

1 HB275
2 196025-1
3 By Representatives Reynolds, Robertson, Farley, Stringer,
4 McMillan, Ball, Pettus and Rowe
5 RFD: Judiciary
6 First Read: 21-MAR-19

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8 SYNOPSIS: This bill would authorize the Attorney
9 General to submit an application to a circuit court
10 judge to intercept any wire, oral, or electronic
11 communication if there is probable cause to believe
12 an individual is committing, has committed, or is
13 about to commit certain felony drug offenses.

14 This bill would specify the procedures for
15 obtaining an intercept order, the information that
16 must be included in an intercept order, the
17 limitations of an intercept order, and the means by
18 which the communication is to be intercepted.

19 This bill would provide for the extension of
20 intercept orders under certain conditions and would
21 prohibit the destruction of recorded communications
22 for a specified time frame.

23 This bill would allow an investigative
24 officer with the Alabama State Law Enforcement
25 Agency to submit a written request to the Attorney
26 General requesting the Attorney General apply for
27 an intercept order.

1 This bill would specify under what
2 conditions recorded communications may be disclosed
3 and would provide civil and criminal penalties for
4 certain unauthorized disclosures.

5 This bill would also provide for the sealing
6 of certain records relating to the use of pen
7 registers and trap and trace devices and would
8 provide penalties for unauthorized disclosures.

9 Amendment 621 of the Constitution of Alabama
10 of 1901, now appearing as Section 111.05 of the
11 Official Recompilation of the Constitution of
12 Alabama of 1901, as amended, prohibits a general
13 law whose purpose or effect would be to require a
14 new or increased expenditure of local funds from
15 becoming effective with regard to a local
16 governmental entity without enactment by a 2/3 vote
17 unless: it comes within one of a number of
18 specified exceptions; it is approved by the
19 affected entity; or the Legislature appropriates
20 funds, or provides a local source of revenue, to
21 the entity for the purpose.

22 The purpose or effect of this bill would be
23 to require a new or increased expenditure of local
24 funds within the meaning of the amendment.
25 However, the bill does not require approval of a
26 local governmental entity or enactment by a 2/3
27 vote to become effective because it comes within

1 one of the specified exceptions contained in the
2 amendment.

3
4 A BILL
5 TO BE ENTITLED
6 AN ACT

7
8 Relating to wiretapping; to add a new Chapter 2A to
9 Title 20, Code of Alabama 1975; to authorize the Attorney
10 General to submit an application to a circuit court judge to
11 intercept any wire, oral, or electronic communication under
12 certain circumstances; to specify the procedures for obtaining
13 an intercept order, the information that must be included in
14 an intercept order, the limitations of an intercept order, and
15 the means by which the communication is to be intercepted; to
16 provide for the extension of intercept orders under certain
17 conditions; to prohibit the destruction of recorded
18 communications for a specified time frame; to allow an
19 investigative officer with the Alabama State Law Enforcement
20 Agency to submit a written request to the Attorney General
21 requesting the Attorney General apply for an intercept order;
22 to specify under what conditions recorded communications may
23 be disclosed; to provide for civil and criminal penalties for
24 violations; to amend Section 15-5-40, Code of Alabama 1975, to
25 provide for the sealing of certain records relating to pen
26 registers and trap and trace devices; to provide penalties for
27 unauthorized disclosures; and in connection therewith would

1 have as its purpose or effect the requirement of a new or
2 increased expenditure of local funds within the meaning of
3 Amendment 621 of the Constitution of Alabama of 1901, now
4 appearing as Section 111.05 of the Official Recompilation of
5 the Constitution of Alabama of 1901, as amended.

6 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

7 Section 1. Chapter 2A, commencing with Sections
8 20-2A-1, is added to Title 20, Code of Alabama, 1975, to read
9 as follows:

10 §20-2A-1.

11 For the purposes of this article, the following
12 terms shall have the following meanings:

13 (1) AGENCY. Alabama State Law Enforcement Agency.

14 (2) AGGRIEVED PERSON. A person who was a party to an
15 intercepted wire, oral, or electronic communication or a
16 person against whom the interception was directed.

17 (3) ATTORNEY GENERAL. The Attorney General of the
18 State of Alabama or his or her designee.

19 (4) COMMUNICATION COMMON CARRIER. The term as
20 defined in 47 USC §153(h) or a provider of communication
21 services.

22 (5) CONTENTS. When used with respect to a wire,
23 oral, or electronic communication, any information concerning
24 the identity of the parties to the communication or the
25 existence, substance, purport, or meaning of that
26 communication.

1 (6) COVERT ENTRY. Any entry into or onto premises
2 which if made without a court would be a violation of state or
3 federal law and constitutional principles regarding search and
4 seizure.

5 (7) ELECTRONIC COMMUNICATION. Any transfer of an
6 electronic or other signal, including fax signals, computer
7 generated signals, other similar signals, or any scrambled or
8 encrypted signal transferred via wire, radio, electromagnetic,
9 photoelectric or photo optical system from one party to
10 another in which the involved parties may reasonably expect
11 the communication to be private.

12 (8) ELECTRONIC, MECHANICAL, OR OTHER DEVICE. A
13 device or apparatus primarily designed or used for the
14 nonconsensual interception of wire, oral, or electronic
15 communications.

16 (9) INTERCEPT. The aural or other acquisition of the
17 contents of a wire, oral, or electronic communication through
18 the use of an electronic, mechanical, or other device.

19 (10) INVESTIGATIVE OFFICER. A special agent of the
20 agency, an investigator with the Attorney General's office, or
21 any other law enforcement officer designated by the secretary
22 of the agency that meet guidelines established by the
23 secretary, who has successfully completed a training course on
24 the legal and technical aspects of the interception and use of
25 wire, oral, or electronic communications, which has been
26 approved by the Attorney General.

1 (11) JUDGE OF COMPETENT JURISDICTION. A circuit
2 court judge in the county where the intercept is expected to
3 take place.

4 (12) ORAL COMMUNICATION. An oral communication
5 spoken by a person who expects his or her communication is not
6 subject to interception under circumstances justifying that
7 expectation.

8 (13) PROSECUTOR. A district attorney or his or her
9 designee.

10 (14) RESIDENCE. A building which is used or normally
11 used by a person for sleeping, living, or lodging.

12 (15) SECRETARY. The Secretary of the Alabama State
13 Law Enforcement Agency or his or her designee.

14 (16) WIRE COMMUNICATION. A communication made in
15 whole or in part through the use of facilities for the
16 transmission of communications by the aid of wire, cable, or
17 other like connection between the point of origin and the
18 point of reception furnished or operated by a person engaged
19 as a common carrier in providing or operating the facilities
20 for the transmission of communications.

21 §20-2A-2.

22 (a) No individual or other agency, other than the
23 Alabama State Law Enforcement Agency, may own or possess an
24 electronic, mechanical, or other device as defined in Section
25 20-2A-1.

1 (b) Only investigative officers, as defined in
2 Section 1, may own, possess, install, operate, or monitor an
3 electronic, mechanical, or other device.

4 (c) Any law enforcement officer may assist in the
5 operation and monitoring of an interception of a wire, oral,
6 or electronic communication as long as an investigative
7 officer is present at all times.

8 §20-2A-3.

9 Orders authorizing, approving, or extending the
10 interception of wire, oral, or electronic communications may
11 be granted, subject to this chapter when the intercept may
12 provide or has provided evidence a person is committing, has
13 committed, or is about to commit a felony drug offense
14 included in Article 5, commencing with Section 13A-12-201, of
15 Chapter 12, of Title 13A.

16 §20-2A-4.

17 (a) (1) An investigative officer may submit a written
18 request to the Attorney General requesting the Attorney
19 General apply for an intercept order to a judge of competent
20 jurisdiction. The written request shall be on a form approved
21 by the Attorney General and shall include an affidavit.

22 (2) The affidavit shall include all of the
23 following:

24 a. The identity of the investigating officer making
25 the application.

1 b. A statement of the facts and circumstances relied
2 upon by the applicant to justify the belief that an order
3 should be issued, including all of the following:

4 1. Details of the specific offense that has been
5 committed, is being committed, or will be committed.

6 2. A particular description of the nature and
7 location of the communications facilities from which, or the
8 place where, the communication is to be intercepted.

9 3. A particular description of the type of
10 communication sought to be intercepted.

11 4. The identity of the person, if known, whose
12 communications are to be intercepted.

13 c. A statement that other investigative procedures
14 have been tried and failed, reasonably appear to be unlikely
15 to succeed if tried, or are too dangerous to be tried.

16 d. A statement of the period of time the intercept
17 is required to be maintained, including a statement of whether
18 the intercept will automatically terminate when the described
19 communication is first obtained. If the authorization for the
20 intercept does not automatically terminate when the described
21 type of communication is obtained, facts that establish
22 probable cause to believe additional communications of the
23 same type will occur.

24 e. If a covert entry is requested, a statement that
25 a covert entry will be necessary to properly and safely
26 install the wiretapping device, electronic surveillance, or
27 eavesdropping equipment and a statement explaining why a

1 covert entry is necessary and proper under the facts of the
2 particular investigation, including a full and complete
3 statement as to whether other investigative techniques have
4 been tried and have failed, why they reasonably appear to be
5 unlikely to succeed, or are to be too dangerous if tried or
6 are not feasible under the circumstances or exigencies of
7 time.

8 f. A statement of the facts concerning all previous
9 applications, known to the applicant, made to any judge for
10 approval of an intercept involving the same person,
11 facilities, or places specified in the application and the
12 action taken by the judge, if known.

13 g. If the application is for the extension of an
14 order, a statement explaining the results obtained from the
15 intercept or a reasonable explanation of the failure to obtain
16 required results.

17 (b) The Attorney General shall review the request
18 and decide whether it is appropriate to submit an application
19 to a judge of competent jurisdiction for an intercept order.

20 (1) If the Attorney General decides to submit an
21 application, he or she shall notify the secretary or the
22 investigative officer.

23 (2) If the Attorney General declines to submit an
24 application, he or she shall send the secretary or the
25 investigative officer a notice of declination within 10 days.

26 §20-2A-5.

1 (a) Upon receiving an application from the Attorney
2 General for an intercept order, a judge of competent
3 jurisdiction may enter an ex parte intercept order as
4 requested or as modified, authorizing an intercept if the
5 judge determines all of the following:

6 (1) There is probable cause to believe that an
7 individual is committing, has committed, or is about to commit
8 a felony drug offense included in Article 5, commencing with
9 Section 13A-12-201, of Chapter 12, of Title 13A.

10 (2) There is probable cause to believe that specific
11 communications concerning that offense will be obtained
12 through the intercept.

13 (3) Normal investigative procedures have been tried
14 and have failed, reasonably appear to be unlikely to succeed
15 if tried, or are too dangerous to be tried.

16 (4) There is probable cause to believe that the
17 facilities from which, or the place where, the wire, oral, or
18 electronic communications are to be intercepted are being
19 used, or are about to be used, in connection with the
20 commission of the offense, or are leased to, listed in the
21 name of, or commonly used by the individual described in the
22 application.

23 (b) If requested, a judge may authorize a covert
24 entry if, in addition to the requirements of subsection (a),
25 the judge determines all of the following:

26 (1) The premises into or onto which the covert entry
27 is authorized, or the person whose communications are to be

1 obtained, has been the subject of a pen register previously
2 authorized in connection with the same investigation.

3 (2) The premises into or onto which the covert entry
4 is authorized, or the person whose communications are to be
5 obtained, has been the subject of an interception of wire
6 communications previously authorized in connection with the
7 same investigation.

8 (3) That a court-ordered attempt to intercept the
9 communications without using covert entry has previously been
10 made without success.

11 (c) Each intercept order authorizing or approving
12 the interception of a wire, oral, or electronic communication
13 shall specify all of the following:

14 (1) The identity of the individual, if known, whose
15 communications are to be intercepted.

16 (2) The nature and location of the communications
17 facilities which, or the place where, authority to intercept
18 is granted, and the means by which the intercept may be made.

19 (3) A description of the type of communication
20 sought to be intercepted and a statement of the particular
21 offense to which it relates.

22 (4) The identity of the agency authorized to
23 intercept the communications and the person requesting the
24 application.

25 (5) The period of time the intercept is authorized,
26 including a statement of whether the intercept automatically
27 terminates when the described communication is first obtained.

1 (6) If a covert entry was requested, whether a
2 covert entry is authorized by the court to properly and safely
3 install wiretapping, electronic surveillance, or eavesdropping
4 equipment.

5 (d) The intercept order authorizing the intercept
6 shall, upon request of the applicant, direct that a
7 communication common carrier, landlord, custodian, or other
8 person furnish the applicant all information, facilities, and
9 technical assistance necessary to accomplish the intercept
10 unobtrusively and with a minimum of interference with the
11 services that the carrier, landlord, custodian, or other
12 person is providing the person whose communications are to be
13 intercepted. Any communication common carrier, landlord,
14 custodian, or other person furnishing facilities or technical
15 assistance shall be compensated by the applicant for
16 reasonable expenses incurred in providing facilities or
17 assistance at the prevailing rates.

18 (e) (1) An intercept order entered pursuant to this
19 chapter may not authorize the interception of a wire, oral, or
20 electronic communication for any period longer than is
21 necessary to achieve the objective of the authorization, and
22 in no event for more than 30 days. The 30-day period begins
23 either when the investigative officer first begins to conduct
24 an intercept under the intercept order, or 10 days after the
25 order is entered, whichever is sooner.

26 (2) The issuing judge may grant extensions of an
27 intercept order, but only upon an application for an extension

1 made in accordance with this chapter. The period of extension
2 may not be for any period longer than the authorizing judge
3 deems necessary to achieve the purposes for which it is
4 granted, and in no event may the extension be for more than 30
5 days. To be valid, each order and extension of an order shall
6 provide that the authorization to intercept be executed as
7 soon as practicable, be conducted in a way that minimizes the
8 interception of communications not otherwise subject to
9 interception under this article, and terminate upon obtaining
10 the authorized objective or within 30 days, whichever occurs
11 sooner.

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

18 (i) Whenever an order authorizing an intercept is
19 entered pursuant to this chapter, the order may require
20 reports to the judge who issued the order showing what
21 progress has been made toward achievement of the authorized
22 objective and the need for continued interception. Reports
23 shall be made at any interval required by the judge.

24 (j) A judge who issues an order authorizing the
25 interception of a wire, oral, or electronic communication may
26 not hear a criminal prosecution in which evidence derived from

1 the interception may be used or in which the order may be an
2 issue.

3 §20-2A-6.

4 (a) The contents of a wire, oral, or electronic
5 communication intercepted by means authorized by this chapter
6 shall be recorded on tape, wire, or other comparable device,
7 to the extent practicable. The recording of the contents of a
8 wire, oral, or electronic communication under this section
9 shall be performed in a way that protects the recording from
10 editing or other alterations.

11 (b) Immediately following the expiration of an
12 intercept order, or all extensions, if any, the recordings
13 shall be made available to the judge issuing the order and
14 shall be sealed. Custody of the recordings shall be wherever
15 the judge orders. The recordings may not be destroyed until at
16 least 10 years after the date of expiration on the order and
17 the last extension, if any. A recording may be destroyed only
18 by order of the judge who authorized the interception, or his
19 or her successor.

20 (c) Duplicate recordings may be made for use or
21 disclosure pursuant to Section 20-2A-8 for investigative
22 purposes. One copy shall remain in the custody of the judge
23 and one copy shall be given to the entity that executed the
24 intercept order.

25 (d) The presence of a seal as required in subsection
26 (b), or a satisfactory explanation of its absence, shall be a
27 prerequisite for the use or disclosure of the contents of any

1 wire, oral, or electronic communication or any evidence
2 derived from the communication under Section 20-2A-8.

3 (e) A violation of this section shall be punished as
4 contempt of court.

5 §20-2A-7.

6 (a) The judge of competent jurisdiction shall seal
7 each application made, and order granted, under this chapter.
8 Custody of the applications and orders shall be wherever the
9 judge orders. An application or order may be disclosed only
10 upon a showing of good cause before a judge of competent
11 jurisdiction. An application or order may not be destroyed
12 until at least 10 years after the date it was sealed. An
13 application or order may be destroyed only by order of the
14 judge who authorized the interception, or his or her
15 successor.

16 (b) A violation of this section shall be punished as
17 contempt of court.

18 §20-2A-8.

19 (a) Within a reasonable time, but not later than 90
20 days after the date an application for an order is denied or
21 after the date an order, or the last extension, if any,
22 expires, the judge who granted or denied the application shall
23 serve an inventory on the persons named in the order or the
24 application or any other parties to the intercepted
25 communications deemed appropriate by the issuing judge, if
26 any. The inventory shall include a notice of all of the
27 following:

1 (1) The entry of the order or the application.

2 (2) The date of the entry and the period of
3 authorized interception or the date of denial of the
4 application.

5 (3) Whether wire, oral, or electronic communications
6 were intercepted during the authorized period.

7 (b) Upon a motion, the judge may make available for
8 inspection to any person or persons whose communications have
9 been intercepted, or their counsel, any portion of an
10 intercepted communication, application, or order the judge
11 determines is in the interest of justice to disclose to that
12 person.

13 (c) Upon an ex parte showing of good cause to the
14 judge, the serving of the inventory required by this section
15 may be postponed, but evidence derived from an order under
16 this chapter may not be disclosed in any trial until after the
17 inventory has been served.

18 §20-2A-9.

19 (a) The contents of an intercepted wire, oral, or
20 electronic communication, or evidence derived from the
21 communication, may not be entered in evidence or otherwise
22 disclosed in a trial, hearing, or other proceeding in a
23 federal or state court unless each party has been furnished a
24 copy of the court order and application under which the
25 intercept was authorized or approved, at least 10 days before
26 the date of the trial, hearing, or other proceeding. The
27 10-day period may be waived by the judge if he or she finds it

1 is not possible to furnish the party with the information 10
2 days before the trial, hearing, or proceeding and that the
3 party will not be prejudiced by the delay in receiving the
4 information.

5 (b) An aggrieved person charged with an offense in a
6 trial, hearing, or proceeding in or before a court,
7 department, officer, agency, regulatory body, or other
8 authority of the United States or of this state or a political
9 subdivision of this state, may move to suppress the contents
10 of an intercepted wire, oral, or electronic communication or
11 evidence derived from the communication on any of the
12 following grounds:

13 (1) The communication was unlawfully intercepted.

14 (2) The order authorizing the interception is
15 insufficient on its face.

16 (3) The interception was not made in conformity with
17 the order.

18 (c) The motion to suppress shall be made before the
19 trial, hearing, or proceeding, unless there was no opportunity
20 to make the motion before the trial, hearing, or proceeding,
21 or the person was not aware of the grounds of the motion
22 before the trial, hearing, or proceeding. The hearing on the
23 motion shall be held in camera upon the written request of the
24 aggrieved person. If the motion is granted, the contents of
25 the intercepted wire, oral, or electronic communication, and
26 evidence derived from the communication, shall be treated as
27 inadmissible evidence. The judge, on the filing of the motion

1 by the aggrieved person, shall make available for inspection
2 to the aggrieved person, or his or her counsel, any portion of
3 the intercepted communication, or evidence derived from the
4 communication, that the judge determines is in the interest of
5 justice to make available.

6 §20-2A-10.

7 (a) Any law enforcement officer who obtains, by any
8 means authorized by this chapter, knowledge of the contents of
9 a wire, oral, or electronic communication, or evidence derived
10 from the communication, may disclose the contents, or evidence
11 derived, to another law enforcement officer if the disclosure
12 is appropriate to the proper performance of the official
13 duties of the officer making or receiving the disclosure.

14 (b) Any law enforcement officer who obtains, by any
15 means authorized by this chapter, knowledge of the contents of
16 a wire, oral, or electronic communication, or evidence derived
17 from the communication, may use the contents, or evidence
18 derived, if the use is appropriate to the proper performance
19 of the official duties of the officer.

20 (c) Any individual who receives, by any means
21 authorized by this chapter, information concerning a wire,
22 oral, or electronic communication, or evidence derived from
23 the communication, may disclose the contents of the
24 communication, or evidence derived from the communication,
25 while giving testimony in any proceeding held under the
26 authority of the United States, this state, or a political
27 subdivision of this state.

1 (d) No privileged wire, oral, or electronic
2 communication intercepted in according with, or in violation
3 of, this chapter shall lose its privileged character.

4 (e) When an investigative officer, while engaged in
5 intercepting wire, oral, or electronic communications in a
6 manner authorized by the chapter, intercepts communications
7 relating to an offense other than those specified in the
8 intercept order, the contents of, and evidence derived from
9 the communication, may be disclosed or used as provided by
10 subsection (a) and (b). The contents of, and any evidence
11 derived from the communication from the communication may be
12 used under subsection (c) when a judge of competent
13 jurisdiction finds, on a subsequent application, that the
14 contents were otherwise intercepted in accordance with the
15 provision of this Chapter. The subsequent application shall be
16 made as soon as practicable.

17 §20-2A-11.

18 (a) In January of each year, any judge who has
19 issued an order, or an extension of an order, pursuant to
20 Section 20-2A-5 that expired during the preceding year, or who
21 has denied approval of an intercept order during the preceding
22 year, shall report to the Administrative Office of the United
23 States Courts all of the following:

24 (1) The fact that an order or extension was sought.

25 (2) The kind of order or extension sought.

26 (3) The fact that the order or extension was granted
27 as applied for, was modified, or was denied.

1 (4) The period of intercepts authorized by the order
2 and the number and duration of any extensions of the order.

3 (5) The offense specified in the order, application,
4 or extension.

5 (6) The identity of the officer making the request
6 and the individual authorizing the application.

7 (7) The nature of the facilities or the place where
8 communications were to be intercepted.

9 (b) In March of each year, the Attorney General
10 shall report to the Administrative Office of the United States
11 Courts the following information for the preceding calendar
12 year:

13 (1) The information required by subsection (a) with
14 respect to each application for an order or extension made.

15 (2) A general description of the intercepts made
16 under each order or extension, including the approximate
17 nature and frequency of incriminating communications
18 intercepted, the approximate nature and frequency of other
19 communications intercepted, the approximate number of persons
20 whose communications were intercepted, and the approximate
21 nature, amount, and cost of the manpower and other resources
22 used in the interceptions.

23 (3) The number of arrests resulting from
24 interceptions made under each order or extension and the
25 offenses for which arrests were made.

26 (4) The number of trials resulting from intercepts.

1 (5) The number of motions to suppress made with
2 respect to intercepts and the number granted or denied.

3 (6) The number of convictions resulting from
4 intercepts, the offenses for which the convictions were
5 obtained, and a general assessment of the importance of the
6 intercepts.

7 (7) The information required by subdivisions (2)
8 through (6) with respect to orders or extensions obtained.

9 (c) Any judge required to file a report with the
10 Administrative Office of the United States Courts and the
11 Attorney General shall forward a copy of the report to the
12 secretary by March 15.

13 (d) On or before April 15th of each year, the
14 secretary shall submit to the Alabama Administrative Office of
15 Courts a report of all intercepts conducted pursuant to this
16 chapter and terminated during the preceding calendar year.
17 Such report shall include all of the following:

18 (1) All reports received by judges and the report
19 received by the Attorney General, as required by this section.

20 (2) The number of agency personnel and other
21 designated law enforcement authorized to possess, install, or
22 operate electronic, mechanical, or other devices.

23 (3) The number of agency personnel and other
24 designated law enforcement who participated or engaged in the
25 seizure of intercepts pursuant to this chapter during the
26 preceding calendar year.

1 (4) The total cost to the agency of all activities
2 and procedures relating to the seizure of intercepts during
3 the preceding calendar year, including costs of equipment,
4 manpower, and expenses incurred as compensation for use of
5 facilities or technical assistance provided by the agency.

6 §20-2A-12.

7 (a) An individual whose wire, oral, or electronic
8 communication is intercepted, disclosed, or used in violation
9 of this chapter shall have a civil cause of action against any
10 individual who intercepts, discloses, or uses or procures
11 another individual to intercept, disclose, or use the
12 communication, and is entitled to recover from the individual
13 or entity which engaged in the violation any of the following:

14 (1) Actual damages.

15 (2) Punitive damages.

16 (3) Reasonable attorney's fees and other litigation
17 costs reasonably incurred.

18 (b) This section does not apply to any of the
19 following persons if acting in a reasonable manner pursuant to
20 this chapter:

21 (1) An operator of a switchboard, or an officer,
22 employee, or agent of a communication common carrier whose
23 facilities are used in the transmission of a wire
24 communication, intercepts a communication, or who discloses or
25 uses an intercepted communication in the normal course of
26 employment while engaged in an activity that is a necessary

1 incident to the rendition of service or to the protection of
2 the rights or property of the carrier of the communication.

3 (2) An officer, employee, or agent of a
4 communication common carrier who employs or uses any equipment
5 or device which may be attached to any telephonic equipment of
6 any subscriber which permits the interception and recording of
7 any telephonic communications solely for the purposes of
8 business service improvements.

9 (3) An officer, employee, or agent of a
10 communication common carrier who provides information,
11 facilities or technical assistance to an investigative officer
12 who is authorized as provided by this article to intercept a
13 wire, oral, or electronic communication.

14 (4) An individual acting under authority of law who
15 intercepts a wire, oral, or electronic communication if the
16 individual is a party to the communication, or if one of the
17 parties to the communication has given prior consent to the
18 interception.

19 (5) An individual not acting under authority of law
20 who intercepts a wire, oral, or electronic communication if
21 the individual is a party to the communication, or if one of
22 the parties to the communication has given prior consent to
23 the interception unless the communication is intercepted for
24 the purpose of committing any criminal or tortious act in
25 violation of the Constitution or laws of the United States or
26 of this state, or for the purpose of committing any other
27 injurious act.

1 (c) A good faith reliance on a court order is a
2 complete defense to any civil cause of action brought under
3 this chapter.

4 §20-2A-13.

5 (a) Any individual who knowingly and intentionally
6 possesses, installs, operates, or monitors an electronic,
7 mechanical, or other device in violation of this chapter shall
8 be guilty of a Class A misdemeanor.

9 (2) Any individual who violates Section 20-2A-6
10 shall be guilty of a Class A felony.

11 §20-2A-14.

12 This chapter does not apply to a person who is a
13 subscriber to a telephone operated by a communication common
14 carrier and who intercepts a communication on a telephone to
15 which he or she subscribes. This chapter does not apply to
16 persons who are members of the household of the subscriber who
17 intercept communications on a telephone in the home of the
18 subscriber.

19 §20-2A-15.

20 (a) The secretary may issue an administrative
21 subpoena to a communication common carrier or a provider of
22 communication services to compel production of business
23 records if the records satisfy all of the following:

24 (1) Relate to information concerning local or
25 long-distance toll records or subscriber information.

26 (2) Are material to an active investigation of
27 violations of the Alabama Uniform Controlled Substance Act, as

1 provided in Chapter 5, Title 13A, being conducted by a special
2 agent of the agency.

3 Section 2. Section 15-5-40, Code of Alabama 1975, is
4 amended to read as follows:

5 "§15-5-40.

6 "(a) The definitions, prohibitions, authorizations,
7 and procedures regarding access to stored wire and electronic
8 communications and transactional records and the installation
9 or use of pen registers or trap and trace devices shall be
10 adopted and coextensive with the provisions of the federal law
11 defined at Chapters 121 and 206 of Title 18, United States
12 Code, Sections 2701-2712 and 3121-3127, and as those
13 provisions may hereafter be amended.

14 "(b) Emergency pen registers and trap and trace
15 devices may be installed pursuant to the provisions of the
16 federal law defined in Title 18, United States Code, Section
17 3125, as it may hereafter be amended, provided the
18 investigative or law enforcement officer declaring the
19 emergency has been specially authorized and designated in
20 writing by the Attorney General, district attorney, or city
21 attorney, if authorized to prosecute felony offenses, with
22 prosecuting jurisdiction over the offense, investigation,
23 defendant, or provider of wire or electronic communications
24 service whose assistance is required.

25 "(c) An emergency declared or order issued under the
26 combined authority of the provisions of federal law defined at
27 Chapters 121 and 206 of Title 18, United States Code, Sections

1 2701-2712 and 3121-3127, may authorize disclosure of
2 call-identifying addressing, routing, or signaling information
3 that may disclose the physical location of the subscriber,
4 customer, or user of a wire or electronic communications
5 service.

6 "(d) An emergency may be declared in those
7 situations involving the disappearance of an individual, the
8 report of a runaway child, or report of a missing person for
9 which no criminal charge may be readily apparent but where the
10 individual may be in danger based on, but not limited to, the
11 age, physical condition, or circumstances surrounding the
12 disappearance of the individual. The situation will authorize
13 the installation of pen registers and trap and trace devices
14 and disclosure of call-identifying addressing, routing, or
15 signaling information that may disclose the physical location
16 of the subscriber, customer, or user of a wire or electronic
17 communications service.

18 "(e) (1) Orders or search warrants, or both, issued
19 pursuant to this section are expressly allowed to be
20 prospective in nature and these orders or search warrants, or
21 both, are allowed to be executed during the day and night.
22 ~~Further,~~

23 "(2) An inventory of the information obtained
24 pursuant to an order or search warrant issued pursuant to this
25 section related to electronic storage media or the seizure or
26 copying of electronically stored information may be limited to

1 describing the physical storage media that was seized or
2 copied.

3 "(3) Within 10 days after the expiration of the
4 order or search warrant issued pursuant to this section, law
5 enforcement must return the order or search warrant to the
6 judge designated in the order or search warrant, and, if
7 unavailable, to another judge with jurisdiction.

8 "(4) The judge shall seal each order issued pursuant
9 to this section. The contents of a motion, affidavit, or order
10 may not be disclosed except in the course of a judicial
11 proceeding. Any unauthorized disclosure of a sealed order,
12 motion, or affidavit shall be punishable as contempt of
13 court."

14 Section 3. Although this bill would have as its
15 purpose or effect the requirement of a new or increased
16 expenditure of local funds, the bill is excluded from further
17 requirements and application under Amendment 621, now
18 appearing as Section 111.05 of the Official Recompilation of
19 the Constitution of Alabama of 1901, as amended, because the
20 bill defines a new crime or amends the definition of an
21 existing crime.

22 Section 4. This act shall become effective on the
23 first day of the third month following its passage and
24 approval by the Governor, or its otherwise becoming law.