

Union Calendar No. 382

99TH CONGRESS
2D SESSION

H. R. 4952

[Report No. 99-647]

To amend title 18, United States Code, with respect to the interception of certain communications, other forms of surveillance, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 5, 1986

Mr. KASTENMEIER (for himself, Mr. MOORHEAD, Mr. BROOKS, Mr. MAZZOLI, Mr. SYNAR, Mrs. SCHROEDER, Mr. FRANK, Mr. MORRISON of Connecticut, Mr. BERMAN, Mr. BOUCHER, Mr. HYDE, Mr. KINDNESS, Mr. SWINDALL, Mr. COBLE, Mr. EDWARDS of California, Mr. CONYERS, Mr. ENGLISH, Mr. MATSUI, Mr. BRUCE, Mr. OWENS, Mr. MITCHELL, Mr. KOSTMAYER, Mr. NOWAK, and Mr. LELAND) introduced the following bill; which was referred to the Committee on the Judiciary

JUNE 19, 1986

Additional sponsors: Mr. CHANDLER, Mr. ROBINSON, Mr. TOWNS, Mr. FOLEY, Mr. BRYANT, Mr. HAYES, Mr. HUGHES, Mr. RODINO, Mr. GLICKMAN, Mr. BLILEY, Mr. WEISS, and Mr. SAVAGE

JUNE 19, 1986

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on June 5, 1986]

A BILL

To amend title 18, United States Code, with respect to the interception of certain communications, other forms of surveillance, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Electronic Communica-*
 5 *tions Privacy Act of 1986”.*

6 **TITLE I—INTERCEPTION OF**
 7 **COMMUNICATIONS AND RELATED MATTERS**

8 **SEC. 101. FEDERAL PENALTIES FOR THE INTERCEPTION OF**
 9 **COMMUNICATIONS.**

10 *(a) DEFINITIONS.—(1) Section 2510(1) of title 18,*
 11 *United States Code, is amended—*

12 *(A) by striking out “any communication” and in-*
 13 *serting “any aural transfer” in lieu thereof;*

14 *(B) by inserting “(including the use of such con-*
 15 *nection in a switching station)” after “reception”.*

16 *(C) by striking out “as a common carrier” and*

17 *(D) by inserting before the semicolon at the end*
 18 *the following: “or communications affecting interstate*
 19 *or foreign commerce, but such term does not include*
 20 *the radio portion of a cordless telephone communication*

1 *that is transmitted between the cordless telephone hand-*
2 *set and the base unit”.*

3 (2) *Section 2510(2) of title 18, United States Code, is*
4 *amended by inserting before the semicolon at the end the fol-*
5 *lowing: “, but such term does not include any electronic com-*
6 *munication”.*

7 (3) *Section 2510(4) of title 18, United States Code, is*
8 *amended—*

9 (A) *by inserting “or other” after “aural”; and*

10 (B) *by inserting “, electronic,” after “wire”.*

11 (4) *Section 2510(8) of title 18, United States Code, is*
12 *amended by striking out “identity of the parties to such com-*
13 *munication or the existence,”.*

14 (5) *Section 2510 of title 18, United States Code, is*
15 *amended—*

16 (A) *by striking out “and” at the end of paragraph*

17 (10);

18 (B) *by striking out the period at the end of para-*
19 *graph (11) and inserting a semicolon in lieu thereof;*
20 *and*

21 (C) *by adding at the end the following:*

22 “(12) ‘*electronic communication*’ means any
23 *transfer of signs, signals, writing, images, sounds,*
24 *data, or intelligence of any nature transmitted in whole*
25 *or in part by a wire, radio, electromagnetic, photoelec-*

1 *tronic or photooptical system that affects interstate or*
2 *foreign commerce, but does not include—*

3 *“(A) the radio portion of a cordless telephone*
4 *communication that is transmitted between the*
5 *cordless telephone handset and the base unit;*

6 *“(B) any wire or oral communication;*

7 *“(C) any communication made through a*
8 *tone-only paging device; or*

9 *“(D) any communication from a tracking*
10 *device (as defined in section 3117 of this title);*

11 *“(13) ‘user’ means any person or entity who—*

12 *“(A) uses an electronic communication serv-*
13 *ice; and*

14 *“(B) is duly authorized by the provider of*
15 *such service to engage in such use;*

16 *“(14) ‘electronic communications system’ means*
17 *any wire, radio, electromagnetic, photooptical or pho-*
18 *toelectronic facilities for the transmission of electronic*
19 *communications, and any computer facilities or related*
20 *electronic equipment for the electronic storage of such*
21 *communications;*

22 *“(15) ‘electronic communication service’ means*
23 *any service which provides to users thereof the ability*
24 *to send or receive wire or electronic communications;*

1 “(16) ‘readily accessible to the general public’
2 *means, with respect to a radio communication, that*
3 *such communication is not—*

4 “(A) *scrambled or encrypted;*

5 “(B) *transmitted using modulation tech-*
6 *niques whose essential parameters have been with-*
7 *held from the public with the intention of preserv-*
8 *ing the privacy of such communication;*

9 “(C) *carried on a subcarrier or other signal*
10 *subsidiary to a radio transmission;*

11 “(D) *transmitted over a communication*
12 *system provided by a common carrier, unless the*
13 *communication is a tone only paging system com-*
14 *munication; or*

15 “(E) *transmitted on frequencies allocated*
16 *under part 25, subpart D, E, or F of part 74, or*
17 *part 94 of the Rules of the Federal Communica-*
18 *tions Commission, unless, in the case of a com-*
19 *munication transmitted on a frequency allocated*
20 *under part 74 that is not exclusively allocated to*
21 *broadcast auxiliary services, the communication is*
22 *a two-way voice communication by radio;*

23 “(17) ‘*electronic storage*’ *means—*

1 “(A) any temporary, intermediate storage of
2 a wire or electronic communication incidental to
3 the electronic transmission thereof; and

4 “(B) any storage of such communication by
5 an electronic communication service for purposes
6 of backup protection of such communication; and

7 “(18) ‘aural transfer’ means a transfer containing
8 the human voice at any point between and including
9 the point of origin and the point of reception.”.

10 (b) *EXCEPTIONS WITH RESPECT TO ELECTRONIC*
11 *COMMUNICATIONS.—*

12 (1) *Section 2511(2)(d) of title 18, United States Code,*
13 *is amended by striking out “or for the purpose of committing*
14 *any other injurious act”.*

15 (2) *Section 2511(2)(f) of title 18, United States Code,*
16 *is amended—*

17 (A) *by inserting “or chapter 121” after “this*
18 *chapter”;* and

19 (B) *by striking out “by” the second place it ap-*
20 *pears and inserting in lieu thereof “, or foreign intelli-*
21 *gence activities conducted in accordance with otherwise*
22 *applicable Federal law involving a foreign electronic*
23 *communications system, utilizing”.*

24 (3) *Section 2511(2) of title 18, United States Code, is*
25 *amended by adding at the end the following:*

1 “(g) *It shall not be unlawful under this chapter or chap-*
2 *ter 121 of this title for any person—*

3 “(i) *to intercept or access an electronic communi-*
4 *cation made through an electronic communication*
5 *system that is configured so that such electronic com-*
6 *munication is readily accessible to the general public;*

7 “(ii) *to intercept any radio communication which*
8 *is transmitted—*

9 “(I) *by any station for the use of the general*
10 *public, or that relates to ships, aircraft, vehicles,*
11 *or persons in distress;*

12 “(II) *by any governmental, law enforcement,*
13 *civil defense, or public safety communications*
14 *system, including police and fire, readily accessi-*
15 *ble to the general public;*

16 “(III) *by a station operating on a frequency*
17 *assigned to the amateur, citizens band, or general*
18 *mobile radio services; or*

19 “(IV) *by any marine or aeronautical com-*
20 *munications system;*

21 “(iii) *to engage in any conduct which—*

22 “(I) *is prohibited by section 633 of the Com-*
23 *munications Act of 1934; or*

1 “(II) is excepted from the application of sec-
2 tion 705(a) of the Communications Act of 1934
3 by section 705(b) of that Act;

4 “(iv) to intercept any wire or electronic communi-
5 cation the transmission of which is causing harmful
6 interference to any lawfully operating station, to the
7 extent necessary to identify the source of such interfer-
8 ence; or

9 “(v) for other users of the same frequency to inter-
10 cept any radio communication made through a common
11 carrier system that utilizes frequencies monitored by
12 individuals engaged in the provision or the use of such
13 system, if such communication is not scrambled
14 encrypted.

15 “(h) It shall not be unlawful under this chapter—

16 “(i) to use a pen register (as that term is defined
17 for the purposes of chapter 206 (relating to pen regis-
18 ters) of this title);

19 “(ii) for a provider of electronic communication
20 service to record the fact that a wire or electronic com-
21 munication was initiated or completed in order to pro-
22 tect such provider, another provider furnishing service
23 toward the completion of the wire or electronic commu-
24 nication, or a user of that service, from fraudulent, un-
25 lawful or abusive use of such service; or

1 “(iii) to use a device that captures the incoming
2 electronic or other impulses which identify the numbers
3 of an instrument from which a wire communication
4 was transmitted.”.

5 (c) *TECHNICAL AND CONFORMING AMENDMENTS.*—

6 (1) Chapter 119 of title 18, United States Code, is
7 amended—

8 (A) in each of sections 2510(5), 2510(8),
9 2510(9)(b), 2510(11), and 2511 through 2519 (except
10 sections 2516(1) and 2518(10)), by striking out “wire
11 or oral” each place it appears (including in any sec-
12 tion heading) and inserting “wire, oral, or electronic”
13 in lieu thereof; and

14 (B) in section 2511(2)(b), by inserting “or elec-
15 tronic” after “wire”.

16 (2) The heading of chapter 119 of title 18, United
17 States Code, is amended by inserting “**and electronic**
18 **communications**” after “**wire**”.

19 (3) The item relating to chapter 119 in the table of
20 chapters at the beginning of part I of title 18 of the United
21 States Code is amended by inserting “and electronic commu-
22 nications” after “Wire”.

23 (4) Section 2510(5)(a) of title 18, United States Code,
24 is amended by striking out “communications common carri-

1 *er” and inserting “provider of wire or electronic communica-*
2 *tion service” in lieu thereof.*

3 (5) *Section 2511(2)(a)(i) of title 18, United States*
4 *Code, is amended—*

5 (A) *by striking out “any communication common*
6 *carrier” and inserting “a provider of wire or electronic*
7 *communication service” in lieu thereof;*

8 (B) *by striking out “of the carrier of such com-*
9 *munication” and inserting “of the provider of that*
10 *service” in lieu thereof; and*

11 (C) *by striking out “: Provided, That said com-*
12 *munication common carriers” and inserting “, except*
13 *that a provider of wire communication service to the*
14 *public” in lieu thereof.*

15 (6) *Section 2511(2)(a)(ii) of title 18, United States*
16 *Code, is amended—*

17 (A) *by striking out “communication common car-*
18 *riers” and inserting “providers of wire or electronic*
19 *communication service” in lieu thereof;*

20 (B) *by striking out “communication common car-*
21 *rier” each place it appears and inserting “provider of*
22 *wire or electronic communication service” in lieu there-*
23 *of; and*

24 (C) *by striking out “if the common carrier” and*
25 *inserting “if such provider” in lieu thereof.*

1 (7) Section 2512(2)(a) of title 18, United States Code,
2 is amended—

3 (A) by striking out “a communications common
4 carrier” the first place it appears and inserting “a pro-
5 vider of wire or electronic communication service” in
6 lieu thereof; and

7 (B) by striking out “a communications common
8 carrier” the second place it appears and inserting
9 “such a provider” in lieu thereof; and

10 (C) by striking out “communications common
11 carrier’s business” and inserting “business of provid-
12 ing that wire or electronic communication service” in
13 lieu thereof.

14 (8) Section 2518(4) of title 18, United States Code, is
15 amended by striking out “communication common carrier”
16 and inserting “provider of electronic communication service”
17 in lieu thereof.

18 (d) **PENALTIES MODIFICATION.**—(1) Section 2511(1)
19 of title 18, United States Code, is amended by striking out
20 “shall be” and all that follows through “or both” and insert-
21 ing in lieu thereof “shall be punished as provided in subsec-
22 tion (4)”.

23 (2) Section 2511 of title 18, United States Code, is
24 amended by adding after the material added by section 102
25 the following:

1 “(4)(a) *Except as provided in paragraph (b) of this sub-*
2 *section, whoever violates subsection (1) of this section shall be*
3 *fined under this title or imprisoned not more than five years,*
4 *or both.*

5 “(b) *If the offense is a first offense under paragraph (a)*
6 *of this subsection and is not for a tortious or illegal purpose*
7 *or for purposes of direct or indirect commercial advantage or*
8 *private commercial gain, and the wire or electronic communi-*
9 *cation with respect to which the offense under paragraph (a)*
10 *is a radio communication, then—*

11 “(i) *if the communication is not the radio portion*
12 *of a cellular telephone communication, the offender*
13 *shall be fined under this title or imprisoned not more*
14 *than one year, or both; and*

15 “(ii) *if the communication is the radio portion of*
16 *a cellular telephone communication, the offender shall*
17 *be fined not more than \$500 or imprisoned not more*
18 *than six months, or both.*

19 “(c) *Conduct otherwise an offense under this subsection*
20 *that consists of or relates to the interception of a satellite*
21 *transmission that is not encrypted or scrambled and that is*
22 *transmitted to a broadcasting station for purposes of retrans-*
23 *mission to the general public is not an offense under this*
24 *subsection unless the conduct is for the purposes of direct or*
25 *indirect commercial advantage or private financial gain.”.*

1 (e) *EXCLUSIVITY OF REMEDIES WITH RESPECT TO*
2 *ELECTRONIC COMMUNICATIONS.*—Section 2518(10) of
3 title 18, United States Code, is amended by adding at the
4 end the following:

5 “(c) *The remedies and sanctions described in this chap-*
6 *ter with respect to the interception of electronic communica-*
7 *tions are the only judicial remedies and sanctions for noncon-*
8 *stitutional violations of this chapter involving such communi-*
9 *cations.*”.

10 **SEC. 102. REQUIREMENTS FOR CERTAIN DISCLOSURES.**

11 Section 2511 of title 18, United States Code, is
12 amended by adding at the end the following:

13 “(3)(A) *Except as provided in subparagraph (B) of this*
14 *paragraph, a person or entity providing an electronic commu-*
15 *nication service to the public shall not willfully divulge the*
16 *contents of any communication (other than one to such*
17 *person or entity, or an agent thereof) while in transmission*
18 *on that service to any person or entity other than an ad-*
19 *ressee or intended recipient of such communication or an*
20 *agent of such addressee or intended recipient.*

21 “(B) *A person or entity providing electronic communi-*
22 *cation service to the public may divulge the contents of any*
23 *such communication—*

24 “(i) *as otherwise authorized in section 2511(2)(a)*
25 *or 2517 of this title;*

1 “(ii) with the lawful consent of the originator or
2 any addressee or intended recipient of such communi-
3 cation;

4 “(iii) to a person employed or authorized, or
5 whose facilities are used, to forward such communica-
6 tion to its destination; or

7 “(iv) which were inadvertently obtained by the
8 service provider and which appear to pertain to the
9 commission of a crime, if such divulgence is made to a
10 law enforcement agency.”.

11 **SEC. 103. RECOVERY OF CIVIL DAMAGES.**

12 Section 2520 of title 18, United States Code, is
13 amended to read as follows:

14 **“§ 2520. Recovery of civil damages authorized**

15 “(a) *IN GENERAL.*—Any person whose wire, oral, or
16 electronic communication is intercepted, disclosed, or will-
17 fully used in violation of this chapter may in a civil action
18 recover from the person or entity which engaged in that viola-
19 tion such relief as may be appropriate.

20 “(b) *RELIEF.*—In an action under this section, appro-
21 priate relief includes—

22 “(1) such preliminary and other equitable or de-
23 claratory relief as may be appropriate;

24 “(2) damages under subsection (c) and punitive
25 damages in appropriate cases; and

1 “(3) a reasonable attorney’s fee and other litiga-
2 tion costs reasonably incurred.

3 “(c) *COMPUTATION OF DAMAGES.*—The court may
4 assess as damages in an action under this section whichever
5 is the greater of—

6 “(1) the sum of the actual damages suffered by
7 the plaintiff and any profits made by the violator as a
8 result of the violation; or

9 “(2) statutory damages of whichever is the greater
10 of \$100 a day for each day of violation or \$10,000.

11 “(d) *DEFENSE.*—A good faith reliance on—

12 “(1) a court warrant or order, a grand jury sub-
13 poena, a legislative authorization, or a statutory
14 authorization;

15 “(2) a request of an investigative or law enforce-
16 ment officer under section 2518(7) of this title; or

17 “(3) a good faith determination that section
18 2511(3) of this title permitted the conduct complained
19 of;

20 is a complete defense against any civil or criminal action
21 brought under this chapter or any other provision of law.

22 “(e) *LIMITATION.*—A civil action under this section
23 may not be commenced later than two years after the date
24 upon which the claimant first has a reasonable opportunity to
25 discover the violation.”

1 **SEC. 104. CERTAIN APPROVALS BY JUSTICE DEPARTMENT OFFI-**
2 **CIALS.**

3 *Section 2516(1) of title 18 of the United States Code is*
4 *amended by striking out “or any Assistant Attorney Gener-*
5 *al” and inserting in lieu thereof “any Assistant Attorney*
6 *General, any acting Assistant Attorney General, or any*
7 *Deputy Assistant Attorney General in the Criminal*
8 *Division”.*

9 **SEC. 105. ADDITION OF OFFENSES TO CRIMES FOR WHICH**
10 **INTERCEPTION IS AUTHORIZED.**

11 **(a) WIRE AND ORAL INTERCEPTIONS.**—*Section*
12 *2516(1) of title 18 of the United States Code is amended—*

13 *(1) in paragraph (c)—*

14 *(A) by inserting “section 751 (relating to*
15 *escape),” after “wagering information),”;*

16 *(B) by striking out “2314” and inserting*
17 *“2312, 2313, 2314,” in lieu thereof;*

18 *(C) by inserting “the second section 2320*
19 *(relating to trafficking in certain motor vehicles or*
20 *motor vehicle parts), section 1203 (relating to hos-*
21 *tage taking), section 1029 (relating to fraud and*
22 *related activity in connection with access devices),*
23 *section 3146 (relating to penalty for failure to*
24 *appear), section 3521(b)(3) (relating to witness*
25 *relocation and assistance), section 32 (relating to*

1 *destruction of aircraft or aircraft facilities),” after*
2 *“stolen property),”;*

3 (D) by inserting “*section 1952A (relating to*
4 *use of interstate commerce facilities in the com-*
5 *mission of murder for hire), section 1952B (relat-*
6 *ing to violent crimes in aid of racketeering activi-*
7 *ty),” after “1952 (interstate and foreign travel or*
8 *transportation in aid of racketeering enter-*
9 *prises),”;* and

10 (E) by inserting “, *section 115 (relating to*
11 *threatening or retaliating against a Federal offi-*
12 *cial), the section in chapter 65 relating to destruc-*
13 *tion of an energy facility, and section 1341 (relat-*
14 *ing to mail fraud),” after “section 1963 (viola-*
15 *tions with respect to racketeer influenced and cor-*
16 *rupt organizations)”;*

17 (2) by striking out “or” at the end of paragraph
18 (g);

19 (3) by inserting after paragraph (g) the following:

20 “(h) *any felony violation of sections 2511 and*
21 *2512 (relating to interception and disclosure of certain*
22 *communications and to certain intercepting devices) of*
23 *this title;*

24 “(i) *the location of any fugitive from justice from*
25 *an offense described in this section; or”;* and

1 (4) by redesignating paragraph (h) as paragraph
2 (j).

3 (b) *INTERCEPTION OF ELECTRONIC COMMUNICA-*
4 *TIONS.*—Section 2516 of title 18 of the United States Code
5 *is amended by adding at the end the following:*

6 “(3) Any attorney for the Government (as such term is
7 *defined for the purposes of the Federal Rules of Criminal*
8 *Procedure)* may authorize an application to a Federal judge
9 *of competent jurisdiction for, and such judge may grant, in*
10 *conformity with section 2518 of this title, an order authoriz-*
11 *ing or approving the interception of electronic communica-*
12 *tions by an investigative or law enforcement officer having*
13 *responsibility for the investigation of the offense as to which*
14 *the application is made, when such interception may provide*
15 *or has provided evidence of any Federal felony.”.*

16 **SEC. 106. APPLICATIONS, ORDERS, AND IMPLEMENTATION OF**
17 **ORDERS.**

18 (a) *PLACE OF AUTHORIZED INTERCEPTION.*—Section
19 *2518(3) of title 18 of the United States Code is amended by*
20 *inserting “(and outside that jurisdiction but within the*
21 *United States in the case of a mobile interception device au-*
22 *thorized by a Federal court within such jurisdiction)” after*
23 *“within the territorial jurisdiction of the court in which the*
24 *judge is sitting”.*

1 (b) *REIMBURSEMENT FOR ASSISTANCE.*—Section
2 2518(4) of title 18 of the United States Code is amended by
3 striking out “at the prevailing rates” and inserting in lieu
4 thereof “for reasonable expenses incurred in providing such
5 facilities or assistance”.

6 (c) *COMMENCEMENT OF 30-DAY PERIOD AND POST-*
7 *PONEMENT OF MINIMIZATION.*—Section 2518(5) of title 18
8 of the United States Code is amended—

9 (1) by inserting after the first sentence the follow-
10 ing: “Such thirty-day period begins on the earlier of
11 the day on which the investigative or law enforcement
12 officer first begins to conduct an interception under the
13 order or ten days after the order is entered.”; and

14 (2) by adding at the end the following: “In the
15 event the intercepted communication is in a code or
16 foreign language, and an expert in that foreign lan-
17 guage or code is not reasonably available during the
18 interception period, minimization may be accomplished
19 as soon as practicable after such interception. An inter-
20 ception under this chapter may be conducted in whole
21 or in part by Government personnel, or by an individ-
22 ual operating under a contract with the Government,
23 acting under the supervision of an investigative or law
24 enforcement officer authorized to conduct the intercep-
25 tion.”.

1 (d) *ALTERNATIVE TO DESIGNATING SPECIFIC FA-*
2 *CILITIES FROM WHICH COMMUNICATIONS ARE TO BE*
3 *INTERCEPTED.—(1) Section 2518(1)(b)(ii) of title 18 of the*
4 *United States Code is amended by inserting “except as pro-*
5 *vided in subsection (11),” before “a particular description”.*

6 (2) *Section 2518(3)(d) of title 18 of the United States*
7 *Code is amended by inserting “except as provided in subsec-*
8 *tion (11),” before “there is”.*

9 (3) *Section 2518 of title 18 of the United States Code is*
10 *amended by adding at the end the following:*

11 *“(11) The requirements of subsections (1)(b)(ii) and*
12 *(3)(d) of this section relating to the specification of the facili-*
13 *ties from which, or the place where, the communication is to*
14 *be intercepted do not apply if—*

15 *“(i) in the case of an application with respect to*
16 *the interception of an oral communication—*

17 *“(I) the application is by a Federal investi-*
18 *gative or law enforcement officer and is approved*
19 *by the Attorney General, the Deputy Attorney*
20 *General, the Associate Attorney General, an As-*
21 *stant Attorney General, or an acting Assistant*
22 *Attorney General;*

23 *“(II) the application contains a full and*
24 *complete statement as to why such specification is*
25 *not practical and identifies the person committing*

1 *the offense and whose communications are to be*
2 *intercepted; and*

3 *“(III) the judge finds that such specification*
4 *is not practical; and*

5 *“(ii) in the case of an application with respect to*
6 *a wire or electronic communication—*

7 *“(I) the application is by a Federal investi-*
8 *gative or law enforcement officer and is approved*
9 *by the Attorney General, the Deputy Attorney*
10 *General, the Associate Attorney General, an As-*
11 *stant Attorney General, or an acting Assistant*
12 *Attorney General;*

13 *“(II) the application identifies the person be-*
14 *lieved to be committing the offense and whose*
15 *communications are to be intercepted and the ap-*
16 *plicant makes a showing of a purpose, on the part*
17 *of that person, to thwart interception by changing*
18 *facilities; and*

19 *“(III) the judge finds that such purpose has*
20 *been adequately shown.*

21 *“(12) An interception of a communication under an*
22 *order with respect to which the requirements of subsections*
23 *(1)(b)(ii) and (3)(d) of this section do not apply by reason of*
24 *subsection (11) shall not begin until the facilities from which,*
25 *or the place where, the communication is to be intercepted is*

1 *ascertained by the person implementing the interception*
 2 *order.”.*

3 (4) *Section 2519(1)(b) of title 18, United States Code,*
 4 *is amended by inserting “(including whether or not the order*
 5 *was an order with respect to which the requirements of sec-*
 6 *tions 2518(1)(b)(ii) and 2518(3)(d) of this title did not apply*
 7 *by reason of section 2518(11) of this title)” after “applied*
 8 *for”.*

9 **SEC. 107. INTELLIGENCE ACTIVITIES.**

10 (a) *IN GENERAL.—Nothing in this Act or the amend-*
 11 *ments made by this Act constitutes authority for the conduct*
 12 *of any intelligence activity.*

13 (b) **CERTAIN ACTIVITIES UNDER PROCEDURES AP-**
 14 **PROVED BY THE ATTORNEY GENERAL.—Nothing in chap-**
 15 **ter 119 or chapter 121 of title 18, United States Code, shall**
 16 **affect the conduct, by officers or employees of the United**
 17 **States Government in accordance with other applicable Fed-**
 18 **eral law, under procedures approved by the Attorney General**
 19 **of activities intended to—**

20 (1) *intercept encrypted or other official communi-*
 21 *cations of United States executive branch entities or*
 22 *United States Government contractors for communica-*
 23 *tions security purposes;*

24 (2) *intercept radio communications transmitted*
 25 *between or among foreign powers or agents of a foreign*

1 *power as defined by the Foreign Intelligence Surveil-*
2 *lance Act of 1978; or*

3 (3) *access an electronic communication system*
4 *used exclusively by a foreign power or agent of a for-*
5 *ign power as defined by the Foreign Intelligence Sur-*
6 *veillance Act of 1978.*

7 **SEC. 108. MOBILE TRACKING DEVICES.**

8 (a) *IN GENERAL.*—*Chapter 205 of title 18, United*
9 *States Code, is amended by adding at the end the following:*

10 **“§ 3117. Mobile tracking devices**

11 “(a) *IN GENERAL.*—*If a court is empowered to issue a*
12 *warrant or other order for the installation of a mobile track-*
13 *ing device, such order may authorize the use of that device*
14 *within the jurisdiction of the court, and outside that jurisdic-*
15 *tion if the device is installed in that jurisdiction.*

16 “(b) *DEFINITION.*—*As used in this section, the term*
17 *‘tracking device’ means an electronic or mechanical device*
18 *which permits the tracking of the movement of a person or*
19 *object.”.*

20 (b) *CLERICAL AMENDMENT.*—*The table of contents at*
21 *the beginning of chapter 205 of title 18, United States Code,*
22 *is amended by adding at the end the following:*

 “3117. Mobile tracking devices.”.

23 **SEC. 109. WARNING SUBJECT OF SURVEILLANCE.**

24 Section 2232 of title 18, United States Code, is
25 amended—

1 (1) by inserting “(a) *PHYSICAL INTERFERENCE*
2 *WITH SEARCH.*—” before “Whoever” the first place
3 it appears;

4 (2) by inserting “(b) *NOTICE OF SEARCH.*—”
5 before “Whoever” the second place it appears; and

6 (3) by adding at the end the following:

7 “(c) *NOTICE OF CERTAIN ELECTRONIC SURVEIL-*
8 *LANCE.*—Whoever, having knowledge that a Federal investi-
9 gative or law enforcement officer has been authorized or has
10 applied for authorization under chapter 119 to intercept a
11 wire, oral, or electronic communication, in order to obstruct,
12 impede, or prevent such interception, gives notice or attempts
13 to give notice of the possible interception to any person shall
14 be fined under this title or imprisoned not more than five
15 years, or both.

16 “Whoever, having knowledge that a Federal officer has
17 been authorized or has applied for authorization to conduct
18 electronic surveillance under the Foreign Intelligence Sur-
19 veillance Act (50 U.S.C. 1801, et seq.), in order to obstruct,
20 impede, or prevent such activity, gives notice or attempts to
21 give notice of the possible activity to any person shall be fined
22 under this title or imprisoned not more than five years, or
23 both.”

1 **SEC. 110. INJUNCTIVE REMEDY.**

2 (a) *IN GENERAL.*—Chapter 119 of title 18, United
3 States Code, is amended by adding at the end the following:

4 “§ 2521. *Injunction against illegal interception*

5 “Whenever it shall appear that any person is engaged
6 or is about to engage in any act which constitutes or will
7 constitute a felony violation of this chapter, the Attorney
8 General may initiate a civil action in a district court of the
9 United States to enjoin such violation. The court shall pro-
10 ceed as soon as practicable to the hearing and determination
11 of such an action, and may, at any time before final determi-
12 nation, enter such a restraining order or prohibition, or take
13 such other action, as is warranted to prevent a continuing
14 and substantial injury to the United States or to any person
15 or class of persons for whose protection the action is brought.
16 A proceeding under this section is governed by the Federal
17 Rules of Civil Procedure, except that, if an indictment has
18 been returned against the respondent, discovery is governed
19 by the Federal Rules of Criminal Procedure.”

20 (b) *CLERICAL AMENDMENT.*—The table of sections at
21 the beginning of chapter 119 of title 18, United States Code,
22 is amended by adding at the end thereof the following:

“2521. *Injunction against illegal interception.*”

23 **SEC. 111. EFFECTIVE DATE.**

24 (a) *IN GENERAL.*—Except as provided in subsection
25 (b), this title and the amendments made by this title shall

1 *take effect 90 days after the date of the enactment of this Act*
2 *and shall, in the case of conduct pursuant to a court order or*
3 *extension, apply only with respect to court orders or exten-*
4 *sions made after this title takes effect.*

5 *(b) SPECIAL RULE FOR STATE AUTHORIZATIONS OF*
6 *INTERCEPTIONS.—Any interception pursuant to section*
7 *2516(2) of title 18 of the United States Code which would be*
8 *valid and lawful without regard to the amendments made by*
9 *this title shall be valid and lawful notwithstanding such*
10 *amendments if such interception occurs during the period be-*
11 *ginning on the date such amendments take effect and ending*
12 *on the earlier of—*

13 *(1) the day before the date of the taking effect of*
14 *State law conforming the applicable State statute with*
15 *chapter 119 of title 18, United States Code, as so*
16 *amended; or*

17 *(2) the date two years after the date of the enact-*
18 *ment of this Act.*

19 **TITLE II—STORED WIRE AND ELECTRONIC**
20 **COMMUNICATIONS AND TRANSACTIONAL**
21 **RECORDS ACCESS**

22 **SEC. 201. TITLE 18 AMENDMENT.**

23 *Title 18, United States Code, is amended by inserting*
24 *after chapter 119 the following:*

1 **“CHAPTER 121—STORED WIRE AND ELECTRONIC**
 2 **COMMUNICATIONS AND TRANSACTIONAL**
 3 **RECORDS ACCESS**

“Sec.

“2701. *Unlawful access to stored communications.*

“2702. *Disclosure of contents.*

“2703. *Requirements for governmental access.*

“2704. *Backup preservation.*

“2705. *Delayed notice.*

“2706. *Cost reimbursement.*

“2707. *Civil action.*

“2708. *Exclusivity of remedies.*

“2709. *Counterintelligence access to telephone toll and transactional records.*

“2710. *Definitions.*

4 **“§ 2701. Unlawful access to stored communications**

5 **“(a) OFFENSE.—***Except as provided in subsection (c)*
 6 *of this section whoever—*

7 *“(1) intentionally accesses without authorization a*
 8 *facility through which an electronic communication*
 9 *service is provided; or*

10 *“(2) intentionally exceeds an authorization to*
 11 *access that facility;*

12 *and thereby obtains, alters, or prevents authorized access to a*
 13 *wire or electronic communication while it is in electronic*
 14 *storage in such system shall be punished as provided in sub-*
 15 *section (b) of this section.*

16 **“(b) PUNISHMENT.—***The punishment for an offense*
 17 *under subsection (a) of this section is—*

18 *“(1) if the offense is committed for purposes of*
 19 *commercial advantage, malicious destruction or*
 20 *damage, or private commercial gain—*

1 “(A) a fine of not more than \$250,000 or
2 imprisonment for not more than one year, or both,
3 in the case of a first offense under this subpara-
4 graph; and

5 “(B) a fine under this title or imprisonment
6 for not more than two years, or both, for any sub-
7 sequent offense under this subparagraph; and

8 “(2) a fine of not more than \$5,000 or imprison-
9 ment for not more than six months, or both, in any
10 other case.

11 “(c) *EXCEPTIONS.*—Subsection (a) of this section does
12 not apply with respect to conduct authorized—

13 “(1) by the person or entity providing a wire or
14 electronic communications service;

15 “(2) by a user of that service with respect to a
16 communication of or intended for that user; or

17 “(3) in section 2703 or 2704 of this title.

18 “§ 2702. *Disclosure of contents*

19 “(a) *PROHIBITIONS.*—Except as provided in subsec-
20 tion (b)—

21 “(1) a person or entity providing an electronic
22 communication service to the public shall not knowing-
23 ly divulge to any person or entity the contents of a
24 communication while in electronic storage by that serv-
25 ice; and

1 “(2) a person or entity providing remote comput-
2 ing service to the public shall not knowingly divulge to
3 any person or entity the contents of any communica-
4 tion which is carried or maintained on that service—

5 “(A) on behalf of, and received by means of
6 electronic transmission from (or created by means
7 of computer processing of communications received
8 by means of electronic transmission from), a sub-
9 scriber or customer of such service; and

10 “(B) solely for the purpose of providing stor-
11 age or computer processing services to such sub-
12 scriber or customer, if the provider is not author-
13 ized to access the contents of any such communi-
14 cations for purposes of providing any services
15 other than storage or computer processing.

16 “(b) *EXCEPTIONS.*—A person or entity may divulge
17 *the contents of a communication—*

18 “(1) to an addressee or intended recipient of such
19 communication or an agent of such addressee or in-
20 tended recipient;

21 “(2) as otherwise authorized in section 2516,
22 2511(2)(a), or 2703 of this title;

23 “(3) with the lawful consent of the originator or
24 an addressee or intended recipient of such communica-

1 *tion, or the subscriber in the case of remote computing*
 2 *service;*

3 *“(4) to a person employed or authorized or whose*
 4 *facilities are used to forward such communication to its*
 5 *destination;*

6 *“(5) as may be necessarily incident to the rendi-*
 7 *tion of the service or to the protection of the rights or*
 8 *property of the provider of that service; or*

9 *“(6) to a law enforcement agency, if such con-*
 10 *tents—*

11 *“(A) were inadvertently obtained by the serv-*
 12 *ice provider; and*

13 *“(B) appear to pertain to the commission of*
 14 *a crime.*

15 ***“§ 2703. Requirements for governmental access***

16 *“(a) CONTENTS OF ELECTRONIC COMMUNICATIONS*
 17 *IN ELECTRONIC STORAGE.—A governmental entity may*
 18 *require the disclosure by a provider of electronic communica-*
 19 *tion service of the contents of a non-voice wire communica-*
 20 *tion or an electronic communication, that is in electronic*
 21 *storage in an electronic communications system for 180 days*
 22 *or less, only pursuant to a warrant issued under the Federal*
 23 *Rules of Criminal Procedure or equivalent State warrant. A*
 24 *governmental entity may require the disclosure by a provider*
 25 *of electronic communications services of the contents of an*

1 *electronic communication that has been in electronic storage*
2 *in an electronic communications system for more than 180*
3 *days by the means available under subsection (b) of this*
4 *section.*

5 “(b) *CONTENTS OF ELECTRONIC COMMUNICATIONS*
6 *IN A REMOTE COMPUTING SERVICE.—(1) A governmental*
7 *entity may require a provider of remote computing service to*
8 *disclose the contents of any electronic communication to*
9 *which this paragraph is made applicable by paragraph (2) of*
10 *this subsection—*

11 “(A) *without required notice to the subscriber or*
12 *customer, if the governmental entity obtains a warrant*
13 *issued under the Federal Rules of Criminal Procedure*
14 *or equivalent State warrant; or*

15 “(B) *with prior notice from the governmental*
16 *entity to the subscriber or customer if the governmental*
17 *entity—*

18 “(i) *uses an administrative subpoena author-*
19 *ized by a Federal or State statute or a Federal or*
20 *State grand jury subpoena; or*

21 “(ii) *obtains a court order for such disclosure*
22 *under subsection (d) of this section;*
23 *except that delayed notice may be given pursuant to*
24 *section 2705 of this title.*

1 “(2) Paragraph (1) is applicable with respect to any
2 *electronic communication that is held or maintained on that*
3 *service—*

4 “(A) on behalf of, and received by means of elec-
5 *tronic transmission from (or created by means of com-*
6 *puter processing of communications received by means*
7 *of electronic transmission from), a subscriber or cus-*
8 *tomers of such remote computing service; and*

9 “(B) solely for the purpose of providing storage or
10 *computer processing services to such subscriber or cus-*
11 *tomers, if the provider is not authorized to access the*
12 *contents of any such communications for purposes of*
13 *providing any services other than storage or computer*
14 *processing.*

15 “(c) *RECORDS CONCERNING ELECTRONIC COMMUNI-*
16 *CATIONS SERVICE OR REMOTE COMPUTING SERVICE.—*
17 *A governmental entity may require a provider of electronic*
18 *communications service or remote computing service to dis-*
19 *close a record or other information pertaining to a subscriber*
20 *to or customer of such service (not including the contents of*
21 *communications covered by subsection (a) or (b) of this sec-*
22 *tion) without required notice to the subscriber or customer if*
23 *the governmental entity—*

1 “(1) uses an administrative subpoena authorized
2 by a Federal or State statute, or a Federal or State
3 grand jury subpoena;

4 “(2) obtains a warrant issued under the Federal
5 Rules of Criminal Procedure or equivalent State war-
6 rant; or

7 “(3) obtains a court order for such disclosure
8 under subsection (d) of this section.

9 “(d) **REQUIREMENTS FOR COURT ORDER.**—A court
10 order for disclosure under subsection (b) or (c) of this section
11 shall issue only if the governmental entity shows that there is
12 reason to believe the contents of a wire or electronic commu-
13 nication, or the records or other information sought, are rele-
14 vant to a legitimate law enforcement inquiry. In the case of a
15 State governmental authority, such a court order shall not
16 issue if prohibited by the law of such State.

17 **“§ 2704. Backup preservation**

18 “(a) **BACKUP PRESERVATION.**—(1) A governmental
19 entity acting under section 2703(b)(2) may include in its
20 subpoena or court order a requirement that the service provid-
21 er to whom the request is directed create a backup copy of the
22 contents of the electronic communications sought in order to
23 preserve those communications. Without notifying the sub-
24 scriber or customer of such subpoena or court order, such
25 service provider shall create such backup copy as soon as

1 *practicable consistent with its regular business practices and*
2 *shall confirm to the governmental entity that such backup*
3 *copy has been made. Such backup copy shall be created*
4 *within two business days after receipt by the service provider*
5 *of the subpoena or court order.*

6 “(2) *Notice to the subscriber or customer shall be made*
7 *by the governmental entity within three days after receipt of*
8 *such confirmation, unless such notice is delayed pursuant to*
9 *section 2705(a).*

10 “(3) *The service provider shall not destroy such backup*
11 *copy until the later of—*

12 “(A) *the delivery of the information; or*

13 “(B) *the resolution of any proceedings (including*
14 *appeals of any proceeding) concerning the government’s*
15 *subpoena or court order.*

16 “(4) *The service provider shall release such backup copy*
17 *to the requesting governmental entity no sooner than 14 days*
18 *after the governmental entity’s notice to the subscriber or cus-*
19 *tomers if such service provider—*

20 “(A) *has not received notice from the subscriber or*
21 *customer that the subscriber or customer has challenged*
22 *the governmental entity’s request; and*

23 “(B) *has not initiated proceedings to challenge the*
24 *request of the governmental entity.*

1 “(5) A governmental entity may seek to require the cre-
2 ation of a backup copy under subsection (a)(1) of this section
3 if in its sole discretion such entity determines that there is
4 reason to believe that notification under section 2703 of this
5 title of the existence of the subpoena or court order may result
6 in destruction of or tampering with evidence. This determina-
7 tion is not subject to challenge by the subscriber or customer
8 or service provider.

9 “(b) CUSTOMER CHALLENGES.—(1) Within 14 days
10 after notice by the governmental entity to the subscriber or
11 customer under subsection (a)(2) of this section, such sub-
12 scribe or customer may file a motion to quash such subpoena
13 or vacate such court order, with copies served upon the gov-
14 ernmental entity and with written notice of such challenge to
15 the service provider. A motion to vacate a court order shall be
16 filed in the court which issued such order. A motion to quash
17 a subpoena shall be filed in the appropriate United States
18 district court or State court. Such motion or application shall
19 contain an affidavit or sworn statement—

20 “(A) stating that the applicant is a customer or
21 subscriber to the service from which the contents of
22 electronic communications maintained for him have
23 been sought; and

24 “(B) stating the applicant’s reasons for believing
25 that the records sought are not relevant to a legitimate

1 *law enforcement inquiry or that there has not been*
2 *substantial compliance with the provisions of this chap-*
3 *ter in some other respect.*

4 *“(2) Service shall be made under this section upon a*
5 *governmental entity by delivering or mailing by registered or*
6 *certified mail a copy of the papers to the person, office, or*
7 *department specified in the notice which the customer has*
8 *received pursuant to this chapter. For the purposes of this*
9 *section, the term ‘delivery’ has the meaning given that term*
10 *in the Federal Rules of Civil Procedure.*

11 *“(3) If the court finds that the customer has complied*
12 *with paragraphs (1) and (2) of this subsection, the court shall*
13 *order the governmental entity to file a sworn response, which*
14 *may be filed in camera if the governmental entity includes in*
15 *its response the reasons which make in camera review appro-*
16 *priate. If the court is unable to determine the motion or appli-*
17 *cation on the basis of the parties’ initial allegations and re-*
18 *sponse, the court may conduct such additional proceedings as*
19 *it deems appropriate. All such proceedings shall be completed*
20 *and the motion or application decided as soon as practicable*
21 *after the filing of the governmental entity’s response.*

22 *“(4) If the court finds that the applicant is not the sub-*
23 *scriber or customer for whom the communications sought by*
24 *the governmental entity are maintained, or that there is a*
25 *reason to believe that the law enforcement inquiry is legiti-*

1 *mate and that the communications sought are relevant to that*
2 *inquiry, it shall deny the motion or application and order*
3 *such process enforced. If the court finds that the applicant is*
4 *the subscriber or customer for whom the communications*
5 *sought by the governmental entity are maintained, and that*
6 *there is not a reason to believe that the communications*
7 *sought are relevant to a legitimate law enforcement inquiry,*
8 *or that there has not been substantial compliance with the*
9 *provisions of this chapter, it shall order the process quashed.*

10 *“(5) A court order denying a motion or application*
11 *under this section shall not be deemed a final order and no*
12 *interlocutory appeal may be taken therefrom by the customer.*

13 **“§ 2705. Delayed notice**

14 *“(a) DELAY OF NOTIFICATION.—(1) A governmental*
15 *entity acting under section 2703(b) of this title may—*

16 *“(A) where a court order is sought, include in the*
17 *application a request, which the court shall grant, for*
18 *an order delaying the notification required under sec-*
19 *tion 2703(b) of this title for a period not to exceed 90*
20 *days; if the court determines that there is reason to be-*
21 *lieve that notification of the existence of the court order*
22 *may have an adverse result described in paragraph (2)*
23 *of this subsection; or*

24 *“(B) where an administrative subpoena author-*
25 *ized by a Federal or State statute or a Federal or*

1 *State grand jury subpoena is obtained, delay the noti-*
2 *fication required under section 2703(b) of this title for*
3 *a period not to exceed 90 days upon the execution of a*
4 *written certification of a supervisory official that there*
5 *is reason to believe that notification of the existence of*
6 *the subpoena may have an adverse result described in*
7 *paragraph (2) of this subsection.*

8 *“(2) An adverse result for the purposes of paragraph (1)*
9 *of this subsection is—*

10 *“(A) endangering the life or physical safety of an*
11 *individual;*

12 *“(B) flight from prosecution;*

13 *“(C) destruction of or tampering with evidence;*

14 *“(D) intimidation of potential witnesses; or*

15 *“(E) otherwise seriously jeopardizing an investi-*
16 *gation or unduly delaying a trial.*

17 *“(3) The governmental entity shall maintain a true*
18 *copy of certification under paragraph (1)(B).*

19 *“(4) Extensions of the delay of notification provided in*
20 *section 2703 of up to 90 days each may be granted by the*
21 *court upon application, or by certification by a governmental*
22 *entity, but only in accordance with subsection (b) or (c) of*
23 *this section.*

24 *“(5) Upon expiration of the period of delay of notifica-*
25 *tion under paragraph (1) or (4) of this subsection, the govern-*

1 *mental entity shall serve upon, or deliver by registered or*
2 *first class mail to, the customer or subscriber a copy of the*
3 *process or request together with notice that—*

4 “(A) *states with reasonable specificity the nature*
5 *of the law enforcement inquiry; and*

6 “(B) *informs such customer or subscriber—*

7 “(i) *that information maintained for such*
8 *customer or subscriber by the service provider*
9 *named in such process or request was supplied to*
10 *or requested by that governmental authority and*
11 *the date on which the supplying or request took*
12 *place;*

13 “(ii) *that notification of such customer or*
14 *subscriber was delayed;*

15 “(iii) *what governmental entity or court*
16 *made the certification or determination pursuant*
17 *to which that delay was made; and*

18 “(iv) *which provision of this chapter allowed*
19 *such delay.*

20 “(6) *As used in this subsection, the term ‘supervi-*
21 *sory official’ means the investigative agent in charge or*
22 *assistant investigative agent in charge or an equivalent*
23 *of an investigating agency’s headquarters or regional*
24 *office, or the chief prosecuting attorney or the first as-*

1 *sistant prosecuting attorney or an equivalent of a pros-*
2 *ecuting attorney's headquarters or regional office.*

3 *“(b) PRECLUSION OF NOTICE TO SUBJECT OF GOV-*
4 *ERNMENTAL ACCESS.—A governmental entity acting under*
5 *section 2703, when it is not required to notify the subscriber*
6 *or customer under section 2703(b)(1), or to the extent that it*
7 *may delay such notice pursuant to subsection (a) of this sec-*
8 *tion, may apply to a court for an order commanding a pro-*
9 *vider of electronic communications service or remote comput-*
10 *ing service to whom a warrant, subpoena, or court order is*
11 *directed, for such period as the court deems appropriate, not*
12 *to notify any other person of the existence of the warrant,*
13 *subpoena, or court order. The court shall enter such an order*
14 *if it determines that there is reason to believe that notification*
15 *of the existence of the warrant, subpoena, or court order will*
16 *result in—*

17 *“(1) endangering the life or physical safety of an*
18 *individual;*

19 *“(2) flight from prosecution;*

20 *“(3) destruction of or tampering with evidence;*

21 *“(4) intimidation of potential witnesses; or*

22 *“(5) otherwise seriously jeopardizing an investiga-*
23 *tion or unduly delaying a trial.*

1 **“§ 2706. Cost reimbursement**

2 “(a) *PAYMENT.*—*Except as otherwise provided in sub-*
3 *section (c), a governmental entity obtaining the contents of*
4 *communications, records, or other information under section*
5 *2702, 2703, or 2704 of this title shall pay to the person or*
6 *entity assembling or providing such information a fee for re-*
7 *imbursement for such costs as are reasonably necessary and*
8 *which have been directly incurred in searching for, assem-*
9 *bling, reproducing, or otherwise providing such information.*
10 *Such reimbursable costs shall include any costs due to neces-*
11 *sary disruption of normal operations of any electronic com-*
12 *munication service or remote computing service in which*
13 *such information may be stored.*

14 “(b) *AMOUNT.*—*The amount of the fee provided by sub-*
15 *section (a) shall be as mutually agreed by the governmental*
16 *entity and the person or entity providing the information, or,*
17 *in the absence of agreement, shall be as determined by the*
18 *court which issued the order for production of such informa-*
19 *tion (or the court before which a criminal prosecution relating*
20 *to such information would be brought, if no court order was*
21 *issued for production of the information).*

22 “(c) *The requirement of subsection (a) of this section*
23 *does not apply with respect to records or other information*
24 *maintained by a communications common carrier that relate*
25 *to telephone toll records and telephone listings obtained under*
26 *section 2703 of this title. The court may, however, order a*

1 *payment as described in subsection (a) if the court deter-*
 2 *mines the information required is unusually voluminous in*
 3 *nature or otherwise caused an undue burden on the provider.*

4 **“§ 2707. Civil action**

5 “(a) *CAUSE OF ACTION.*—Any provider of electronic
 6 *communication service, subscriber, or customer aggrieved by*
 7 *any violation of this chapter in which the conduct constitut-*
 8 *ing the violation is engaged in with a knowing or intentional*
 9 *state of mind may, in a civil action, recover from the person*
 10 *or entity which engaged in that violation such relief as may*
 11 *be appropriate.*

12 “(b) *RELIEF.*—In a civil action under this section, ap-
 13 *propriate relief includes—*

14 “(1) *such preliminary and other equitable or de-*
 15 *claratory relief as may be appropriate;*

16 “(2) *damages under subsection (c); and*

17 “(3) *a reasonable attorney’s fee and other litiga-*
 18 *tion costs reasonably incurred.*

19 “(c) *DAMAGES.*—The court may assess as damages in
 20 *a civil action under this section the sum of the actual dam-*
 21 *ages suffered by the plaintiff and any profits made by the*
 22 *violator as a result of the violation, but in no case shall a*
 23 *person entitled to recover receive less than the sum of \$1,000.*

24 “(d) *DEFENSE.*—A good faith reliance on—

1 *Federal Bureau of Investigation under subsection (b) of this*
2 *section.*

3 “(b) *REQUIRED CERTIFICATION.*—*The Director of the*
4 *Federal Bureau of Investigation (or an individual within the*
5 *Federal Bureau of Investigation designated for this purpose*
6 *by the Director) may request any such information and*
7 *records if the Director (or the Director’s designee) certifies in*
8 *writing to the carrier or provider to which the request is made*
9 *that—*

10 “(1) *the information sought is relevant to an au-*
11 *thorized foreign counterintelligence investigation; and*

12 “(2) *there are specific and articulable facts giving*
13 *reason to believe that the person or entity to whom the*
14 *information sought pertains is a foreign power or an*
15 *agent of a foreign power as defined in section 101 of*
16 *the Foreign Intelligence Surveillance Act of 1978 (50*
17 *U.S.C. 1801).*

18 “(c) *PROHIBITION OF CERTAIN DISCLOSURE.*—*No*
19 *communications common carrier or service provider, or offi-*
20 *cer, employee, or agent thereof, shall disclose to any person*
21 *that the Federal Bureau of Investigation has sought or ob-*
22 *tained access to information or records under this section.*

23 “(d) *DISSEMINATION BY BUREAU.*—*The Federal*
24 *Bureau of Investigation may disseminate information and*
25 *records obtained under this section only as provided in guide-*

1 *lines approved by the Attorney General for foreign intelli-*
2 *gence collection and foreign counterintelligence investigations*
3 *conducted by the Federal Bureau of Investigation, and, with*
4 *respect to dissemination to an agency of the United States,*
5 *only if such information is clearly relevant to the authorized*
6 *responsibilities of such agency.*

7 “(e) **REQUIREMENT THAT CERTAIN CONGRESSIONAL**
8 **BODIES BE INFORMED.**—*On a semiannual basis the Direc-*
9 *tor of the Federal Bureau of Investigation shall fully inform*
10 *the Permanent Select Committee on Intelligence of the House*
11 *of Representatives and the Select Committee on Intelligence*
12 *of the Senate concerning all requests made under subsection*
13 *(b) of this section.*

14 **“§ 2710. Definitions for chapter**

15 *“As used in this chapter—*

16 “(1) *the terms defined in section 2510 of this title*
17 *have, respectively, the definitions given such terms in*
18 *that section; and*

19 “(2) *the term ‘remote computing service’ means*
20 *the provision to the public of computer storage or proc-*
21 *essing services by means of an electronic communica-*
22 *tions system.”.*

23 **(b) CLERICAL AMENDMENT.**—*The table of chapters at*
24 *the beginning of part I of title 18, United States Code, is*
25 *amended by adding at the end the following:*

“121. Stored Wire and Electronic Communications and Transactional Records Access 2701”.

1 **SEC. 202. EFFECTIVE DATE.**

2 *This title and the amendments made by this title shall*
 3 *take effect 90 days after the date of the enactment of this Act*
 4 *and shall, in the case of conduct pursuant to a court order or*
 5 *extension, apply only with respect to court orders or exten-*
 6 *sions made after this title takes effect.*

7 **TITLE III—PEN REGISTERS**

8 **SEC. 301. TITLE 18 AMENDMENT.**

9 *(a) IN GENERAL.—Title 18 of the United States Code*
 10 *is amended by inserting after chapter 205 the following new*
 11 *chapter:*

12 **“CHAPTER 206—PEN REGISTERS**

“Sec.

“3121. General prohibition on pen register use; exception.

“3122. Application for an order for a pen register.

“3123. Issuance of an order for a pen register.

“3124. Assistance in installation and use of a pen register.

“3125. Reports concerning pen registers.

“3126. Definitions for chapter.

13 **“§ 3121. General prohibition on pen register use; exception**

14 *“(a) IN GENERAL.—Except as provided in this section,*
 15 *no person may install or use a pen register without first ob-*
 16 *taining a court order under section 3123 of this title or under*
 17 *the Foreign Intelligence Surveillance Act of 1978 (50*
 18 *U.S.C. 1801 et seq.).*

1 “(b) *EXCEPTION.*—*The prohibition of subsection (a)*
2 *does not apply with respect to the use of a pen register by a*
3 *provider of electronic or wire communication service—*

4 “(1) *relating to the operation, maintenance, and*
5 *testing of a wire or electronic communication service or*
6 *to the protection of the rights or property of such pro-*
7 *vider, or to the protection of users of that service from*
8 *abuse of service or unlawful use of service; or*

9 “(2) *to record the fact that a wire or electronic*
10 *communication was initiated or completed in order to*
11 *protect such provider, another provider furnishing serv-*
12 *ice toward the completion of the wire communication,*
13 *or a user of that service, from fraudulent, unlawful or*
14 *abusive use of service, or with the consent or the user*
15 *of that service.*

16 “(c) *PENALTY.*—*Whoever knowingly violates subsec-*
17 *tion (a) shall be fined under this title or imprisoned not more*
18 *than one year, or both.*

19 “§ 3122. *Application for an order for a pen register*

20 “(a) *APPLICATION.*—(1) *An attorney for the Govern-*
21 *ment may make application for an order or an extension of*
22 *an order under section 3123 of this title authorizing or ap-*
23 *proving the installation and use of a pen register under this*
24 *chapter, in writing under oath or equivalent affirmation, to a*
25 *court of competent jurisdiction.*

1 “(2) *Unless prohibited by State law, a State investiga-*
2 *tive or law enforcement officer may make application for an*
3 *order or an extension of an order under section 3123 of this*
4 *title authorizing or approving the installation and use of a*
5 *pen register under this chapter, in writing under oath or*
6 *equivalent affirmation, to a court of competent jurisdiction of*
7 *such State.*

8 “(b) *CONTENTS OF APPLICATION.—An application*
9 *under subsection (a) of this section shall include—*

10 “(1) *the identity of the attorney for the Govern-*
11 *ment or the State law enforcement or investigative offi-*
12 *cer making the application and the identity of the law*
13 *enforcement agency conducting the investigation; and*

14 “(2) *a certification by the applicant that the infor-*
15 *mation likely to be obtained is relevant to an ongoing*
16 *criminal investigation being conducted by that agency.*

17 “§ 3123. *Issuance of an order for a pen register*

18 “(a) *IN GENERAL.—Upon an application made under*
19 *section 3122 of this title, the court shall enter an ex parte*
20 *order authorizing the installation and use of a pen register*
21 *within the jurisdiction of the court if the court finds that the*
22 *attorney for the government or the State law enforcement or*
23 *investigative officer has certified to the court that the infor-*
24 *mation likely to be obtained by such installation and use is*
25 *relevant to an ongoing criminal investigation.*

1 “(b) *CONTENTS OF ORDER.*—*An order issued under*
2 *this section—*

3 “(1) *shall specify—*

4 “(A) *the identity, if known, of the person to*
5 *whom is leased or in whose name is listed the*
6 *telephone line to which the pen register is to be*
7 *attached;*

8 “(B) *the identity, if known, of the person*
9 *who is the subject of the criminal investigation;*

10 “(C) *the number and, if known, physical lo-*
11 *cation of the telephone line to which the pen regis-*
12 *ter is to be attached; and*

13 “(D) *a statement of the offense to which the*
14 *information likely to be obtained by the pen regis-*
15 *ter relates; and*

16 “(2) *shall direct, upon the request of the appli-*
17 *cant, the furnishing of information, facilities, and tech-*
18 *nical assistance necessary to accomplish the installa-*
19 *tion of the pen register under section 3124 of this title.*

20 “(c) *TIME PERIOD AND EXTENSIONS.*—(1) *An order*
21 *issued under this section shall authorize the installation and*
22 *use of a pen register for a period not to exceed 60 days.*

23 “(2) *Extensions of such an order may be granted, but*
24 *only upon an application for an order under section 3122 of*
25 *this title and upon the judicial finding required by subsection*

1 (a) of this section. The period of extension shall be for a
2 period not to exceed 60 days.

3 “(d) **NONDISCLOSURE OF EXISTENCE OF PEN REG-**
4 **ISTER.**—An order authorizing or approving the installation
5 and use of a pen register shall direct that—

6 “(1) the order be sealed until otherwise ordered by
7 the court; and

8 “(2) the person owning or leasing the line to
9 which the pen register is attached, or who has been or-
10 dered by the court to provide assistance to the appli-
11 cant, not disclose the existence of the pen register or the
12 existence of the investigation to the listed subscriber, or
13 to any other person, unless or until otherwise ordered
14 by the court.

15 “§ 3124. **Assistance in installation and use of a pen register**

16 “(a) **IN GENERAL.**—Upon the request of an attorney
17 for the government or an officer of a law enforcement agency
18 authorized to install and use a pen register under this chap-
19 ter, a provider of wire communication service, landlord, cus-
20 todian, or other person shall furnish such investigative or law
21 enforcement officer forthwith all information, facilities, and
22 technical assistance necessary to accomplish the installation
23 of the pen register unobtrusively and with a minimum of
24 interference with the services that the person so ordered by
25 the court accords the party with respect to whom the installa-

1 *tion and use is to take place, if such assistance is directed by*
2 *a court order as provided in section 3123(b)(2) of this title.*

3 “(b) *COMPENSATION.*—*A provider of wire communica-*
4 *tion service, landlord, custodian, or other person who fur-*
5 *nishes facilities or technical assistance pursuant to this sec-*
6 *tion shall be reasonably compensated for such reasonable ex-*
7 *penses incurred in providing such facilities and assistance.*

8 **“§ 3125. Reports concerning pen registers**

9 *“The Attorney General shall annually report to Con-*
10 *gress on the number of pen register orders applied for by law*
11 *enforcement agencies of the Department of Justice.*

12 **“§ 3126. Definitions for chapter**

13 *“As used in this chapter—*

14 *“(1) the term ‘communications common carrier’*
15 *has the meaning set forth for the term ‘common carrier’*
16 *in section 3(h) of the Communications Act of 1934 (47*
17 *U.S.C. 153(h));*

18 *“(2) the term ‘wire communication’ has the mean-*
19 *ing set forth for such term in section 2510 of this title;*

20 *“(3) the term ‘court of competent jurisdiction’*
21 *means—*

22 *“(A) a district court of the United States*
23 *(including a magistrate of such a court) or a*
24 *United States Court of Appeals; or*

1 “(B) a court of general criminal jurisdiction
2 of a State authorized by the law of that State to
3 enter orders authorizing the use of a pen register;

4 “(4) the term ‘pen register’ means a device which
5 records or decodes electronic or other impulses which
6 identify the numbers dialed or otherwise transmitted,
7 with respect to wire communications, on the telephone
8 line to which such device is attached, but such term
9 does not include any device used by a provider of wire
10 communication service for billing, or recording as an
11 incident to billing, for communications services pro-
12 vided by such provider; and

13 “(5) the term ‘attorney for the Government’ has
14 the meaning given such term for the purposes of the
15 Federal Rules of Criminal Procedure; and

16 “(6) the term ‘State’ means a State, the District
17 of Columbia, Puerto Rico, and any other possession or
18 territory of the United States.”.

19 **(b) CLERICAL AMENDMENT.**—The table of chapters for
20 part II of title 18 of the United States Code is amended by
21 inserting after the item relating to chapter 205 the following
22 new item:

 “206. Pen Registers..... 3121”.

23 **SEC. 302. EFFECTIVE DATE.**

24 **(a) IN GENERAL.**—Except as provided in subsection
25 **(b)**, this title and the amendments made by this title shall

1 *take effect 90 days after the date of the enactment of this Act*
2 *and shall, in the case of conduct pursuant to a court order or*
3 *extension, apply only with respect to court orders or exten-*
4 *sions made after this title takes effect.*

5 **(b) SPECIAL RULE FOR STATE AUTHORIZATIONS OF**
6 **INTERCEPTIONS.**—*Any pen register order or installation*
7 *which would be valid and lawful without regard to the*
8 *amendments made by this title shall be valid and lawful not-*
9 *withstanding such amendments if such order or installation*
10 *occurs during the period beginning on the date such amend-*
11 *ments take effect and ending on the earlier of—*

12 **(1)** *the day before the date of the taking effect of*
13 *changes in State law required in order to make orders*
14 *or installations under Federal law as amended by this*
15 *title; or*

16 **(2)** *the date two years after the date of the enact-*
17 *ment of this Act.*

Union Calendar No. 382

99TH CONGRESS
2D SESSION

H. R. 4952

[Report No. 99-647]

A BILL

To amend title 18, United States Code, with respect to the interception of certain communications, other forms of surveillance, and for other purposes.

JUNE 19, 1986

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed