

99TH CONGRESS
2D SESSION

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.

IN THE HOUSE OF REPRESENTATIVES

JUNE 5, 1986

Mr. KASTENMEIER (for himself, Mr. MOORHEAD, Mr. BROOKS, Mr. MAZZOLI, Mr. SYNAR, Mrs. SCHBOEDER, 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

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".

1 **TITLE I—INTERCEPTION OF COMMUNICA-**
2 **TIONS AND RELATED MATTERS**

3 **SEC. 101. FEDERAL PENALTIES FOR THE INTERCEPTION OF**
4 **COMMUNICATIONS.**

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

7 (A) by striking out “any communication” and in-
8 serting “any aural transfer” in lieu thereof;

9 (B) by striking out “as a common carrier” and

10 (C) by inserting before the semicolon at the end
11 the following: “or communications affecting interstate
12 or foreign commerce, but such term does not include
13 the radio portion of a cordless telephone communica-
14 tion that is transmitted between the cordless telephone
15 handset and the base unit”.

16 (2) Section 2510(2) of title 18, United States Code, is
17 amended by inserting before the semicolon at the end the
18 following: “, but such term does not include any electronic
19 communication”.

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

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

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

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

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

6 (A) by striking out “and” at the end of paragraph
7 (10);

8 (B) by striking out the period at the end of para-
9 graph (11) and inserting a semicolon in lieu thereof;
10 and

11 (C) by adding at the end the following:

12 “(12) ‘electronic communication’ means any trans-
13 fer of signs, signals, writing, images, sounds, data, or
14 intelligence of any nature transmitted in whole or in
15 part by a wire, radio, electromagnetic, photoelectronic
16 or photooptical system that affects interstate or foreign
17 commerce, but does not include—

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

21 “(B) any wire or oral communication;

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

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

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

2 “(A) uses an electronic communication serv-
3 ice; and

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

6 “(14) ‘electronic communications system’ means
7 any wire, radio, electromagnetic, photooptical or pho-
8 toelectronic facilities for the transmission of electronic
9 communications, and any computer facilities or related
10 electronic equipment for the electronic storage of such
11 communications;

12 “(15) ‘electronic communication service’ means
13 any service which provides to users thereof the ability
14 to send or receive wire or electronic communications;

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

18 “(A) scrambled or encrypted;

19 “(B) transmitted using modulation techniques
20 whose essential parameters have been withheld
21 from the public with the intention of preserving
22 the privacy of such communication;

23 “(C) carried on a subcarrier or other signal
24 subsidiary to a radio transmission;

1 “(D) transmitted over a communication
2 system provided by a common carrier, unless the
3 communication is a tone only paging system com-
4 munication; or

5 “(E) transmitted on frequencies allocated
6 under part 25, subpart D, E, or F of part 74, or
7 part 94 of the Rules of the Federal Communica-
8 tions Commission, unless, in the case of a commu-
9 nication transmitted on a frequency allocated
10 under part 74 that is not exclusively allocated to
11 broadcast auxiliary services, the communication is
12 a two-way voice communication by radio;

13 “(17) ‘electronic storage’ means—

14 “(A) any temporary, intermediate storage of
15 a wire or electronic communication incidental to
16 the electronic transmission thereof; and

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

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

23 (b) EXCEPTIONS WITH RESPECT TO ELECTRONIC
24 COMMUNICATIONS.—(1) Section 2511(2)(a)(i) of title 18,

1 United States Code, is amended by striking out “of such
2 communication”.

3 (2) Section 2511(2)(d) of title 18, United States Code, is
4 amended by striking out “or for the purpose of committing
5 any other injurious act”.

6 (3) Section 2511(2)(f) of title 18, United States Code, is
7 amended—

8 (A) by inserting “or chapter 121” after “this
9 chapter”; and

10 (B) by striking out “by” the second place it ap-
11 pears and inserting in lieu thereof “, or foreign intelli-
12 gence activities conducted in accordance with other-
13 wise applicable Federal law involving a foreign elec-
14 tronic communications system, utilizing”.

15 (4) Section 2511(2) of title 18, United States Code, is
16 amended by adding at the end the following:

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

19 “(i) to intercept or access an electronic communi-
20 cation made through an electronic communication
21 system that is configured so that such electronic com-
22 munication is readily accessible to the general public;

23 “(ii) to intercept any radio communication which
24 is transmitted—

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

4 “(II) by any governmental, law enforcement,
5 civil defense, or public safety communications
6 system, including police and fire, readily accessi-
7 ble to the general public;

8 “(III) by a station operating on a frequency
9 assigned to the amateur citizens band or general
10 mobile radio services; or

11 “(IV) by any marine or aeronautical commu-
12 nications system;

13 “(iii) to engage in any conduct which—

14 “(I) is prohibited by section 633 of the Com-
15 munications Act of 1934; or

16 “(II) is excepted from the application of sec-
17 tion 705(a) of the Communications Act of 1934
18 by section 705(b) of that Act;

19 “(iv) to intercept any wire or electronic communi-
20 cation the transmission of which is causing harmful in-
21 terference to any lawfully operating station, to the
22 extent necessary to identify the source of such interfer-
23 ence; or

24 “(v) for other users of the same frequency to
25 intercept any radio communication made through a

1 common carrier system that utilizes frequencies moni-
2 tored by individuals engaged in the provision or the use
3 of such system, if such communication is not scrambled
4 encrypted.

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

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

9 “(ii) for a provider of wire or electronic communi-
10 cation service to record the fact that a wire or elec-
11 tronic communication was initiated or completed in
12 order to protect such provider, another provider fur-
13 nishing service toward the completion of the wire or
14 electronic communication, or a user of that service,
15 from fraudulent, unlawful or abusive use of such serv-
16 ice; or

17 “(iii) to use a device that captures the incoming
18 electronic or other impulses which identify the numbers
19 of an instrument from which a wire communication
20 was transmitted.”.

21 (c) TECHNICAL AND CONFORMING AMENDMENTS.—(1)
22 Chapter 119 of title 18, United States Code, is amended—

23 (A) in each of sections 2510(5), 2510(8),
24 2510(9)(b), 2510(11), and 2511 through 2519 (except
25 sections 2516(1) and 2518(10)), by striking out “wire

1 or oral” each place it appears (including in any section
2 heading) and inserting “wire, oral, or electronic” in
3 lieu thereof; and

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

6 (2) The heading of chapter 119 of title 18, United States
7 Code, is amended by inserting “**AND ELECTRONIC COM-**
8 **MUNICATIONS**” after “**WIRE**”.

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

13 (4) Section 2510(5)(a) of title 18, United States Code, is
14 amended by striking out “communications common carrier”
15 and inserting “provider of wire or electronic communication
16 service” in lieu thereof.

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

19 (A) by striking out “any communication common
20 carrier” and inserting “a provider of wire or electronic
21 communication service” in lieu thereof;

22 (B) by striking out “of the carrier of such commu-
23 nication” and inserting “of the provider of that serv-
24 ice” in lieu thereof; and

1 (C) by striking out “: *Provided*, That said commu-
2 nication common carriers” and inserting “, except that
3 a provider of wire communication service to the
4 public” in lieu thereof.

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

7 (A) by striking out “communication common carri-
8 ers” and inserting “providers of wire or electronic
9 communication service” in lieu thereof;

10 (B) by striking out “communication common carri-
11 er” each place it appears and inserting “provider of
12 wire or electronic communication service” in lieu
13 thereof; and

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

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

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

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

1 (C) by striking out “communications common car-
2 rier’s business” and inserting “business of providing
3 that wire or electronic communication service” in lieu
4 thereof.

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

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

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

17 “(b) If the offense is a first offense under paragraph (a)
18 of this subsection and is not for a tortious or illegal purpose
19 or for purposes of direct or indirect commercial advantage or
20 private commercial gain, and the electronic communication
21 with respect to which the offense under paragraph (a) is a
22 radio communication, then—

23 “(i) if the communication is not the radio portion
24 of a cellular telephone communication, the offender

1 shall be fined under this title or imprisoned not more
2 than one year, or both; and

3 “(ii) if the communication is the radio portion of a
4 cellular telephone communication, the offender shall be
5 fined not more than \$500 or imprisoned not more than
6 six months, or both.

7 “(c) Conduct otherwise an offense under this subsection
8 that consists of or relates to the interception of a satellite
9 transmission that is not encrypted or scrambled and that is
10 transmitted to a broadcasting station for purposes of retrans-
11 mission to the general public is not an offense under this
12 subsection unless the conduct is for the purposes of direct or
13 indirect commercial advantage or private financial gain.”.

14 (e) **EXCLUSIVITY OF REMEDIES WITH RESPECT TO**
15 **ELECTRONIC COMMUNICATIONS.**—Section 2518(10) of title
16 18, United States Code, is amended by adding at the end the
17 following:

18 “(c) The remedies and sanctions described in this chap-
19 ter with respect to the interception of electronic communica-
20 tions are the only judicial remedies and sanctions for non-
21 constitutional violations of this chapter involving such
22 communications.”.

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

24 Section 2511 of title 18, United States Code, is amend-
25 ed by adding at the end the following:

1 “(3)(A) Except as provided in subparagraph (B) of this
2 paragraph, a person or entity providing an electronic commu-
3 nication service to the public shall not willfully divulge the
4 contents of any communication (other than one to such
5 person or entity, or an agent thereof) while in transmission
6 on that service to any person or entity other than an ad-
7 dressee or intended recipient of such communication or an
8 agent of such addressee or intended recipient.

9 “(B) A person or entity providing electronic communica-
10 tion service to the public may divulge the contents of any
11 such communication—

12 “(i) as otherwise authorized in section 2511(2)(a)
13 or 2516 of this title;

14 “(ii) with the lawful consent of the originator or
15 any addressee or intended recipient of such communi-
16 cation;

17 “(iii) to a person employed or authorized, or
18 whose facilities are used, to forward such communica-
19 tion to its destination; or

20 “(iv) which were inadvertently obtained by the
21 service provider and which appear to pertain to the
22 commission of a crime, if such divulgence is made to a
23 law enforcement agency.”.

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

2 Section 2520 of title 18, United States Code, is amend-
3 ed to read as follows:

4 **“§ 2520. Recovery of civil damages authorized**

5 “(a) **IN GENERAL.**—Any person whose wire, oral, or
6 electronic communication is intercepted, disclosed, or willful-
7 ly used in violation of this chapter may in a civil action re-
8 cover from the person or entity which engaged in that viola-
9 tion such relief as may be appropriate.

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

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

14 “(2) damages under subsection (c) and punitive
15 damages in appropriate cases; and

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

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

21 “(1) the sum of the actual damages suffered by
22 the plaintiff and any profits made by the violator as a
23 result of the violation; or

24 “(2) statutory damages of whichever is the great-
25 er of \$100 a day for each day of violation or \$10,000.

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

1 SEC. 105. ADDITION OF OFFENSES TO CRIMES FOR WHICH
2 INTERCEPTION IS AUTHORIZED.

3 (a) WIRE AND ORAL INTERCEPTIONS.—Section
4 2516(1) of title 18 of the United States Code is amended—

5 (1) in paragraph (c)—

6 (A) by inserting “section 751 (relating to
7 escape),” after “wagering information,”;

8 (B) by striking out “2314” and inserting
9 “2312, 2313, 2314,” in lieu thereof;

10 (C) by inserting “the second section 2320
11 (relating to trafficking in certain motor vehicles or
12 motor vehicle parts), section 1203 (relating to
13 hostage taking), section 1029 (relating to fraud
14 and related activity in connection with access de-
15 vices), section 3146 (relating to penalty for failure
16 to appear), section 3521(b)(3) (relating to witness
17 relocation and assistance), section 32 (relating to
18 destruction of aircraft or aircraft facilities),” after
19 “stolen property,”;

20 (D) by inserting “section 1952A (relating to
21 use of interstate commerce facilities in the com-
22 mission of murder for hire), section 1952B (relat-
23 ing to violent crimes in aid of racketeering activi-
24 ty),” after “1952 (interstate and foreign travel or
25 transportation in aid of racketeering enter-
26 prises),”; and

1 (E) by inserting “, section 115 (relating to
2 threatening or retaliating against a Federal offi-
3 cial), the section in chapter 65 relating to destruc-
4 tion of an energy facility, and section 1341 (relat-
5 ing to mail fraud),” after “section 1963 (violations
6 with respect to racketeer influenced and corrupt
7 organizations)”;

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

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

11 “(h) any felony violation of sections 2511 and
12 2512 (relating to interception and disclosure of certain
13 communications and to certain intercepting devices) of
14 this title;

15 “(i) the location of any fugitive from justice from
16 an offense described in this section; and”;

17 (4) by redesignating paragraph (h) as paragraph
18 (j).

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

22 “(3) Any attorney for the Government (as such term is
23 defined for the purposes of the Federal Rules of Criminal
24 Procedure) may authorize an application to a Federal judge
25 of competent jurisdiction for, and such judge may grant, in

1 conformity with section 2518 of this title, an order authoriz-
2 ing or approving the interception of electronic communica-
3 tions by an investigative or law enforcement officer having
4 responsibility for the investigation of the offense as to which
5 the application is made, when such interception may provide
6 or has provided evidence of any Federal felony.”.

7 **SEC. 106. APPLICATIONS, ORDERS, AND IMPLEMENTATION OF**
8 **ORDERS.**

9 (a) **PLACE OF AUTHORIZED INTERCEPTION.**—Section
10 2518(3) of title 18 of the United States Code is amended by
11 inserting “(and outside that jurisdiction but within the United
12 States in the case of a mobile interception device authorized
13 by a Federal court within such jurisdiction)” after “within
14 the territorial jurisdiction of the court in which the judge is
15 sitting”.

16 (b) **REIMBURSEMENT FOR ASSISTANCE.**—Section
17 2518(4) of title 18 of the United States Code is amended by
18 striking out “at the prevailing rates” and inserting in lieu
19 thereof “for reasonable expenses incurred in providing such
20 facilities or assistance”.

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

24 (1) by inserting after the first sentence the follow-
25 ing: “Such thirty-day period begins on the earlier of

1 the day on which the investigative or law enforcement
2 officer first begins to conduct an interception under the
3 order or ten days after the order is entered.”; and

4 (2) by adding at the end the following: “In the
5 event the intercepted communication is in a code or
6 foreign language, and an expert in that foreign lan-
7 guage or code is not reasonably available during the
8 interception period, minimization may be accomplished
9 as soon as practicable after such interception. An inter-
10 ception under this chapter may be conducted in whole
11 or in part by Government personnel, or by an individ-
12 ual operating under a contract with the Government,
13 acting under the supervision of an investigative or law
14 enforcement officer authorized to conduct the intercep-
15 tion.”.

16 (d) ALTERNATIVE TO DESIGNATING SPECIFIC FACILI-
17 TIES FROM WHICH COMMUNICATIONS ARE TO BE INTER-
18 CEPTED.—(1) Section 2518(1)(b)(ii) of title of the United
19 States Code is amended by inserting “except as provided in
20 subsection (11),” before “a particular description”.

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

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

1 “(11) The requirements of subsections (1)(b)(ii) and (3)(d)
2 of this section relating to the specification of the facilities
3 from which, or the place where, the communication is to be
4 intercepted do not apply if—

5 “(i) in the case of an application with respect to
6 the interception of an oral communication—

7 “(I) the application is by a Federal investiga-
8 tive or law enforcement officer and is approved by
9 the Attorney General, the Deputy Attorney Gen-
10 eral, the Associate Attorney General, an Assist-
11 ant Attorney General, or an acting Assistant At-
12 torney General;

13 “(II) the application contains a full and com-
14 plete statement as to why such specification is not
15 practical and identifies the person committing the
16 offense and whose communications are to be
17 intercepted; and

18 “(III) the judge finds that such specification
19 is not practical; and

20 “(ii) in the case of an application with respect to a
21 wire or electronic communication—

22 “(I) the application is by a Federal investiga-
23 tive or law enforcement officer and is approved by
24 the Attorney General, the Deputy Attorney Gen-
25 eral, the Associate Attorney General, an Assist-

1 ant Attorney General, or an acting Assistant At-
2 torney General;

3 “(II) the application identifies the person be-
4 lieved to be committing the offense and whose
5 communications are to be intercepted and the ap-
6 plicant makes a showing of a purpose, on the part
7 of that person, to thwart interception by changing
8 facilities; and

9 “(III) the judge finds that such purpose has
10 been adequately shown.

11 “(12) An interception of a communication under an
12 order with respect to which the requirements of subsections
13 (1)(b)(ii) and (3)(d) of this section do not apply by reason of
14 subsection (11) shall not begin until the facilities from which,
15 or the place where, the communication is to be intercepted is
16 ascertained by the person implementing the interception
17 order.”.

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

1 **SEC. 107. INTELLIGENCE ACTIVITIES.**

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

5 (b) **CERTAIN ACTIVITIES UNDER PROCEDURES AP-**
6 **PROVED BY THE ATTORNEY GENERAL.**—Nothing in chapter
7 119 or chapter 121 of title 18, United States Code, shall
8 affect the conduct, by officers or employees of the United
9 States Government in accordance with other applicable Fed-
10 eral law, under procedures approved by the Attorney Gener-
11 al of activities intended to—

12 (1) intercept encrypted or other official communi-
13 cations of United States entities or contractors for
14 communications security purposes;

15 (2) intercept radio communications transmitted be-
16 tween or among foreign powers or agents of a foreign
17 power as defined by the Foreign Intelligence Surveil-
18 lance Act of 1978; or

19 (3) access an electronic communication system
20 used exclusively by a foreign power or agent of a for-
21 eign power as defined by the Foreign Intelligence Sur-
22 veillance Act of 1978.

23 **SEC. 108. MOBILE TRACKING DEVICES.**

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

1 **“§ 3117. Mobile tracking devices**

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

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

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

“3117. Mobile tracking devices.”.

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

15 Section 2232 of title 18, United States Code, is amend-
16 ed—

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

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

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

23 “(c) **NOTICE OF CERTAIN ELECTRONIC SURVEIL-**
24 **LANCE.**—Whoever, having knowledge that a Federal investi-
25 gative or law enforcement officer has been authorized or has

1 applied for authorization under chapter 119 to intercept a
2 wire, oral, or electronic communication, in order to obstruct,
3 impede, or prevent such interception, gives notice or at-
4 tempts to give notice of the possible interception to any
5 person shall be fined under this title or imprisoned not more
6 than five years, or both.

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

15 **SEC. 110. INJUNCTIVE REMEDY.**

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

18 **“§ 2521. Injunction against illegal interception**

19 “Whenever it shall appear that any person is engaged
20 or is about to engage in any act which constitutes or will
21 constitute a felony violation of this chapter, the Attorney
22 General may initiate a civil action in a district court of the
23 United States to enjoin such violation. The court shall pro-
24 ceed as soon as practicable to the hearing and determination
25 of such an action, and may, at any time before final determi-

1 nation, enter such a restraining order or prohibition, or take
2 such other action, as is warranted to prevent a continuing
3 and substantial injury to the United States or to any person
4 or class of persons for whose protection the action is brought.
5 A proceeding under this section is governed by the Federal
6 Rules of Civil Procedure, except that, if an indictment has
7 been returned against the respondent, discovery is governed
8 by the Federal Rules of Criminal Procedure.”.

9 (b) CLERICAL AMENDMENT.—The chapter heading of
10 chapter 119 of title 18, United States Code, is amended by
11 adding at the end thereof the following:

“2521. Injunction against illegal interception.”.

12 SEC. 111. EFFECTIVE DATE.

13 (a) IN GENERAL.—Except as provided in subsection (b),
14 this title and the amendments made by this title shall take
15 effect 90 days after the date of the enactment of this Act and
16 shall, in the case of conduct pursuant to a court order or
17 extension, apply only with respect to court orders or exten-
18 sions made after this title takes effect.

19 (b) SPECIAL RULE FOR STATE AUTHORIZATIONS OF
20 INTERCEPTIONS.—Any interception pursuant to section
21 2516(2) of title 18 of the United States Code which would be
22 valid and lawful without regard to the amendments made by
23 this title shall be valid and lawful notwithstanding such
24 amendments if such interception occurs during the period be-

1 ginning on the date such amendments take effect and ending
2 on the earlier of—

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

7 (2) the date two years after the date of the enact-
8 ment of this Act.

9 **TITLE II—STORED WIRE AND ELECTRONIC**
10 **COMMUNICATIONS AND TRANSACTION-**
11 **AL RECORDS ACCESS**

12 **SEC. 201. TITLE 18 AMENDMENT.**

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

15 **“CHAPTER 121—STORED WIRE AND ELECTRONIC**
16 **COMMUNICATIONS AND TRANSACTIONAL**
17 **RECORDS ACCESS**

“Sec.

“2701. Unlawful access to stored communications.

“2702. Disclosure of contents.

“2703. Requirements for governmental access.

“2704. Delayed notice.

“2705. Cost reimbursement.

“2706. Civil action.

“2707. Exclusivity of remedies.

“2708. Counterintelligence access to telephone toll and transactional records.

“2709. Definitions.

18 **“§ 2701. Unlawful access to stored communications**

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

1 “(1) willfully accesses without authorization a fa-
2 cility through which an electronic communication serv-
3 ice is provided; or

4 “(2) willfully exceeds an authorization to access
5 that facility;

6 and thereby obtains, alters, or prevents authorized access to
7 a wire or electronic communication while it is in electronic
8 storage in such system shall be punished as provided in sub-
9 section (b) of this section.

10 “(b) PUNISHMENT.—The punishment for an offense
11 under subsection (a) of this section is—

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

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

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

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

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

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

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

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

8 **“§ 2702. Disclosure of contents**

9 “(a) PROHIBITIONS.—Except as provided in subsection
10 (b)—

11 “(1) a person or entity providing an electronic
12 communication service to the public shall not willfully
13 divulge to any person or entity the contents of a com-
14 munication while in electronic storage by that service;
15 and

16 “(2) a person or entity providing remote comput-
17 ing service to the public shall not willfully divulge to
18 any person or entity the contents of any communica-
19 tion which is carried or maintained on that service—

20 “(A) on behalf of, and received by means of
21 electronic transmission from (or created by means
22 of computer processing of communications re-
23 ceived by means of electronic transmission from),
24 a subscriber or customer of such service; and

1 “(B) solely for the purpose of providing stor-
2 age or computer processing services to such sub-
3 scriber or customer, if the provider is not author-
4 ized to access the contents of any such communi-
5 cations for purposes of providing any services
6 other than storage or computer processing.

7 “(b) EXCEPTIONS.—A person or entity may divulge the
8 contents of a communication—

9 “(1) to an addressee or intended recipient of such
10 communication or an agent of such addressee or in-
11 tended recipient;

12 “(2) as otherwise authorized in section 2516,
13 2511(2)(a), or 2703 of this title;

14 “(3) with the lawful consent of the originator or
15 an addressee or intended recipient of such communica-
16 tion, or the subscriber in the case of remote computing
17 service;

18 “(4) to a person employed or authorized or whose
19 facilities are used to forward such communication to its
20 destination;

21 “(5) as may be necessarily incident to the rendi-
22 tion of the service or to the protection of the rights or
23 property of the provider of that service; or

24 “(6) to a law enforcement agency, if such
25 contents—

1 “(A) were inadvertently obtained by the
2 service provider; and

3 “(B) appear to pertain to the commission of
4 a crime.

5 **“§ 2703. Requirements for governmental access**

6 “(a) **CONTENTS OF ELECTRONIC COMMUNICATIONS IN**
7 **ELECTRONIC STORAGE.**—A governmental entity may re-
8 quire the disclosure by a provider of electronic communica-
9 tions services of the contents of an electronic communication
10 that is in electronic storage in an electronic communications
11 system for 180 days or less only pursuant to a warrant issued
12 under the Federal Rules of Criminal Procedure or equivalent
13 State warrant. A governmental entity may require the disclo-
14 sure by a provider of electronic communications services of
15 the contents of an electronic communication that has been in
16 electronic storage in an electronic communications system for
17 more than 180 days by the means available under subsection
18 (b) of this section.

19 “(b) **CONTENTS OF ELECTRONIC COMMUNICATIONS IN**
20 **A REMOTE COMPUTING SERVICE.**—(1) A governmental
21 entity may require a provider of remote computing service to
22 disclose the contents of any electronic communication to
23 which this paragraph is made applicable by paragraph (2) of
24 this subsection—

1 “(A) without required notice to the subscriber or
2 customer, if the governmental entity obtains a warrant
3 issued under the Federal Rules of Criminal Procedure
4 or equivalent State warrant; or

5 “(B) with prior notice from the governmental
6 entity to the subscriber or customer if the governmen-
7 tal entity—

8 “(i) uses an administrative subpoena author-
9 ized by a Federal or State statute or a Federal or
10 State grand jury subpoena; or

11 “(ii) obtains a court order for such disclosure
12 under subsection (d) of this section;

13 except that delayed notice may be given pursuant to
14 section 2704 of this title.

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

18 “(A) on behalf of, and received by means of elec-
19 tronic transmission from (or created by means of com-
20 puter processing of communications received by means
21 of electronic transmission from), a subscriber or cus-
22 tomer of such remote computing service; and

23 “(B) solely for the purpose of providing storage or
24 computer processing services to such subscriber or cus-
25 tomer, if the provider is not authorized to access the

1 contents of any such communications for purposes of
2 providing any services other than storage or computer
3 processing.

4 “(c) RECORDS CONCERNING ELECTRONIC COMMUNI-
5 CATIONS SERVICE OR REMOTE COMPUTING SERVICE.—A
6 governmental entity may require a provider of electronic
7 communications service or remote computing service to dis-
8 close a record or other information pertaining to a subscriber
9 to or customer of such service (not including the contents of
10 communications covered by subsection (a) or (b) of this sec-
11 tion) without required notice to the subscriber or customer if
12 the governmental entity—

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

16 “(2) obtains a warrant issued under the Federal
17 Rules of Criminal Procedure or equivalent State war-
18 rant; or

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

21 “(d) REQUIREMENTS FOR COURT ORDER.—A court
22 order for disclosure under subsection (b) or (c) of this section
23 shall issue only if the governmental entity shows that there is
24 reason to believe the contents of a wire or electronic commu-

1 nication, or the records or other information sought, are rele-
2 vant to a legitimate law enforcement inquiry.

3 **“§ 2704. Backup preservation; delayed notice**

4 “(a) **BACKUP PRESERVATION.**—(1) A governmental
5 entity acting under section 2703(b)(2) may include in its sub-
6 poena or court order a requirement that the service provider
7 to whom the request is directed create a backup copy of the
8 contents of the electronic communications sought in order to
9 preserve those communications. Without notifying the sub-
10 scriber or customer of such subpoena or court order, such
11 service provider shall create such backup copy as soon as
12 practicable consistent with its regular business practices and
13 shall confirm to the governmental entity that such backup
14 copy has been made. Such backup copy shall be created
15 within two business days after receipt by the service provider
16 of the subpoena or court order.

17 “(2) Notice to the subscriber or customer shall be made
18 by the governmental entity within three days after receipt of
19 such confirmation, unless such notice is delayed pursuant to
20 section 2704(c).

21 “(3) The service provider shall not destroy such backup
22 copy until the later of—

23 “(A) the delivery of the information; or

1 “(B) the resolution of any proceedings (including
2 appeals of any proceeding) concerning the govern-
3 ment’s subpoena or court order.

4 “(4) The service provider shall release such backup copy
5 to the requesting governmental entity within 14 days after
6 the governmental entity’s notice to the subscriber or custom-
7 er if such service provider—

8 “(A) has not received notice from the subscriber
9 or customer that the subscriber or customer has chal-
10 lenged the governmental entity’s request; and

11 “(B) has not initiated proceedings to challenge the
12 request of the governmental entity.

13 “(5) A governmental entity may seek to require the cre-
14 ation of a backup copy under subsection (a)(1) of this section
15 if in its sole discretion such entity determines that there is
16 reason to believe that notification under section 2703 of this
17 title of the existence of the subpoena or court order may
18 result in destruction of or tampering with evidence. This de-
19 termination is not subject to challenge by the subscriber or
20 customer or service provider.

21 “(b) CUSTOMER CHALLENGES.—(1) Within 14 days
22 after notice by the governmental entity to the subscriber or
23 customer under subsection (a)(2) of this section, such sub-
24 scriber or customer may file a motion to quash such subpoena
25 or vacate such court order, with copies served upon the gov-

1 governmental entity and with written notice of such challenge to
2 the service provider. A motion to vacate a court order shall
3 be filed in the court which issued such order. A motion to
4 quash a subpoena shall be filed in the appropriate United
5 States district court or State court. Such motion or applica-
6 tion shall contain an affidavit or sworn statement—

7 “(A) stating that the applicant is a customer or
8 subscriber to the service from which the contents of
9 electronic communications maintained for him have
10 been sought; and

11 “(B) stating the applicant’s reasons for believing
12 that the records sought are not relevant to a legitimate
13 law enforcement inquiry or that there has not been
14 substantial compliance with the provisions of this chap-
15 ter in some other respect.

16 “(2) Service shall be made under this section upon a
17 governmental entity by delivering or mailing by registered or
18 certified mail a copy of the papers to the person, office, or
19 department specified in the notice which the customer has
20 received pursuant to this chapter. For the purposes of this
21 section, the term ‘delivery’ has the meaning given that term
22 in the Federal Rules of Civil Procedure.

23 “(3) If the court finds that the customer has complied
24 with paragraphs (1) and (2) of this subsection, the court shall
25 order the governmental entity to file a sworn response, which

1 may be filed in camera if the governmental entity includes in
2 its response the reasons which make in camera review appro-
3 priate. If the court is unable to determine the motion or ap-
4 plication on the basis of the parties' initial allegations and
5 response, the court may conduct such additional proceedings
6 as it deems appropriate. All such proceedings shall be com-
7 pleted and the motion or application decided within seven
8 calendar days after the filing of the governmental entity's
9 response.

10 “(4) If the court finds that the applicant is not the sub-
11 scriber or customer for whom the communications sought by
12 the governmental entity are maintained, or that there is a
13 reason to believe that the law enforcement inquiry is legiti-
14 mate and that the communications sought are relevant to
15 that inquiry, it shall deny the motion or application and order
16 such process enforced. If the court finds that the applicant is
17 the subscriber or customer for whom the communications
18 sought by the governmental entity are maintained, and that
19 there is not a reason to believe that the communications
20 sought are relevant to a legitimate law enforcement inquiry,
21 or that there has not been substantial compliance with the
22 provisions of this chapter, it shall order the process quashed.

23 “(5) A court ruling denying a motion or application
24 under this section shall not be deemed a final order and

1 no interlocutory appeal may be taken therefrom by the
2 customer.

3 “(c) DELAY OF NOTIFICATION.—(1) A governmental
4 entity acting under section 2703(b) of this title may—

5 “(A) where a court order is sought, include in the
6 application a request, which the court shall grant, for
7 an order delaying the notification required under sec-
8 tion 2703(b) of this title for a period not to exceed 90
9 days; if the court determines that there is reason to be-
10 lieve that notification of the existence of the court
11 order may have an adverse result described in para-
12 graph (2) of this subsection; or

13 “(B) where an administrative subpoena authorized
14 by a Federal or State statute or a Federal or State
15 grand jury subpoena is obtained, delay the notification
16 required under section 2703(b) of this title for a period
17 not to exceed 90 days upon the execution of a written
18 certification of a supervisory official that there is
19 reason to believe that notification of the existence of
20 the subpoena may have an adverse result described in
21 paragraph (2) of this subsection.

22 “(2) An adverse result for the purposes of paragraph (1)
23 of this subsection is—

24 “(A) endangering the life or physical safety of an
25 individual;

1 “(B) flight from prosecution;

2 “(C) destruction of or tampering with evidence;

3 “(D) intimidation of potential witnesses; or

4 “(E) otherwise seriously jeopardizing an investiga-
5 tion or unduly delaying a trial.

6 “(3) The governmental entity shall maintain a true copy
7 of certification under paragraph (1)(B).

8 “(4) Extensions of the delay of notification provided in
9 section 2703 of up to 90 days each may be granted by the
10 court upon application, or by certification by a governmental
11 entity, but only in accordance with subsection (b) or (c) of this
12 section.

13 “(5) Upon expiration of the period of delay of notifica-
14 tion under paragraph (1) or (4) of this subsection, the govern-
15 mental entity shall serve upon, or mail to, the customer or
16 subscriber a copy of the process or request together with
17 notice that—

18 “(A) states with reasonable specificity the nature
19 of the law enforcement inquiry; and

20 “(B) informs such customer or subscriber—

21 “(i) that information maintained for such cus-
22 tomer or subscriber by the service provider named
23 in such process or request was supplied to or re-
24 quested by that governmental authority and the

1 date on which the supplying or request took
2 place;

3 “(ii) that notification of such customer or
4 subscriber was delayed;

5 “(iii) what governmental entity or court
6 made the certification or determination pursuant
7 to which that delay was made; and

8 “(iv) which provision of this chapter allowed
9 such delay.

10 “(6) As used in this subsection, the term ‘supervi-
11 sory official’ means the investigative agent in charge or
12 assistant investigative agent in charge or his equivalent
13 of an investigating agency’s headquarters or regional
14 office, or the chief prosecuting attorney or the first as-
15 sistant prosecuting attorney or his equivalent of a pros-
16 ecuting attorney’s headquarters or regional office.”.

17 “(d) PRECLUSION OF NOTICE TO SUBJECT OF GOV-
18 ERNMENTAL ACCESS.—A governmental entity acting under
19 section 2703, when it is not required to notify the subscriber
20 or customer under section 2703(b)(1), or to the extent that it
21 may delay such notice pursuant to section 2704(c), may
22 apply to a court for an order commanding a provider of elec-
23 tronic communications service or remote computing service
24 to whom a warrant, subpoena, or court order is directed, for
25 such period as the court deems appropriate, not to notify any

1 other person of the existence of the warrant, subpoena, or
2 court order. The court shall enter such an order if it deter-
3 mines that there is reason to believe that notification of the
4 existence of the warrant, subpoena, or court order will result
5 in—

6 “(1) endangering the life or physical safety of an
7 individual;

8 “(2) flight from prosecution;

9 “(3) destruction of or tampering with evidence;

10 “(4) intimidation of potential witnesses; or

11 “(5) otherwise seriously jeopardizing an investiga-
12 tion or unduly delaying a trial.

13 **“§ 2705. Cost reimbursement**

14 “(a) PAYMENT.—Except as otherwise provided by law,
15 a governmental entity obtaining communications, records, or
16 other information under section 2702, 2703, or 2704 of this
17 title shall pay to the person or entity assembling or providing
18 such information a fee for reimbursement for such costs as
19 are reasonably necessary and which have been directly in-
20 curred in searching for, assembling, reproducing, or other-
21 wise providing such information. Such reimbursable costs
22 shall include any costs due to necessary disruption of normal
23 operations of any electronic communication service or remote
24 computing service in which such information may be stored.

1 “(b) **AMOUNT.**—The amount of the fee provided by sub-
2 section (a) shall be as mutually agreed by the governmental
3 entity and the person or entity providing the information, or,
4 in the absence of agreement, shall be as determined by the
5 court which issued the order for production of such informa-
6 tion (or the court before which a criminal prosecution relating
7 to such information would be brought, if no court order was
8 issued for production of the information).

9 “§ 2706. **Civil action**

10 “(a) **CAUSE OF ACTION.**—Any subscriber or customer
11 aggrieved by any willful or intentional violation of this chap-
12 ter may in a civil action recover from the person or entity
13 which engaged in that violation such relief as may be
14 appropriate.

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

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

19 “(2) damages under subsection (c); and

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

22 “(c) **DAMAGES.**—The court may assess as damages in a
23 civil action under this section the sum of the actual damages
24 suffered by the plaintiff and any profits made by the violator

1 as a result of the violation, but in no case shall a person
2 entitled to recover receive less than the sum of \$1,000.

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

4 “(1) a court warrant or order, a grand jury sub-
5 poena, a legislative authorization, or a statutory
6 authorization;

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

9 “(3) a good faith determination that section
10 2511(3) of this title permitted the conduct complained
11 of;

12 is a complete defense to any civil or criminal action brought
13 under this chapter or any other law.

14 “(e) LIMITATION.—A civil action under this section
15 may not be commenced later than two years after the date
16 upon which the claimant first discovered or had a reasonable
17 opportunity to discover the violation.

18 **“§ 2707. Exclusivity of remedies**

19 “The remedies and sanctions described in this chapter
20 are the only judicial remedies and sanctions for nonconstitu-
21 tional violations of this chapter.

22 **“§ 2708. Counterintelligence access to telephone toll and**
23 **transactional records**

24 “(a) DUTY TO PROVIDE.—A Communications common
25 carrier or an electronic communication service provider shall

1 comply with a request made for telephone subscriber informa-
2 tion and toll billing records information, or electronic commu-
3 nication transactional records made by the Director of the
4 Federal Bureau of Investigation under subsection (b) of this
5 section.

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

13 “(1) the information sought is relevant to an au-
14 thorized foreign counterintelligence investigation; and

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

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

1 “(d) **DISSEMINATION BY BUREAU.**—The Federal
2 Bureau of Investigation may disseminate information and
3 records obtained under this section only as provided in guide-
4 lines approved by the Attorney General for foreign intelli-
5 gence collection and foreign counterintelligence investiga-
6 tions conducted by the Federal Bureau of Investigation, and,
7 with respect to dissemination to an agency of the United
8 States, only if such information is clearly relevant to the au-
9 thorized responsibilities of such agency.

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

17 **“§ 2709. Definitions for chapter**

18 “As used in this chapter—

19 “(1) the terms defined in section 2510 of this title
20 have, respectively, the definitions given such terms in
21 that section; and

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

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

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

4 **SEC. 202. EFFECTIVE DATE.**

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

10 **TITLE III—PEN REGISTERS**

11 **SEC. 301. TITLE 18 AMENDMENT.**

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

15 **“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.

16 **“§ 3121. General prohibition on pen register use; exception**

17 **“(a) IN GENERAL.**—Except as provided in this section,
 18 no person may install or use a pen register without first ob-
 19 taining a court order under section 3123 of this title or under

1 the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.
2 1801 et seq.).

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

6 “(1) relating to the operation, maintenance, and
7 testing of a wire communication service or to the pro-
8 tection of the rights or property of such provider, or to
9 the protection of users of that service from abuse of
10 service or unlawful use of service; or

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

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

21 **“§ 3122. Application for an order for a pen register**

22 “(a) APPLICATION.—(1) An attorney for the Govern-
23 ment may make application for an order or an extension of an
24 order under section 3123 of this title authorizing or approv-
25 ing the installation and use of a pen register under this chap-

1 ter, in writing under oath or equivalent affirmation, to a court
2 of competent jurisdiction.

3 “(2) A State investigative or law enforcement officer
4 may make application for an order or an extension of an
5 order under section 3123 of this title authorizing or approv-
6 ing the installation and use of a pen register under this chap-
7 ter, in writing under oath or equivalent affirmation, to a court
8 of competent jurisdiction of such State.

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

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

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

18 **“§ 3123. Issuance of an order for a pen register**

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

1 mation likely to be obtained by such installation and use is
2 relevant to an ongoing criminal investigation.

3 “(b) CONTENTS OF ORDER.—An order issued under
4 this section—

5 “(1) shall specify—

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

10 “(B) the identity, if known, of the person
11 who is the subject of the criminal investigation;

12 “(C) the number and , if known, physical lo-
13 cation of the telephone line to which the pen reg-
14 ister is to be attached; and

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

18 “(2) shall direct, upon the request of the appli-
19 cant, the furnishing of information, facilities, and tech-
20 nical assistance necessary to accomplish the installation
21 of the pen register under section 3125 of this title.

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

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

6 “(d) **NONDISCLOSURE OF EXISTENCE OF PEN REGIS-**
7 **TER.**—An order authorizing or approving the installation and
8 use of a pen register shall direct that—

9 “(1) the order be sealed until otherwise ordered
10 by the court; and

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

18 “§ 3124. **Assistance in installation and use of a pen**
19 **register**

20 “(a) **IN GENERAL.**—Upon the request of an attorney for
21 the government or an officer of a law enforcement agency
22 authorized to install and use a pen register under this chap-
23 ter, a provider of wire communication service, landlord, cus-
24 todian, or other person shall furnish such investigative or law
25 enforcement officer forthwith all information, facilities, and

1 technical assistance necessary to accomplish the installation
 2 of the pen register unobtrusively and with a minimum of in-
 3 terference with the services that the person so ordered by the
 4 court accords the party with respect to whom the installation
 5 and use is to take place, if such assistance is directed by a
 6 court order as provided in section 3123(b)(2) of this title.

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

12 **“§ 3125. Reports concerning pen registers**

13 “The Attorney General shall annually report to Con-
 14 gress on the number of pen register orders applied for by law
 15 enforcement agencies of the Department of Justice.

16 **“§ 3126. Definitions for chapter**

17 “As used in this chapter—

18 “(1) the term ‘communications common carrier’
 19 has the meaning set forth for the term ‘common carri-
 20 er’ in section 3(h) of the Communications Act of 1934
 21 (47 U.S.C. 153(h));

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

24 “(3) the term ‘court of competent jurisdiction’
 25 means—

1 “(A) a district court of the United States (in-
2 cluding a magistrate of such a court) or a United
3 States Court of Appeals; or

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

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

16 “(5) the term ‘attorney for the Government’ has
17 the meaning given such term for the purposes of the
18 Federal Rules of Criminal Procedure; and

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

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

“206. Pen Registers..... 3121”.

1 SEC. 302. EFFECTIVE DATE.

2 (a) IN GENERAL.—Except as provided in subsection (b),
3 this title and the amendments made by this title shall take
4 effect 90 days after the date of the enactment of this Act and
5 shall, in the case of conduct pursuant to a court order or
6 extension, apply only with respect to court orders or exten-
7 sions made after this title takes effect.

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

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

19 (2) the date two years after the date of the enact-
20 ment of this Act.

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