of property or services [under] **pursuant to** subsection 3 of this section which exceeds seven hundred fifty dollars may be considered a separate felony and may be charged in separate counts.

6. Any person with a prior conviction of paragraph (i) of subdivision (3) of subsection 3 of this section and who violates the provisions of paragraph (i) of subdivision (3) of subsection 3 of this section when the value of the animal or animals stolen exceeds three thousand dollars is guilty of a class B felony.

7. Any violation of this section for which no other penalty is specified in this section is a class A misdemeanor.

571.020. 1. A person commits a crime if [he] **such person** knowingly possesses, manufactures, transports, repairs, or sells:

- (1) An explosive weapon;
- (2) An explosive, incendiary or poison substance or material with the purpose to manufacture an explosive weapon;**
- [(2)] **(3)** A machine gun;
- [(3)] **(4)** A gas gun;
- [(4)] **(5)** A short barreled rifle or shotgun;
- [(5)] **(6)** A firearm silencer;

[(6)] (7) A switchblade knife;

[(7)] (8) A bullet or projectile which explodes or detonates upon impact because of an independent explosive charge after having been shot from a firearm; or

[(8)] (9) Knuckles.

2. A person does not commit a crime [under] **pursuant to** this section if his conduct:

(1) Was incident to the performance of official duty by the armed forces, national guard, a governmental law enforcement agency, or a penal institution; or

(2) Was incident to engaging in a lawful commercial or business transaction with an organization enumerated in subdivision (1) of this section; or

(3) Was incident to using an explosive weapon in a manner reasonably related to a lawful industrial or commercial enterprise; or

(4) Was incident to displaying the weapon in a public museum or exhibition; or

(5) Was incident to dealing with the weapon solely as a curio, ornament, or keepsake, or to using it in a manner reasonably related to a lawful dramatic performance; but if the weapon is a type described in subdivision (1), [(3) or (5)] (4) or (6) of subsection 1 of this section it must be in such a nonfunctioning condition that it cannot readily be made operable. No short barreled rifle, short barreled shotgun, or machine gun may be possessed, manufactured, transported, repaired or sold as a curio, ornament, or keepsake, unless such person is an importer, manufacturer, dealer, or collector licensed by the Secretary of the Treasury pursuant to the Gun Control Act of 1968, U.S.C., Title 18, or unless such firearm is an "antique firearm" as defined in subsection 3 of section 571.080, or unless such firearm has been designated a "collectors item" by the Secretary of the Treasury pursuant to the U.S.C., Title 26, Section 5845 (a).

3. A crime [under] **pursuant to** subdivision (1), (2), (3), (4) [or], (5) or (6) of subsection 1 of this section is a class C felony; a crime [under] **pursuant to** subdivision [(6),] (7) [or], (8) or (9) of subsection 1 of this section is a class A misdemeanor.

574.105. 1. As used in this section, the following terms mean:

(1) "Conducts", initiating, concluding or participating in initiating or concluding a transaction;

(2) "Criminal activity", any act or activity constituting an offense punishable as a felony pursuant to the laws of Missouri or the United States;

(3) "Currency", currency and coin of the United States;

(4) "Currency transaction", a transaction involving the physical transfer of currency from one person to another. A transaction which is a transfer of funds by means of bank check, bank draft, wire transfer or other written order, and which does not include the physical transfer of currency is not a currency transaction;

(5) "Person", natural persons, partnerships, trusts, estates, associations, corporations and

all entities cognizable as legal personalities.

2. A person commits the crime of money laundering if he:

(1) Conducts or attempts to conduct a currency transaction [involving the proceeds of criminal activity] with the purpose to promote or aid the carrying on of criminal activity; or

(2) Conducts or attempts to conduct a currency transaction with the purpose to conceal or disguise in whole or in part the nature, location, source, ownership or control of the proceeds of criminal activity; or

(3) Conducts or attempts to conduct a currency transaction with the purpose to avoid currency transaction reporting requirements under federal law; **or**

(4) Conducts or attempts to conduct a currency transaction with the purpose to promote or aid the carrying on of criminal activity for the purpose of furthering or making a terrorist threat or act.

3. The crime of money laundering is a class B felony and in addition to penalties otherwise provided by law, a fine of not more than five hundred thousand dollars or twice the amount involved in the transaction, whichever is greater, may be assessed.

574.115. 1. A person commits the crime of making a [terroristic] **terrorist** threat if such person communicates a threat to [commit a felony.] **cause an incident or condition involving danger to life, communicates** a knowingly false report [concerning the commission of any felony] **of an incident or condition involving danger to life**, or knowingly [false report concerning the occurrence of any catastrophe] **causes a false belief or fear that an incident has occurred or that a condition exists involving danger to life:**

(1) [For] **With** the purpose of frightening [or disturbing] ten or more people;

(2) [For] **With** the purpose of causing the evacuation, **quarantine** or closure of any **portion of a** building, inhabitable structure, place of assembly or facility of transportation; or

(3) With reckless disregard of the risk of causing the evacuation, **quarantine** or closure of any **portion of a** building, inhabitable structure, place of assembly or facility of transportation; **or**

(4) With criminal negligence with regard to the risk of causing the evacuation, quarantine or closure of any portion of a building, inhabitable structure, place of assembly or facility of transportation.

2. Making a [terroristic] **terrorist** threat is a class C felony unless committed under subdivision (3) of subsection 1 of this section in which case it is a class D felony **or unless committed under subdivision (4) of subsection 1 of this section in which case it is a class A misdemeanor.**

3. [As used in this section:

(1) The term "threat" means an express or implied threat but does not include a report made in good faith for the purpose of preventing harm; and

(2) The term "catastrophe" is defined by section 569.070, RSMo] **For the purpose of this section, "threat" includes an express or implied threat.**

4. A person who acts in good faith with the purpose to prevent harm does not commit a crime pursuant to this section.

575.080. 1. A person commits the crime of making a false report if he knowingly:

(1) Gives false information to [a law enforcement officer] **any person** for the purpose of implicating another person in a crime; or

(2) Makes a false report to a law enforcement officer that a crime has occurred or is about to occur; or

(3) Makes a false report or causes a false report to be made to a law enforcement officer, security officer, fire department or other organization, official or volunteer, which deals with emergencies involving danger to life or property that a fire or other incident calling for an emergency response has occurred **or is about to occur.**

2. It is a defense to a prosecution under subsection 1 of this section that the actor retracted the false statement or report before the law enforcement officer or any other person took substantial action in reliance thereon.

3. The defendant shall have the burden of injecting the issue of retraction under subsection 2 of this section.

4. Making a false report is a class B misdemeanor.

576.080. 1. A person commits the crime of supporting terrorism if such person knowingly provides material support to any organization designated as a foreign terrorist organization pursuant to 8 U.S.C. 1189, as amended and acts recklessly with regard to whether such organization had been designated as a foreign terrorist organization pursuant to 8 U.S.C. 1189.

2. For the purpose of this section, "material support" includes currency or other financial securities, financial services, lodging, training, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation and other physical assets, except medicine or religious materials.

3. Supporting terrorism is a class C felony.

578.008. 1. A person commits the crime of [spreading disease to livestock or animals] **agroterrorism** if [that] **such** person purposely spreads any type of contagious, communicable or infectious disease among **crops, poultry**, livestock as defined in section 267.565, RSMo, or other animals.

2. [Spreading disease to livestock or animals] **Agroterrorism** is a class D felony unless the damage to **crops, poultry**, livestock or animals is ten million dollars or more in which case it is a class B felony.

3. It shall be a defense to the crime of [spreading disease to livestock or animals] **agroterrorism** if such spreading is consistent with medically recognized therapeutic procedures **or done in the course of legitimate, professional scientific research.**

610.021. Except to the extent disclosure is otherwise required by law, a public governmental body is authorized to close meetings, records and votes, to the extent they relate to the following:

(1) Legal actions, causes of action or litigation involving a public governmental body and any confidential or privileged communications between a public governmental body or its representatives and its attorneys. However, any minutes, vote or settlement agreement relating to legal actions, causes of action or litigation involving a public governmental body or any agent or entity representing its interests or acting on its behalf or with its authority, including any insurance company acting on behalf of a public government body as its insured, shall be made public upon final disposition of the matter voted upon or upon the signing by the parties of the settlement agreement, unless, prior to final disposition, the settlement agreement is ordered closed by a court after a written finding that the adverse impact to a plaintiff or plaintiffs to the action clearly outweighs the public policy considerations of section 610.011, however, the amount of any moneys paid by, or on behalf of, the public governmental body shall be disclosed; provided, however, in matters involving the exercise of the power of eminent domain, the vote shall be announced or become public immediately following the action on the motion to authorize institution of such a legal action. Legal work product shall be considered a closed record;

(2) Leasing, purchase or sale of real estate by a public governmental body where public knowledge of the transaction might adversely affect the legal consideration therefor. However, any minutes, vote or public record approving a contract relating to the leasing, purchase or sale of real estate by a public governmental body shall be made public within seventy-two hours after execution of the lease, purchase or sale of the real estate;

(3) Hiring, firing, disciplining or promoting of particular employees by a public governmental body when personal information about the employee is discussed or recorded. However, any vote on a final decision, when taken by a public governmental body, to hire, fire, promote or discipline an employee of a public governmental body must be made available with a record of how each member voted to the public within seventy-two hours of the close of the meeting where such action occurs; provided, however, that any employee so affected shall be entitled to prompt notice of such decision during the seventy-two-hour period before such decision is made available to the public. As used in this subdivision, the term "personal information" means information relating to the performance or merit of individual employees;

(4) The state militia or national guard or any part thereof;

(5) Nonjudicial mental or physical health proceedings involving identifiable persons, including medical, psychiatric, psychological, or alcoholism or drug dependency diagnosis or

treatment;

(6) Scholastic probation, expulsion, or graduation of identifiable individuals, including records of individual test or examination scores; however, personally identifiable student records maintained by public educational institutions shall be open for inspection by the parents, guardian or other custodian of students under the age of eighteen years and by the parents, guardian or other custodian and the student if the student is over the age of eighteen years;

(7) Testing and examination materials, before the test or examination is given or, if it is to be given again, before so given again;

(8) Welfare cases of identifiable individuals;

(9) Preparation, including any discussions or work product, on behalf of a public governmental body or its representatives for negotiations with employee groups;

(10) Software codes for electronic data processing and documentation thereof;

(11) Specifications for competitive bidding, until either the specifications are officially approved by the public governmental body or the specifications are published for bid;

(12) Sealed bids and related documents, until the bids are opened; and sealed proposals and related documents or any documents related to a negotiated contract until a contract is executed, or all proposals are rejected;

(13) Individually identifiable personnel records, performance ratings or records pertaining to employees or applicants for employment, except that this exemption shall not apply to the names, positions, salaries and lengths of service of officers and employees of public agencies once they are employed as such;

(14) Records which are protected from disclosure by law;

(15) Meetings and public records relating to scientific and technological innovations in which the owner has a proprietary interest;

(16) Records relating to municipal hot lines established for the reporting of abuse and wrongdoing;

(17) Confidential or privileged communications between a public governmental body and its auditor, including all auditor work product; [and]

(18) In preparation for and implementation of electric restructuring, a municipal electric utility may close that portion of its financial records and business plans which contains information regarding the name of the suppliers of services to said utility and the cost of such services, and the records and business plans concerning the municipal electric utility's future marketing and service expansion areas. However, this exception shall not be construed to limit access to other records of a municipal electric utility, including but not limited to the names and addresses of its business and residential customers, its financial reports, including but not limited to its budget, annual reports and other financial statements prepared in the course of business, and other records maintained in the course of doing business as a municipal electric utility. This

exception shall become null and void if the state of Missouri fails to implement by December 31, 2001, electric restructuring through the adoption of statutes permitting the same in this state;
and

(19) Specific information on existing or proposed security systems or security vulnerabilities for any building or property owned or leased by a public governmental body. Such records may include photographs, schematic diagrams, recommendations, or consultations made to analyze or enhance security of the building or property. Information related to the total costs budgeted and expended to protect such structures and systems shall not be a closed record pursuant to this subdivision and such disclosures shall not specifically identify buildings, sites or specific purposes of the expenditures. This exception shall become null and void on December 31, 2007.

[542.400. As used in sections 542.400 to 542.424, the following words and phrases mean:

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

(2) "Communication common carrier", an individual or corporation undertaking to transport messages for compensation;

(3) "Contents", when used with respect to any wire communication, includes any information concerning the identity of the parties, the substance, purport, or meaning of that communication;

(4) "Court of competent jurisdiction", any circuit court having general criminal jurisdiction within the territorial jurisdiction where the communication is to be intercepted including any circuit judge specially assigned by the supreme court of Missouri pursuant to section 542.404;

(5) "Electronic, mechanical, or other device", any device or apparatus which can be used to intercept a wire communication other than:

(a) Any telephone or telegraph instrument, equipment or facility, or any component thereof, owned by the user or furnished to the subscriber or user by a communications common carrier in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business or being used by a communications common carrier in the ordinary course of its business or by an investigative office or law enforcement officer in the ordinary course of his duties; or

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

(6) "Intercept", the aural acquisition of the contents of any wire communication through the use of any electronic or mechanical device, including but not limited to interception by one spouse of another spouse;

(7) "Investigative officer" or "law enforcement officer or agency", any officer or agency of this state or a political subdivision of this state, who is empowered by law to conduct investigations of or to make arrests for offenses enumerated in sections 542.400 to 542.424, and any attorney authorized by law to prosecute or participate in the prosecution of such offenses;

(8) "Oral communication", any communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation;

(9) "Person", any employee, or agent of this state or political subdivision of this state, and any individual, partnership, association, joint stock company, trust, or corporation;

(10) "Prosecuting attorney", the elected prosecuting attorney of the county or the circuit attorney of any city not contained within a county;

(11) "State", state of Missouri and political subdivisions of the state;

(12) "Wire communication", 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 including the use of such connection in a switching station furnished or operated by any person engaged as a common carrier in providing or operating such facilities for the transmission of local, state or interstate communications.]

[542.402. 1. Except as otherwise specifically provided in sections 542.400 to 542.424, a person is guilty of a class D felony and upon conviction shall be punished as provided by law, if such person:

(1) Knowingly intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept, any wire communication;

(2) Knowingly 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 such device transmits communications by radio or interferes with the transmission of such communication; provided, however, that nothing in sections 542.400 to 542.424 shall be construed to prohibit the use by law enforcement officers of body microphones and transmitters in undercover investigations for the acquisition of evidence and the protection of law enforcement officers and others working under their direction in such investigations;

(3) Knowingly discloses, or endeavors to disclose, to any other person the contents of any wire communication, when he knows or has reason to know that the information was obtained through the interception of a wire communication in violation of this subsection; or

(4) Knowingly uses, or endeavors to use, the contents of any wire communication, when he knows or has reason to know that the information was obtained through the interception of a wire communication in violation of this subsection.

2. It is not unlawful under the provisions of sections 542.400 to 542.424:

(1) For an operator of a switchboard, or an officer, employee, or agent of any communication common carrier, whose facilities are used in the transmission of a wire communication, to intercept, disclose, or use that communication in the normal course of his employment while engaged in any activity which is a necessary incident to the rendition of his service or to the protection of the rights or property of the carrier of such communication, however, communication common carriers shall not utilize service observing or random monitoring except for mechanical or service quality control checks;

(2) For a person acting under law to intercept a wire 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;

(3) For a person not acting under law to intercept a wire 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.]

[542.404. 1. The elected prosecuting attorney of the county with the written authorization of the attorney general of the state of Missouri may make application for an order authorizing the interception of a wire communication. The supreme court of Missouri, upon notice that the attorney general of the state of Missouri has authorized application for an interception of a wire communication, shall appoint a circuit court from a circuit other than the circuit where the application originates to approve or deny the application and to issue any necessary orders. Such court may grant in conformity with sections 542.400 to 542.424, an order authorizing the interception of wire communications by the law enforcement agency having responsibility for the investigation of the offense if there is probable cause to believe that the interception may provide evidence of:

(1) A felony which involves the manufacture, importation, receiving, possession, buying, selling, prescription, administration, dispensation, distribution, compounding or otherwise having in a person's control any controlled substance, as the term "controlled substance" is defined by section 195.010, RSMo; or

(2) Any conspiracy to commit any of the offenses listed in subdivision (1) of this subsection.

2. Any order entered pursuant to the provisions of sections 542.400 to 542.424 shall require live monitoring by appropriate law enforcement personnel of the interception of any wire communication.]

[542.406. 1. Any investigative officer or law enforcement officer who, by any means authorized by sections 542.400 to 542.424, has lawfully obtained knowledge of the contents of any wire communication, or evidence derived therefrom, may disclose such contents to another investigative officer or law enforcement officer to the extent that such disclosure is necessary to the proper performance of the official duties of the officer making or receiving the disclosure for investigative purposes only.

2. Any investigative officer or law enforcement officer who, by any means authorized by sections 542.400 to 542.424, has lawfully obtained knowledge of the contents of any wire or oral communication, or evidence derived therefrom, may use such contents to the extent such use is necessary to the proper performance of his official duties.

3. Any person who has received, by any means authorized by sections 542.400 to 542.424, any information concerning a wire communication, or evidence derived therefrom, intercepted in accordance with the provisions of sections 542.400 to 542.424 shall disclose the contents of that communication or such derivative evidence while giving testimony under oath or affirmation in any criminal proceeding, including deposition in any court or in any grand jury proceeding, subject to the rules of evidence.

4. No otherwise privileged wire communication intercepted in accordance with, or in violation of, the provisions of sections 542.400 to 542.424 shall lose its privileged character and shall be suppressed upon motion.]

[542.408. 1. Each application for an order authorizing or approving the interception of a wire communication shall be made in writing and shall be submitted to the attorney general for his review and approval. If the attorney general approves the application, he shall join such application, which shall be submitted upon oath or affirmation to a court of competent jurisdiction and shall state the applicant's authority to make such application. Each application shall include the following information:

(1) The identity of the prosecuting attorney making the application together with the identities of the law enforcement agency or agencies that are to conduct the interception;

(2) A full and complete statement of the facts and circumstances relied upon by the applicant to justify his belief that an order should be issued, including:

(a) Details as to the particular offense that has been, is being, or is about to be committed;

(b) A particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted;

(c) A particular description of the type of communications sought to be intercepted;
and

(d) The identity of the person and employment, if known, committing the offense and whose communications are to be intercepted;

(e) That the application is sought solely for detection of:

a. A felony which involves the manufacture, importation, receiving, possession, buying, selling, prescription, administration, dispensation, distribution, compounding or otherwise having in a person's control any controlled substance, as the term "controlled substance" is defined by section 195.010, RSMo; or

b. Any conspiracy to commit any of the offenses listed in subparagraph a of this paragraph;

(3) A full and complete statement as to whether 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;

(4) 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 the 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;

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

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

(7) A statement that adequate resources are available to perform the interception and the estimated number of persons required to accomplish the interception.

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

3. Upon such application the court may enter an ex parte order, as requested or as modified, authorizing or approving interception of wire communications within the territorial jurisdiction of the court, if the court determines on the basis of the facts submitted by the applicant that:

(1) Probable cause exists to believe that an individual is committing, has committed, or is about to commit a particular offense enumerated in section 542.404;

(2) Probable cause exists to believe that particular communications concerning

that offense will be obtained through such interception;

(3) 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

(4) Probable cause exists to believe that the facilities from which, or the place where, the wire 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 communication shall specify:

(1) The identity of the person and employment, if known, whose communications are to be intercepted;

(2) The nature and location of the communication facilities as to which, or the place where, authority to intercept is granted;

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

(4) The identity of the agency authorized to intercept the communications, and of the person authorizing the application;

(5) 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. No order entered under this section may authorize or approve the interception of any wire 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 court deems necessary to achieve the purposes for which it was granted and in no event 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 minimize the interception of communications not otherwise subject to interception under sections 542.400 to 542.424, and shall terminate upon attainment of the authorized objective, or in any event in thirty days.

6. Whenever an order authorizing interception is entered pursuant to the provisions of sections 542.400 to 542.424, the order may require reports to be made to the court who issued the order showing what progress has been made toward achievement of the authorized objective and the need for continued interception. Such reports shall be made at such intervals as the court may require, but in no case longer than thirty

days.

7. Notwithstanding any other provisions of sections 542.400 to 542.424, any law enforcement officer with the approval of the prosecuting attorney may request an order of an appropriate court whenever reasonable grounds therefor exist to have a pen register placed in effect, which pen register will only determine the phone number to which the call is placed.

8. Notwithstanding any other provision of law to the contrary, communication common carriers, and their officers, employees and agents, may provide information, facilities or technical assistance to persons authorized by law to intercept wire communications, if the communication common carrier, its officers, employees or agents have been provided with a court order directing such assistance signed by the authorizing court. The court order shall set forth the period of time during which the provision of the information, facilities or technical assistance is authorized and specifying the information, facilities, or technical assistance required. No cause of action shall lie in any court against any communication common carrier, its officers, employees, and agents for providing information, facilities or assistance in accordance with the terms of an order under this subsection. Any communication common carrier furnishing such facilities or technical assistance shall be compensated therefor by the prosecuting attorney at the prevailing rates.]

[542.410. 1. The contents of any wire communication intercepted by any means authorized by sections 542.400 to 542.424 shall be recorded on tape or wire or other comparable device. The recording of the contents of any wire or oral communication as required by this section 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 court issuing such order and shall be sealed under its directions. Custody of the recordings shall be wherever the court orders. The recordings shall not be destroyed except upon an order of the issuing court and in any event shall be kept for ten years. Duplicate recordings shall be made for use for disclosure pursuant to the provisions of subsections 1 and 2 of section 542.406 for investigations and discovery in accordance with applicable supreme court rules. The presence of the seal provided for by subsection 2 of this section, or a satisfactory explanation for the absence thereof, shall be a prerequisite for the use or disclosure of the contents of any wire communication or evidence derived therefrom under the provisions of subsection 3 of section 542.406.

2. Applications made and orders granted under sections 542.400 to 542.424 shall be sealed by the court. Custody of the applications and orders shall be wherever the court directs. Such applications and orders shall be disclosed only upon a showing of good

cause before a court of competent jurisdiction and shall not be destroyed except on order of the issuing or denying court, and in any event shall be kept for ten years.

3. Any violation of the provisions of this section shall be punishable as a class A misdemeanor.

4. Within a reasonable time but not later than ninety days after the filing of an application for an order of approval under the provisions of sections 542.400 to 542.424 or the termination of the period of an order or extensions thereof, whichever is later, the issuing or denying court shall cause to be served, on the persons named in the order or the application, and such other parties to intercepted communications an inventory which shall include notice of:

- (1) The fact of the entry of the order or the application;
- (2) The date of the entry and the period of authorized, approved interception;
- (3) The fact that during the period oral communications were or were not intercepted; and
- (4) The nature of said conversations.

The court, upon the filing of a motion, shall make available to such person or his counsel for inspection and copying such intercepted communications, applications and orders.]

[542.412. 1. The contents of any intercepted wire communications or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in federal or state court nor in any administrative proceeding unless each party, in compliance with supreme court rules relating to discovery in criminal cases, hearings and proceedings, has been furnished with a copy of the court order and accompanying application under which the interception was authorized or approved and a transcript of any intercepted wire communication or evidence derived therefrom.

2. If the defense in its request designates material or information not in the possession or control of the state, but which is, in fact, in the possession or control of other governmental personnel, the state shall use diligence and make good faith efforts to cause such materials to be made available to the defendant's counsel, and if the state's efforts are unsuccessful and such material or other governmental personnel are subject to the jurisdiction of the court, the court, upon request, shall issue suitable subpoenas or orders to cause such material or information to be made available to the state for disclosure to the defense.]

[542.414. 1. Any aggrieved person in any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, the state, or a political subdivision thereof, may move to suppress the contents of any intercepted wire communication, or evidence derived therefrom, on the

grounds that:

(1) The communication was unlawfully intercepted;

(2) The order of authorization or approval under which it was intercepted is insufficient on its face;

(3) The interception was not made in conformity with the order of authorization or approval; or

(4) The communication was intercepted in violation of the provisions of the Constitution of the United States or the state of Missouri or in violation of a state statute. Such motion shall be made before the trial, hearing, or proceeding unless there was no reasonable opportunity to make such motion or the person was not aware of the existence of grounds for the motion. If the motion is granted, the contents of the intercepted wire communication, or evidence derived therefrom or the contents of any communication intercepted as a result of any extension of the original order authorizing or approving the interception of wire communication, and any evidence derived therefrom, shall be treated as having been obtained in violation of sections 542.400 to 542.424.

2. In addition to any other right to appeal, the state shall have the right to appeal from an order granting a motion to suppress made under subsection 1 of this section if the prosecuting attorney shall certify to the court or other official granting such motion that the appeal be taken within thirty days after the date the order was entered and shall be diligently prosecuted.]

[542.416. 1. Within thirty days after the expiration of an order or each extension thereof entered pursuant to the provisions of section 542.408, the issuing court shall report to the state courts administrator:

(1) The fact that an order or extension was applied for;

(2) The kind of order or extension applied for;

(3) The fact that the order or extension was granted as applied for, was modified, or was denied;

(4) The period of interceptions authorized by the order, and the number and duration of any extensions of the order;

(5) The offense specified in the order or application, or extension of an order;

(6) The identity of the applying investigative officer or law enforcement officer and agency making the application and the person authorizing the application; and

(7) The nature of the facilities from which or the place where communications were to be intercepted.

2. In January of each year, the principal prosecuting attorney for any political subdivision of the state shall report to the state courts administrator:

(1) The information required by subdivisions (1) through (7) of subsection 1 of

this section with respect to each application for an order or extension made during the preceding calendar year;

(2) A general description of the interceptions made under such order or extension, including:

(a) The approximate nature and frequency of incriminating communications intercepted;

(b) The approximate nature and frequency of other communications intercepted;

(c) The approximate number of persons whose communications were intercepted;

and

(d) The approximate nature, amount, and cost of the manpower and other resources used in the interceptions;

(3) The number of arrests resulting from interceptions made under such order or extension, and the offenses for which arrests were made;

(4) The number of trials resulting from such interceptions;

(5) The number of motions to suppress made with respect to such interceptions, and the number granted or denied;

(6) The number of convictions resulting from such interceptions and the offenses for which the convictions were obtained and a general assessment of the importance of the interceptions; and

(7) The information required by subdivisions (2) through (6) of this subsection with respect to orders or extensions obtained in the preceding calendar year.

3. In April of each year the state courts administrator shall transmit to the Missouri general assembly a full and complete report concerning the number of applications for orders authorizing or approving the interception of wire communications and the number of orders and extensions granted or denied during the preceding calendar year. Such report shall include a summary and analysis of the data required to be filed with the state courts administrator by subsections 1 and 2 of this section. The state courts administrator may promulgate rules and regulations dealing with the content and form of the reports required to be filed by subsections 1 and 2 of this section.]

[542.418. 1. The contents of any wire communication or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any civil or administrative proceeding, except in civil actions brought pursuant to this section.

2. Any person whose wire communication is intercepted, disclosed, or used in violation of sections 542.400 to 542.424 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 recover from any such person:

(a) Actual damages, but not less than liquidated damages computed at the rate of one hundred dollars a day for each day of violation or ten thousand dollars whichever is greater;

(b) Punitive damages on a showing of a willful or intentional violation of sections 542.400 to 542.424; and

(c) A reasonable attorney's fee and other litigation costs reasonably incurred.

3. A good faith reliance on a court order or on the provisions of section 542.408 shall constitute a prima facie defense to any civil or criminal action brought under sections 542.400 to 542.424.

4. Nothing contained in this section shall limit any cause of action available prior to August 28, 1989.]

[542.420. Whenever any wire communication has been intercepted, no part of the contents of such communication and no evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the United States, a state, or a political subdivision thereof if the disclosure of that information would be in violation of sections 542.400 to 542.424.]

[542.422. Whenever it shall appear that any person is engaged or is about to engage in any act which constitutes or will constitute a felony violation of sections 542.400 to 542.424, the attorney general may initiate a civil action in a circuit court to enjoin such violation. The court shall proceed as soon as practicable to the hearing and determination of such an action, and may, at any time before final determination, enter such a restraining order or prohibition, or take such other action, as is warranted to prevent a continuing and substantial injury to the state or to any 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 an indictment has been returned against the respondent, discovery is governed by the rules of criminal procedure.]

Section B. Because of the immediate need for state emergency powers this act is deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and this act shall be in full force and effect upon its passage and approval.