

1 SB71
2 207797-1
3 By Senator Butler
4 RFD: Governmental Affairs
5 First Read: 02-FEB-21
6 PFD: 01/26/2021

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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 chapter, 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 U.S.C. §153(11) 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 any fax signal, computer
5 generated signal, other similar signal, or 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 of the Attorney General's office, or
19 any other law enforcement officer designated by the secretary
20 of the agency who meets guidelines established by the
21 secretary and who has successfully completed a training course
22 approved by the Attorney General on the legal and technical
23 aspects of the interception and use of wire or electronic
24 communications.

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 20-2A-1, may install, operate, or monitor an
19 electronic, 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 Alabama State Law Enforcement Agency shall
25 perform audits on the electronic, mechanical, or other
26 devices.

1 (e) The secretary may approve the use of an
2 electronic, mechanical, or other device that is being used by
3 a federal agency, as long as the approval is made in writing
4 and attached to the original affidavit.

5 §20-2A-3.

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

13 §20-2A-4.

14 (a) (1) An investigative officer may submit a written
15 request to the secretary requesting the secretary apply for an
16 intercept order. If the secretary approves the request, the
17 secretary may submit a written request to the Attorney General
18 requesting the Attorney General apply for an intercept order
19 to a judge of competent jurisdiction. The written request
20 shall be on a form approved by the Attorney General and shall
21 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. A statement of the facts concerning all previous
25 applications known to the applicant, made to any judge for
26 approval of an intercept involving the same person,

1 facilities, or places specified in the application and the
2 action taken by the judge, if known.

3 f. If the application is for the extension of an
4 order, a statement explaining the results obtained from the
5 intercept or a reasonable explanation of the failure to obtain
6 required results.

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

10 (1) If the Attorney General decides to submit an
11 application, he or she shall notify the secretary or the
12 investigative officer.

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

16 §20-2A-5.

17 (a) Upon receiving an application from the Attorney
18 General for an intercept order, a judge of competent
19 jurisdiction may enter an ex parte intercept order as
20 requested or as modified, authorizing an intercept within the
21 territorial jurisdiction of the court where the judge is
22 sitting pursuant to subsection (g), if the judge determines
23 all of the following:

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

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

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

7 (4) There is probable cause to believe that the
8 facilities from which, or the place where, the wire or
9 electronic communications are to be intercepted are being
10 used, or are about to be used, in connection with the
11 commission of the offense, or are being leased to, listed in
12 the name of, or commonly used by the individual described in
13 the application.

14 (b) Each intercept order authorizing or approving
15 the interception of a wire or electronic communication shall
16 specify all of the following:

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

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

22 (3) A description of the type of communication
23 sought to be intercepted and a statement of the particular
24 offense to which it relates.

25 (4) The identity of the agency authorized to
26 intercept the communications and the person requesting the
27 application.

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

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

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

25 (2) The issuing judge may grant extensions of an
26 intercept order, but only upon an application for an extension
27 made in accordance with this chapter. The period of extension

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

11 (e) Whenever an order authorizing an intercept is
12 entered pursuant to this chapter, the order may require
13 reports to the judge who issued the order showing what
14 progress has been made toward achieving the authorized
15 objective and the need for continued interception. Reports
16 shall be made at any interval required by the judge.

17 (f) A judge who issues an order authorizing the
18 interception of a wire or electronic communication may not
19 hear a criminal prosecution in which evidence derived from the
20 interception may be used or in which the order may be an
21 issue.

22 (g) For jurisdictional purposes, the territorial
23 jurisdiction pursuant to subsection (a) includes both the
24 location of the device and the original listening post. A
25 judge in either jurisdiction has the authority to issue an
26 intercept order.

27 §20-2A-6.

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

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

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

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

1 (e) A violation of this section shall be punished as
2 contempt of court.

3 §20-2A-7.

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

14 (b) A violation of this section shall be punished as
15 contempt of court.

16 §20-2A-8.

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

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

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

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

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

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

17 §20-2A-9.

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

1 days before the trial, hearing, or proceeding and that the
2 party will not be prejudiced by the delay in receiving the
3 information.

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

12 (1) The communication was unlawfully intercepted.

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

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

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

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

5 §20-2A-10.

6 (a) 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 disclose the contents, or evidence
10 derived, to another law enforcement officer if the disclosure
11 is appropriate to the proper performance of the official
12 duties of the officer making or receiving the disclosure.

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

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

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

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

16 §20-2A-11.

17 (a) On or before January 31 of each year, any judge
18 who has issued an order, or an extension of an order, pursuant
19 to Section 20-2A-5 that expired during the preceding year, or
20 who has denied approval of an intercept order during the
21 preceding year, shall report to the Administrative Office of
22 the United States Courts all of the following:

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

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

25 (3) The fact that the order or extension was granted
26 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) On or before March 31 of each year, the Attorney
10 General shall report to the Administrative Office of the
11 United States Courts the following information for the
12 preceding calendar 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
20 individuals whose communications were intercepted, and the
21 approximate nature, amount, and cost of the manpower and other
22 resources 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 of each year.

13 (d) On or before April 15 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 officers who participated or
25 engaged in the seizure of intercepts pursuant to this chapter
26 during the 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 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 individuals if acting in a reasonable manner
20 pursuant to 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, who intercepts a communication, or who
25 discloses or uses an intercepted communication in the normal
26 course of employment while engaged in an activity that is a
27 necessary incident to the rendition of service or to the

1 protection of the rights or property of the carrier of the
2 communication.

3 (2) An officer, employee, or agent of a
4 communication common carrier who employs or uses any equipment
5 or device that 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
12 officer who is authorized as provided by this chapter to
13 intercept a wire or electronic communication.

14 (4) An individual acting under authority of law who
15 intercepts a wire 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 or electronic communication if the
21 individual is a party to the communication, or if one of the
22 parties to the communication has given prior consent to the
23 interception, unless the communication is intercepted for the
24 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 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 C felony.

9 §20-2A-14.

10 This chapter does not apply to an individual who is
11 a subscriber to a telephone operated by a communication common
12 carrier and who intercepts a communication on a telephone to
13 which he or she subscribes. This chapter does not apply to
14 individuals who are members of the household of the subscriber
15 who intercepts communications on a telephone in the home of
16 the subscriber.

17 §20-2A-15.

18 The secretary may issue an administrative subpoena
19 to a communication common carrier or a provider of
20 communication services to compel production of business
21 records if the records requested satisfy both of the
22 following:

23 (1) Are local or long-distance toll records or
24 subscriber information.

25 (2) Are material to an active investigation of a
26 felony violation of the Alabama Uniform Controlled Substance

1 Act, as provided in Chapter 2, being conducted by a special
2 agent of the agency.

3 Section 3. 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, an~~

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, with knowledge that the information has
13 been sealed, shall be punishable as contempt of court."

14 Section 4. 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 5. 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.