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

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 COMMUNICATIONS AND RELATED MATTERS
2
3 SEC. 101. FEDERAL PENALTIES FOR THE INTERCEPTION OF COMMUNICATIONS.
4
5 (a) Definitions.—(1) Section 2510(1) of title 18, United States Code, is amended—
6
7 (A) by striking out "any communication" and inserting "any aural transfer" in lieu thereof;
8
9 (B) by striking out "as a common carrier" and
10
11 (C) 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".
12
13 (2) Section 2510(2) of title 18, United States Code, is amended by inserting before the semicolon at the end the following: ", but such term does not include any electronic communication".
14
15 (3) Section 2510(4) of title 18, United States Code, is amended—
16
17 (A) by inserting "or other" after "aural"; and
18
19 (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 of title 18, United States Code, is amended—

(A) by striking out "and" at the end of paragraph (10);

(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 signs, signals, writing, images, 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, photooptical or photoelectronic facilities for the transmission of electronic communications, and any computer facilities or related electronic equipment for the electronic storage of such communications;

“(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 not—

“(A) scrambled or encrypted;

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

“(C) carried on a subcarrier or other signal subsidiary to a radio transmission;
"(D) transmitted over a communication system provided by a common carrier, unless the communication is a tone only paging system communication; or

"(E) transmitted on frequencies allocated under part 25, subpart D, E, or F of part 74, or part 94 of the Rules of the Federal Communications Commission, unless, in the case of a communication transmitted on a frequency allocated under part 74 that is not exclusively allocated to broadcast auxiliary services, the communication is a two-way voice communication by radio;

"(17) 'electronic storage' means—

"(A) any temporary, intermediate storage of a wire or electronic 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) 'aural transfer' means a transfer containing the human voice at any point between and including the point of origin and the point of reception.'".

(b) EXCEPTIONS WITH RESPECT TO ELECTRONIC COMMUNICATIONS.—(1) Section 2511(2)(a)(i) of title 18,
United States Code, is amended by striking out "of such communication".

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

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

(A) by inserting "or chapter 121" after "this chapter"; and

(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".

(4) Section 2511(2) of title 18, United States Code, is amended 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 that is configured so that such electronic communication is readily accessible to the general public;

"(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;

“(II) by any governmental, law enforcement, civil defense, or public safety communications system, including police and fire, readily accessible to the general public;

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

“(IV) by any marine or aeronautical communications system;

“(iii) to engage in any conduct which—

“(I) is prohibited by section 633 of the Communications Act of 1934; or

“(II) is excepted from the application of section 705(a) of the Communications Act of 1934 by section 705(b) of that Act;

“(iv) to intercept any wire or electronic communication the transmission of which is causing harmful interference to any lawfully operating station, to the extent necessary to identify the source of such interference; or

“(v) for other users of the same frequency to intercept any radio communication made through a
common carrier system that utilizes frequencies moni-
tored by individuals engaged in the provision or the use
of such system, if such communication is not scrambled
encrypted.

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

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

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

“(iii) 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.”.

(c) 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 2511(2)(b), by inserting “or electronic” after “wire”.

(2) The heading of chapter 119 of title 18, United States Code, is amended by inserting “AND ELECTRONIC COMMUNICATIONS” after “WIRE”.

(3) 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”.

(4) Section 2510(5)(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.

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

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

(B) by striking out “of the carrier of such communication” and inserting “of the provider of that service” in lieu thereof; and
(C) by striking out "Provided, That said communication common carriers" and inserting ", except that a provider of wire communication service to the public" in lieu thereof.

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

(A) by striking out "communication common carriers" and inserting "providers of wire or electronic communication service" in lieu thereof;

(B) by striking out "communication common carrier" each place it appears and inserting "provider of wire or electronic communication service" in lieu thereof; and

(C) by striking out "if the common carrier" and inserting "if such provider" in lieu thereof.

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

(A) by striking out "a communications common carrier" the first place it appears and inserting "a provider of wire or electronic communication service" in lieu thereof; and

(B) by striking out "a communications common carrier" the second place it appears and inserting "such a provider" in lieu thereof; and
(C) by striking out “communications common carrier’s business” and inserting “business of providing that wire or electronic communication service” in lieu thereof.

(d) Penalties Modification.—(1) Section 2511(1) of title 18, United States Code, is amended by striking out “shall be” and all that follows through “or both” and inserting in lieu thereof “shall be punished as provided in subsection (4)”.

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

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

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

“(i) if the communication is not the radio portion of a cellular telephone communication, the offender
shall be fined under this title or imprisoned not more
than one year, or both; and
“(ii) if the communication is the radio portion of a
cellular telephone communication, the offender shall be
fined not more than $500 or imprisoned not more than
six months, or both.
“(c) Conduct otherwise an offense under this subsection
that consists of or relates to the interception of a satellite
transmission that is not encrypted or scrambled and that is
transmitted to a broadcasting station for purposes of retrans-
mission to the general public is not an offense under this
subsection unless the conduct is for the purposes of direct or
indirect commercial advantage or private financial gain.”.
(e) EXCLUSIVITY OF REMEDIES WITH RESPECT TO
ELECTRONIC COMMUNICATIONS.—Section 2518(10) of title
18, United States Code, is amended by adding at the end the
following:
“(c) The remedies and sanctions described in this chap-
ter with respect to the interception of electronic communica-
tions are the only judicial remedies and sanctions for non-
constitutional violations of this chapter involving such
communications.”.

SEC. 102. REQUIREMENTS FOR CERTAIN DISCLOSURES.
Section 2511 of title 18, United States Code, is amend-
ed by adding at the end the following:
“(A) Except as provided in subparagraph (B) of this paragraph, a person or entity providing an electronic communication service to the public shall not willfully divulge the contents of any communication (other than one to such person or entity, or an agent thereof) while in transmission on that service to any person or entity other than an addressee or intended recipient of such communication or an agent of such addressee or intended recipient.

“(B) A person or entity providing electronic communication service to the public may divulge the contents of any such communication—

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

“(ii) with the lawful consent of the originator or any addressee or intended recipient of such communication;

“(iii) to a person employed or authorized, or whose facilities are used, to forward such communication to its destination; or

“(iv) which were inadvertently obtained by the service provider and which appear to pertain to the commission of a crime, if such divulgence is made to a law enforcement agency.”.
SEC. 103. RECOVERY OF CIVIL DAMAGES.

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

"§ 2520. Recovery of civil damages authorized

"(a) In General.—Any person whose wire, oral, or electronic communication is intercepted, disclosed, or willfully used in violation of this chapter may in a civil action recover from the person or entity which engaged in that violation such relief as may be appropriate.

"(b) Relief.—In an action under this section, appropriate relief includes—

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

"(2) damages under subsection (c) and punitive damages in appropriate cases; and

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

"(c) Computation of Damages.—The court may assess as damages in an action under this section whichever is the greater of—

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

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

"(d) Defense.—A good faith reliance on—
"(1) a court warrant or order, a grand jury subpoena, a legislative authorization, or a statutory authorization;

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

"(3) a good faith determination that section 2511(3) 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.

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

SEC. 104. CERTAIN APPROVALS BY JUSTICE DEPARTMENT OFFICIALS.

Section 2516(1) of title 18 of the United States Code is amended by striking out "or any Assistant Attorney General" and inserting in lieu thereof "any Assistant Attorney General, any acting Assistant Attorney General, or any Deputy Assistant Attorney General in the Criminal Division".
SEC. 105. ADDITION OF OFFENSES TO CRIMES FOR WHICH INTERCEPTION IS AUTHORIZED.

(a) Wire and Oral Interceptions.—Section 2516(1) of title 18 of the United States Code is amended—

(1) in paragraph (c)—

(A) by inserting "section 751 (relating to escape)," after "wagering information),";

(B) by striking out "2314" and inserting "2312, 2313, 2314," in lieu thereof;

(C) by inserting "the second section 2320 (relating to trafficking in certain motor vehicles or motor vehicle parts), section 1203 (relating to hostage taking), section 1029 (relating to fraud and related activity in connection with access devices), section 3146 (relating to penalty for failure to appear), section 3521(b)(3) (relating to witness relocation and assistance), section 32 (relating to destruction of aircraft or aircraft facilities)," after "stolen property),";

(D) by inserting "section 1952A (relating to use of interstate commerce facilities in the commission of murder for hire), section 1952B (relating to violent crimes in aid of racketeering activity)," after "1952 (interstate and foreign travel or transportation in aid of racketeering enterprises),"; and
(E) by inserting "", section 115 (relating to threatening or retaliating against a Federal official), the section in chapter 65 relating to destruction of an energy facility, and section 1341 (relating to mail fraud)," after "section 1963 (violations with respect to racketeer influenced and corrupt organizations);"

(2) by striking out "or" at the end of paragraph (g);

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

"(h) any felony violation of sections 2511 and 2512 (relating to interception and disclosure of certain communications and to certain intercepting devices) of this title;

"(i) the location of any fugitive from justice from an offense described in this section; and"; and

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

(b) INTERCEPTION OF ELECTRONIC COMMUNICATIONS.—Section 2516 of title 18 of the United States Code is amended by adding at the end the following:

"(3) Any attorney for the Government (as such term is defined for the purposes of the Federal Rules of Criminal Procedure) may authorize an application to a Federal judge of competent jurisdiction for, and such judge may grant, in
conformity with section 2518 of this title, an order authorizing or approving the interception of electronic communications by an investigative or law enforcement officer having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of any Federal felony.”.

SEC. 106. APPLICATIONS, ORDERS, AND IMPLEMENTATION OF ORDERS.

(a) Place of Authorized Interception.—Section 2518(3) of title 18 of the United States Code is amended by inserting “(and outside that jurisdiction but within the United States in the case of a mobile interception device authorized by a Federal court within such jurisdiction)” after “within the territorial jurisdiction of the court in which the judge is sitting”.

(b) Reimbursement for Assistance.—Section 2518(4) of title 18 of the United States Code is amended by striking out “at the prevailing rates” and inserting in lieu thereof “for reasonable expenses incurred in providing such facilities or assistance”.

(c) Commencement of 30-Day Period and Postponement of Minimization.—Section 2518(5) of title 18 of the United States Code is amended—

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

(2) by adding 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 during the interception period, minimization may be accomplished as soon as practicable after such interception. An interception under this chapter may be conducted in whole or in part by Government personnel, or by an individual operating under a contract with the Government, acting under the supervision of an investigative or law enforcement officer authorized to conduct the interception.”.

(d) ALTERNATIVE TO DESIGNATING SPECIFIC FACILITIES FROM WHICH COMMUNICATIONS ARE TO BE INTERCEPTED.—(1) Section 2518(1)(b)(ii) of title of the United States Code is amended by inserting “except as provided in subsection (11),” before “a particular description”.

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

(3) Section 2518 of title 18 of the United States Code is amended by adding at the end the following:
“(11) The requirements of subsections (1)(b)(ii) and (3)(d) of this section relating to the specification of the facilities from which, or the place where, the communication is to be intercepted do not apply if—

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

“(I) the application is by a Federal investigative or law enforcement officer and is approved by the Attorney General, the Deputy Attorney General, the Associate Attorney General, an Assistant Attorney General, or an acting Assistant Attorney General;

“(II) the application contains a full and complete statement as to why such specification is not practical and identifies the person committing the offense and whose communications are to be intercepted; and

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

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

“(I) the application is by a Federal investigative or law enforcement officer and is approved by the Attorney General, the Deputy Attorney General, the Associate Attorney General, an Assist-
court Attorney General, or an acting Assistant At­

torney General;

"(II) the application identifies the person be­

lieved to be committing the offense and whose

communications are to be intercepted and the ap­

licant makes a showing of a purpose, on the part

of that person, to thwart interception by changing

facilities; and

"(III) the judge finds that such purpose has

been adequately shown.

"(12) An interception of a communication under an

order with respect to which the requirements of subsections

(1)(b)(ii) and (3)(d) of this section do not apply by reason of

subsection (11) shall not begin until the facilities from which,

or the place where, the communication is to be intercepted is

ascertained by the person implementing the interception

order.".

(4) Section 2519(1)(b) of title 18, United States Code, is
amended by inserting "(including whether or not the order
was an order with respect to which the requirements of sec­
tions 2518(1)(b)(ii) and 2518(3)(d) of this title did not apply
by reason of section 2518(11) of this title)" after "applied
for".
SEC. 107. INTELLIGENCE ACTIVITIES.

(a) In General.—Nothing in this Act or the amend-
ments made by this Act constitutes authority for the conduct
of any intelligence activity.

(b) Certain Activities Under Procedures Approved by the Attorney General.—Nothing in chapter
119 or chapter 121 of title 18, United States Code, shall
affect the conduct, by officers or employees of the United
States Government in accordance with other applicable Fed-
eral law, under procedures approved by the Attorney Gener-
al of activities intended to—

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

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

(3) access an electronic communication system
used exclusively by a foreign power or agent of a for-
eign power as defined by the Foreign Intelligence Sur-

SEC. 108. MOBILE TRACKING DEVICES.

(a) In General.—Chapter 205 of title 18, United
States Code, is amended by adding at the end the following:
§ 3117. Mobile tracking devices

(a) In General.—If a court is empowered to issue a warrant or other order for the installation of a mobile tracking device, such order may authorize the use of that device within the jurisdiction of the court, and outside that jurisdiction if the device is installed in that jurisdiction.

(b) Definition.—As used in this section, the term ‘tracking device’ means an electronic or mechanical device which permits the tracking of the movement of a person or object.”.

(b) Clerical Amendment.—The table of contents at the beginning of chapter 205 of title 18, United States Code, is amended by adding at the end the following:

“3117. Mobile tracking devices.”.

SEC. 109. WARNING SUBJECT OF SURVEILLANCE.

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

(1) by inserting “‘(a) Physical Interference With Search.—’” before “Whoever” the first place it appears;

(2) by inserting “‘(b) Notice of Search.—’” before “Whoever” the second place it appears; and

(3) by adding at the end the following:

“(c) Notice of Certain Electronic Surveillance.—Whoever, having knowledge that a Federal investiga­

tive or law enforcement officer has been authorized or has
applied for authorization under chapter 119 to intercept a
wire, oral, or electronic communication, in order to obstruct,
impede, or prevent such interception, gives notice or at-
ttempts to give notice of the possible interception to any
person shall be fined under this title or imprisoned not more
than five years, or both.

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

SEC. 110. INJUNCTIVE REMEDY.

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

"§ 2521. Injunction against illegal interception

"Whenever it shall appear that any person is engaged
or is about to engage in any act which constitutes or will
constitute a felony violation of this chapter, the Attorney
General may initiate a civil action in a district court of the
United States to enjoin such violation. The court shall pro-
ceed as soon as practicable to the hearing and determination
of such an action, and may, at any time before final determi-
nation, 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 AMENDMENT.—The chapter heading of
chapter 119 of title 18, United States Code, is amended by
adding at the end thereof the following:

“2521. Injunction against illegal interception.”.

SEC. 111. EFFECTIVE DATE.

(a) IN GENERAL.—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 and
shall, in the case of conduct pursuant to a court order or
extension, apply only with respect to court orders or exten-
sions made after this title takes effect.

(b) SPECIAL RULE FOR STATE AUTHORIZATIONS OF
INTERCEPTIONS.—Any interception pursuant to section
2516(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 if such interception occurs during the period be-
ginning 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) the date two years after the date of the enact-
ment of this Act.

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

SEC. 201. TITLE 18 AMENDMENT.

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

"CHAPTER 121—STORED WIRE AND ELECTRONIC
COMMUNICATIONS AND TRANSACTIONAL
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.

"§ 2701. Unlawful access to stored communications

"(a) OFFENSE.—Except as provided in subsection (c) of
this section whoever—
“(1) willfully accesses without authorization a facility through which an electronic communication service is provided; or

“(2) willfully 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 shall be punished as provided in subsection (b) of this section.

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

“(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 not more than one year, or both, in the case of a first offense under this subparagraph; and

“(B) a fine under this title or imprisonment for not more than two years, or both, for any subsequent offense under this subparagraph; and

“(2) 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;

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

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

§ 2702. Disclosure of contents

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

“(1) a person or entity providing an electronic communication service to the public shall not willfully divulge to any person or entity the contents of a communication while in electronic storage by that service; and

“(2) a person or entity providing remote computing service to the public shall not willfully divulge to any person or entity the contents of any communication which is carried or maintained on that service—

“(A) on behalf of, and received by means of electronic transmission from (or created by means of computer processing of communications received by means of electronic transmission from), a subscriber or customer of such service; and
“(B) 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 services other than storage or computer processing.

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

“(1) to an addressee or intended recipient of such communication or an agent of such addressee or intended recipient;

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

“(3) with the lawful consent of the originator or an addressee or intended recipient of such communication, or the subscriber in the case of remote computing service;

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

“(5) as may be necessarily incident to the rendition of the service or to the protection of the rights or property of the provider of that service; or

“(6) to a law enforcement agency, if such contents—
"(A) were inadvertently obtained by the
service provider; and

"(B) appear to pertain to the commission of
a crime.

§ 2703. Requirements for governmental access

(a) CONTENTS OF ELECTRONIC COMMUNICATIONS IN
ELECTRONIC STORAGE.—A governmental entity may re­
quire the disclosure by a provider of electronic communica­
tions services of the contents of an 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 disclo­
sure by a provider of electronic communications services 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.—(1) A governmental
entity may require a provider of remote computing service to
disclose the contents of any electronic communication to
which this paragraph is made applicable by paragraph (2) of
this subsection—
“(A) without required notice to the subscriber or customer, if the governmental entity obtains a warrant issued under the Federal Rules of Criminal Procedure or equivalent State warrant; or

“(B) 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; except that delayed notice may be given pursuant to section 2704 of this title.

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

“(A) on behalf of, and received by means of electronic transmission from (or created by means of computer processing of communications received by means of electronic transmission from), a subscriber or customer of such remote computing service; and

“(B) 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 services other than storage or computer processing.

"(c) 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;

"(2) obtains a warrant issued under the Federal Rules of Criminal Procedure or equivalent State warrant; or

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

"(d) REQUIREMENTS FOR COURT ORDER.—A court order for disclosure under subsection (b) or (c) of this section shall issue only if the governmental entity shows that there is reason to believe the contents of a wire or electronic commu-
nication, or the records or other information sought, are rele-
vant to a legitimate law enforcement inquiry.

§ 2704. Backup preservation; delayed notice

(a) Backup preservation.—(1) A governmental
entity acting under section 2703(b)(2) may include in its sub-
poena or court order a requirement that the service provider
to whom the request is directed create a backup copy of the
contents of the electronic communications sought in order to
preserve those communications. Without notifying the sub-
scriber 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 2704(c).

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

(A) the delivery of the information; or
“(B) the resolution of any proceedings (including appeals of any proceeding) concerning the government’s subpoena or court order.

“(4) The service provider shall release such backup copy to the requesting governmental entity within 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 request of the governmental entity.

“(5) 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 destruction of or tampering with evidence. This determination is not subject to challenge by the subscriber or customer or service provider.

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

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

“(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 chap-
ter in some other respect.

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

“(3) If the court finds that the customer has complied
with paragraphs (1) and (2) of this subsection, the court shall
order the governmental entity to file a sworn response, which
may be filed in camera if the governmental entity includes in its response the reasons which make in camera review appropriate. If the court is unable to determine the motion or application on the basis of the parties' initial allegations and response, the court may conduct such additional proceedings as it deems appropriate. All such proceedings shall be completed and the motion or application decided within seven calendar days 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 finds that the applicant is the subscriber or customer for whom the communications sought by the governmental entity are maintained, and that there is not a reason to believe that the communications sought are relevant to a legitimate law enforcement inquiry, or that there has not been substantial compliance with the provisions of this chapter, it shall order the process quashed.

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

"(c) 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 authorized by a Federal or State statute or a Federal or State grand jury subpoena is obtained, delay the notification required under section 2703(b) of this title for a period not to exceed 90 days upon the execution of a written certification of a supervisory official that there is reason to believe that notification of the existence of the subpoena may have an adverse result described in paragraph (2) of this subsection.

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

"(A) endangering the life or physical safety of an individual;
"(B) flight from prosecution;
(C) destruction of or tampering with evidence;
(D) intimidation of potential witnesses; or
(E) otherwise seriously jeopardizing an investiga-
tion or unduly delaying a trial.

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

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

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

"(A) states with reasonable specificity the nature
of the law enforcement inquiry; and

"(B) informs such customer or subscriber—

"(i) that information maintained for such cus-
tomer or subscriber by the service provider named
in such process or request was supplied to or re-
quested by that governmental authority and the
date on which the supplying or request took place;

"(ii) that notification of such customer or subscriber was delayed;

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

"(iv) which provision of this chapter allowed such delay.

"(6) As used in this subsection, the term ‘supervisory official’ means the investigative agent in charge or assistant investigative agent in charge or his equivalent of an investigating agency’s headquarters or regional office, or the chief prosecuting attorney or the first assistant prosecuting attorney or his equivalent of a prosecuting attorney’s headquarters or regional office.’’.

"(d) PRECLUSION OF NOTICE TO SUBJECT OF GOVERNMENTAL ACCESS.—A governmental entity acting under section 2703, when it is not required to notify the subscriber or customer under section 2703(b)(1), or to the extent that it may delay such notice pursuant to section 2704(c), may apply to a court for an order commanding a provider of electronic communications service or remote computing service to whom a warrant, subpoena, or court order is directed, for 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—

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

"(2) flight from prosecution;

"(3) destruction of or tampering with evidence;

"(4) intimidation of potential witnesses; or

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

§ 2705. Cost reimbursement

"(a) PAYMENT.—Except as otherwise provided by law, a governmental entity obtaining communications, records, or other 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 as are reasonably necessary and which have been directly incurred in searching for, assembling, reproducing, or otherwise providing such information. Such reimbursable costs shall include any costs due to necessary disruption of normal operations of any electronic communication service or remote computing service in which such information may be stored.
"(b) AMOUNT.—The amount of the fee provided by subsection (a) shall be as mutually agreed 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 (or the court before which a criminal prosecution relating to such information would be brought, if no court order was issued for production of the information).

§ 2706. Civil action

"(a) CAUSE OF ACTION.—Any subscriber or customer aggrieved by any willful or intentional violation of this chapter may in a civil action recover from the person or entity which engaged in that violation such relief as may be appropriate.

"(b) RELIEF.—In a civil action under this section, appropriate relief includes—

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

"(2) damages under subsection (c); and

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

"(c) DAMAGES.—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) a court warrant or order, a grand jury subpoena, a legislative authorization, or a statutory authorization;

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

"(3) a good faith determination that section 2511(3) of this title permitted the conduct complained of;

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

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

§ 2707. Exclusivity of remedies

"The remedies and sanctions described in this chapter are the only judicial remedies and sanctions for nonconstitutional violations of this chapter.

§ 2708. Counterintelligence access to telephone toll and transactional records

"(a) DUTY TO PROVIDE.—A Communications common carrier or an electronic communication service provider shall
comply with a request made for telephone subscriber information and toll billing records information, or electronic communication transactional records made by the Director of the Federal Bureau of Investigation under subsection (b) of this section.

"(b) REQUIRED CERTIFICATION.—The Director of the Federal Bureau of Investigation (or an individual within the Federal Bureau of Investigation designated for this purpose by the Director) may request any such information and records if the Director (or the Director's designee) certifies in writing to the carrier or provider to which the request is made that—

"(1) the information sought is relevant to an authorized foreign counterintelligence investigation; and

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

"(c) PROHIBITION OF CERTAIN DISCLOSURE.—No communications common carrier or service provider, or officer, employee, or agent thereof, shall disclose to any person that the Federal Bureau of Investigation has sought or obtained access to information or records under this section.
"(d) DISSEMINATION BY BUREAU.—The Federal Bureau of Investigation may disseminate information and records obtained under this section only as provided in guidelines approved by the Attorney General for foreign intelligence collection and foreign counterintelligence investigations conducted by the Federal Bureau of Investigation, and, with respect to dissemination to an agency of the United States, only if such information is clearly relevant to the authorized responsibilities of such agency.

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

"§ 2709. Definitions for chapter

"As used in this chapter—

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

"(2) the term 'remote computing service' means the provision to the public of computer storage or processing services by means of an electronic communications system.".
(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...

2701".

SEC. 202. EFFECTIVE DATE. 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 conduct pursuant to a court order or extension, apply only with respect to court orders or extensions made after this title takes effect.

TITLE III—PEN REGISTERS

SEC. 301. TITLE 18 AMENDMENT. (a) In General.—Title 18 of the United States Code is amended by inserting after chapter 205 the following new chapter:

"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.

§ 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 first 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 wire communication service 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 service; or

"(2) to record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire communication, or a user of that service, from fraudulent, unlawful or abusive use of service, or with the consent or the user of that service.

"(c) PENALTY.—Whoever knowingly violates subsection (a) shall be fined under this title 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 chap-
ter, in writing under oath or equivalent affirmation, to a court of competent jurisdiction.

"(2) A State investigative or law enforcement officer 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 of such State.

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

"(1) the identity of the attorney for the Government or the State law enforcement or investigative officer making the application and the identity of the law enforcement agency conducting the investigation; and

"(2) a certification by the applicant that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by that agency.

§ 3123. Issuance of an order for a pen register

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

"(b) CONTENTS OF ORDER.—An order issued under this section—

"(1) shall specify—

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

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

"(C) the number and, if known, physical location of the telephone line to which the pen register is to be attached; and

"(D) a statement of the offense to which the information likely to be obtained by the pen register relates; and

"(2) shall direct, upon the request of the applicant, the furnishing of information, facilities, and technical assistance necessary to accomplish the installation of the pen register under section 3125 of this title.

"(c) TIME PERIOD AND EXTENSIONS.—(1) An order issued under this section shall authorize the installation and use of a pen register for a period not to exceed 60 days.
“(2) Extensions of such an order may be granted, but only upon an application for an order under section 3122 of this title and upon the judicial finding required by subsection (a) of this section. The period of extension shall be for a period not to exceed 60 days.

“(d) 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 owning or leasing the line to which the 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 or until otherwise ordered by the court.

“§ 3124. 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 and use a pen register under this chapter, a provider of wire communication service, landlord, custodian, or other person shall furnish such investigative or law enforcement officer forthwith all information, facilities, and
technical assistance necessary to accomplish the installation
of the pen register unobtrusively and with a minimum of in-
terference with the services that the person so ordered by the
court accords the party with respect to whom the installation
and use is to take place, if such assistance is directed by a
court order as provided in section 3123(b)(2) of this title.

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

"§ 3125. Reports concerning pen registers

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

"§ 3126. Definitions for chapter

"As used in this chapter—

"(1) the term 'communications common carrier'
has the meaning set forth for the term 'common carri-
er' in section 3(h) of the Communications Act of 1934
(47 U.S.C. 153(h));

"(2) the term 'wire communication' has the mean-
ing set forth for such term in section 2510 of this title;

"(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 wire communications, on the telephone line to which such device is attached, but such term does not include any device used by a provider of wire communication service for billing, or recording as an incident to billing, for communications services provided by such provider; and

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

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

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

“206. Pen Registers................................................................. 3121”.

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SEC. 302. EFFECTIVE DATE.

(a) IN GENERAL.—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 and shall, in the case of conduct pursuant to a court order or extension, apply only with respect to court orders or extensions made after this title takes effect.

(b) SPECIAL RULE FOR STATE AUTHORIZATIONS OF INTERCEPTIONS.—Any pen register order or installation which would be valid and lawful without regard to the amendments made by this title shall be valid and lawful notwithstanding such amendments if such order or installation occurs 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 changes in State law required in order to make orders or installations under Federal law as amended by this title; or

(2) the date two years after the date of the enactment of this Act.