

By: Senator(s) Albritton

To: Judiciary, Division B

SENATE BILL NO. 2962

1 AN ACT TO AMEND SECTIONS 41-29-505, 41-29-507, 41-29-509,  
2 41-29-513, 41-29-527 AND 41-29-536, MISSISSIPPI CODE OF 1972, TO  
3 EXPAND THE WIRETAPPING AUTHORITY OF THE BUREAU OF NARCOTICS AND TO  
4 INCLUDE IN THAT AUTHORITY THE MISSISSIPPI BUREAU OF INVESTIGATION;  
5 TO REPEAL SECTION 41-29-537, MISSISSIPPI CODE OF 1972, WHICH IS A  
6 SUNSET PROVISION FOR THE AUTHORITY OF THE BUREAU OF NARCOTICS TO  
7 PERFORM ANY WIRETAPPING OPERATIONS; AND FOR RELATED PURPOSES.

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

9 **SECTION 1.** Section 41-29-505, Mississippi Code of 1972, is  
10 amended as follows:

11 41-29-505. A judge of competent jurisdiction in the circuit  
12 court district of the location where the interception of wire,  
13 oral or other communications is sought, or a circuit court  
14 district contiguous to such circuit court district, may issue an  
15 order authorizing interception of wire, oral or other  
16 communications only if the prosecutor applying for the order shows  
17 probable cause to believe that the interception will provide  
18 evidence of the commission of: (a) a felony under the Uniform  
19 Controlled Substances Law; (b) a capital offense as that term is  
20 defined in Section 1-3-4; or (c) a felony violation of the  
21 Racketeer Influenced and Corrupt Organization (RICO) Act.

22 **SECTION 2.** Section 41-29-507, Mississippi Code of 1972, is  
23 amended as follows:

24 41-29-507. (1) No person, agency of the state or political  
25 subdivision of the state, other than the Bureau of Narcotics and  
26 the Bureau of Investigation, is authorized by this article to own,  
27 possess, install, operate or monitor an electronic, mechanical or  
28 other device. The Bureau of Narcotics or the Bureau of  
29 Investigation may be assisted by an investigative or law

30 enforcement officer in the operation and monitoring of an  
31 interception of wire, oral or other communications, provided that  
32 an agent of the Bureau of Narcotics or the Bureau of Investigation  
33 is present at all times.

34 (2) The commissioner shall designate, in writing, the agents  
35 of the Bureau of Narcotics and the Bureau of Investigation who are  
36 responsible for the possession, installation, operation and  
37 monitoring of electronic, mechanical or other devices for the  
38 bureau.

39 **SECTION 3.** Section 41-29-509, Mississippi Code of 1972, is  
40 amended as follows:

41 41-29-509. Prior to submitting a request for an order  
42 authorizing interception of wire, oral or other communications to  
43 a prosecutor, the commissioner shall receive a written affidavit  
44 from one or more agents of the Bureau of Narcotics or the Bureau  
45 of Investigation setting forth the information required by Section  
46 41-29-513(1). The commissioner shall submit all information  
47 required by Section 41-29-513(1) to the prosecutor. Upon receipt  
48 of the request from the commissioner, the prosecutor shall be  
49 authorized to submit an application to a court of competent  
50 jurisdiction requesting the court to issue an order authorizing  
51 interception of wire, oral or other communications as provided in  
52 Section 41-29-515.

53 **SECTION 4.** Section 41-29-513, Mississippi Code of 1972, is  
54 amended as follows:

55 41-29-513. (1) To be valid, an application for an order  
56 authorizing the interception of a wire, oral or other  
57 communication must be made in writing under oath to a judge of  
58 competent jurisdiction in the circuit court district of the  
59 location where the interception of wire, oral or other  
60 communications is sought, or a circuit court district contiguous  
61 to such circuit court district, and must state the applicant's

62 authority to make the application. An applicant must include the  
63 following information in the application:

64 (a) A statement that the application has been requested  
65 by the commissioner and the identity of the prosecutor making the  
66 application;

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

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

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

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

77 (iv) The identity of the person, if known,  
78 committing the offense and whose communications are to be  
79 intercepted;

80 (c) A full and complete statement as to whether or not  
81 other investigative procedures have been tried and failed or why  
82 they reasonably appear to be unlikely to succeed or to be too  
83 dangerous if tried;

84 (d) A statement of the period of time for which the  
85 interception is required to be maintained and, if the nature of  
86 the investigation is such that the authorization for interception  
87 should not automatically terminate when the described type of  
88 communication is first obtained, a particular description of the  
89 facts establishing probable cause to believe that additional  
90 communications of the same type will occur after the described  
91 type of communication is obtained;

92 (e) A statement whether a covert entry will be  
93 necessary to properly and safely install the wiretapping or  
94 electronic surveillance or eavesdropping equipment and, if a

95 covert entry is requested, a statement as to why such an entry is  
96 necessary and proper under the facts of the particular  
97 investigation, including a full and complete statement as to  
98 whether other investigative techniques have been tried and have  
99 failed or why they reasonably appear to be unlikely to succeed or  
100 to be too dangerous if tried or are not feasible under the  
101 circumstances or exigencies of time;

102 (f) A full and complete statement of the facts  
103 concerning all applications known to the prosecutor making the  
104 application that have been previously made to a judge for  
105 authorization to intercept wire, oral or other communications  
106 involving any of the persons, facilities or places specified in  
107 the application and of the action taken by the judge on each  
108 application; and

109 (g) If the application is for the extension of an  
110 order, a statement setting forth the results already obtained from  
111 the interception or a reasonable explanation of the failure to  
112 obtain results.

113 (2) The judge may, in an ex parte in camera hearing, require  
114 additional testimony or documentary evidence in support of the  
115 application, and such testimony or documentary evidence shall be  
116 preserved as part of the application.

117 **SECTION 5.** Section 41-29-527, Mississippi Code of 1972, is  
118 amended as follows:

119 41-29-527. (1) Within thirty (30) days after the date an  
120 order or the last extension, if any, expires or after the denial  
121 of an order, the issuing or denying judge shall report to the  
122 Administrative Office of the United States Courts:

123 (a) The fact that an order or extension was applied  
124 for;

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

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

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

130           (e) The offense specified in the order or application  
131 or extension;

132           (f) The identity of the officer making the request and  
133 the prosecutor making the application; and

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

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

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

142           (b) A general description of the interceptions made  
143 under each order or extension, including the approximate nature  
144 and frequency of incriminating communications intercepted, the  
145 approximate nature and frequency of order communications  
146 intercepted, the approximate number of persons whose  
147 communications were intercepted, and the approximate nature,  
148 amount and cost of the manpower and other resources used in the  
149 interceptions;

150           (c) The number of arrests resulting from interceptions  
151 made under each order or extension and the offenses for which  
152 arrests were made;

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

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

156           (f) The number of convictions resulting from  
157 interceptions, the offenses for which the convictions were  
158 obtained, and a general assessment of the importance of the  
159 interceptions; and

160 (g) The information required by paragraphs (b) through  
161 (f) of this subsection with respect to orders or extensions  
162 obtained.

163 (3) Any judge or prosecutor required to file a report with  
164 the Administrative Office of the United States Courts shall  
165 forward a copy of such report to the director. On or before  
166 January 5 of each year the commissioner shall submit to the  
167 Mississippi Administrative Office of Courts a report of all  
168 intercepts, as defined in this subsection and as required by  
169 federal law which relates to statistical data only, conducted  
170 pursuant to this article and terminated during the preceding  
171 calendar year. Such report shall include:

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

174 (b) The number of Bureau of Narcotics and Bureau of  
175 Investigation personnel authorized to possess, install or operate  
176 electronic, mechanical or other devices;

177 (c) The number of Bureau of Narcotics and Bureau of  
178 Investigation and other law enforcement personnel who participated  
179 or engaged in the seizure of intercepts pursuant to this article  
180 during the preceding calendar year; and

181 (d) The total cost to the Bureau of Narcotics and the  
182 Bureau of Investigation of all activities and procedures relating  
183 to the seizure of intercepts during the preceding calendar year,  
184 including costs of equipment, manpower and expenses incurred as  
185 compensation for use of facilities or technical assistance  
186 provided by the bureau.

187 **SECTION 6.** Section 41-29-536, Mississippi Code of 1972, is  
188 amended as follows:

189 41-29-536. (1) Attorneys for the Bureau of Narcotics and  
190 the Bureau of Investigation may file a motion with a circuit court  
191 judge of the circuit court district in which the subscriber,  
192 instrument or other device exists, for communication records which

193 will be material to an ongoing investigation of a felony violation  
194 as authorized under Section 41-29-505.

195 (2) The motion shall be made in writing, under oath, and  
196 shall include the name of the subscriber, the number or numbers,  
197 and the location of the instrument or other device, if known and  
198 applicable. The motion shall be accompanied by an affidavit from  
199 an agent of the Bureau of Narcotics or the Bureau of Investigation  
200 which sets forth facts which the court shall consider in  
201 determining that probable cause exists to believe that the  
202 information sought will be material to an ongoing felony violation  
203 as authorized in Section 41-29-505.

204 (3) Upon consideration of the motion and the determination  
205 that probable cause exists, the circuit court judge may order a  
206 communications common carrier as defined by 47 USCS 153(h) or a  
207 provider of communication services to provide the Bureau of  
208 Narcotics or the Bureau of Investigation with communication  
209 billing records, call records, subscriber information, or other  
210 communication record information. The communications common  
211 carrier or the provider of communication services shall be  
212 entitled to compensation at the prevailing rates from the Bureau  
213 of Narcotics or the Bureau of Investigation.

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

219 **SECTION 7.** Section 41-29-537, Mississippi Code of 1972,  
220 which is a sunset provision for the authority of the Bureau of  
221 Narcotics to perform any wiretapping operations, is repealed.

222 **SECTION 8.** This act shall take effect and be in force from  
223 and after July 1, 2006.