June 23, 1986

CONGRESSIONAL RECORD – HOUSE

H 4039

Mr. KASTENMEIER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4952) to amend title 18, United States Code, with respect to the interception of certain communications, other forms of surveillance, and for other purposes, as amended.

The Clerk read as follows:

H.R. 4952

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Electronic Communications Privacy Act of 1986".

TITLE I—INTERCEPTION OF COMMUNICATIONS AND RELATED MATTERS

SEC. 101. FEDERAL PENALTIES FOR THE INTERCEPTION OF COMMUNICATIONS.

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

(A) by striking "any communication" and inserting "any aural transfer" in lieu thereof;

(B) by inserting "(including the use of such connection in a switching station)" after "connection";

(C) by striking out "as a common carrier" and

(D) by inserting before the semicolon at the end the following: "or communications affecting interstate or foreign commerce, but such term does not include the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit ";

(2) Section 2510(1) of title 18, United States Code, is amended by inserting after the semicolon at the end the following: "; and such term does not include any electronic communication;"

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

(A) by inserting "or other" after "aural"; and

(B) by inserting ", electronic," after "wire";

(4) Section 2510(8) of title 18, United States Code, is amended by striking out "identity of the parties to such communication or the existence,";

(5) Section 2510(11) of title 18, United States Code, is amended—

(A) by striking out "and" at the end of paragraph (1); and

(B) by striking out the period at the end of paragraph (11) and inserting a semicolon in lieu thereof; and

(C) by adding at the end the following: "(12) 'electronic communication' means any transfer of signals, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photooptical system that affects interstate or foreign commerce, but does not include—"

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

(B) any wire or oral communication;

(C) any communication made through a tone-only paging device; or

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

(13) "user" means any person or entity who—

(A) uses an electronic communication service; and

(B) is duly authorized by the provider of such service to engage in such use;"

"(14) electronic communications system" means any wire, radio, electromagnetic, photoelectronic or photooptical system that affects interstate or foreign commerce, but does not include—

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

(B) any wire or oral communication;

(C) any communication made through a tone-only paging device; or

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

(15) 'electronic communication service' means any service which provides to users thereof the ability to send or receive wire or electronic communications;

(16) 'readily accessible to the general public' means, with respect to a radio communication, that such communication is (A) scrambled or encrypted; and (B) transmitted using modulation techniques whose essential parameters have been withheld from the public with the intention of preserving the privacy of such communication;

(17) 'electronic storage' means—

(A) any temporary, intermediate storage of an electronic or other communication incidental to the electronic transmission thereof; and

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

(18) 'oral transfer' means a transfer containing the human voice at any point between and including the point of origin and the point of reception;"

(B) by striking out "by" the second place it appears and inserting in lieu thereof "; or foreign intelligence activities conducted in accordance with otherwise applicable Federal law involving a foreign electronic communications system, utilizing ";

(C) by adding at the end the following: "(g) It shall not be unlawful under this chapter or chapter 121 of this title for any person—"

(I) to intercept or access an electronic communication made through an electronic communication system by installing or interfering with such electronic communication system so that such electronic communication is readily accessible to the general public; and

(ii) to intercept any radio communication which is transmitted—"

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

(ii) by any government, law enforcement, civil defense, or public safety communications system, including police and fire, readily accessible to the general public;
(IV) by striking out "communication common carrier" and inserting "provider of wire or electronic communication service to the public" thereby; and
(B) by striking out "communication common carrier" each place it appears and inserting "provider of wire or electronic communication service to the public" in lieu thereof.

(h) It shall not be unlawful under this Act—

(1) to use a pen register (as that term is defined for the purposes of chapter 206 (except title 206a) of this title) for a provider of electronic communication service to record the fact that a wire or electronic communication, or a user of that service, from fraudulent, unlawful or abusive use of such service; or

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

(i) Technical and conforming amendments.—(1) Chapter 119 of title 18, United States Code, is amended—

(a) in each of sections 2510(5), 2510(8), 2510(9)(b), 2510(11), and 2511 through 2519 (except sections 2516(1) and 2518(10)), by striking out "wire or oral" each place it appears (including in any section heading) and inserting "wire, oral, or electronic" in lieu thereof; and

(b) in section 2512(1)(b), by inserting "or electronic" after "wire".

(ii) The heading of chapter 119 of title 18, United States Code, is amended by inserting "and electronic communications, after "wire".

(iii) The item relating to chapter 119 in the table of chapters at the beginning of part I of title 18 of the United States Code is amended by inserting "and electronic communications, after "wire".

(iv) Section 2511(2)(a) of title 18, United States Code, is amended by striking out "communications common carrier" and inserting "provider of wire or electronic communication service" in lieu thereof.

(b) Section 2511(2)(b) of title 18, United States Code, is amended by striking out "wire or oral" each place it appears (including in any section heading) and inserting "wire, oral, or electronic" in lieu thereof.

(c) Except as provided in paragraph (b) of this subsection, whoever violates subsection (a) of this section shall be fined under this title or imprisoned not more than one year, or both; and

(d) Section 2512(2)(a) of title 18, United States Code, is amended by adding at the end the following:

"(A) Except as provided in paragraph (b) of this subsection, whoever violates subsection (a) of this section shall be fined under this title or imprisoned not more than one year, or both; and

(2) a request of an investigative or law enforcement officer under section 2518(7) of this title.

(6) A good faith determination that section 2511(3)(c) of this title permitted the conduct complained of; is a complete defense against any civil or criminal action brought under this chapter or any other provision of law.

(i) Limitation—A civil action under this section may not be commenced more than two years after the date upon which the claimant first has a reasonable opportunity to discover the violation.

(a) Offenses under this title are punishable by a fine of not more than $10,000, or imprisonment for not more than one year, or both.

(b) A good faith determination that section 2511(3)(c) of this title permitted the conduct complained of; is a complete defense against any civil or criminal action brought under this chapter or any other provision of law.

(c) Offenses under this title are punishable by a fine of not more than $10,000, or imprisonment for not more than one year, or both.

(d) Offenses under this title are punishable by a fine of not more than $10,000, or imprisonment for not more than one year, or both.

(e) Offenses under this title are punishable by a fine of not more than $10,000, or imprisonment for not more than one year, or both.

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(j) Offenses under this title are punishable by a fine of not more than $10,000, or imprisonment for not more than one year, or both.

(k) Offenses under this title are punishable by a fine of not more than $10,000, or imprisonment for not more than one year, or both.

(l) Offenses under this title are punishable by a fine of not more than $10,000, or imprisonment for not more than one year, or both.

(m) Offenses under this title are punishable by a fine of not more than $10,000, or imprisonment for not more than one year, or both.

(n) Offenses under this title are punishable by a fine of not more than $10,000, or imprisonment for not more than one year, or both.

(o) Offenses under this title are punishable by a fine of not more than $10,000, or imprisonment for not more than one year, or both.

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(s) Offenses under this title are punishable by a fine of not more than $10,000, or imprisonment for not more than one year, or both.

(t) Offenses under this title are punishable by a fine of not more than $10,000, or imprisonment for not more than one year, or both.

(u) Offenses under this title are punishable by a fine of not more than $10,000, or imprisonment for not more than one year, or both.

(v) Offenses under this title are punishable by a fine of not more than $10,000, or imprisonment for not more than one year, or both.

(w) Offenses under this title are punishable by a fine of not more than $10,000, or imprisonment for not more than one year, or both.

(x) Offenses under this title are punishable by a fine of not more than $10,000, or imprisonment for not more than one year, or both.

(y) Offenses under this title are punishable by a fine of not more than $10,000, or imprisonment for not more than one year, or both.

(z) Offenses under this title are punishable by a fine of not more than $10,000, or imprisonment for not more than one year, or both.
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(D) by inserting after subsection (b) of section 2518, in paragraph (2), the following:

"(D) the interception is conducted in whole or in part by personnel of the Attorney General, an Assistant Attorney General, or an acting Assistant Attorney General;"

SEC. 105. CERTAIN ACTIVITIES UNDER PROCEDURES APPROVED BY THE ATTORNEY GENERAL. —Nothing in this Act or the amendments made by this Act applies to any intelligence activity.

SEC. 106. INJUNCTIVE REMEDY. —Nothing in this Act or the amendments made by this Act applies to any intelligence activity.

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(2) by inserting at the end the following:

"In the event the intercepted communication is in a code or foreign language, and an expert in that foreign language or code is not reasonably available, the procedures of this section shall be followed;"

(3) by inserting the following, after subsection (b) of section 2518:

"(c) AUTHORIZATION OF INTERCEPTION.—(1) Authorization of an application to a Federal judge shall be made—"

(4) by inserting the following after subsection (d) of section 2518:

"(d)-minimization may be accomplished only after such notice has been given to the affected person.

(5) by inserting the following, after section 2518:

"(e) PROHIBITION OF USE OF ELECTRONIC DEVICES.—No electronic device may be used to intercept a wire, oral, or electronic communication from which"
"§ 2521. Injunction against illegal interception

"Whenever it shall appear that any person is engaged or is about to engage in any act which, if unlawful, would constitute an offense under this title, the district court of the United States for the district in which such act is engaged or is about to be engaged shall have jurisdiction to declare such act unlawful and, in the case of such violation of this chapter, the Attorney General may initiate a civil action in a district court of the United States for the district in which such act is engaged or is about to be engaged to enjoin such act.

The court shall proceed as practicable to the hearing and determination of such an act, and may, at any time before final determination, enter such a restraining order or prohibition, or take such other action, as is warranted to prevent a continuing and substantial injury to the United States or to any person or class of persons for whose protection the action is brought. A proceeding under this section is governed by the Federal Rules of Civil Procedure, except that if an indictment has been returned against the respondent, discovery is governed by the Federal Rules of Criminal Procedure.

(b) Clerical amendments.—The table of sections at the beginning of chapter 119 of title 18, United States Code, is amended by redesignating the following:

§ 2521. Injunction against illegal interception.

SEC. III. EFFECTIVE DATE.

Title 18—Except as provided in subsection (b), this title and the amendments made by this title shall take effect 90 days after the date of the enactment of this Act. In the case of State grand juries, a court order or extension, only with respect to such orders or extensions made after the date two years after the date of the enactment of this Act.

(b) Special Rule for State Authorizations or Interceptions.—Any interception pursuant to section 2518(2) of title 18 of the United States Code, which would be valid and lawful without regard to the amendments made by this title shall be valid and lawful notwithstanding such amendments except that interceptions occurring during the period beginning on the date such amendments take effect and ending on the earlier of—

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

(2) as authorized by a State grand jury on or after the date of the enactment of this Act.

TITLE II—STORED WIRE AND ELECTRONIC COMMUNICATIONS ACCESS AND TRANSACTIONAL RECORDS ACCESS

SEC. I. TITLE IS AMENDMENT.

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

CHAP. II—STORED WIRE AND ELECTRONIC COMMUNICATIONS AND TRANSACTIONAL RECORDS ACCESS

"Sec.

2701. Unlawful access to stored communicati—

2703. Requirements for governmental access.

2704. Backup preservation.

2705. Delayed notice.

2706. Court order.

2707. Civil action.

2708. Exclusivity of remedies.

2709. Court order for access to telephone toll and transactional records.

2710. Definitions.

2712. Unlawful access to stored communications

(a) Offense.—Except as provided in subsection (c) of this section who so desires, or (c) of this section who—

(1) intentionally access through which an electronic communication service is provided;

or

(2) intentionally exceeds an authorization to access that facility;

and thereby obtains, alters, or prevents authorized access to a wire or electronic communication while it is in electronic storage in such system, and is punished as provided in subsection (b) of this section.

(b) Punishment.—The punishment for an offense under subsection (a) of this section—

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

(A) a fine of not more than $250,000 or imprisonment for up to one year, or both, or in the case of a first offense under this subparagraph; and

(B) a fine under this title or imprisonment for any subsequent offense under this subparagraph; and

(2) if a fine of not more than $5,000 or imprisonment for not more than six months, or both, in any other case.

(c) Exceptions.—Subsection (a) of this section does not apply with respect to conduct authorized—

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

(2) by a user of that service with respect to a communication of or intended for that user.

(d) Effective date.—This section applies to any electronic communication that is in electronic storage in an electronic communications system for more than 180 days by the means available under subsection (b) of this section.

SEC. II. CONTENTS OF ELECTRONIC COMMUNICATIONS IN A REMOTE COMPUTING SERVICE

—A governmental entity may require the disclosure by a provider of electronic communication service of the contents of a non-voice wire or electronic communication, that is in electronic storage in an electronic communications system for 180 days or less, only pursuant to a warrant issued under the Federal Rules of Criminal Procedure or equivalent State warrant. A governmental entity may require the disclosure by a provider of electronic communication service of the contents of an electronic communication that has been in electronic storage in an electronic communications system for more than 180 days by the means available under subsection (b) of this section.

(b) Contents of Electronic Communications in a Remote Computing Service.—A governmental entity may require a provider of remote computing service to disclose the contents of any electronic communication to which this paragraph is applicable by paragraph (2) of this subsection—

(1) without required notice to the subscriber or customer, if the governmental entity shows that there is a law enforcement inquiry. In the case of a governmental entity that is a law enforcement entity, such inquiry is one that—

(A) is for a purpose authorized by a Federal or State statute; or

(B) is otherwise authorized by the Federal Rules of Criminal Procedure or equivalent State warrant; or

(2) with prior notice from the governmental entity to the subscriber or customer if the governmental entity—

(i) uses an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury subpoena; or

(ii) obtains a court order for such disclosure under subsection (d) of this section.

(c) Effective date.—This section is applicable with respect to any electronic communication that is held or maintained on that service—

(1) on behalf of, and received by means of computer processing of communications received by means of electronic transmission from, a subscriber or customer of such service; and

(2) solely for the purpose of providing storage or computer processing services to such subscriber or customer, if the provider is not authorized to access the contents of any such communications for purposes of providing any service other than storage or computer processing.

(d) Records concerning ELECTRONIC COMMUNICATIONS SERVICE OR REMOTE COMPUTING SERVICE.—A governmental entity may require a provider of electronic communications service or remote computing service to disclose a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by subsection (a) or (b) of this section) without required notice to the subscriber or customer if the governmental entity—

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

(2) obtains a warrant issued under the Federal Rules of Criminal Procedure or equivalent State warrant or a court order for such disclosure under subsection (d) of this section.

(e) Requirements for Court Order.—A court order for disclosure under subsection (d) of this section is issued only if the governmental entity shows that there is a reason to believe the contents of a wire or electronic communication more than merely that the record or other information sought is relevant to a legitimate law enforcement inquiry. In the case of a State governmental entity, such order shall not issue without the approval of the law of such State.
§ 2704. Backup preservation

(a) Backup preservation.—(1) A governmental entity acting under section 2703(b)(2) may in its subpoena or court order a requirement that the service provider to whom the request is directed create, copy, or otherwise preserve the contents or the electronic communications sought in order to preserve those communications. Without notifying the subscriber or customer of such subpoena or court order, such service provider shall create such backup copy as soon as practicable consistent with its regular business practices and shall confirm to the governmental entity that such backup copy has been made. Such backup copy shall be created within two business days after receipt by the service provider of the subpoena or court order.

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

(b) Service provider.—(1) The service provider shall not destroy such backup copy until the later of—

(A) the delivery of the information; or

(B) the expiration of any proceeding (including appeals of any proceeding) concerning the government's subpoena or court order.

(2) The service provider shall release such backup copy to the requesting governmental entity no sooner than 14 days after the governmental entity's notice to the subscriber or customer if such service provider—

(A) has not received notice from the subscriber or customer that the subscriber or customer has challenged the governmental entity's request; and

(B) has not initiated proceedings to challenge the governmental entity.

(3) A governmental entity may seek to require the creation of a backup copy under subsection (a)(1) of this section if in its sole discretion such entity determines that there is reason to believe that notification under section 2703 of this title of the existence of the subpoena or court order may result in the destruction of or tampering with evidence. This determination is not subject to challenge by the subscriber or customer or service provider.

(C) Notification of existence of legal enforcement inquiry.—(1) A governmental entity, but only in accordance with section 2703(b)(1), or to the extent that it may delay such notice pursuant to subsection (a) of this section, may apply to a court for an order compelling a provider of electronic communications service or remote computing service to whom a warrant, subpoena, or court order is directed, with such period as the court deems appropriate, not to notify any other person of the existence of the warrant, subpoena, or court order. The court shall enter such an order if it determines that there is reason to believe that notification of the existence of the warrant, subpoena, or court order will result in—

(i) endangering the life or physical safety of an individual;

(ii) flight from prosecution;

(iii) destruction of or tampering with evidence;

(iv) intimidation of potential witnesses; or

(v) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

(2)§ 2706. Cost reimbursement

(a) Payment.—Except as otherwise provided in subsection (c), a governmental entity obtaining the contents of communications, records, or other information under information under section 2702, 2703, or 2704 of this title shall pay to the person or entity assembling or providing such information a fee for reimbursement for such costs that may be necessary and which have been directly incurred in searching for, assembling, reproducing, or otherwise providing such information.

(b) Amount.—The amount of the fee provided in subsection (a) shall be agreed to by the governmental entity and the person or entity providing the information, or, in the absence of agreement, shall be as determined by the court which issued the order for production of such information for the court before which a criminal prosecution relating to such information would be

(1) If the court finds that the applicant has compiled with paragraphs (1) and (2) of section 2703(b) and that the governmental entity to file a sworn response, which may be filed in camera if the governmental entity includes in its response the reasons why it does not deem the action appropriate. If the court is unable to determine the motion or application on the basis of the parties' initial allegations and responses, the court may conduct such additional proceedings as it deems appropriate. All such proceedings shall be completed and the motion or application determined as soon as practicable after the filing of the governmental entity's response.

(4) If the court finds that the applicant is not the subscriber or customer for whom the communications sought by the governmental entity are maintained, or that there is a reason to believe that the law enforcement inquiry is legitimate and that the communications sought are relevant to that inquiry, it shall deny the motion or application and order such process enforced. If the court determines that the communications sought are relevant to a legitimate law enforcement inquiry, or that there is substantial compliance with the provisions of this chapter, it shall order the process quashed.

(5) A court order denying a motion or application under this subsection is not appealable and no interlocutory appeal may be taken from the court.

(2)§ 2705. Delay of notification

(a) Delay of notification.—(1) A governmental entity acting under section 2703(b) of this title may—

(A) where a court order is sought, include in the application a request, which the court shall grant, for an order delaying the notification required under section 2703(b) of this title for a period not to exceed 90 days; if the court determines that there is reason to believe that notification of the existence of the court order may have an adverse result described in paragraph (2) of this subsection, or

(B) where an administrative subpoena is issued under section 2703(a), include an affidavit or sworn statement—

(i) that information maintained for such individual;

(ii) that notification of such customer or subscriber may have an adverse result described in paragraph (2) of this subsection, or

(B) stating the applicant's reasons for believing that the records sought are not relevant to a legitimate law enforcement inquiry or that there has not been substantial compliance with the provisions of this chapter in some other respect.

(2) Service shall be made under this section by personal delivery or by certified mail or other similar means of delivery as may be agreed to by the governmental entity, the service provider, and, in the absence of agreement, by the court which issued the order pursuant to this chapter. For the purposes of this section, the term 'delivery' has the meaning given that term in the Federal Rules of Civil Procedure.
brought, if no court order was issued for production of the information).  

(1) The requirement of subsection (a) of this section does not apply with respect to records or other information maintained by a communications common carrier that relate to telephone toll records and telephone toll records obtained under section 2703 of this title. The court may, however, order a payment as described in subsection (b) of this section if the court determines the information required is necessary to avoid�an volunteerum in nature or otherwise caused an undue burden on the provider.

§2707. Civil action

(a) CAUSE OR ACTION.—Any provider of electronic communication service, subscriber, or customer aggrieved by any violation of this chapter in which the conduct constituting the violation is engaged in with a knowing or intentional state of mind may, in a civil action, recover from the person or entity which engaged in that violation such relief as may be appropriate.

(b) Civil action under this section, appropriate relief includes—

(1) such preliminary and other equitable or other relief as may be appropriate;

(2) damages under subsection (c); and

(3) a reasonable attorney’s fee and other litigation costs reasonably incurred.

The court may assess as damages in a civil action under this section the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation, but in no case shall a person entitled to recover receive less than the sum of $1,000.

(d) DEFENSE.—A good faith reliance on—

(1) the terms defined in section 2510 of this title; or

(2) the term ‘remote computing service’ as defined in section 1030 of this title, shall constitute a defense to a civil action brought under this chapter, in writing under oath or equivalent affirmation, to a court of competent jurisdiction.

§3122. Application for an order for a pen register

(a) APPLICATION.—(1) An attorney for the Government may make application for an order or an extension of an order under section 3123 of this title authorizing or approving the installation and use of a pen register under this chapter in writing under oath or equivalent affirmation, to a court of competent jurisdiction.

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

"121. Stored Wire and Electronic Communications and Transactional Records Access. 2707."

§3123. Issuance of an order for a pen register

This title and the amendments made by this title shall take effect 90 days after the date of the enactment of this Act and shall, in the case of an order or extension, apply only with respect to court orders or extensions made after this title takes effect.

§3124. PEN REGISTERS

SEC. 1. TITLE IN AMENDMENT.

(a) IN GENERAL.—Title 18 of the United States Code is amended by inserting after chapter 225 the following new chapter:

"CHAPTER 296—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. Antitrust in installation and use of a pen register.

3125. Reports concerning pen registers.

3126. Definitions and regulations.

3121. General prohibition on pen register use; exception.

(a) In GENERAL.—Except as provided in this section, no person may install or use a pen register without obtaining a court order under section 3123 of this title or under the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.).

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

(1) relating to the operation, maintenance, and testing of a telephone or other electronic or to the protection of the rights or property of such provider, or to the protection of users of that service from abuse of service or unlawful use of such service;

(2) to record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, customer, or any other person, from fraud, unlawful or abusive use, or with the consent or the user of that service.

(c) PENALTY.—Whoever knowingly violates subsection (a) shall be fined not more than $10,000, or imprisoned not more than one year, or both.

§3122. Application for an order for a pen register

(a) APPLICATION.—(1) An attorney for the Government may make application for an order or an extension of an order under section 3123 of this title authorizing or approving the installation and use of a pen register under this chapter in writing under oath or equivalent affirmation, to a court of competent jurisdiction.

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

"121. Stored Wire and Electronic Communications and Transactional Records Access. 2707."

§3123. Issuance of an order for a pen register

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

(1) relating to the operation, maintenance, and testing of a telephone or other electronic or to the protection of the rights or property of such provider, or to the protection of users of that service from abuse of service or unlawful use of such service;

(2) to record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, customer, or any other person, from fraud, unlawful or abusive use, or with the consent or the user of that service.

(c) PENALTY.—Whoever knowingly violates subsection (a) shall be fined not more than $10,000, or imprisoned not more than one year, or both.
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Before the installation and use of a pen register for a period not to exceed 60 days.

"(2) Extensions of such order may be granted, but only upon an application for an order under section 3122 of this title and upon the written finding required by subsection (a) of this section. The period of extension shall be for a period not to exceed 60 days.

"(f) NONDISCLOSURE OF EXISTENCE OF PEN REGISTER.—An order authorizing or approving the installation and use of a pen register shall direct that:

"(1) the order be sealed until otherwise ordered by the court; and

"(2) the person coming or leaving the line to which a pen register is attached, or who has been ordered by the court to provide assistance to the applicant, not disclose the existence of the pen register or the existence of the investigation to the listed subscriber, or to any other person, unless and until otherwise ordered by the court.

"3114. Assistance in installation and use of a pen register

"(a) IN GENERAL.—Upon the request of an attorney for the government or an officer of a law enforcement agency authorized to install or use a pen register under section 3123(b)(2) of this title, a provider of wire communication service, landlord, custodian, or other person shall furnish such facility or assistance pursuant to this section shall be reasonably compensated for such reasonable expenses incurred in providing such facilities and assistance.

"3125. Reports concerning pen registers

"The Attorney General shall annually report to the Congress on the number of pen register orders applied for by law enforcement agencies of the Department of Justice.

"3126. Definition for chapter

"As used in this chapter, the term 'communications common carrier' has the meaning set forth for the term 'common carrier' in section 3(j) of the Communications Act of 1934 (47 U.S.C. 153(j)).

"(2) the term 'wire communication' has the meaning set forth for such term in section 2(19) of the Communications Act of 1934 (47 U.S.C. 153(19)).

"(3) the term 'court of competent jurisdiction' means—

"(A) a district court of the United States (including a magistrate of such a court) or a United States Court of Appeals; or

"(B) a court of general criminal jurisdiction of a State authorized by the law of that State to enter orders authorizing the use of a pen register.

"(4) the term 'pen register' means a device which records or decodes electronic or other impulses which identify the numbers dialed or otherwise transmitted, with respect to which such device is attached, but such term does not include any device used by a person for communications services for billing, or recording as an incident to billing, for communications services provided by such provider; and

"(5) the term 'lawful without regard to the amendments made after this title takes effect. The period of extension shall be a period not to exceed 60 days.

"The bill also benefits law enforcement by creating clearer procedures for the use of investigative techniques which involve the interception of communications.

This legislation, which grew out of extensive hearings and an Office of Technology Assessment study, enjoys the strong support of the business community, consumer groups, civil liberties, law enforcement, and the Department of Justice. In commenting on the bill the Department of Justice has said that 'enactment of this bill would represent a major accomplishment for the 99th Congress.' Business organizations supporting the bill include the National Association of Manufacturers, the National Association of Broadcasters, numerous telephone companies and trade associations involved in electronic mail, videotex, cellular telephones, paging services, and other telecommunications services.

This measure is relatively uncontroversial in that no amendments were offered in the committee. The Congressional Budget Office has indicated that it expects no significant costs from the bill. Finally, it should be noted that pending in the Senate is an identical measure sponsored by the chairman and ranking minority member of the relevant Senate subcommittee. Therefore, I hope that H.R. 4952 can be acted upon favorably this afternoon so that we can see prompt action in the other body.

Let me take a few moments to highlight what I believe to be the fundamental principles which guide this legislation.

The first principle is that legislation which protects electronic communications from interceptions by either private parties or the Government should be comprehensive, and not limited to particular types or techniques of communications. For example, it is technically impossible to effectively differentiate between wire line phone calls and those which are carried by wire, microwave, satellite, and radio. Any attempt to write a law which tries to protect only those technologies which exist in the marketplace today; that is, cellular phones and electronic mail is destined to be outmoded within a few years.

The second principle which should be recognized in this area is a recognition that what is being protected is the sanctity and privacy of the

The Electronic Communications Privacy Act updates existing federal wiretapping law to take into account the new forms of electronic communications such as electronic mail, cellular telephones, and data transmission by providing such communications with protection against improper interception. The bill also benefits law enforcement by creating clearer procedures for the use of investigative techniques which overlap the intelligence community, consumer groups, civil liberties, and private parties. The bill was recently reported by the Committee on the Judiciary by a record vote of 34 to 0.

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communication. We should not attempt to discriminate for or against certain methods of communication, unless there is a compelling cast that all parties to the communication want the message accessible to the public.

Meanwhile, we should keep in mind is that the nature of modern recordkeeping requires that some level of privacy protection be extended to records, which are stored outside the home. When the Framers added the fourth amendment protection against unreasonable searches and seizures to the Constitution, they did so to protect citizens' papers and effects. In those days an individual's private writings and records were kept within the home. That situation has changed drastically today. Many Americans are now using computer services, which store their bank records, electronic mail and other personal data. If we fail to afford protection against governmental snooping in these files, our right of privacy will evaporate. Moreover, if we fail to protect the records of third-party providers, there will be a tremendous disincentive created against using these services. Thus, the adverse business consequences of inadequate protection for third-party records with respect to communications has led several industry groups to support the privacy provisions of the bill.

Today Congress stands at a crossroads regarding the electronic communications privacy. We may provide the forum to balance the privacy rights of citizens with the legitimate law enforcement needs of the Government; or we abdicate that role to ad hoc decisions made by the courts and the executive branch. I believe this bill is a significant step in that direction, and I urge my colleagues in the House to support this landmark legislation.

The integrity of the coalition of business, Government and civil liberties groups who support this legislation is worthy of note. As my colleagues know the primary sponsors of this legislation in the House and the other body are the chairman and ranking minority member of the relevant subcommittees: Representative Carlos Moorhead, Senator Patrick Leahy, the senior Senator from Maryland, and Charles McC. Mathias and myself. It has been through the commitment and leadership of this group that this legislation has come as far as it has.

In addition, I would like to pay homage to a number of private individuals and organizations who have been instrumental in developing this legislation: I wish to thank: David Beier, sworn executive secretary of the New York Times; John Shattuck, vice president, Harvard University; Pris Regan, Office of Technology Assessment; Ron Fiesler, former general counsel, U.S. Postal Service; Jerry Berman of the American Civil Liberties Union; H.W. Willian Caming, Esq; Phil Walker of GTE; Michael Cavannaugh of the Electronic Mail Association; Martina Bradford of AT&T; Barbara Phillips of Teletactor; Bob Maher of Cellular Telephone Industry Association; Michael Nugent of EDS; David M. Bell and Paul Lazor of Wilmer, Cutler & Pickering; Paul Myer of Capital Cities/ABC, Inc.; Terry Mahoney of the National Broadcasting Corp.; Steve Jacobs and Steve Books of the Broadcasters Association of Broadcasters; Joseph DePrato and John Sturm of CBS; Steve Klitzman of the Federal Communications Commission; Trish Witacker of Bell Communications; Brent Rehan of Southwestern Bell; Jim Golden of AT&T; Hugh Brady of Bell South; Doug McCollum of C&P Telephone Co.; Iris Schneider of NYNEX; Bruce Eggers of American Telecommunications Association; Martin Katzen of Telecom Industry Association; Steve Pomerantz of Pacific Telesis; David Peyton of the Information Industry Association; Larry Fineman of the National Association of Manufacturers with Griswold of GTE; Robert Swaseey of MCI; Ted Heydlinger of CEBA; Jay Kitchen of NABER; Perry Williams of American Radio Relay League; Ed Merliss and Doug Watts of NCTA; Howard Pastor of Timmons & Co.; Phillip Hochberg, Esq; Charles Meehan, Esq; Magistrate James Carr; Prof. Clifford Fishman; Prof. Michael Goldsmith; Prof. Herman Schwartz; Prof. George Trubow; Fred Wood of OTA; Peggy Miller of Trintex; Richard Fazzone and David Sherman of General Electric; Leslie Seeman of the Source; Mary Jane Saunders and Olga Grakave of ADAPSO; Kay Riddle of Chase Manhattan Bank; Bill Warner of Control Data; and David Rubashkin of U.S. West.

Special mention should also be made of the personnel of the Department of Justice who assisted us on this bill, especially Cary Copeland, Roger Pauley, Frederick Reas, Richard Cinquegrana, Mark Evans, Dennis Miller, Harry Myers, R. Cabbage, Tom O'Malley, James L.K. Knapp, and Stephen Trott.

Finally, it would be appropriate to thank staff members who worked on this bill: Deborah Leavy, David Beier, Joe Wolfe, Marilyn Pedretti, and Sheila Groves. Staff from other subcommittees and committees such as Bernard Rahmo, Michael O'Neill, Ed O'Connell, and Hayden Gregory deserve mention, as do Senate staff.

John Podesta and Steve Metalitz. Last but not least credit for intelligent and careful legislative drafting must go to Doug Bells of the Office of Legislative Counsel.

Mr. SWINDALL. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, before we consider H.R. 492, the Electronic Communications Privacy Bill, I want to first commend the distinguished chairman and ranking minority member of the Subcommittee on Court, Civil Liberties and the Administration of Justice for their tenacious support of this bill. Both the chairman, Mr. KASTENMEIER, and the ranking minority member, Mr. MOORHEAD, did yeoman work in keeping the sometimes fragile coalition together. This bill reflects the kind of bipartisanship which is at the heart of this bill.

The Senate Committee on the Judiciary is presently considering an identical measure which has the same type of bipartisan support which this bill received in the House. In conclusion, I want to reiterate my thanks and congratulations to Mr. KASTENMEIER and Mr. MOORHEAD for their work on this important legislation.

Mr. Speaker, as a member of the Subcommittee on Courts, Civil Liberties and the Administration of Justice, and an original cosponsor of H.R. 492, I urge my colleagues to support this valuable and much-needed piece of legislation.

Before yielding back the balance of my time, Mr. Speaker, I wish to engage the chairman of the subcommittee in a short colloquy.

Mr. Chairman, what relationship does this legislation have to the speech and debate clause, article I, section 6, especially with respect to access to records?

Mr. KASTENMEIER. Mr. Speaker, will the gentleman yield?

Mr. SWINDALL. I am happy to yield to the gentleman from Wisconsin.

Mr. KASTENMEIER. Mr. Speaker, I thank the gentleman for yielding.

Under provisions of this act, the House will receive notice of any requested access to records. Resolution of the propriety of any such request will then be preserved.

Having stated that, if the gentleman would yield further, I wish to con-
gratulate and thank the gentleman from Georgia (Mr. SWINDALL) for his courteous comments and arguments and discussion in subcommittee on this bill. I do remember that. It was a major contribution.

Mr. SWINDALL. Mr. Speaker, I thank the gentleman.

Mr. MOORHEAD. Mr. Speaker, I would like to indicate my strong support for H.R. 4952, the Electronic Communications Privacy Act of 1986 and commend the chairman of the Courts Subcommittee, Mr. KASTENMEIER, for having on this legislation. We are here in large part today because of the initiative he took in the 98th Congress when he introduced H.R. 6343, a forerunner of H.R. 4952. Needless to say, we have come a long way since then.

When the Subcommittee on Courts, Civil Liberties and the Administration of Justice began its series of hearings on this issue, it did so with the recognition that since 1966, when Congress first addressed the issue of privacy rights in a comprehensive fashion, the technologies of communications and interception have changed significantly. During the hearings it was well documented by the various witnesses that protections for the new modes of electronic communications such as electronic mail, cellular telephones, and satellite transmission was either ambiguous or did not exist.

A recent report prepared by the Office of Technology Assessment entitled "Electronic Surveillance and Civil Liberties," examined the new electronic technologies and concluded that:

The contents of phone conversations that are transmitted in digital form or calls made on cellular or cordless phones are not clearly protected by existing statutes.

Data communications between computers and digital transmission to video and graphic images are not protected by existing statutes.

There are also changes at which electronic mail messages could be intercepted: First, at the terminal or in the electronic files of the sender; second, while being communicated; third, in the electronic memory of receiver; fourth, when printed into hard copy; and fifth, when retained in the files of the electronic mail company or provider for administrative purposes. Existing law offers little or no protection at most of these stages.

While there was a consensus among the witnesses on the need to update existing law with respect to the new methods of electronic communications, there were questions as to how that could best be accomplished. The past March, when the Department of Justice testified before the Courts Subcommittee, they took the position that while they supported many of the objectives of the legislation, they had several law enforcement concerns about several of its provisions. After that hearing, the Department undertook a lengthy series of negotiations with representatives of the affected industries, as well as with the Courts Subcommittee. As a result of those negotiations is H.R. 4952, a landmark piece of legislation that will provide needed protection for the new electronic communications technologies in a manner that is consistent with the important needs of law enforcement.

In short, H.R. 4952 provides clear rules governing the interception of private communications and thereby maintains the integrity of our communications systems. Likewise, the legislation establishes clear rules for Government access to new forms of electronic communications as well as the transactional records regarding such communications. Finally, the legislation removes cumbersome procedures from current law that will facilitate the interests of federal law enforcement officials. The legislation is strongly supported by the Department of Justice and the satellite common carriers (AT&T, GTE, RCA, and Western Union; National Association of Broadcasters [NAB]; NCTA; the three TV networks; the cellular telephone industry; and private microwave operators, railroads, General Motors, GE, utilities, etc. cetera; as well as the National Association of Manufacturers [NAM]; the Chamber of Commerce; the ACLU; and others. Mr. Speaker, H.R. 4952 is important legislation with strong bipartisan support; accordingly I urge my colleagues' support for the legislation.

Mr. SWINDALL. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed. A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Florida (Mr. Ferras) is recognized for 5 minutes.

Mr. PEPPER. Mr. Speaker, I was unavoidably absent June 19, 1986, at the time of roll call 181. I was testifying at that time before the Senate Special Committee on Aging on the problem of mandatory retirement. Had I been present for the vote approving the Journal of June 19, 1986, I would have voted "aye."

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois (Mr. Annunzio) is recognized for 5 minutes.

[Mr. ANNUNZIO addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California (Mr. Lungren) is recognized for 60 minutes.

[Mr. LUNGREN addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California (Mr. Dannehyer) is recognized for 60 minutes.

(Mr. DANNEMEYER addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. Robert F. Smith) to revise and extend their remarks and include extraneous material:)

Mr. DANNEMEYER, for 60 minutes, on June 25.

Mr. DANNEMEYER, for 60 minutes, on June 26.

(The following Members (at the request of Mr. KASTENMEIER) to revise and extend their remarks and include extraneous material:

Mr. PEPPER, for 5 minutes, today.

Mr. ANNUNZIO, for 5 minutes, today.

Mr. GAYDOS, for 60 minutes, on June 24.

Mr. GAYDOS, for 60 minutes, on June 25.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. KASTENMEIER) to revise and extend their remarks and include extraneous matter:)

Mr. GRADISON.

Mr. SCHUETTE.

Mr. COURTIER.

Mr. CONTE.

(The following Members (at the request of Mr. KASTENMEIER) to revise and extend their remarks and include extraneous matter:)

Mr. KOSTMAYER.

Mr. GARCIA.

Mr. ANDERSON in 10 instances.

Mr. GONZALEZ in 10 instances.

Mr. BROWN of California in 10 instances.

Mr. ANNUNZIO in six instances.

Mr. JONES of Tennessee in 10 instances.

Mr. BONER of Tennessee in five instances.

Mr. COYNE.

Mr. MURTHA in two instances.

Mr. STARK.

Mr. DORGAN of North Dakota.

Mr. LEHMAN of Florida in two instances.

ADJOURNMENT

Mr. KASTENMEIER. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 12 o'clock and 45 minutes p.m.), the House adjourned until tomorrow, Tuesday, June 24, 1986, at 12 o'clock noon.