

By: Representative Warren

To: Judiciary A

HOUSE BILL NO. 564

1 AN ACT TO REENACT SECTIONS 41-29-501 THROUGH 41-29-536,
2 MISSISSIPPI CODE OF 1972, WHICH CREATE THE CONTROLLED SUBSTANCES
3 ACT, PROVIDE FOR THE DISCLOSURE AND USE OF INFORMATION OBTAINED
4 FROM INTERCEPTED COMMUNICATION AND ESTABLISH PENALTIES FOR CERTAIN
5 VIOLATIONS OF THE CONTROLLED SUBSTANCES ACT; TO AMEND SECTION
6 41-29-537, MISSISSIPPI CODE OF 1972, TO EXTEND THE DATE OF REPEAL
7 ON THOSE REENACTED SECTIONS; AND FOR RELATED PURPOSES.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

63 which the person indicates an intent to return after any temporary
64 absence.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

226 the application and of the action taken by the judge on each
227 application; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

290 compensation by the applicant for the facilities or assistance at
291 the prevailing rates.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

421 the judge determines is in the interest of justice to disclose to
422 that person.

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

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

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

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

449 (a) The communication was unlawfully intercepted;

450 (b) The order authorizing the interception is
451 insufficient on its face; or

452 (c) The interception was not made in conformity with
453 the order.

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

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

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

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

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

484 41-29-527. (1) Within thirty (30) days after the date an
485 order or the last extension, if any, expires or after the denial

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

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

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

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

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

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

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

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

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

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

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

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

(d) The number of trials resulting from interceptions;

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

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

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

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

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

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

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

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

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

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

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

563 (b) Punitive damages; and

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

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

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

571 41-29-531. This article shall not apply to:

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

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

584 communications solely for the purposes of business service
585 improvements;

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

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

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

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

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

611 (2) Any person who violates the provisions of Section
612 41-29-511 shall be guilty of a felony and, upon conviction
613 thereof, shall be sentenced to not more than five (5) years in the
614 State Penitentiary and fined not more than Ten Thousand Dollars
615 (\$10,000.00).

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

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

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

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

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

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

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

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

656 41-29-537. Sections 41-29-501 through 41-29-536, Mississippi
657 Code of 1972, shall stand repealed on July 1, 2008.

658 **SECTION 21.** This act shall take effect and be in force from
659 and after July 1, 2006.