

By: Ford

To: Judiciary A

HOUSE BILL NO. 246

1 AN ACT TO REENACT SECTIONS 41-29-501 THROUGH 41-29-536,
2 MISSISSIPPI CODE OF 1972, AUTHORIZING THE BUREAU OF NARCOTICS TO
3 USE MONITORING DEVICES; TO AMEND SECTION 41-29-537, MISSISSIPPI
4 CODE OF 1972, TO EXTEND THE REPEALER; AND FOR RELATED PURPOSES.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

6 SECTION 1. Section 41-29-501, Mississippi Code of 1972, is
7 reenacted as follows:[BD1]

8 41-29-501. As used in this article, the following terms
9 shall have the meaning ascribed to them herein unless the context
10 requires otherwise:

11 (a) "Aggrieved person" means a person who was a party
12 to an intercepted wire, oral or other communication or a person
13 against whom the interception was directed.

14 (b) "Communication common carrier" has the meaning
15 given the term "common carrier" by 47 USCS 153(h) and shall also
16 mean a provider of communication services.

17 (c) "Contents," when used with respect to a wire, oral
18 or other communication, includes any information concerning the
19 identity of the parties to the communication or the existence,
20 substance, purport or meaning of that communication.

21 (d) "Covert entry" means any entry into or onto
22 premises which if made without a court order allowing such an
23 entry under this article would be a violation of criminal law.

24 (e) "Director" means the Director of the Bureau of
25 Narcotics or, if the director is absent or unable to serve, the
26 Assistant Director of the Bureau of Narcotics.

27 (f) "Electronic, mechanical or other device" means a

28 device or apparatus primarily designed or used for the
29 nonconsensual interception of wire, oral or other communications.

30 (g) "Intercept" means the aural or other acquisition of
31 the contents of a wire, oral or other communication through the
32 use of an electronic, mechanical or other device.

33 (h) "Investigative or law enforcement officer" means an
34 officer of this state or of a political subdivision of this state
35 who is empowered by law to conduct investigations of, or to make
36 arrests for, offenses enumerated in Section 41-29-505, or an
37 attorney authorized by law to prosecute or participate in the
38 prosecution of such offenses.

39 (i) "Judge of competent jurisdiction" means a justice
40 of the Supreme Court or a circuit court judge.

41 (j) "Oral communication" means an oral communication
42 uttered by a person exhibiting an expectation that the
43 communication is not subject to interception under circumstances
44 justifying that expectation.

45 (k) "Other communication" means any transfer of an
46 electronic or other signal, including fax signals, computer
47 generated signals, other similar signals, or any scrambled or
48 encrypted signal transferred via wire, radio, electromagnetic,
49 photoelectric or photooptical system from one party to another in
50 which the involved parties may reasonably expect the communication
51 to be private.

52 (l) "Prosecutor" means a district attorney with
53 jurisdiction in the county in which the facility or place where
54 the communication to be intercepted is located or a legal
55 assistant to the district attorney if designated in writing by the
56 district attorney on a case by case basis.

57 (m) "Residence" means a structure or the portion of a
58 structure used as a person's home or fixed place of habitation to
59 which the person indicates an intent to return after any temporary
60 absence.

61 (n) "Wire communication" means a communication made in
62 whole or in part through the use of facilities for the
63 transmission of communications by the aid of wire, cable or other
64 like connection between the point of origin and the point of
65 reception furnished or operated by a person engaged as a common
66 carrier in providing or operating the facilities for the
67 transmission of communications and includes cordless telephones,
68 voice pagers, cellular telephones, any mobile telephone, or any
69 communication conducted through the facilities of a provider of
70 communication services.

71 SECTION 2. Section 41-29-503, Mississippi Code of 1972, is
72 reenacted as follows:[BD2]

73 41-29-503. The contents of an intercepted wire, oral or
74 other communication and evidence derived from an intercepted wire,
75 oral or other communication may not be received in evidence in any
76 trial, hearing or other proceeding in or before any court, grand
77 jury, department, officer, agency, regulatory body, legislative
78 committee, or other authority of the United States or of this
79 state or a political subdivision of this state if the disclosure
80 of that information would be in violation of this article. The
81 contents of an intercepted wire, oral or other communication and
82 evidence derived from an intercepted communication may be received
83 in a civil trial, hearing or other proceeding only if the civil
84 trial, hearing or other proceeding arises out of a violation of
85 the criminal law of this state.

86 SECTION 3. Section 41-29-505, Mississippi Code of 1972, is
87 reenacted as follows:[BD3]

88 41-29-505. A judge of competent jurisdiction in the circuit
89 court district of the location where the interception of wire,
90 oral or other communications is sought, or a circuit court
91 district contiguous to such circuit court district, may issue an
92 order authorizing interception of wire, oral or other
93 communications only if the prosecutor applying for the order shows

94 probable cause to believe that the interception will provide
95 evidence of the commission of a felony under the Uniform
96 Controlled Substances Law.

97 SECTION 4. Section 41-29-507, Mississippi Code of 1972, is
98 reenacted as follows:[BD4]

99 41-29-507. (1) No person, agency of the state or political
100 subdivision of the state, other than the Bureau of Narcotics, is
101 authorized by this article to own, possess, install, operate or
102 monitor an electronic, mechanical or other device. The Bureau of
103 Narcotics may be assisted by an investigative or law enforcement
104 officer in the operation and monitoring of an interception of
105 wire, oral or other communications, provided that an agent of the
106 Bureau of Narcotics is present at all times.

107 (2) The director shall designate, in writing, the agents of
108 the Bureau of Narcotics who are responsible for the possession,
109 installation, operation and monitoring of electronic, mechanical
110 or other devices for the bureau.

111 SECTION 5. Section 41-29-509, Mississippi Code of 1972, is
112 reenacted as follows:[BD5]

113 41-29-509. Prior to submitting a request for an order
114 authorizing interception of wire, oral or other communications to
115 a prosecutor, the director shall receive a written affidavit from
116 one or more agents of the Bureau of Narcotics setting forth the
117 information required by Section 41-29-513(1). The director shall
118 submit all information required by Section 41-29-513(1) to the
119 prosecutor. Upon receipt of the request from the director, the
120 prosecutor shall be authorized to submit an application to a court
121 of competent jurisdiction requesting the court to issue an order
122 authorizing interception of wire, oral or other communications as
123 provided in Section 41-29-515.

124 SECTION 6. Section 41-29-511, Mississippi Code of 1972, is
125 reenacted as follows:[BD6]

126 41-29-511. (1) An investigative or law enforcement officer

127 who, by any means authorized by this article, obtains knowledge of
128 the contents of a wire, oral or other communication or evidence
129 derived from such communication may disclose the contents or
130 evidence to another investigative or law enforcement officer to
131 the extent that the disclosure is appropriate to the proper
132 performance of the official duties of the officer making or
133 receiving the disclosure.

134 (2) An investigative or law enforcement officer who, by any
135 means authorized by this article, obtains knowledge of the
136 contents of a wire, oral or other communication or evidence
137 derived from such communication may use the contents or evidence
138 to the extent the use is appropriate to the proper performance of
139 his official duties.

140 (3) A person who receives, by any means authorized by this
141 article, information concerning a wire, oral or other
142 communication or evidence derived from a wire, oral or other
143 communication intercepted in accordance with the provisions of
144 this article may disclose the contents of such communication or
145 the evidence derived from such wire, oral or other communication
146 while giving testimony under oath in any proceeding held under the
147 authority of the United States, of this state, or of a political
148 subdivision of this state.

149 (4) An otherwise privileged wire, oral or other
150 communication intercepted in accordance with, or in violation of,
151 the provisions of this article does not lose its privileged
152 character, and any evidence derived from such privileged
153 communication against the party to the privileged communication
154 shall be considered privileged also.

155 (5) When an investigative or law enforcement officer, while
156 engaged in intercepting wire, oral or other communications in a
157 manner authorized by this article, intercepts wire, oral or other
158 communications relating to offenses other than those specified in
159 the order of authorization, the contents of and evidence derived

160 from the communication may be disclosed or used as provided by
161 subsections (1) and (2) of this section. Such contents and any
162 evidence derived therefrom may be used under subsection (3) of
163 this section when authorized by a judge of competent jurisdiction
164 where the judge finds, upon subsequent application, that the
165 contents were otherwise intercepted in accordance with the
166 provisions of this article. The application shall be made as soon
167 as practicable.

168 SECTION 7. Section 41-29-513, Mississippi Code of 1972, is
169 reenacted as follows:[BD7]

170 41-29-513. (1) To be valid, an application for an order
171 authorizing the interception of a wire, oral or other
172 communication must be made in writing under oath to a judge of
173 competent jurisdiction in the circuit court district of the
174 location where the interception of wire, oral or other
175 communications is sought, or a circuit court district contiguous
176 to such circuit court district, and must state the applicant's
177 authority to make the application. An applicant must include the
178 following information in the application:

179 (a) A statement that the application has been requested
180 by the director and the identity of the prosecutor making the
181 application;

182 (b) A full and complete statement of the facts and
183 circumstances relied on by the applicant to justify his belief
184 that an order should be issued including:

185 (i) Details about the particular offense that has
186 been, is being, or is about to be committed;

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

190 (iii) A particular description of the type of
191 communication sought to be intercepted; and

192 (iv) The identity of the person, if known,

193 committing the offense and whose communications are to be
194 intercepted;

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

199 (d) A statement of the period of time for which the
200 interception is required to be maintained and, if the nature of
201 the investigation is such that the authorization for interception
202 should not automatically terminate when the described type of
203 communication is first obtained, a particular description of the
204 facts establishing probable cause to believe that additional
205 communications of the same type will occur after the described
206 type of communication is obtained;

207 (e) A statement whether a covert entry will be
208 necessary to properly and safely install the wiretapping or
209 electronic surveillance or eavesdropping equipment and, if a
210 covert entry is requested, a statement as to why such an entry is
211 necessary and proper under the facts of the particular
212 investigation, including a full and complete statement as to
213 whether other investigative techniques have been tried and have
214 failed or why they reasonably appear to be unlikely to succeed or
215 to be too dangerous if tried or are not feasible under the
216 circumstances or exigencies of time;

217 (f) A full and complete statement of the facts
218 concerning all applications known to the prosecutor making the
219 application that have been previously made to a judge for
220 authorization to intercept wire, oral or other communications
221 involving any of the persons, facilities or places specified in
222 the application and of the action taken by the judge on each
223 application; and

224 (g) If the application is for the extension of an
225 order, a statement setting forth the results already obtained from

226 the interception or a reasonable explanation of the failure to
227 obtain results.

228 (2) The judge may, in an ex parte in camera hearing, require
229 additional testimony or documentary evidence in support of the
230 application, and such testimony or documentary evidence shall be
231 preserved as part of the application.

232 SECTION 8. Section 41-29-515, Mississippi Code of 1972, is
233 reenacted as follows:[BD8]

234 41-29-515. (1) Upon receipt of an application, the judge
235 may enter an ex parte order, as requested or as modified,
236 authorizing interception of wire, oral or other communications if
237 the judge determines from the evidence submitted by the applicant
238 that:

239 (a) There is probable cause to believe that a person is
240 committing, has committed, or is about to commit a particular
241 offense enumerated in Section 41-29-505;

242 (b) There is probable cause to believe that particular
243 communications concerning that offense will be obtained through
244 the interception;

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

248 (d) There is probable cause to believe that the
249 facilities from which or the place where the wire, oral or other
250 communications are to be intercepted are being used or are about
251 to be used in connection with the commission of an offense or are
252 leased to, listed in the name of, or commonly used by the person;
253 and

254 (e) A covert entry is or is not necessary to properly
255 and safely install the electronic, mechanical or other device.

256 (2) Each order authorizing the interception of a wire or
257 oral communication shall specify:

258 (a) The identity of the person, if known, whose

259 communications are to be intercepted;

260 (b) The nature and location of the communications
261 facilities as to which or the place where authority to intercept
262 is granted;

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

266 (d) A statement setting forth the identity of the
267 prosecutor and stating that the director has requested the
268 prosecutor to apply for the order authorizing the interception;

269 (e) The time during which the interception is
270 authorized, including a statement of whether or not the
271 interception will automatically terminate when the described
272 communication is first obtained; and

273 (f) Whether or not a covert entry is necessary to
274 properly and safely install wiretapping, electronic surveillance
275 or eavesdropping equipment.

276 (3) The order authorizing the interception of a wire, oral
277 or other communication shall, upon request of the applicant,
278 direct that a communication common carrier, landlord, custodian or
279 other person furnish the applicant all information, facilities and
280 technical assistance necessary to accomplish the interception
281 unobtrusively and with a minimum of interference with the services
282 that the carrier, landlord, custodian or other person is providing
283 the person whose communications are to be intercepted. Any
284 communication common carrier, landlord, custodian or other person
285 furnishing facilities or technical assistance is entitled to
286 compensation by the applicant for the facilities or assistance at
287 the prevailing rates.

288 (4) An order entered pursuant to this section may not
289 authorize the interception of a wire, oral or other communication
290 for longer than is necessary to achieve the objective of the
291 authorization, and in no event may it authorize interception for

292 more than thirty (30) days. The issuing judge may grant
293 extensions of an order, but only upon application for an extension
294 made in accordance with Section 41-29-513 and the court making the
295 findings required by subsection (1) of this section. The period
296 of extension may not be longer than the authorizing judge deems
297 necessary to achieve the purposes for which it is granted, and in
298 no event may the extension be for more than thirty (30) days. To
299 be valid, each order and extension of an order shall provide that
300 the authorization to intercept be executed as soon as practicable,
301 be conducted in a way that minimizes the interception of
302 communications not otherwise subject to interception under this
303 article, and terminate on obtaining the authorized objective or
304 within thirty (30) days, whichever occurs sooner.

305 (5) An order entered pursuant to this section may not
306 authorize a covert entry into a residence solely for the purpose
307 of intercepting a wire communication.

308 (6) An order entered pursuant to this section may not
309 authorize a covert entry into or onto a premises for the purpose
310 of intercepting an oral or other communication unless:

311 (a) The judge, in addition to making the determinations
312 required under subsection (1) of this section, determines that:

313 (i) (A) The premises into or onto which the
314 covert entry is authorized or the person whose communications are
315 to be obtained has been the subject of a pen register previously
316 authorized in connection with the same investigation; (B) the
317 premises into or onto which the covert entry is authorized or the
318 person whose communications are to be obtained has been the
319 subject of an interception of wire communications previously
320 authorized in connection with the same investigation; (C) that
321 such procedures have failed; and (D) if the order is for the
322 interception of other communications and requires covert entry, a
323 court-ordered attempt to intercept the communications without
324 using covert entry must have been made without success;

325 (ii) That the procedures enumerated in item (i)
326 reasonably appear to be unlikely to succeed or to be too dangerous
327 if tried or are not feasible under the circumstances or exigencies
328 of time; and

329 (b) The order, in addition to the matters required to
330 be specified under subsection (2) of this section, specifies that
331 the covert entry is for the purpose of intercepting oral
332 communications of two (2) or more persons and that there is
333 probable cause to believe they are committing, have committed, or
334 are about to commit a particular offense enumerated in Section
335 41-29-505.

336 (7) The judge of a court of competent jurisdiction may issue
337 an order for the interception of wire, oral or other
338 communications conducted within a vehicle, vessel, other mode of
339 transportation or any location where a reasonable expectation of
340 privacy might exist, provided the requirements of this section,
341 where applicable, are met.

342 (8) Whenever an order authorizing interception is entered
343 pursuant to this article, the order may require reports to the
344 judge who issued the order showing what progress has been made
345 toward achievement of the authorized objective and the need for
346 continued interception. Reports shall be made at any interval the
347 judge requires.

348 (9) A judge who issues an order authorizing the interception
349 of a wire, oral or other communication may not hear a criminal
350 prosecution in which evidence derived from the interception may be
351 used or in which the order may be an issue.

352 (10) An order issued pursuant to this section authorizing
353 the interception of any cellular, portable, transportable or
354 mobile telephone or communication instrument is valid throughout
355 the State of Mississippi unless otherwise specified by the issuing
356 judge.

357 SECTION 9. Section 41-29-517, Mississippi Code of 1972, is

358 reenacted as follows:[BD9]

359 41-29-517. (1) The contents of a wire, oral or other
360 communication intercepted by means authorized by this article
361 shall be recorded on tape, wire or other comparable device. The
362 recording of the contents of a wire, oral or other communication
363 under this subsection shall be done in a way that protects the
364 recording from editing or other alterations.

365 (2) Immediately on the expiration of the period of the order
366 and all extensions, if any, the recordings shall be made available
367 to the judge issuing the order and sealed under his directions.
368 Custody of the recordings shall be wherever the judge orders. The
369 recordings may not be destroyed until at least ten (10) years
370 after the date of expiration of the order and the last extension,
371 if any. A recording may be destroyed only by order of the judge
372 of competent jurisdiction who authorized the interception, or his
373 successor.

374 (3) Duplicate recordings may be made for use or disclosure
375 pursuant to subsections (1) and (2) of Section 41-29-511 for
376 investigations.

377 (4) The presence of the seal required by subsection (2) of
378 this section, or a satisfactory explanation of its absence, shall
379 be a prerequisite for the use or disclosure of the contents of a
380 wire, oral or other communication or evidence derived from the
381 communication under subsection (3) of Section 49-29-511.

382 SECTION 10. Section 41-29-519, Mississippi Code of 1972, is
383 reenacted as follows:[BD10]

384 41-29-519. The judge shall seal each application made and
385 order granted under this article. Custody of the applications and
386 orders shall be wherever the judge directs. An application or
387 order may be disclosed only upon a showing of good cause before a
388 judge of competent jurisdiction, and may not be destroyed until at
389 least ten (10) years after the date it is sealed. An application
390 or order may be destroyed only by order of the judge of competent

391 jurisdiction for the administrative judicial district in which it
392 was made or granted.

393 SECTION 11. Section 41-29-521, Mississippi Code of 1972, is
394 reenacted as follows:[BD11]

395 41-29-521. A violation of Section 41-29-517 or 41-29-519
396 shall be punished as contempt of court.

397 SECTION 12. Section 41-29-523, Mississippi Code of 1972, is
398 reenacted as follows:[BD12]

399 41-29-523. (1) Within a reasonable time but not later than
400 ninety (90) days after the date an application for an order is
401 denied or after the date an order or the last extension, if any,
402 expires, the judge who granted or denied the application shall
403 cause to be served upon the persons named in the order or the
404 application and any other parties to intercepted communications
405 deemed appropriate by the issuing judge, if any, an inventory,
406 which shall include notice:

407 (a) Of the entry of the order or the application;

408 (b) Of the date of the entry and the period of
409 authorized interception or the date of denial of the application;
410 and

411 (c) That during the authorized period wire, oral or
412 other communications were or were not intercepted.

413 (2) The judge, upon motion, may, in his discretion, make
414 available for inspection to any person or persons whose oral
415 communications have been intercepted, or their counsel, any
416 portion of an intercepted communication, application or order that
417 the judge determines is in the interest of justice to disclose to
418 that person.

419 (3) Upon an ex parte showing of good cause to the judge, the
420 serving of the inventory required by this section may be
421 postponed, but in no event may any evidence derived from an order
422 under this article be disclosed in any trial until after such
423 inventory has been served.

424 SECTION 13. Section 41-29-525, Mississippi Code of 1972, is
425 reenacted as follows:[BD13]

426 41-29-525. (1) The contents of an intercepted wire, oral or
427 other communication or evidence derived from the communication may
428 not be received in evidence or otherwise disclosed in a trial,
429 hearing or other proceeding in a federal or state court unless
430 each party has been furnished with a copy of the court order and
431 application under which the interception was authorized or
432 approved not less than ten (10) days before the date of the trial,
433 hearing or other proceeding. The ten-day period may be waived by
434 the judge if he finds that it is not possible to furnish the party
435 with the information ten (10) days before the trial, hearing or
436 proceeding and that the party will not be prejudiced by the delay
437 in receiving the information.

438 (2) An aggrieved person charged with an offense in a trial,
439 hearing or proceeding in or before a court, department, officer,
440 agency, regulatory body, or other authority of the United States
441 or of this state or a political subdivision of this state, may
442 move to suppress the contents of an intercepted wire, oral or
443 other communication or evidence derived from the communication on
444 the ground that:

445 (a) The communication was unlawfully intercepted;

446 (b) The order authorizing the interception is
447 insufficient on its face; or

448 (c) The interception was not made in conformity with
449 the order.

450 (3) The motion to suppress shall be made before the trial,
451 hearing or proceeding unless there was no opportunity to make the
452 motion before the trial, hearing or proceeding, or the person was
453 not aware of the grounds of the motion before the trial, hearing
454 or proceeding. The hearing on the motion shall be held in camera
455 upon the written request of the aggrieved person. If the motion
456 is granted, the contents of the intercepted wire, oral or other

457 communication and evidence derived from the communication shall be
458 treated as inadmissible evidence. The judge, on the filing of the
459 motion by the aggrieved person, shall make available to the
460 aggrieved person or his counsel for inspection any portion of the
461 intercepted communication or evidence derived from the
462 communication that the judge determines is in the interest of
463 justice to make available.

464 (4) Any circuit judge of this state, upon hearing a pretrial
465 motion regarding conversations intercepted by wire pursuant to
466 this article, or who otherwise becomes informed that there exists
467 on such intercepted wire, oral or other communication
468 identification of a specific individual who is not a party or
469 suspect to the subject of interception:

470 (a) Shall give notice and an opportunity to be heard on
471 the matter of suppression of references to that person if
472 identification is sufficient so as to give notice; or

473 (b) Shall suppress references to that person if
474 identification is sufficient to potentially cause embarrassment or
475 harm which outweighs the probative value, if any, of the mention
476 of such person, but insufficient to require the notice provided
477 for in paragraph (a) of this subsection.

478 SECTION 14. Section 41-29-527, Mississippi Code of 1972, is
479 reenacted as follows:[BD14]

480 41-29-527. (1) Within thirty (30) days after the date an
481 order or the last extension, if any, expires or after the denial
482 of an order, the issuing or denying judge shall report to the
483 Administrative Office of the United States Courts:

484 (a) The fact that an order or extension was applied
485 for;

486 (b) The kind of order or extension applied for;

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

489 (d) The period of interceptions authorized by the order

490 and the number and duration of any extensions of the order;

491 (e) The offense specified in the order or application
492 or extension;

493 (f) The identity of the officer making the request and
494 the prosecutor making the application; and

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

497 (2) In January of each year each prosecutor shall report to
498 the Administrative Office of the United States Courts the
499 following information for the preceding calendar year:

500 (a) The information required by subsection (1) of this
501 section with respect to each application for an order or extension
502 made;

503 (b) A general description of the interceptions made
504 under each order or extension, including the approximate nature
505 and frequency of incriminating communications intercepted, the
506 approximate nature and frequency of order communications
507 intercepted, the approximate number of persons whose
508 communications were intercepted, and the approximate nature,
509 amount and cost of the manpower and other resources used in the
510 interceptions;

511 (c) The number of arrests resulting from interceptions
512 made under each order or extension and the offenses for which
513 arrests were made;

514 (d) The number of trials resulting from interceptions;

515 (e) The number of motions to suppress made with respect
516 to interceptions and the number granted or denied;

517 (f) The number of convictions resulting from
518 interceptions, the offenses for which the convictions were
519 obtained, and a general assessment of the importance of the
520 interceptions; and

521 (g) The information required by paragraphs (b) through
522 (f) of this subsection with respect to orders or extensions

523 obtained.

524 (3) Any judge or prosecutor required to file a report with
525 the Administrative Office of the United States Courts shall
526 forward a copy of such report to the director. On or before
527 January 5 of each year the director shall submit to the
528 Mississippi Administrative Office of Courts a report of all
529 intercepts, as defined in this subsection and as required by
530 federal law which relates to statistical data only, conducted
531 pursuant to this article and terminated during the preceding
532 calendar year. Such report shall include:

533 (a) The report of judges and prosecuting attorneys
534 forwarded to the director as required by this section;

535 (b) The number of Bureau of Narcotics personnel
536 authorized to possess, install or operate electronic, mechanical
537 or other devices;

538 (c) The number of Bureau of Narcotics and other law
539 enforcement personnel who participated or engaged in the seizure
540 of intercepts pursuant to this article during the preceding
541 calendar year; and

542 (d) The total cost to the Bureau of Narcotics of all
543 activities and procedures relating to the seizure of intercepts
544 during the preceding calendar year, including costs of equipment,
545 manpower and expenses incurred as compensation for use of
546 facilities or technical assistance provided by the bureau.

547 SECTION 15. Section 41-29-529, Mississippi Code of 1972, is
548 reenacted as follows:[BD15]

549 41-29-529. (1) A person whose wire, oral or other
550 communication is intercepted, disclosed or used in violation of
551 this article shall have a civil cause of action against any person
552 who intercepts, discloses or uses or procures another person to
553 intercept, disclose or use the communication, and is entitled to
554 recover from the person:

555 (a) Actual damages but not less than liquidated damages

556 computed at a rate of One Hundred Dollars (\$100.00) a day for each
557 day of violation or One Thousand Dollars (\$1,000.00), whichever is
558 higher;

559 (b) Punitive damages; and

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

562 (2) A good faith reliance on a court order is a complete
563 defense to any civil or criminal action brought under this
564 article.

565 SECTION 16. Section 41-29-531, Mississippi Code of 1972, is
566 reenacted as follows:[BD16]

567 41-29-531. This article shall not apply to:

568 (a) An operator of a switchboard, or an officer,
569 employee or agent of a communication common carrier whose
570 facilities are used in the transmission of a wire communication,
571 intercepts a communication, or who discloses or uses an
572 intercepted communication in the normal course of employment while
573 engaged in an activity that is a necessary incident to the
574 rendition of service or to the protection of the rights or
575 property of the carrier of the communication;

576 (b) An officer, employee or agent of a communication
577 common carrier who employs or uses any equipment or device which
578 may be attached to any telephonic equipment of any subscriber
579 which permits the interception and recording of any telephonic
580 communications solely for the purposes of business service
581 improvements;

582 (c) An officer, employee or agent of a communication
583 common carrier who provides information, facilities or technical
584 assistance to an investigative or law enforcement officer who is
585 authorized as provided by this article to intercept a wire, oral
586 or other communication;

587 (d) A person acting under color of law who intercepts a
588 wire, oral or other communication if the person is a party to the

589 communication, or if one (1) of the parties to the communication
590 has given prior consent to the interception; or

591 (e) A person not acting under color of law who
592 intercepts a wire, oral or other communication if the person is a
593 party to the communication, or if one (1) of the parties to the
594 communication has given prior consent to the interception unless
595 the communication is intercepted for the purpose of committing any
596 criminal or tortious act in violation of the Constitution or laws
597 of the United States or of this state, or for the purpose of
598 committing any other injurious act.

599 SECTION 17. Section 41-29-533, Mississippi Code of 1972, is
600 reenacted as follows:[BD17]

601 41-29-533. (1) Any person who knowingly and intentionally
602 possesses, installs, operates or monitors an electronic,
603 mechanical or other device in violation of this article shall be
604 guilty of a misdemeanor and, upon conviction thereof, shall be
605 sentenced to not more than one (1) year in the county jail or
606 fined not more than Ten Thousand Dollars (\$10,000.00), or both.

607 (2) Any person who violates the provisions of Section
608 41-29-511 shall be guilty of a felony and, upon conviction
609 thereof, shall be sentenced to not more than five (5) years in the
610 State Penitentiary and fined not more than Ten Thousand Dollars
611 (\$10,000.00).

612 SECTION 18. Section 41-29-535, Mississippi Code of 1972, is
613 reenacted as follows:[BD18]

614 41-29-535. This article shall not apply to a person who is a
615 subscriber to a telephone operated by a communication common
616 carrier and who intercepts a communication on a telephone to which
617 he subscribes. This article shall not apply to persons who are
618 members of the household of the subscriber who intercept
619 communications on a telephone in the home of the subscriber.

620 SECTION 19. Section 41-29-536, Mississippi Code of 1972, is
621 reenacted as follows:[BD19]

622 41-29-536. (1) Attorneys for the Bureau of Narcotics may
623 file a motion with a circuit court judge of the circuit court
624 district in which the subscriber, instrument or other device
625 exists, for communication records which will be material to an
626 ongoing investigation of a felony violation of the Uniform
627 Controlled Substances Law.

628 (2) The motion shall be made in writing, under oath, and
629 shall include the name of the subscriber, the number or numbers,
630 and the location of the instrument or other device, if known and
631 applicable. The motion shall be accompanied by an affidavit from
632 an agent of the Bureau of Narcotics which sets forth facts which
633 the court shall consider in determining that probable cause exists
634 to believe that the information sought will be material to an
635 ongoing felony violation of the Uniform Controlled Substances Law.

636 (3) Upon consideration of the motion and the determination
637 that probable cause exists, the circuit court judge may order a
638 communications common carrier as defined by 47 USCS 153(h) or a
639 provider of communication services to provide the Bureau of
640 Narcotics with communication billing records, call records,
641 subscriber information, or other communication record information.
642 The communications common carrier or the provider of communication
643 services shall be entitled to compensation at the prevailing rates
644 from the Bureau of Narcotics.

645 (4) The circuit court judge shall seal each order issued
646 pursuant to this section. The contents of a motion, affidavit and
647 order may not be disclosed except in the course of a judicial
648 proceeding. Any unauthorized disclosure of a sealed order, motion
649 or affidavit shall be punishable as contempt of court.

650 SECTION 20. Section 41-29-537, Mississippi Code of 1972, is
651 reenacted and amended as follows:[BD20]

652 41-29-537. Sections 41-29-501 through 41-29-536, Mississippi
653 Code of 1972, shall stand repealed on July 1, 2001.

654 SECTION 21. This act shall take effect and be in force from

655 and after July 1, 2000.