

1 HB186
2 156296-3
3 By Representative Treadaway
4 RFD: Public Safety and Homeland Security
5 First Read: 14-JAN-14

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8 SYNOPSIS: This bill would authorize the Attorney
9 General to request approval from a Judge of the
10 Court of Criminal Appeals to intercept any wire,
11 oral, or electronic communication if there is
12 probable cause to believe that an individual is
13 committing, has committed, or is about to commit
14 certain crimes.

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

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

24 This bill would also provide for the
25 emergency interception of wire, oral, or electronic
26 communications under limited circumstances without
27 an intercept order.

1 This bill would allow the head of any state
2 law enforcement agency, any district attorney, or
3 any federal law enforcement agency to submit a
4 written request to the Attorney General requesting
5 that the Attorney General apply for an intercept
6 order.

7 This bill would specify under what
8 conditions recorded communications may be disclosed
9 and would provide criminal penalties for certain
10 unauthorized disclosures.

11 This bill would also allow the Attorney
12 General to appeal an order granting a motion to
13 suppress the contents of a recorded communication
14 or an order denying an application for an intercept
15 order.

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

1 funds, or provides a local source of revenue, to
2 the entity for the purpose.

3 The purpose or effect of this bill would be
4 to require a new or increased expenditure of local
5 funds within the meaning of the amendment. However,
6 the bill does not require approval of a local
7 governmental entity or enactment by a 2/3 vote to
8 become effective because it comes within one of the
9 specified exceptions contained in the amendment.

10
11 A BILL
12 TO BE ENTITLED
13 AN ACT
14

15 To add Sections 15-5-41 through 15-5-47, inclusive,
16 to Article 3, Chapter 5, Title 15, Code of Alabama 1975, to
17 authorize the Attorney General to request approval from a
18 Judge of the Court of Criminal Appeals to intercept any wire,
19 oral, or electronic communication under certain conditions; to
20 specify the procedures for obtaining an intercept order, the
21 information that must be included in an intercept order, the
22 limitations of an intercept order, and the means by which the
23 communication is to be intercepted; to provide for the
24 extension of intercept orders under certain conditions; to
25 prohibit the destruction of recorded communications for a
26 specified time frame; to provide the Attorney General with
27 rulemaking authority; to provide for the emergency

1 interception of communications under certain conditions; to
2 allow other state and federal law enforcement agencies to
3 request that the Attorney General apply for an intercept
4 order; to specify under what conditions recorded
5 communications may be disclosed; to provide criminal penalties
6 for violations; to provide for the appeal of intercept orders
7 or orders suppressing evidence derived thereof; and in
8 connection therewith would have as its purpose or effect the
9 requirement of a new or increased expenditure of local funds
10 within the meaning of Amendment 621 of the Constitution of
11 Alabama of 1901, now appearing as Section 111.05 of the
12 Official Recompilation of the Constitution of Alabama of 1901,
13 as amended.

14 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

15 Section 1. This act shall be known and may be cited
16 as the Child Protection and Safe Streets Act of 2014.

17 Section 2. Sections 15-5-41 through 15-5-47,
18 inclusive, are added to Article 3, Chapter 5, Title 15, Code
19 of Alabama 1975, to read as follows:

20 §15-5-41.

21 For the purposes of this article, the following
22 terms shall have the following meanings:

23 (1) APPROVING JUDGE. Any sitting judge on the
24 Alabama Court of Criminal Appeals.

25 (2) ATTORNEY GENERAL. The Attorney General of the
26 State of Alabama.

1 (3) AURAL TRANSFER. A transfer containing the human
2 voice at any point between and including the point of origin
3 and the point of reception.

4 (4) CHAPTER 119 OF THE UNITED STATES CODE. Chapter
5 119 of Part I of Title 18, United States Code, being Public
6 Law 90-351, the Omnibus Crime Control and Safe Streets Act of
7 1968, as amended by the Electronic Communications Privacy Act
8 of 1986.

9 (5) CONTENTS. When used with respect to any wire,
10 oral, or electronic communication, any information concerning
11 the substance, purport, or meaning of that communication.

12 (6) ELECTRONIC, MECHANICAL, OR OTHER DEVICE. Any
13 device or apparatus which can be used to intercept a wire,
14 oral, or electronic communication other than any of the
15 following:

16 a. Any telephone or telegraph instrument, equipment,
17 or facility, or any component thereof that satisfies either of
18 the following:

19 1. Is furnished to the subscriber or user by a
20 provider of wire or electronic communication service in the
21 ordinary course of its business and is being used by the
22 subscriber or user in the ordinary course of its business or
23 is furnished by the subscriber or user for connection to the
24 facilities of such service and is used in the ordinary course
25 of its business.

26 2. Is being used by a provider of wire or electronic
27 communication service in the ordinary course of its business

1 or by an investigative or law enforcement officer in the
2 ordinary course of the officer's duties.

3 b. A hearing aid or similar device being used to
4 correct subnormal hearing to not better than normal.

5 (7) ELECTRONIC COMMUNICATION. Any transfer of signs,
6 signals, writing, images, sounds, data, or intelligence of any
7 nature transmitted in whole or in part by a wire, radio,
8 electromagnetic, photoelectronic, or photooptical system but
9 does not include any of the following:

10 a. Any wire or oral communication.

11 b. Any communication made through a tone-only paging
12 device.

13 c. Any communication from a tracking device, as
14 defined in Section 3117 of Title 18 of the United States Code.

15 (8) ELECTRONIC COMMUNICATION SERVICE. Any service
16 that provides to its users the ability to send or receive wire
17 or electronic communications.

18 (9) ELECTRONIC STORAGE. Both of the following:

19 a. Any temporary, intermediate storage of a wire or
20 electronic communication incidental to the electronic
21 transmission thereof.

22 b. Any storage of such communication by an
23 electronic communication service for the purposes of backup
24 protection of the communication.

25 (10) ELECTRONIC SURVEILLANCE. The interception of
26 wire, oral, or electronic communications as provided by this
27 act.

1 (11) FEDERAL LAW ENFORCEMENT AGENCY. The Attorney
2 General of the United States, his or her deputies and
3 assistants, the U.S. Attorneys for the Northern, Middle, and
4 Southern Districts of Alabama, and their deputies and
5 assistants, or any federal law enforcement agent in this state
6 charged with enforcing federal law.

7 (12) INTERCEPT. The aural or other acquisition of
8 the contents of any wire, oral, or electronic communication
9 through the use of any electronic, mechanical, or other
10 device.

11 (13) INTERCEPT ORDER. An ex parte order by an
12 approving judge authorizing the interception of wire, oral, or
13 electronic communications.

14 (14) MAJOR CRIMES. Any of the following:

15 a. Murder, Section 13A-6-2.

16 b. Kidnapping in the first degree, Section 13A-6-43.

17 c. Human trafficking in the first or second degree,
18 Sections 13A-6-152 and 13A-6-153.

19 d. Any criminal sex offense in which the victim was
20 a child under the age of 12 and or any offense involving child
21 pornography.

22 e. Any felony drug offense included in Article 5,
23 Chapter 12, Title 13A.

24 (15) NOTICE OF DECLINATION. A written statement
25 approved by the Attorney General setting forth the reason that
26 the application should not be made to the approving judge.

1 (16) ORAL COMMUNICATION. Any oral communication
2 uttered by a person exhibiting an expectation that the
3 communication is not subject to interception under
4 circumstances justifying the expectation, but the term does
5 not include any electronic communication.

6 (17) USER. Any person or entity who satisfies both
7 of the following:

8 a. Uses an electronic communications service.

9 b. Is duly authorized by the provider of the service
10 to engage in the use.

11 (18) WIRE COMMUNICATION. Any aural transfer made in
12 whole or in part through the use of facilities for the
13 transmission of communications by the aid of wire, cable, or
14 other like connection between the point of origin and the
15 point of reception, including the use of the connection in a
16 switching station, furnished or operated by any person engaged
17 in providing or operating such facilities for the transmission
18 of communications, and the term includes any electronic
19 storage of the communication.

20 §15-5-42.

21 (a) Upon application by the Attorney General, an
22 approving judge may enter an intercept order, if the approving
23 judge determines all of the following on the basis of the
24 facts submitted by the applicant:

25 (1) There is probable cause for belief that an
26 individual is committing, has committed, or is about to commit
27 a major crime.

1 (2) There is probable cause for belief that
2 particular communications concerning that offense will be
3 obtained through such interception.

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

7 (4) Except as provided in subsection (i), there is
8 probable cause for belief that the facilities from which, or
9 the place where, the wire, oral, or electronic communications
10 are to be intercepted are being used, or are about to be used,
11 in connection with the commission of the offense, or are
12 leased to, listed in the name of, or commonly used by the
13 individual described in subdivision (1) of this subsection.

14 (5) Pursuant to Section 15-5-45(b), a copy of the
15 Attorney General's notice of declination, if the request is
16 being made by a district attorney after receiving a notice of
17 declination from the Attorney General.

18 (b) Each intercept order shall have application over
19 any wire, oral, or electronic communication related to or in
20 furtherance of any crime in which jurisdiction would lie in
21 any court of this state, and shall include all of the
22 following:

23 (1) The identity of the person, if known, whose
24 communications are to be intercepted.

25 (2) Except as provided by subsection (i), the nature
26 and location of the communications facilities as to which, or

1 the place where, authority to intercept is granted, and the
2 means by which the interceptions may be made.

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

6 (4) The identity of the agency authorized to
7 intercept the communications and of the person requesting the
8 application.

9 (5) Pursuant to Section 15-5-45(b), a copy of the
10 Attorney General's notice of declination, if the request is
11 being made by a district attorney after receiving a notice of
12 declination from the Attorney General.

13 (c)(1) An intercept order entered under this article
14 may not authorize the interception of any wire, oral, or
15 electronic communication for any period longer than is
16 necessary to achieve the objective of the authorization, nor
17 in any event longer than 30 days. The 30-day period begins on
18 the earlier of the day on which the investigative or law
19 enforcement officer first begins to conduct an interception
20 under the intercept order, or 10 days after the order is
21 entered, whichever is sooner.

22 (2) Extensions of an intercept order may be granted,
23 but only upon application for an extension made in accordance
24 with Section 14-5-44. The period of extension shall be no
25 longer than the approving judge determines to be necessary to
26 achieve the purpose for which it was granted, and in no event
27 for longer than 30 days.

1 (3) Every intercept order and extension thereof
2 shall contain a provision that the authorization to intercept
3 be executed as soon as practicable, be conducted to minimize
4 the interception of communications not otherwise subject to
5 interception under this article, and terminate upon attainment
6 of the authorized objective, or in any event in 30 days, as is
7 appropriate. Every intercept order and extension thereof shall
8 also contain a provision that in conducting the intercept,
9 reasonable steps shall be taken to prevent the monitoring of
10 privileged communications.

11 (4) In the event the intercepted communication is in
12 a code or foreign language, and an expert in that foreign
13 language or code is not reasonably available during the
14 interception period, minimization may be accomplished as soon
15 as practicable after the interception.

16 (5) An interception under this article shall be
17 conducted in whole or in part by state or federal government
18 personnel, or by an individual operating under a contract with
19 the state or federal government, acting under the authority of
20 a state law enforcement officer authorized to conduct
21 interceptions under this article.

22 (d) If an intercept order is entered pursuant to
23 this article, the order may require reports to be made to the
24 approving judge showing that progress has been made toward
25 achievement of the authorized objective and the need for
26 continued interception. The reports shall be made at such
27 intervals as the approving judge may require.

1 (e) The contents of any wire, oral, or electronic
2 communication intercepted by any means authorized by this
3 article shall be recorded on tape, wire, or electronic,
4 mechanical or other comparable device, to the extent
5 practicable. The recording of the contents of any wire,
6 electronic, or oral communication under this subsection shall
7 be done in a way to protect the recording from editing or
8 other alterations. As soon as practicable, upon the expiration
9 of the period of the intercept order, or extensions thereof,
10 the recordings shall be made available to the approving judge
11 and sealed. Custody of the recordings is wherever the
12 approving judge orders. The recordings may not be destroyed
13 except upon an order of the approving judge and in any event
14 must be kept for 10 years. Duplicate recordings may be made
15 for use or disclosure pursuant to the provisions of Section
16 14-5-46 for investigative purposes, and one copy shall remain
17 in the custody of the approving judge, and one copy shall be
18 given to the entity that executed the intercept order.

19 (f) A violation of this section may be punished as
20 contempt.

21 (g) The Attorney General, his or her deputies or
22 assistants, shall own or control or supervise the operation of
23 any equipment used to implement intercept orders, and may
24 operate or use, in implementing any intercept order,
25 electronic surveillance equipment in which a local government
26 or any of its agencies has a property interest.

1 (h) The Attorney General, his or her deputies or
2 assistants, shall supervise any assistance given to local law
3 enforcement agencies and is authorized to conduct statewide
4 training sessions for investigative and law enforcement
5 officers regarding this article.

6 (i) The requirements of subdivision (2) of
7 subsection (a) relating to the specification of the facilities
8 from which, or the place where, the communication is to be
9 intercepted do not apply under any of the following
10 conditions:

11 (1) In the case of an application with respect to
12 the interception of an oral communication, both of the
13 following are satisfied:

14 a. The application contains a full and complete
15 statement as to why the specification is not practical and
16 identifies the person committing the offense and whose
17 communications are to be intercepted.

18 b. The approving judge finds that the specification
19 is not practical.

20 (2) In the case of an application with respect to a
21 wire or electronic communication, all of the following are
22 satisfied:

23 a. The application identifies the person believed to
24 be committing the offense and whose communications are to be
25 intercepted, and the applicant makes a showing that there is
26 probable cause to believe that the person's actions could have

1 the effect of thwarting interception from a specified
2 facility.

3 b. The approving judge finds that the showing has
4 been adequately made.

5 c. The intercept order is limited to interception
6 only for such time as it is reasonable to presume that the
7 person identified in the application is or was reasonably
8 proximate to the instrument through which the communication
9 will be or was transmitted.

10 (j) The Attorney General shall adopt rules for the
11 implementation of this article.

12 §15-5-43.

13 (a) Notwithstanding any other provision of this
14 chapter, any investigative or law enforcement officer
15 designated by the Attorney General, who reasonably determines
16 that an emergency situation exists that involves any of the
17 following, may intercept a wire, oral, or electronic
18 communication without an intercept order if an application for
19 an intercept order approving the interception is made in
20 accordance with Section 15-5-42 within 48 hours after the
21 interception has occurred, or begins to occur:

22 (1) Immediate danger of death or serious physical
23 injury to any person.

24 (2) Immediate danger that a person or persons will
25 suffer rape or sexual abuse.

1 (3) The disappearance of an individual, the report
2 of a runaway child, or report of a missing person where the
3 individual may be in danger.

4 (4) The circumstances require a wire, oral, or
5 electronic communication to be intercepted before an intercept
6 order can, with due diligence, be obtained, and there are
7 grounds upon which an intercept order could be entered under
8 this article to authorize such interception.

9 (b) In the absence of an intercept order, the
10 interception shall immediately terminate when the
11 communication sought is obtained or when the application for
12 the order is denied, whichever is sooner.

13 (c) In the event the application for approval is
14 denied, or in any other case where the emergency interception
15 is terminated without an intercept order having been issued,
16 the contents of any wire, oral, or electronic communication
17 intercepted shall be sealed and delivered to the Judge of the
18 Court of Criminal Appeals to whom the application was made. If
19 the interception is terminated before an application is made
20 or before the approving judge has ruled on an application, the
21 contents of the intercepted wire, oral, or electronic
22 communication shall be sealed and delivered to an approving
23 judge. In any case where an application is denied or in any
24 case where the interception is terminated without an intercept
25 order having been issued, the persons named in the application
26 shall be served with notice of all of the following:

27 (1) The fact of the application.

1 (2) The date of the denial of the application.

2 (3) The fact of and duration during which wire,
3 oral, or electronic communications were intercepted.

4 (d) The approving judge, upon the filing of a
5 motion, in his or her discretion, may make available to a
6 person or his or her counsel for inspection the portions of
7 the intercepted communications, or applications and orders as
8 the judge determines to be in the interest of justice. On an
9 ex parte showing of good cause to the approving judge, the
10 service of notice required by this section may be postponed.

11 §15-5-44.

12 If an approving judge has entered an intercept
13 order, the Attorney General may make an application for the
14 extension of an intercept order. The application shall include
15 a particular description of facts establishing probable cause
16 to believe that additional communications will occur after the
17 expiration of the order, a statement of the period of time for
18 which the interception is required to be maintained, and a
19 statement setting forth the results obtained from the
20 interception to date, or a reasonable explanation of the
21 failure to obtain such results. An extension of a previously
22 granted intercept order or extension that has been applied for
23 within 30 days of the expiration of that order or extension
24 shall be deemed an extension of the original order or
25 extension. An extension may not be granted for greater than 30
26 days.

27 §15-5-45.

1 (a) (1) The head of any state law enforcement agency,
2 any district attorney, or federal law enforcement agency may
3 submit a written request to the Attorney General that the
4 Attorney General apply for an intercept order to be executed
5 within the requesting agency's jurisdiction. The written
6 requests shall be on a form approved by the Attorney General
7 and shall provide sufficient information to form the basis for
8 an application for an intercept order.

9 (2) The Attorney General shall review the request
10 and decide whether it is appropriate to submit an application
11 to an approving judge for an intercept order. If the Attorney
12 General decides to submit an application to an approving
13 judge, he or she shall so notify the requesting agency head,
14 the district attorney, or federal law enforcement agency, as
15 appropriate.

16 (3) If the approving judge grants an intercept
17 order, a copy of the order shall be sent to the requesting
18 agency head, district attorney, or federal law enforcement
19 agency. If the Attorney General declines to submit an
20 application to an approving judge, the Attorney General shall
21 send the requesting agency head, the district attorney, or
22 federal law enforcement agency, as appropriate, a notice of
23 declination within 10 days.

24 (b) If the Attorney General has first declined to
25 submit an application to an approving judge for an intercept
26 order on behalf of a district attorney, the district attorney
27 may request an intercept order pursuant to Section 15-5-42.

1 The application shall include a copy of the notice of
2 declination.

3 (c) This article does not limit the authority of the
4 Attorney General to apply for intercept orders independent of,
5 or contrary to, the requests of law enforcement agency heads,
6 district attorneys, or any federal law enforcement agency, nor
7 does it limit the discretion of the Attorney General in
8 determining whether an application is appropriate under any
9 given circumstance.

10 §15-5-46.

11 (a) Any investigative or law enforcement officer
12 who, by any means authorized by this article or Chapter 119 of
13 the United States Code has obtained knowledge of the contents
14 of any wire, oral, or electronic communication, or evidence
15 derived therefrom, may disclose such contents to another
16 investigative or law enforcement officer to the extent that
17 such disclosure is appropriate to the proper performance of
18 the official duties of the officer making or receiving the
19 disclosure.

20 (b) Any investigative or law enforcement officer,
21 who by any means authorized by this article or Chapter 119 of
22 the United States Code, has obtained knowledge of the contents
23 of any wire, oral, or electronic communication, or evidence
24 derived therefrom, may use such contents to the extent such
25 use is appropriate to the proper performance of the officer's
26 official duties.

1 (c) A person who has received, by any means
2 authorized by this article or Chapter 119 of the United States
3 Code, any information concerning a wire, oral, or electronic
4 communication, or evidence derived therefrom, intercepted in
5 accordance with the provisions of this article, may disclose
6 the contents of that communication or such derivative evidence
7 while giving testimony under oath or affirmation in any
8 proceeding in any court or before any grand jury in this
9 state, or in any court of the United States or of any state,
10 or in any federal or state grand jury proceeding.

11 (d) A good faith reliance on an intercept order
12 shall constitute a complete defense to any civil or criminal
13 action brought under any law.

14 (e) The approving judge, upon the filing of a
15 motion, may make available to such person or his or her
16 counsel for inspection, the portions of the intercepted
17 communications, applications, and orders that are required to
18 be disclosed to the person under Rule 16.1 of the Alabama
19 Rules of Criminal Procedure.

20 (f) Unless otherwise proscribed by law, evidence
21 obtained in conformity with this article shall be admissible
22 in the courts of this state that have felony jurisdiction.

23 §15-5-47.

24 In addition to any other right of appeal, the
25 Attorney General may appeal either of the following:

26 (1) An order granting a motion to suppress the
27 contents of any intercepted wire, oral, or electronic

1 communication. The appeal must be prosecuted as any other
2 interlocutory appeal.

3 (2) An order denying an application for an intercept
4 order. The appeal lies with an en banc panel of the Alabama
5 Court of Criminal Appeals, and may be made ex parte and must
6 be considered in camera and in preference to all other pending
7 appeals. An appeal made under this subdivision must be made
8 within 10 days from receipt of an order denying an application
9 for an intercept order.

10 §15-5-48.

11 (a) A provider of wire or electronic communication
12 service, officer, employee, or agent thereof, or landlord,
13 custodian, or other specified person may not disclose the
14 existence of any interception or surveillance or the device
15 used to accomplish the interception or surveillance if the
16 person has been furnished a court order or certification under
17 this article, except as may otherwise be required by legal
18 process and then only after prior notification to the Attorney
19 General. A violation of this subsection is a Class C felony.

20 (b) No cause of action shall lie in any court
21 against any provider of wire or electronic communication
22 service, its officers, employees, or agents, landlord,
23 custodian, or other specified person for providing
24 information, facilities, or assistance in accordance with the
25 terms of a court order, statutory authorization, or
26 certification under this chapter.

1 Section 3. The provisions of this act are severable.
2 If any part of this act is declared invalid or
3 unconstitutional, that declaration shall not affect the part
4 which remains.

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

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