

By: Representatives Rushing, Stamps

To: Judiciary B

HOUSE BILL NO. 374

1 AN ACT TO AMEND SECTION 41-29-501, MISSISSIPPI CODE OF 1972,
 2 TO REVISE THE DEFINITION OF DIRECTOR TO INCLUDE THE HEAD OF ANY
 3 STATE OR LOCAL LAW ENFORCEMENT AGENCY; TO AMEND SECTION 41-29-505,
 4 MISSISSIPPI CODE OF 1972, TO EXPAND THE PURPOSES OF WIRETAPPING TO
 5 INCLUDE HUMAN TRAFFICKING AND COMMERCIAL SEXUAL EXPLOITATION OF
 6 CHILDREN; TO AMEND SECTIONS 41-29-507, 41-29-509, 41-29-513,
 7 41-29-527 AND 41-29-536, MISSISSIPPI CODE OF 1972, WHICH REGULATE
 8 WIRETAPPING PROCEDURES, TO CONFORM TO THE PRECEDING SECTIONS; TO
 9 BRING FORWARD SECTIONS 41-29-529, 41-29-531, 41-29-533, 41-29-535,
 10 41-29-519, 41-29-521, 41-29-523, 41-29-525, 41-29-517, 41-29-515
 11 AND 41-29-511, MISSISSIPPI CODE OF 1972, WHICH PROVIDE FOR
 12 WIRETAPPING PROCEDURES, FOR PURPOSES OF AMENDMENT; AND FOR RELATED
 13 PURPOSES.

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

15 **SECTION 1.** Section 41-29-501, Mississippi Code of 1972, is
 16 amended as follows:

17 41-29-501. As used in this article, the following terms
 18 shall have the meaning ascribed to them herein unless the context
 19 requires otherwise:

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



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

26 (c) "Contents," when used with respect to a wire, oral
27 or other communication, includes any information concerning the
28 identity of the parties to the communication or the existence,
29 substance, purport or meaning of that communication.

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

33 (e) "Director" means the * * * director, executive
34 director, commissioner, sheriff, police chief and includes any
35 person who is responsible for managing a state or local law
36 enforcement agency.

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

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

43 (h) "Investigative or law enforcement officer" means an
44 officer of this state or of a political subdivision of this state
45 who is empowered by law to conduct investigations of, or to make
46 arrests for, offenses enumerated in Section 41-29-505, an attorney
47 authorized by law to prosecute or participate in the prosecution



48 of such offenses, or a federal law enforcement officer designated
49 by the director.

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

52 (j) "Oral communication" means an oral communication
53 uttered by a person exhibiting an expectation that the
54 communication is not subject to interception under circumstances
55 justifying that expectation.

56 (k) "Other communication" means any transfer of an
57 electronic or other signal, including fax signals, computer
58 generated signals, other similar signals, or any scrambled or
59 encrypted signal transferred via wire, radio, electromagnetic,
60 photoelectric or photooptical system from one party to another in
61 which the involved parties may reasonably expect the communication
62 to be private.

63 (l) "Prosecutor" means a district attorney with
64 jurisdiction in the county in which the facility or place where
65 the communication to be intercepted is located or a legal
66 assistant to the district attorney if designated in writing by the
67 district attorney on a case-by-case basis.

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



72 (n) "Wire communication" means a communication made in
73 whole or in part through the use of facilities for the
74 transmission of communications by the aid of wire, cable or other
75 like connection between the point of origin and the point of
76 reception furnished or operated by a person engaged as a common
77 carrier in providing or operating the facilities for the
78 transmission of communications and includes cordless telephones,
79 voice pagers, cellular telephones, any mobile telephone, or any
80 communication conducted through the facilities of a provider of
81 communication services.

82 **SECTION 2.** Section 41-29-505, Mississippi Code of 1972, is
83 amended as follows:

84 41-29-505. A judge of competent jurisdiction in the circuit
85 court district of the location where the interception of wire,
86 oral or other communications is sought, or a circuit court
87 district contiguous to such circuit court district, may issue an
88 order authorizing interception of wire, oral or other
89 communications only if the prosecutor applying for the order shows
90 probable cause to believe that the interception will provide
91 evidence of the commission of a felony under the Uniform
92 Controlled Substances Law or the provisions of law regulating
93 human trafficking or commercial sexual exploitation of children.

94 **SECTION 3.** Section 41-29-507, Mississippi Code of 1972, is
95 amended as follows:



96 41-29-507. (1) * * * Any law enforcement agency of the
97 state or political subdivision of the state * * * is authorized by
98 this article to own, possess, install, operate or monitor an
99 electronic, mechanical or other device. * * *

100 (2) * * * Each law enforcement agency shall designate, in
101 writing, the * * * officers of that agency who are responsible for
102 the possession, installation, operation and monitoring of
103 electronic, mechanical or other devices for the * * * agency.

104 **SECTION 4.** Section 41-29-509, Mississippi Code of 1972, is
105 amended as follows:

106 41-29-509. Prior to submitting a request for an order
107 authorizing interception of wire, oral or other communications to
108 a prosecutor, the * * * head of the law enforcement agency shall
109 receive a written affidavit from one or more * * * officers within
110 the agency setting forth the information required by Section
111 41-29-513(1). The * * * head of the law enforcement agency shall
112 submit all information required by Section 41-29-513(1) to the
113 prosecutor. Upon receipt of the request * * *, the prosecutor
114 shall be authorized to submit an application to a court of
115 competent jurisdiction requesting the court to issue an order
116 authorizing interception of wire, oral or other communications as
117 provided in Section 41-29-515.

118 **SECTION 5.** Section 41-29-513, Mississippi Code of 1972, is
119 amended as follows:



120 41-29-513. (1) To be valid, an application for an order
121 authorizing the interception of a wire, oral or other
122 communication must be made in writing under oath to a judge of
123 competent jurisdiction in the circuit court district of the
124 location where the interception of wire, oral or other
125 communications is sought, or a circuit court district contiguous
126 to such circuit court district, and must state the applicant's
127 authority to make the application. An applicant must include the
128 following information in the application:

129 (a) A statement that the application has been requested
130 by the * * * head of the law enforcement agency and the identity
131 of the prosecutor making the application;

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

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

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

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

142 (iv) The identity of the person, if known,
143 committing the offense and whose communications are to be
144 intercepted;



145 (c) A full and complete statement as to whether or not
146 other investigative procedures have been tried and failed or why
147 they reasonably appear to be unlikely to succeed or to be too
148 dangerous if tried;

149 (d) A statement of the period of time for which the
150 interception is required to be maintained and, if the nature of
151 the investigation is such that the authorization for interception
152 should not automatically terminate when the described type of
153 communication is first obtained, a particular description of the
154 facts establishing probable cause to believe that additional
155 communications of the same type will occur after the described
156 type of communication is obtained;

157 (e) A statement whether a covert entry will be
158 necessary to properly and safely install the wiretapping or
159 electronic surveillance or eavesdropping equipment and, if a
160 covert entry is requested, a statement as to why such an entry is
161 necessary and proper under the facts of the particular
162 investigation, including a full and complete statement as to
163 whether other investigative techniques have been tried and have
164 failed or why they reasonably appear to be unlikely to succeed or
165 to be too dangerous if tried or are not feasible under the
166 circumstances or exigencies of time;

167 (f) A full and complete statement of the facts
168 concerning all applications known to the prosecutor making the
169 application that have been previously made to a judge for



170 authorization to intercept wire, oral or other communications
171 involving any of the persons, facilities or places specified in
172 the application and of the action taken by the judge on each
173 application; and

174 (g) If the application is for the extension of an
175 order, a statement setting forth the results already obtained from
176 the interception or a reasonable explanation of the failure to
177 obtain results.

178 (2) The judge may, in an ex parte in camera hearing, require
179 additional testimony or documentary evidence in support of the
180 application, and such testimony or documentary evidence shall be
181 preserved as part of the application.

182 **SECTION 6.** Section 41-29-527, Mississippi Code of 1972, is
183 amended as follows:

184 41-29-527. (1) Within thirty (30) days after the date an
185 order or the last extension, if any, expires or after the denial
186 of an order, the issuing or denying judge shall report to the
187 Administrative Office of the United States Courts:

188 (a) The fact that an order or extension was applied
189 for;

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

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

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



195 (e) The offense specified in the order or application
196 or extension;

197 (f) The identity of the officer making the request and
198 the prosecutor making the application; and

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

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

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

207 (b) A general description of the interceptions made
208 under each order or extension, including the approximate nature
209 and frequency of incriminating communications intercepted, the
210 approximate nature and frequency of order communications
211 intercepted, the approximate number of persons whose
212 communications were intercepted, and the approximate nature,
213 amount and cost of the manpower and other resources used in the
214 interceptions;

215 (c) The number of arrests resulting from interceptions
216 made under each order or extension and the offenses for which
217 arrests were made;

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



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

221 (f) The number of convictions resulting from
222 interceptions, the offenses for which the convictions were
223 obtained, and a general assessment of the importance of the
224 interceptions; and

225 (g) The information required by paragraphs (b) through
226 (f) of this subsection with respect to orders or extensions
227 obtained.

228 (3) Any judge or prosecutor required to file a report with
229 the Administrative Office of the United States Courts shall
230 forward a copy of such report to the director. On or before
231 January 5 of each year the director shall submit to the
232 Mississippi Administrative Office of Courts a report of all
233 intercepts, as defined in this subsection and as required by
234 federal law which relates to statistical data only, conducted
235 pursuant to this article and terminated during the preceding
236 calendar year. Such report shall include:

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

239 (b) The number of * * * law enforcement personnel
240 authorized to possess, install or operate electronic, mechanical
241 or other devices;



242 (c) The number of * * * law enforcement personnel who
243 participated or engaged in the seizure of intercepts pursuant to
244 this article during the preceding calendar year; and

245 (d) The total cost to * * * any state funded law
246 enforcement agency or political subdivision of the state for all
247 activities and procedures relating to the seizure of intercepts
248 during the preceding calendar year, including costs of equipment,
249 manpower and expenses incurred as compensation for use of
250 facilities or technical assistance provided by the bureau.

251 **SECTION 7.** Section 41-29-536, Mississippi Code of 1972, is
252 amended as follows:

253 41-29-536. (1) Attorneys for * * * the requesting law
254 enforcement agency may file a motion with a circuit court judge of
255 the circuit court district in which the subscriber, instrument or
256 other device exists, for communication records which will be
257 material to an ongoing investigation of a felony violation of the
258 Uniform Controlled Substances Law or the provisions of law
259 regulating human trafficking or commercial sexual exploitation of
260 children.

261 (2) The motion shall be made in writing, under oath, and
262 shall include the name of the subscriber, the number or numbers,
263 and the location of the instrument or other device, if known and
264 applicable. The motion shall be accompanied by an affidavit from
265 an agent of the * * * the law enforcement agency which sets forth
266 facts which the court shall consider in determining that probable



267 cause exists to believe that the information sought will be
268 material to an ongoing felony violation of the Uniform Controlled
269 Substances Law.

270 (3) Upon consideration of the motion and the determination
271 that probable cause exists, the circuit court judge may order a
272 communications common carrier as defined by 47 USCS 153(h) or a
273 provider of communication services to provide the * * * law
274 enforcement agency with communication billing records, call
275 records, subscriber information, or other communication record
276 information. The communications common carrier or the provider of
277 communication services shall be entitled to compensation at the
278 prevailing rates from the * * * the law enforcement agency.

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

284 **SECTION 8.** Section 41-29-529, Mississippi Code of 1972, is
285 brought forward as follows:

286 41-29-529. (1) A person whose wire, oral or other
287 communication is intercepted, disclosed or used in violation of
288 this article shall have a civil cause of action against any person
289 who intercepts, discloses or uses or procures another person to
290 intercept, disclose or use the communication, and is entitled to
291 recover from the person:



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

296 (b) Punitive damages; and

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

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

302 **SECTION 9.** Section 41-29-531, Mississippi Code of 1972, is
303 brought forward as follows:

304 41-29-531. This article shall not apply to:

305 (a) An operator of a switchboard, or an officer,
306 employee or agent of a communication common carrier whose
307 facilities are used in the transmission of a wire communication,
308 intercepts a communication, or who discloses or uses an
309 intercepted communication in the normal course of employment while
310 engaged in an activity that is a necessary incident to the
311 rendition of service or to the protection of the rights or
312 property of the carrier of the communication;

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



317 communications solely for the purposes of business service
318 improvements;

319 (c) An officer, employee or agent of a communication
320 common carrier who provides information, facilities or technical
321 assistance to an investigative or law enforcement officer who is
322 authorized as provided by this article to intercept a wire, oral
323 or other communication;

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

328 (e) A person not acting under color of law who
329 intercepts a wire, oral or other communication if the person is a
330 party to the communication, or if one (1) of the parties to the
331 communication has given prior consent to the interception unless
332 the communication is intercepted for the purpose of committing any
333 criminal or tortious act in violation of the Constitution or laws
334 of the United States or of this state, or for the purpose of
335 committing any other injurious act.

336 **SECTION 10.** Section 41-29-533, Mississippi Code of 1972, is
337 brought forward as follows:

338 41-29-533. (1) Any person who knowingly and intentionally
339 possesses, installs, operates or monitors an electronic,
340 mechanical or other device in violation of this article shall be
341 guilty of a misdemeanor and, upon conviction thereof, shall be



342 sentenced to not more than one (1) year in the county jail or
343 fined not more than Ten Thousand Dollars (\$10,000.00), or both.

344 (2) Any person who violates the provisions of Section
345 41-29-511 shall be guilty of a felony and, upon conviction
346 thereof, shall be sentenced to not more than five (5) years in the
347 State Penitentiary and fined not more than Ten Thousand Dollars
348 (\$10,000.00).

349 **SECTION 11.** Section 41-29-535, Mississippi Code of 1972, is
350 brought forward as follows:

351 41-29-535. This article shall not apply to a person who is a
352 subscriber to a telephone operated by a communication common
353 carrier and who intercepts a communication on a telephone to which
354 he subscribes. This article shall not apply to persons who are
355 members of the household of the subscriber who intercept
356 communications on a telephone in the home of the subscriber.

357 **SECTION 12.** Section 41-29-519, Mississippi Code of 1972, is
358 brought forward as follows:

359 41-29-519. The judge shall seal each application made and
360 order granted under this article. Custody of the applications and
361 orders shall be wherever the judge directs. An application or
362 order may be disclosed only upon a showing of good cause before a
363 judge of competent jurisdiction, and may not be destroyed until at
364 least ten (10) years after the date it is sealed. An application
365 or order may be destroyed only by order of the judge of competent



366 jurisdiction for the administrative judicial district in which it
367 was made or granted.

368 **SECTION 13.** Section 41-29-521, Mississippi Code of 1972, is
369 brought forward as follows:

370 41-29-521. A violation of Section 41-29-517 or 41-29-519
371 shall be punished as contempt of court.

372 **SECTION 14.** Section 41-29-523, Mississippi Code of 1972, is
373 brought forward as follows:

374 41-29-523. (1) Within a reasonable time but not later than
375 ninety (90) days after the date an application for an order is
376 denied or after the date an order or the last extension, if any,
377 expires, the judge who granted or denied the application shall
378 cause to be served upon the persons named in the order or the
379 application and any other parties to intercepted communications
380 deemed appropriate by the issuing judge, if any, an inventory,
381 which shall include notice:

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

383 (b) Of the date of the entry and the period of
384 authorized interception or the date of denial of the application;
385 and

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

388 (2) The judge, upon motion, may, in his discretion, make
389 available for inspection to any person or persons whose oral
390 communications have been intercepted, or their counsel, any



391 portion of an intercepted communication, application or order that
392 the judge determines is in the interest of justice to disclose to
393 that person.

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

399 **SECTION 15.** Section 41-29-525, Mississippi Code of 1972, is
400 brought forward as follows:

401 41-29-525. (1) The contents of an intercepted wire, oral or
402 other communication or evidence derived from the communication may
403 not be received in evidence or otherwise disclosed in a trial,
404 hearing or other proceeding in a federal or state court unless
405 each party has been furnished with a copy of the court order and
406 application under which the interception was authorized or
407 approved not less than ten (10) days before the date of the trial,
408 hearing or other proceeding. The ten-day period may be waived by
409 the judge if he finds that it is not possible to furnish the party
410 with the information ten (10) days before the trial, hearing or
411 proceeding and that the party will not be prejudiced by the delay
412 in receiving the information.

413 (2) An aggrieved person charged with an offense in a trial,
414 hearing or proceeding in or before a court, department, officer,
415 agency, regulatory body, or other authority of the United States



416 or of this state or a political subdivision of this state, may
417 move to suppress the contents of an intercepted wire, oral or
418 other communication or evidence derived from the communication on
419 the ground that:

420 (a) The communication was unlawfully intercepted;

421 (b) The order authorizing the interception is
422 insufficient on its face; or

423 (c) The interception was not made in conformity with
424 the order.

425 (3) The motion to suppress shall be made before the trial,
426 hearing or proceeding unless there was no opportunity to make the
427 motion before the trial, hearing or proceeding, or the person was
428 not aware of the grounds of the motion before the trial, hearing
429 or proceeding. The hearing on the motion shall be held in camera
430 upon the written request of the aggrieved person. If the motion
431 is granted, the contents of the intercepted wire, oral or other
432 communication and evidence derived from the communication shall be
433 treated as inadmissible evidence. The judge, on the filing of the
434 motion by the aggrieved person, shall make available to the
435 aggrieved person or his counsel for inspection any portion of the
436 intercepted communication or evidence derived from the
437 communication that the judge determines is in the interest of
438 justice to make available.

439 (4) Any circuit judge of this state, upon hearing a pretrial
440 motion regarding conversations intercepted by wire pursuant to



441 this article, or who otherwise becomes informed that there exists
442 on such intercepted wire, oral or other communication
443 identification of a specific individual who is not a party or
444 suspect to the subject of interception:

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

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

453 **SECTION 16.** Section 41-29-517, Mississippi Code of 1972, is
454 brought forward as follows:

455 41-29-517. (1) The contents of a wire, oral or other
456 communication intercepted by means authorized by this article
457 shall be recorded on tape, wire or other comparable device. The
458 recording of the contents of a wire, oral or other communication
459 under this subsection shall be done in a way that protects the
460 recording from editing or other alterations.

461 (2) Immediately on the expiration of the period of the order
462 and all extensions, if any, the recordings shall be made available
463 to the judge issuing the order and sealed under his directions.
464 Custody of the recordings shall be wherever the judge orders. The
465 recordings may not be destroyed until at least ten (10) years



466 after the date of expiration of the order and the last extension,
467 if any. A recording may be destroyed only by order of the judge
468 of competent jurisdiction who authorized the interception, or his
469 successor.

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

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

478 **SECTION 17.** Section 41-29-515, Mississippi Code of 1972, is
479 brought forward as follows:

480 41-29-515. (1) Upon receipt of an application, the judge
481 may enter an ex parte order, as requested or as modified,
482 authorizing interception of wire, oral or other communications if
483 the judge determines from the evidence submitted by the applicant
484 that:

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

488 (b) There is probable cause to believe that particular
489 communications concerning that offense will be obtained through
490 the interception;



491 (c) Normal investigative procedures have been tried and
492 have failed or reasonably appear to be unlikely to succeed or to
493 be too dangerous if tried;

494 (d) There is probable cause to believe that the
495 facilities from which or the place where the wire, oral or other
496 communications are to be intercepted are being used or are about
497 to be used in connection with the commission of an offense or are
498 leased to, listed in the name of, or commonly used by the person;
499 and

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

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

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

506 (b) The nature and location of the communications
507 facilities as to which or the place where authority to intercept
508 is granted;

509 (c) A particular description of the type of
510 communication sought to be intercepted and a statement of the
511 particular offense to which it relates;

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



515 (e) The time during which the interception is
516 authorized, including a statement of whether or not the
517 interception will automatically terminate when the described
518 communication is first obtained; and

519 (f) Whether or not a covert entry is necessary to
520 properly and safely install wiretapping, electronic surveillance
521 or eavesdropping equipment.

522 (3) The order authorizing the interception of a wire, oral
523 or other communication shall, upon request of the applicant,
524 direct that a communication common carrier, landlord, custodian or
525 other person furnish the applicant all information, facilities and
526 technical assistance necessary to accomplish the interception
527 unobtrusively and with a minimum of interference with the services
528 that the carrier, landlord, custodian or other person is providing
529 the person whose communications are to be intercepted. Any
530 communication common carrier, landlord, custodian or other person
531 furnishing facilities or technical assistance is entitled to
532 compensation by the applicant for the facilities or assistance at
533 the prevailing rates.

534 (4) An order entered pursuant to this section may not
535 authorize the interception of a wire, oral or other communication
536 for longer than is necessary to achieve the objective of the
537 authorization, and in no event may it authorize interception for
538 more than thirty (30) days. The issuing judge may grant
539 extensions of an order, but only upon application for an extension



540 made in accordance with Section 41-29-513 and the court making the
541 findings required by subsection (1) of this section. The period
542 of extension may not be longer than the authorizing judge deems
543 necessary to achieve the purposes for which it is granted, and in
544 no event may the extension be for more than thirty (30) days. To
545 be valid, each order and extension of an order shall provide that
546 the authorization to intercept be executed as soon as practicable,
547 be conducted in a way that minimizes the interception of
548 communications not otherwise subject to interception under this
549 article, and terminate on obtaining the authorized objective or
550 within thirty (30) days, whichever occurs sooner.

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

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

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

559 (i) (A) The premises into or onto which the
560 covert entry is authorized or the person whose communications are
561 to be obtained has been the subject of a pen register previously
562 authorized in connection with the same investigation; (B) the
563 premises into or onto which the covert entry is authorized or the
564 person whose communications are to be obtained has been the



565 subject of an interception of wire communications previously
566 authorized in connection with the same investigation; (C) that
567 such procedures have failed; and (D) if the order is for the
568 interception of other communications and requires covert entry, a
569 court-ordered attempt to intercept the communications without
570 using covert entry must have been made without success;

571 (ii) That the procedures enumerated in item (i)
572 reasonably appear to be unlikely to succeed or to be too dangerous
573 if tried or are not feasible under the circumstances or exigencies
574 of time; and

575 (b) The order, in addition to the matters required to
576 be specified under subsection (2) of this section, specifies that
577 the covert entry is for the purpose of intercepting oral
578 communications of two (2) or more persons and that there is
579 probable cause to believe they are committing, have committed, or
580 are about to commit a particular offense enumerated in Section
581 41-29-505.

582 (7) The judge of a court of competent jurisdiction may issue
583 an order for the interception of wire, oral or other
584 communications conducted within a vehicle, vessel, other mode of
585 transportation or any location where a reasonable expectation of
586 privacy might exist, provided the requirements of this section,
587 where applicable, are met.

588 (8) Whenever an order authorizing interception is entered
589 pursuant to this article, the order may require reports to the



590 judge who issued the order showing what progress has been made
591 toward achievement of the authorized objective and the need for
592 continued interception. Reports shall be made at any interval the
593 judge requires.

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

598 (10) An order issued pursuant to this section authorizing
599 the interception of any cellular, portable, transportable or
600 mobile telephone or communication instrument is valid throughout
601 the State of Mississippi unless otherwise specified by the issuing
602 judge.

603 **SECTION 18.** Section 41-29-511, Mississippi Code of 1972, is
604 brought forward as follows:

605 41-29-511. (1) An investigative or law enforcement officer
606 who, by any means authorized by this article, obtains knowledge of
607 the contents of a wire, oral or other communication or evidence
608 derived from such communication may disclose the contents or
609 evidence to another investigative or law enforcement officer to
610 the extent that the disclosure is appropriate to the proper
611 performance of the official duties of the officer making or
612 receiving the disclosure.

613 (2) An investigative or law enforcement officer who, by any
614 means authorized by this article, obtains knowledge of the



615 contents of a wire, oral or other communication or evidence
616 derived from such communication may use the contents or evidence
617 to the extent the use is appropriate to the proper performance of
618 his official duties.

619 (3) A person who receives, by any means authorized by this
620 article, information concerning a wire, oral or other
621 communication or evidence derived from a wire, oral or other
622 communication intercepted in accordance with the provisions of
623 this article may disclose the contents of such communication or
624 the evidence derived from such wire, oral or other communication
625 while giving testimony under oath in any proceeding held under the
626 authority of the United States, of this state, or of a political
627 subdivision of this state.

628 (4) An otherwise privileged wire, oral or other
629 communication intercepted in accordance with, or in violation of,
630 the provisions of this article does not lose its privileged
631 character, and any evidence derived from such privileged
632 communication against the party to the privileged communication
633 shall be considered privileged also.

634 (5) When an investigative or law enforcement officer, while
635 engaged in intercepting wire, oral or other communications in a
636 manner authorized by this article, intercepts wire, oral or other
637 communications relating to offenses other than those specified in
638 the order of authorization, the contents of and evidence derived
639 from the communication may be disclosed or used as provided by



640 subsections (1) and (2) of this section. Such contents and any
641 evidence derived therefrom may be used under subsection (3) of
642 this section when authorized by a judge of competent jurisdiction
643 where the judge finds, upon subsequent application, that the
644 contents were otherwise intercepted in accordance with the
645 provisions of this article. The application shall be made as soon
646 as practicable.

647 **SECTION 19.** This act shall take effect and be in force from
648 and after July 1, 2023.

