

By: Representatives Robinson (84th), Horne

To: Judiciary A

HOUSE BILL NO. 396

1 AN ACT TO CREATE NEW SECTION 41-29-502, MISSISSIPPI CODE OF
 2 1972, TO PROHIBIT THE INTENTIONAL INTERCEPTION OR RECORDING OF ANY
 3 COMMUNICATION, OR THE INTENTIONAL DISCLOSURE OR USE OF THE
 4 CONTENTS OF ANY UNLAWFULLY INTERCEPTED OR RECORDED COMMUNICATION,
 5 EXCEPT AS SPECIFICALLY PROVIDED BY LAW; TO AUTHORIZE THE
 6 INTERCEPTION OR RECORDING OF A COMMUNICATION WHERE THE PERSON IS A
 7 PARTY TO THE COMMUNICATION AND WHERE ALL OF THE PARTIES TO THE
 8 COMMUNICATION HAVE GIVEN PRIOR CONSENT TO THE INTERCEPTION OR
 9 RECORDING; TO AMEND SECTIONS 41-29-517 AND 41-29-531, MISSISSIPPI
 10 CODE OF 1972, TO CONFORM TO THE PRECEDING PROVISIONS; TO AMEND
 11 SECTION 41-29-533, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT ANY
 12 PERSON WHO VIOLATES THIS ACT IS GUILTY OF A FELONY; AND FOR
 13 RELATED PURPOSES.

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

15 **SECTION 1.** The following shall be codified as Section
 16 41-29-502, Mississippi Code of 1972:

17 41-29-502. (1) Except as otherwise specifically provided in
 18 this article, it is unlawful for any individual, partnership,
 19 corporation or association, or the State of Mississippi, its
 20 agencies and political subdivisions, to:

21 (a) Intentionally intercept or record, endeavor to
 22 intercept or record, or procure any other person to intercept or
 23 record or endeavor to intercept or record, any wire, oral or
 24 electronic communication;

25 (b) Intentionally disclose, or endeavor to disclose, to
 26 any other person the contents of any wire, oral or electronic
 27 communication, knowing or having reason to know that the
 28 information was obtained through the interception or recording of
 29 a wire, oral or electronic communication in violation of this
 30 article; or

31 (c) Intentionally use, or endeavor to use, the contents
 32 of any wire, oral or electronic communication, knowing or having

33 reason to know that the information was obtained through the
34 interception or recording of a wire, oral or electronic
35 communication in violation of this article.

36 (2) Notwithstanding the provisions of subsection (1) of this
37 section, it is lawful under this article for a person to intercept
38 or record a wire, oral or electronic communication where the
39 person is a party to the communication and where all of the
40 parties to the communication have given prior consent to the
41 interception or recording, unless the communication is intercepted
42 or recorded for the purpose of committing any criminal or tortious
43 act in violation of the Constitution or laws of the United States
44 or of this state, or for the purpose of committing any other
45 injurious act.

46 (3) Where the consent of all parties to a communication is
47 needed under this article, consent shall be considered obtained
48 whenever one (1) party has announced to all other parties to the
49 communication, in any reasonably effective manner, that the
50 communication is about to be intercepted or recorded. If the
51 communication is to be recorded, that announcement also shall be
52 recorded.

53 **SECTION 2.** Section 41-29-517, Mississippi Code of 1972, is
54 amended as follows:

55 41-29-517. (1) The contents of a wire, oral or other
56 communication intercepted by means authorized by a court order
57 issued under this article shall be recorded on tape, wire or other
58 comparable device. The recording of the contents of a wire, oral
59 or other communication under this subsection shall be done in a
60 way that protects the recording from editing or other alterations.

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

66 after the date of expiration of the order and the last extension,
67 if any. A recording may be destroyed only by order of the judge
68 of competent jurisdiction who authorized the interception, or his
69 successor.

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

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

78 **SECTION 3.** Section 41-29-531, Mississippi Code of 1972, is
79 amended as follows:

80 41-29-531. This article shall not apply to:

81 (a) An operator of a switchboard, or an officer,
82 employee or agent of a communication common carrier whose
83 facilities are used in the transmission of a wire communication,
84 intercepts a communication, or who discloses or uses an
85 intercepted communication in the normal course of employment while
86 engaged in an activity that is a necessary incident to the
87 rendition of service or to the protection of the rights or
88 property of the carrier of the communication;

89 (b) An officer, employee or agent of a communication
90 common carrier who employs or uses any equipment or device which
91 may be attached to any telephonic equipment of any subscriber
92 which permits the interception and recording of any telephonic
93 communications solely for the purposes of business service
94 improvements;

95 (c) An officer, employee or agent of a communication
96 common carrier who provides information, facilities or technical
97 assistance to an investigative or law enforcement officer who is

98 authorized as provided by this article to intercept a wire, oral
99 or other communication;

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

104 (e) A person not acting under color of law who
105 intercepts a wire, oral or other communication where the person is
106 a party to the communication and where all of the parties to the
107 communication have given prior consent to the interception, unless
108 the communication is intercepted for the purpose of committing any
109 criminal or tortious act in violation of the Constitution or laws
110 of the United States or of this state, or for the purpose of
111 committing any other injurious act.

112 **SECTION 4.** Section 41-29-533, Mississippi Code of 1972, is
113 amended as follows:

114 41-29-533. (1) Any person who knowingly and intentionally
115 possesses, installs, operates or monitors an electronic,
116 mechanical or other device in violation of this article shall be
117 guilty of a misdemeanor and, upon conviction thereof, shall be
118 sentenced to not more than one (1) year in the county jail or
119 fined not more than Ten Thousand Dollars (\$10,000.00), or both.

120 (2) Any person who violates the provisions of Section
121 41-29-502 or Section 41-29-511 shall be guilty of a felony and,
122 upon conviction thereof, shall be sentenced to not more than five
123 (5) years in the State Penitentiary and fined not more than Ten
124 Thousand Dollars (\$10,000.00).

125 **SECTION 5.** This act shall take effect and be in force from
126 and after July 1, 2005.