



TENNESSEE CODE ANNOTATED

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*** Current through the 2014 Regular Session ***

Annotations current through May 23, 2014 for the Tennessee Supreme Court

Title 39 Criminal Offenses
Chapter 13 Offenses Against Person
Part 6 Invasion of Privacy

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Tenn. Code Ann. § 39-13-603 (2014)

39-13-603. Civil actions -- Injunctive relief -- Damages -- Defenses -- Limitation of actions.

(a) Except as provided in § 39-13-601(b)(4), any aggrieved person whose wire, oral or electronic communication is intentionally intercepted, disclosed, or used in violation of § 39-13-601 or title 40, chapter 6, part 3 may in a civil action recover from the person or entity that engaged in that violation the following relief:

(1) The greater of:

(A) The sum of the actual damages, including any damage to personal or business reputation or relationships, suffered by the plaintiff and any profits made by the violator as a result of the violation; or

(B) Statutory damages of one hundred dollars (\$100) a day for each day of violation or ten thousand dollars (\$10,000), whichever is greater;

(2) Punitive damages; and

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

(b) Any person whose wire, oral, or electronic communication is or is about to be intercepted, disclosed, or used in violation of § 39-13-601 or title 40, chapter 6, part 3 may seek to enjoin and restrain the violation and may in the same action seek damages as provided by subsection (a).

(c) It is a complete defense against any civil or criminal action brought under § 39-13-601 or title 40, chapter 6, part 3 that there was good faith reliance on a court warrant or order, a grand jury subpoena, a legislative authorization, or a statutory authorization, or if there was a good faith determination that § 39-13-601(c) permitted the conduct complained of.

(d) A civil action under this section or title 40, chapter 6, part 3 may not be commenced later than two (2) years after the date upon which the claimant first discovered or had a reasonable opportunity to discover the violation.

HISTORY: Acts 1994, ch. 964, § 11.

NOTES: Cross-References.

Legislative purpose, § 40-6-302.

Limitation of actions, title 28.

Wiretapping and electronic surveillance by law enforcement, warrants for, title 40, ch. 6, part 3.

Section to Section References.

Sections 39-13-601 -- 39-13-603 are referred to in §§ 39-13-601, 40-6-301, 40-6-302, 40-6-303, 40-6-304, 40-6-306, 40-6-307, 40-6-309, 40-6-310.

This section is referred to in § 39-13-601.

LexisNexis 50 State Surveys, Legislation & Regulations

Communication Interception

NOTES TO DECISIONS

1. Construction. 2. Interception of Emails. 3. Damages.

1. Construction.

Court in a wiretapping damages suit erred by awarding less than \$10,000 in statutory damages where the statute mandated that, if the court found liability, it did not have discretion to refuse an award of damages. *Robinson v. Fulliton*, 140 S.W.3d 312, 2003 Tenn. App. LEXIS 122 (Tenn. Ct. App. Feb. 14, 2003), review or rehearing denied, -- S.W.3d --, 2003 Tenn. LEXIS 790 (Tenn. Sept. 2, 2003).

2. Interception of Emails.

Plaintiff had proven that defendant violated the federal Wiretap Act and the Tennessee Wiretap Act because defendant intentionally and automatically intercepted emails sent to plaintiff through the internet and forwarded copies to herself through the internet when plaintiff opened those emails for the first time from the computer. *Klumb v. Goan*, 884 F. Supp. 2d 644, 2012 U.S. Dist. LEXIS 100836 (E.D. Tenn. July 19, 2012).

3. Damages.

Court properly awarded plaintiff damages for defendant's illegal wiretap where defendant admitted to the activity. *Montgomery v. Montgomery*, 181 S.W.3d 720, 2005 Tenn. App. LEXIS 151 (Tenn. Ct. App. 2005), appeal denied, -- S.W.3d --, 2005 Tenn. LEXIS 982 (Tenn. Oct. 31, 2005).

Where plaintiff had proven that defendant violated the federal Wiretap Act and the Tennessee Wiretap Act, plaintiff was awarded \$10,000 in punitive damages because defendant engaged in a concerted scheme to gain advantage over plaintiff in a divorce by 1) tricking plaintiff into signing an altered prenuptial agreement with a provision that rendered the prenuptial agreement null and void in the event that plaintiff committed adultery, 2) by secretly installing spyware on the computers regularly used by plaintiff, 3) by secretly intercepting at least three emails sent by a woman to plaintiff and altering them to look like the woman and plaintiff were having an affair, and 4) by intending to use the altered emails, the altered prenuptial agreement and the altered September 27, 2007 agreed order to obtain a significant amount of plaintiff's property to which she was not entitled in a divorce from plaintiff. *Klumb v. Goan*, 884 F. Supp. 2d 644, 2012 U.S. Dist. LEXIS 100836 (E.D. Tenn. July 19, 2012).

Where plaintiff had proven that defendant violated the federal Wiretap Act and the Tennessee Wiretap Act, plaintiff was entitled to the liquidated damages sum of \$10,000 only once because given the "single sum" approach per 100 days of violations, it was irrelevant that defendant installed the spyware twice, once on two different computers; defendant was still intercepting the same person's email, and plaintiff had not proven that plaintiff's emails were intercepted on more than 100 days. *Klumb v. Goan*, 884 F. Supp. 2d 644, 2012 U.S. Dist. LEXIS 100836 (E.D. Tenn. July 19, 2012).