

By: Senator(s) Ross

To: Judiciary, Division B

SENATE BILL NO. 2713
(As Sent to Governor)

1 AN ACT TO REENACT SECTIONS 41-29-501 THROUGH 41-29-536,
2 MISSISSIPPI CODE OF 1972, WHICH PROVIDE THE AUTHORITY FOR THE
3 INTERCEPTION OF WIRE OR ORAL COMMUNICATIONS BY THE BUREAU OF
4 NARCOTICS; TO AMEND SECTION 41-29-537, MISSISSIPPI CODE OF 1972,
5 TO EXTEND THE REPEAL DATE ON THE REENACTED SECTIONS; AND FOR
6 RELATED PURPOSES.

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

8 **SECTION 1.** Section 41-29-501, Mississippi Code of 1972, is
9 reenacted as follows:

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

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

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

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

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

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

29 (f) "Electronic, mechanical or other device" means a
30 device or apparatus primarily designed or used for the
31 nonconsensual interception of wire, oral or other communications.

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

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

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

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

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

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

59 (m) "Residence" means a structure or the portion of a
60 structure used as a person's home or fixed place of habitation to

61 which the person indicates an intent to return after any temporary
62 absence.

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

73 **SECTION 2.** Section 41-29-503, Mississippi Code of 1972, is
74 reenacted as follows:

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

88 **SECTION 3.** Section 41-29-505, Mississippi Code of 1972, is
89 reenacted as follows:

90 41-29-505. A judge of competent jurisdiction in the circuit
91 court district of the location where the interception of wire,
92 oral or other communications is sought, or a circuit court
93 district contiguous to such circuit court district, may issue an

94 order authorizing interception of wire, oral or other
95 communications only if the prosecutor applying for the order shows
96 probable cause to believe that the interception will provide
97 evidence of the commission of a felony under the Uniform
98 Controlled Substances Law.

99 **SECTION 4.** Section 41-29-507, Mississippi Code of 1972, is
100 reenacted as follows:

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

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

113 **SECTION 5.** Section 41-29-509, Mississippi Code of 1972, is
114 reenacted as follows:

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

126 **SECTION 6.** Section 41-29-511, Mississippi Code of 1972, is
127 reenacted as follows:

128 41-29-511. (1) An investigative or law enforcement officer
129 who, by any means authorized by this article, obtains knowledge of
130 the contents of a wire, oral or other communication or evidence
131 derived from such communication may disclose the contents or
132 evidence to another investigative or law enforcement officer to
133 the extent that the disclosure is appropriate to the proper
134 performance of the official duties of the officer making or
135 receiving the disclosure.

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

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

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

157 (5) When an investigative or law enforcement officer, while
158 engaged in intercepting wire, oral or other communications in a

159 manner authorized by this article, intercepts wire, oral or other
160 communications relating to offenses other than those specified in
161 the order of authorization, the contents of and evidence derived
162 from the communication may be disclosed or used as provided by
163 subsections (1) and (2) of this section. Such contents and any
164 evidence derived therefrom may be used under subsection (3) of
165 this section when authorized by a judge of competent jurisdiction
166 where the judge finds, upon subsequent application, that the
167 contents were otherwise intercepted in accordance with the
168 provisions of this article. The application shall be made as soon
169 as practicable.

170 **SECTION 7.** Section 41-29-513, Mississippi Code of 1972, is
171 reenacted as follows:

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

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

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

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

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

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

194 (iv) The identity of the person, if known,
195 committing the offense and whose communications are to be
196 intercepted;

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

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

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

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

224 the application and of the action taken by the judge on each
225 application; and

226 (g) If the application is for the extension of an
227 order, a statement setting forth the results already obtained from
228 the interception or a reasonable explanation of the failure to
229 obtain results.

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

234 **SECTION 8.** Section 41-29-515, Mississippi Code of 1972, is
235 reenacted as follows:

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

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

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

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

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

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

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

260 (a) The identity of the person, if known, whose
261 communications are to be intercepted;

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

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

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

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

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

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

288 compensation by the applicant for the facilities or assistance at
289 the prevailing rates.

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

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

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

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

315 (i) (A) The premises into or onto which the
316 covert entry is authorized or the person whose communications are
317 to be obtained has been the subject of a pen register previously
318 authorized in connection with the same investigation; (B) the
319 premises into or onto which the covert entry is authorized or the
320 person whose communications are to be obtained has been the

321 subject of an interception of wire communications previously
322 authorized in connection with the same investigation; (C) that
323 such procedures have failed; and (D) if the order is for the
324 interception of other communications and requires covert entry, a
325 court-ordered attempt to intercept the communications without
326 using covert entry must have been made without success;

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

331 (b) The order, in addition to the matters required to
332 be specified under subsection (2) of this section, specifies that
333 the covert entry is for the purpose of intercepting oral
334 communications of two (2) or more persons and that there is
335 probable cause to believe they are committing, have committed, or
336 are about to commit a particular offense enumerated in Section
337 41-29-505.

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

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

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

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

359 **SECTION 9.** Section 41-29-517, Mississippi Code of 1972, is
360 reenacted as follows:

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

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

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

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

384 **SECTION 10.** Section 41-29-519, Mississippi Code of 1972, is
385 reenacted as follows:

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

395 **SECTION 11.** Section 41-29-521, Mississippi Code of 1972, is
396 reenacted as follows:

397 41-29-521. A violation of Section 41-29-517 or 41-29-519
398 shall be punished as contempt of court.

399 **SECTION 12.** Section 41-29-523, Mississippi Code of 1972, is
400 reenacted as follows:

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

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

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

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

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

419 the judge determines is in the interest of justice to disclose to
420 that person.

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

426 **SECTION 13.** Section 41-29-525, Mississippi Code of 1972, is
427 reenacted as follows:

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

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

447 (a) The communication was unlawfully intercepted;

448 (b) The order authorizing the interception is
449 insufficient on its face; or

450 (c) The interception was not made in conformity with
451 the order.

452 (3) The motion to suppress shall be made before the trial,
453 hearing or proceeding unless there was no opportunity to make the
454 motion before the trial, hearing or proceeding, or the person was
455 not aware of the grounds of the motion before the trial, hearing
456 or proceeding. The hearing on the motion shall be held in camera
457 upon the written request of the aggrieved person. If the motion
458 is granted, the contents of the intercepted wire, oral or other
459 communication and evidence derived from the communication shall be
460 treated as inadmissible evidence. The judge, on the filing of the
461 motion by the aggrieved person, shall make available to the
462 aggrieved person or his counsel for inspection any portion of the
463 intercepted communication or evidence derived from the
464 communication that the judge determines is in the interest of
465 justice to make available.

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

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

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

480 **SECTION 14.** Section 41-29-527, Mississippi Code of 1972, is
481 reenacted as follows:

482 41-29-527. (1) Within thirty (30) days after the date an
483 order or the last extension, if any, expires or after the denial

484 of an order, the issuing or denying judge shall report to the
485 Administrative Office of the United States Courts:

486 (a) The fact that an order or extension was applied
487 for;

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

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

491 (d) The period of interceptions authorized by the order
492 and the number and duration of any extensions of the order;

493 (e) The offense specified in the order or application
494 or extension;

495 (f) The identity of the officer making the request and
496 the prosecutor making the application; and

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

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

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

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

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

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

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

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

523 (g) The information required by paragraphs (b) through
524 (f) of this subsection with respect to orders or extensions
525 obtained.

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

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

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

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

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

549 **SECTION 15.** Section 41-29-529, Mississippi Code of 1972, is
550 reenacted as follows:

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

557 (a) Actual damages but not less than liquidated damages
558 computed at a rate of One Hundred Dollars (\$100.00) a day for each
559 day of violation or One Thousand Dollars (\$1,000.00), whichever is
560 higher;

561 (b) Punitive damages; and

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

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

567 **SECTION 16.** Section 41-29-531, Mississippi Code of 1972, is
568 reenacted as follows:

569 41-29-531. This article shall not apply to:

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

578 (b) An officer, employee or agent of a communication
579 common carrier who employs or uses any equipment or device which
580 may be attached to any telephonic equipment of any subscriber
581 which permits the interception and recording of any telephonic

582 communications solely for the purposes of business service
583 improvements;

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

589 (d) A person acting under color of law who intercepts a
590 wire, oral or other communication if the person is a party to the
591 communication, or if one (1) of the parties to the communication
592 has given prior consent to the interception; or

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

601 **SECTION 17.** Section 41-29-533, Mississippi Code of 1972, is
602 reenacted as follows:

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

609 (2) Any person who violates the provisions of Section
610 41-29-511 shall be guilty of a felony and, upon conviction
611 thereof, shall be sentenced to not more than five (5) years in the
612 State Penitentiary and fined not more than Ten Thousand Dollars
613 (\$10,000.00).

614 **SECTION 18.** Section 41-29-535, Mississippi Code of 1972, is
615 reenacted as follows:

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

622 **SECTION 19.** Section 41-29-536, Mississippi Code of 1972, is
623 reenacted as follows:

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

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

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

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

652 **SECTION 20.** Section 41-29-537, Mississippi Code of 1972, is
653 amended as follows:

654 41-29-537. Sections 41-29-501 through 41-29-536, Mississippi
655 Code of 1972, shall stand repealed on July 1, 2006.

656 **SECTION 21.** This act shall take effect and be in force from
657 and after July 1, 2004.