

1 SB15
2 203432-4
3 By Senator Ward
4 RFD: Judiciary
5 First Read: 04-FEB-20
6 PFD: 01/13/2020

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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 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 to submit a written request to the Attorney
25 General, through the Secretary of the Alabama State
26 Law Enforcement Agency, requesting the Attorney
27 General apply for 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 or electronic communication under certain
12 circumstances; to specify the procedures for obtaining an
13 intercept order, the information that must be included in an
14 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 to submit a written request to the
20 Attorney General, through the Secretary of the Alabama State
21 Law Enforcement Agency, requesting the Attorney General apply
22 for an intercept order; to specify under what conditions
23 recorded communications may be disclosed; to provide for civil
24 and criminal penalties for violations; to amend Section
25 15-5-40, Code of Alabama 1975, to provide for the sealing of
26 certain records relating to pen registers and trap and trace
27 devices; to provide penalties for unauthorized disclosures;

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

7 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

8 Section 1. This act shall be known and may be cited
9 as the Agent Billy Clardy III Act.

10 Section 2. Chapter 2A, commencing with Sections
11 20-2A-1, is added to Title 20, Code of Alabama, 1975, to read
12 as follows:

13 §20-2A-1.

14 For the purposes of this article, the following
15 terms shall have the following meanings:

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

17 (2) AGGRIEVED PERSON. A person who was a party to an
18 intercepted wire or electronic communication or a person
19 against whom the interception was directed.

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

22 (4) COMMUNICATION COMMON CARRIER. The term as
23 defined in 47 USC §153(h) or a provider of communication
24 services.

25 (5) CONTENTS. When used with respect to a wire or
26 electronic communication, any information concerning the

1 identity of the parties to the communication or the existence,
2 substance, purport, or meaning of that communication.

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

10 (7) ELECTRONIC, MECHANICAL, OR OTHER DEVICE. A
11 device or apparatus primarily designed or used for the
12 nonconsensual interception of wire or electronic
13 communications.

14 (8) INTERCEPT. The aural or other acquisition of the
15 contents of a wire or electronic communication through the use
16 of an electronic, mechanical, or other device.

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

25 (10) JUDGE OF COMPETENT JURISDICTION. A circuit
26 court judge in the county where the intercept is expected to
27 take place or where the interception takes place.

1 (11) PROSECUTOR. A district attorney or his or her
2 designee.

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

5 (13) WIRE COMMUNICATION. A communication made in
6 whole or in part through the use of facilities for the
7 transmission of communications by the aid of wire, cable, or
8 other like connection between the point of origin and the
9 point of reception furnished or operated by a person engaged
10 as a common carrier in providing or operating the facilities
11 for the transmission of communications.

12 §20-2A-2.

13 (a) No individual or other agency, other than the
14 Alabama State Law Enforcement Agency, may own or possess an
15 electronic, mechanical, or other device as defined in Section
16 20-2A-1.

17 (b) Only investigative officers, as defined in
18 Section 1, may install, operate, or monitor an electronic,
19 mechanical, or other device.

20 (c) Any law enforcement officer may assist in the
21 operation and monitoring of an interception of a wire or
22 electronic communication as long as an investigative officer
23 is present at all times.

24 (d) The secretary may approve the use of an
25 electronic, mechanical, or other device that is being used by
26 a federal agency, as long as the approval is made in writing
27 and attached to the original affidavit.

1 §20-2A-3.

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

9 §20-2A-4.

10 (a) (1) An investigative officer may submit a written
11 request to the secretary requesting the secretary apply for an
12 intercept order. If the secretary approves the request, the
13 secretary may submit a written request to the Attorney General
14 requesting the Attorney General apply for an intercept order
15 to a judge of competent jurisdiction. The written request
16 shall be on a form approved by the Attorney General and shall
17 include an affidavit.

18 (2) The affidavit shall include all of the
19 following:

20 a. The identity of the investigating officer making
21 the application.

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

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

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

4 3. A particular description of the type of
5 communication sought to be intercepted.

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

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

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

19 e. A statement of the facts concerning all previous
20 applications, known to the applicant, made to any judge for
21 approval of an intercept involving the same person,
22 facilities, or places specified in the application and the
23 action taken by the judge, if known.

24 f. If the application is for the extension of an
25 order, a statement explaining the results obtained from the
26 intercept or a reasonable explanation of the failure to obtain
27 required results.

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

4 (1) If the Attorney General decides to submit an
5 application, he or she shall notify the secretary or the
6 investigative officer.

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

10 §20-2A-5.

11 (a) Upon receiving an application from the Attorney
12 General for an intercept order, a judge of competent
13 jurisdiction may enter an ex parte intercept order as
14 requested or as modified, authorizing an intercept within the
15 territorial jurisdiction of the court where the judge is
16 sitting pursuant to subsection (g), if the judge determines
17 all of the following:

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

22 (2) There is probable cause to believe that specific
23 communications concerning that offense will be obtained
24 through the intercept.

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

1 (4) There is probable cause to believe that the
2 facilities from which, or the place where, the wire or
3 electronic communications are to be intercepted are being
4 used, or are about to be used, in connection with the
5 commission of the offense, or are leased to, listed in the
6 name of, or commonly used by the individual described in the
7 application.

8 (b) Each intercept order authorizing or approving
9 the interception of a wire or electronic communication shall
10 specify all of the following:

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

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

16 (3) A description of the type of communication
17 sought to be intercepted and a statement of the particular
18 offense to which it relates.

19 (4) The identity of the agency authorized to
20 intercept the communications and the person requesting the
21 application.

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

25 (c) The intercept order authorizing the intercept
26 shall, upon request of the applicant, direct that a
27 communication common carrier, custodian, or other person

1 furnish the applicant all information, facilities, and
2 technical assistance necessary to accomplish the intercept
3 unobtrusively and with a minimum of interference with the
4 services that the carrier, custodian, or other person is
5 providing the person whose communications are to be
6 intercepted. Any communication common carrier, custodian, or
7 other person furnishing facilities or technical assistance
8 shall be compensated by the applicant for reasonable expenses
9 incurred in providing facilities or assistance at the
10 prevailing rates.

11 (d) (1) An intercept order entered pursuant to this
12 chapter may not authorize the interception of a wire or
13 electronic communication for any period longer than is
14 necessary to achieve the objective of the authorization, and
15 in no event for more than 30 days. The 30-day period begins
16 either when the investigative officer first begins to conduct
17 an intercept under the intercept order, or 10 days after the
18 order is entered, whichever is sooner.

19 (2) The issuing judge may grant extensions of an
20 intercept order, but only upon an application for an extension
21 made in accordance with this chapter. The period of extension
22 may not be for any period longer than the authorizing judge
23 deems necessary to achieve the purposes for which it is
24 granted, and in no event may the extension be for more than 30
25 days. To be valid, each order and extension of an order shall
26 provide that the authorization to intercept be executed as
27 soon as practicable, be conducted in a way that minimizes the

1 interception of communications not otherwise subject to
2 interception under this article, and terminate upon obtaining
3 the authorized objective or within 30 days, whichever occurs
4 sooner.

5 (e) Whenever an order authorizing an intercept is
6 entered pursuant to this chapter, the order may require
7 reports to the judge who issued the order showing what
8 progress has been made toward achievement of the authorized
9 objective and the need for continued interception. Reports
10 shall be made at any interval required by the judge.

11 (f) A judge who issues an order authorizing the
12 interception of a wire or electronic communication may not
13 hear a criminal prosecution in which evidence derived from the
14 interception may be used or in which the order may be an
15 issue.

16 (g) For jurisdictional purposes, the territorial
17 jurisdiction pursuant to subsection (a) includes both the
18 location of the device and the original listening post. A
19 judge in either jurisdiction has the authority to issue an
20 intercept order.

21 §20-2A-6.

22 (a) The contents of a wire or electronic
23 communication intercepted by means authorized by this chapter
24 shall be recorded on tape, wire, or other comparable device,
25 to the extent practicable. The recording of the contents of a
26 wire or electronic communication under this section shall be

1 performed in a way that protects the recording from editing or
2 other alterations.

3 (b) Immediately following the expiration of an
4 intercept order, or all extensions, if any, the recordings
5 shall be made available to the judge issuing the order and
6 shall be sealed. Custody of the recordings shall be wherever
7 the judge orders. The recordings may not be destroyed until at
8 least 10 years after the date of expiration on the order and
9 the last extension, if any. A recording may be destroyed only
10 by order of the judge who authorized the interception, or his
11 or her successor.

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

17 (d) The presence of a seal as required in subsection
18 (b), or a satisfactory explanation of its absence, shall be a
19 prerequisite for the use or disclosure of the contents of any
20 wire or electronic communication or any evidence derived from
21 the communication under Section 20-2A-8.

22 (e) A violation of this section shall be punished as
23 contempt of court.

24 §20-2A-7.

25 (a) The judge of competent jurisdiction shall seal
26 each application made, and order granted, under this chapter.
27 Custody of the applications and orders shall be wherever the

1 judge orders. An application or order may be disclosed only
2 upon a showing of good cause before a judge of competent
3 jurisdiction. An application or order may not be destroyed
4 until at least 10 years after the date it was sealed. An
5 application or order may be destroyed only by order of the
6 judge who authorized the interception, or his or her
7 successor.

8 (b) A violation of this section shall be punished as
9 contempt of court.

10 §20-2A-8.

11 (a) Within a reasonable time, but not later than 90
12 days after the date an application for an order is denied or
13 after the date an order, or the last extension, if any,
14 expires, the judge who granted or denied the application shall
15 serve an inventory on the persons named in the order or the
16 application or any other parties to the intercepted
17 communications deemed appropriate by the issuing judge, if
18 any. The inventory shall include a notice of all of the
19 following:

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

21 (2) The date of the entry and the period of
22 authorized interception or the date of denial of the
23 application.

24 (3) Whether wire or electronic communications were
25 intercepted during the authorized period.

26 (b) Upon a motion, the judge may make available for
27 inspection to any person or persons whose communications have

1 been intercepted, or their counsel, any portion of an
2 intercepted communication, application, or order the judge
3 determines is in the interest of justice to disclose to that
4 person.

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

10 §20-2A-9.

11 (a) The contents of an intercepted wire or
12 electronic communication, or evidence derived from the
13 communication, may not be entered in evidence or otherwise
14 disclosed in a trial, hearing, or other proceeding in a
15 federal or state court unless each party has been furnished a
16 copy of the court order and application under which the
17 intercept was authorized or approved, at least 10 days before
18 the date of the trial, hearing, or other proceeding. The
19 10-day period may be waived by the judge if he or she finds it
20 is not possible to furnish the party with the information 10
21 days before the trial, hearing, or proceeding and that the
22 party will not be prejudiced by the delay in receiving the
23 information.

24 (b) An aggrieved person charged with an offense in a
25 trial, hearing, or proceeding in or before a court,
26 department, officer, agency, regulatory body, or other
27 authority of the United States or of this state or a political

1 subdivision of this state, may move to suppress the contents
2 of an intercepted wire or electronic communication or evidence
3 derived from the communication on any of the following
4 grounds:

5 (1) The communication was unlawfully intercepted.

6 (2) The order authorizing the interception is
7 insufficient on its face.

8 (3) The interception was not made in conformity with
9 the order.

10 (c) The motion to suppress shall be made before the
11 trial, hearing, or proceeding, unless there was no opportunity
12 to make the motion before the trial, hearing, or proceeding,
13 or the person was not aware of the grounds of the motion
14 before the trial, hearing, or proceeding. The hearing on the
15 motion shall be held in camera upon the written request of the
16 aggrieved person. If the motion is granted, the contents of
17 the intercepted wire or electronic communication, and evidence
18 derived from the communication, shall be treated as
19 inadmissible evidence. The judge, on the filing of the motion
20 by the aggrieved person, shall make available for inspection
21 to the aggrieved person, or his or her counsel, any portion of
22 the intercepted communication, or evidence derived from the
23 communication, that the judge determines is in the interest of
24 justice to make available.

25 §20-2A-10.

26 (a) Any law enforcement officer who obtains, by any
27 means authorized by this chapter, knowledge of the contents of

1 a wire or electronic communication, or evidence derived from
2 the communication, may disclose the contents, or evidence
3 derived, to another law enforcement officer if the disclosure
4 is appropriate to the proper performance of the official
5 duties of the officer making or receiving the disclosure.

6 (b) Any law enforcement officer who obtains, by any
7 means authorized by this chapter, knowledge of the contents of
8 a wire or electronic communication, or evidence derived from
9 the communication, may use the contents, or evidence derived,
10 if the use is appropriate to the proper performance of the
11 official duties of the officer.

12 (c) Any individual who receives, by any means
13 authorized by this chapter, information concerning a wire or
14 electronic communication, or evidence derived from the
15 communication, may disclose the contents of the communication,
16 or evidence derived from the communication, while giving
17 testimony in any proceeding held under the authority of the
18 United States, this state, or a political subdivision of this
19 state.

20 (d) No privileged wire or electronic communication
21 intercepted in accordance with, or in violation of, this
22 chapter shall lose its privileged character.

23 (e) When an investigative officer, while engaged in
24 intercepting wire or electronic communications in a manner
25 authorized by the chapter, intercepts communications relating
26 to an offense other than those specified in the intercept
27 order, the contents of, and evidence derived from the

1 communication, may be disclosed or used as provided by
2 subsection (a) and (b). The contents of, and any evidence
3 derived from the communication may be used under subsection
4 (c) when a judge of competent jurisdiction finds, on a
5 subsequent application, that the contents were otherwise
6 intercepted in accordance with the provision of this Chapter.
7 The subsequent application shall be made as soon as
8 practicable.

9 §20-2A-11.

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

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

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

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

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

22 (5) The offense specified in the order, application,
23 or extension.

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

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

1 (b) In March of each year, the Attorney General
2 shall report to the Administrative Office of the United States
3 Courts the following information for the preceding calendar
4 year:

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

7 (2) A general description of the intercepts made
8 under each order or extension, including the approximate
9 nature and frequency of incriminating communications
10 intercepted, the approximate nature and frequency of other
11 communications intercepted, the approximate number of persons
12 whose communications were intercepted, and the approximate
13 nature, amount, and cost of the manpower and other resources
14 used in the interceptions.

15 (3) The number of arrests resulting from
16 interceptions made under each order or extension and the
17 offenses for which arrests were made.

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

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

21 (6) The number of convictions resulting from
22 intercepts, the offenses for which the convictions were
23 obtained, and a general assessment of the importance of the
24 intercepts.

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

1 (c) Any judge required to file a report with the
2 Administrative Office of the United States Courts and the
3 Attorney General shall forward a copy of the report to the
4 secretary by March 15 of each year.

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

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

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

15 (3) The number of agency personnel and other
16 designated law enforcement who participated or engaged in the
17 seizure of intercepts pursuant to this chapter during the
18 preceding calendar year.

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

24 §20-2A-12.

25 (a) An individual whose wire or electronic
26 communication is intercepted, disclosed, or used in violation
27 of this chapter shall have a civil cause of action against any

1 individual who intercepts, discloses, or uses or procures
2 another individual to intercept, disclose, or use the
3 communication, and is entitled to recover from the individual
4 or entity which engaged in the violation any of the following:

5 (1) Actual damages.

6 (2) Punitive damages.

7 (3) Reasonable attorney's fees and other litigation
8 costs reasonably incurred.

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

12 (1) An operator of a switchboard, or an officer,
13 employee, or agent of a communication common carrier whose
14 facilities are used in the transmission of a wire
15 communication, intercepts a communication, or who discloses or
16 uses an intercepted communication in the normal course of
17 employment while engaged in an activity that is a necessary
18 incident to the rendition of service or to the protection of
19 the rights or property of the carrier of the communication.

20 (2) An officer, employee, or agent of a
21 communication common carrier who employs or uses any equipment
22 or device which may be attached to any telephonic equipment of
23 any subscriber which permits the interception and recording of
24 any telephonic communications solely for the purposes of
25 business service improvements.

26 (3) An officer, employee, or agent of a
27 communication common carrier who provides information,

1 facilities or technical assistance to an investigative officer
2 who is authorized as provided by this article to intercept a
3 wire or electronic communication.

4 (4) An individual acting under authority of law who
5 intercepts a wire or electronic communication if the
6 individual is a party to the communication, or if one of the
7 parties to the communication has given prior consent to the
8 interception.

9 (5) An individual not acting under authority of law
10 who intercepts a wire or electronic communication if the
11 individual is a party to the communication, or if one of the
12 parties to the communication has given prior consent to the
13 interception unless the communication is intercepted for the
14 purpose of committing any criminal or tortious act in
15 violation of the Constitution or laws of the United States or
16 of this state, or for the purpose of committing any other
17 injurious act.

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

21 §20-2A-13.

22 Any individual who knowingly and intentionally
23 possesses, installs, operates, or monitors an electronic,
24 mechanical, or other device in violation of this chapter shall
25 be guilty of a Class C felony.

26 §20-2A-14.

1 This chapter does not apply to a person who is a
2 subscriber to a telephone operated by a communication common
3 carrier and who intercepts a communication on a telephone to
4 which he or she subscribes. This chapter does not apply to
5 persons who are members of the household of the subscriber who
6 intercept communications on a telephone in the home of the
7 subscriber.

8 §20-2A-15.

9 The secretary may issue an administrative subpoena
10 to a communication common carrier or a provider of
11 communication services to compel production of business
12 records if the records satisfy all of the following:

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

15 (2) Are material to an active investigation of a
16 felony violation of the Alabama Uniform Controlled Substance
17 Act, as provided in Chapter 2, Title 20, being conducted by a
18 special agent of the agency.

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

21 "§15-5-40.

22 "(a) The definitions, prohibitions, authorizations,
23 and procedures regarding access to stored wire and electronic
24 communications and transactional records and the installation
25 or use of pen registers or trap and trace devices shall be
26 adopted and coextensive with the provisions of the federal law
27 defined at Chapters 121 and 206 of Title 18, United States

1 Code, Sections 2701-2712 and 3121-3127, and as those
2 provisions may hereafter be amended.

3 "(b) Emergency pen registers and trap and trace
4 devices may be installed pursuant to the provisions of the
5 federal law defined in Title 18, United States Code, Section
6 3125, as it may hereafter be amended, provided the
7 investigative or law enforcement officer declaring the
8 emergency has been specially authorized and designated in
9 writing by the Attorney General, district attorney, or city
10 attorney, if authorized to prosecute felony offenses, with
11 prosecuting jurisdiction over the offense, investigation,
12 defendant, or provider of wire or electronic communications
13 service whose assistance is required.

14 "(c) An emergency declared or order issued under the
15 combined authority of the provisions of federal law defined at
16 Chapters 121 and 206 of Title 18, United States Code, Sections
17 2701-2712 and 3121-3127, may authorize disclosure of
18 call-identifying addressing, routing, or signaling information
19 that may disclose the physical location of the subscriber,
20 customer, or user of a wire or electronic communications
21 service.

22 "(d) An emergency may be declared in those
23 situations involving the disappearance of an individual, the
24 report of a runaway child, or report of a missing person for
25 which no criminal charge may be readily apparent but where the
26 individual may be in danger based on, but not limited to, the
27 age, physical condition, or circumstances surrounding the

1 disappearance of the individual. The situation will authorize
2 the installation of pen registers and trap and trace devices
3 and disclosure of call-identifying addressing, routing, or
4 signaling information that may disclose the physical location
5 of the subscriber, customer, or user of a wire or electronic
6 communications service.

7 "(e) (1) Orders or search warrants, or both, issued
8 pursuant to this section are expressly allowed to be
9 prospective in nature and these orders or search warrants, or
10 both, are allowed to be executed during the day and night.

11 ~~Further,~~

12 "(2) An inventory of the information obtained
13 pursuant to an order or search warrant issued pursuant to this
14 section related to electronic storage media or the seizure or
15 copying of electronically stored information may be limited to
16 describing the physical storage media that was seized or
17 copied.

18 "(3) Within 10 days after the expiration of the
19 order or search warrant issued pursuant to this section, law
20 enforcement must return the order or search warrant to the
21 judge designated in the order or search warrant, and, if
22 unavailable, to another judge with jurisdiction.

23 "(4) The judge shall seal each order issued pursuant
24 to this section. The contents of a motion, affidavit, or order
25 may not be disclosed except in the course of a judicial
26 proceeding. Any unauthorized disclosure of a sealed order,

1 motion, or affidavit shall be punishable as contempt of court."

2 Section 4. Although this bill would have as its
3 purpose or effect the requirement of a new or increased
4 expenditure of local funds, the bill is excluded from further
5 requirements and application under Amendment 621, now
6 appearing as Section 111.05 of the Official Recompilation of
7 the Constitution of Alabama of 1901, as amended, because the
8 bill defines a new crime or amends the definition of an
9 existing crime.

10 Section 5. This act shall become effective on the
11 first day of the third month following its passage and
12 approval by the Governor, or its otherwise becoming law.