

Public Law 99-508
99th Congress

An Act

Oct. 21, 1986
[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.

Electronic
Communications
Privacy Act of
1986.
18 USC 2510
note.

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

SECTION 1. SHORT TITLE.

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

TITLE I—INTERCEPTION OF COMMUNICATIONS AND RELATED MATTERS

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

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

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

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

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

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

(2) Section 2510(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".

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

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

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

(4) Section 2510(5) of title 18, United States Code, is amended in clause (a)(i) by inserting before the semicolon the following: "or furnished by such subscriber or user for connection to the facilities of such service and used in the ordinary course of its business".

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

(6) 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)(ii) of title 18, United States Code, is amended—

18 USC 3117.

(A) by striking out “violation of this subparagraph by a communication common carrier or an officer, employee, or agent thereof” and inserting in lieu thereof “such disclosure”;

(B) by striking out “the carrier” and inserting in lieu thereof “such person”; and

(C) by striking out “an order or certification under this subparagraph” and inserting in lieu thereof “a court order or certification under this chapter”.

(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, private land mobile, or public safety communications system, including police and fire, readily accessible to the general public;

“(III) by a station operating on an authorized frequency within the bands allocated 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 or consumer electronic equipment, 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 system that utilizes frequencies monitored by individuals engaged in the provision or the use of such system, if such communication is not scrambled or encrypted.

Post, p. 1860.

47 USC 553.

47 USC 605.

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

“(i) to use a pen register or a trap and trace device (as those terms are defined for the purposes of chapter 206 (relating to pen registers and trap and trace devices) of this title); or

Post, p. 1868.

“(ii) for a provider of electronic communication service 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 or electronic communication, or a user of that service, from fraudulent, unlawful or abusive use of such service.”

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

18 USC 2510 *et seq.*

(A) in each of sections 2510(5), 2510(8), 2510(9)(b), 2510(11), and 2511 through 2519 (except sections 2515, 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.

(8) Section 2518(4) of title 18, United States Code, is amended—

(A) by striking out “communication common carrier” in both places it appears and inserting “provider of wire or electronic communication service” in lieu thereof; and

(B) by striking out “carrier” and inserting in lieu thereof “service provider”.

(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) or shall be subject to suit as provided in subsection (5)”.

(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 or in subsection (5), 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 wire or electronic communication with respect to which the offense under paragraph (a) is a radio communication that is not scrambled or encrypted, then—

“(i) if the communication is not the radio portion of a cellular telephone communication, a public land mobile radio service communication or a paging service communication, and the conduct is not that described in subsection (5), 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, a public land mobile radio service communication or a paging service communication, the offender shall be fined not more than \$500.

“(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—

“(i) to a broadcasting station for purposes of retransmission to the general public; or

“(ii) as an audio subcarrier intended for redistribution to facilities open to the public, but not including data transmissions or telephone calls,

is not an offense under this subsection unless the conduct is for the purposes of direct or indirect commercial advantage or private financial gain.

“(5)(a)(i) If the communication is—

“(A) a private satellite video communication that is not scrambled or encrypted and the conduct in violation of this chapter is the private viewing of that communication and is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain; or

“(B) a radio communication that is transmitted on frequencies allocated under subpart D of part 74 of the rules of the Federal Communications Commission that is not scrambled or encrypted and the conduct in violation of this chapter is not for

a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain, then the person who engages in such conduct shall be subject to suit by the Federal Government in a court of competent jurisdiction.

“(ii) In an action under this subsection—

“(A) if the violation of this chapter is a first offense for the person under paragraph (a) of subsection (4) and such person has not been found liable in a civil action under section 2520 of this title, the Federal Government shall be entitled to appropriate injunctive relief; and

Infra.

“(B) if the violation of this chapter is a second or subsequent offense under paragraph (a) of subsection (4) or such person has been found liable in any prior civil action under section 2520, the person shall be subject to a mandatory \$500 civil fine.

“(b) The court may use any means within its authority to enforce an injunction issued under paragraph (ii)(A), and shall impose a civil fine of not less than \$500 for each violation of such an injunction.”.

(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 chapter with respect to the interception of electronic communications are the only judicial remedies and sanctions for nonconstitutional violations of this chapter involving such communications.”.

(f) **STATE OF MIND.**—Paragraphs (a), (b), (c), and (d) of subsection (1) of section 2511 of title 18, United States Code, are amended by striking out “willfully” and inserting in lieu thereof “intentionally”.

(2) Subsection (1) of section 2512 of title 18, United States Code, is amended in the matter before paragraph (a) by striking out “willfully” and inserting in lieu thereof “intentionally”.

SEC. 102. REQUIREMENTS FOR CERTAIN DISCLOSURES.

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

“(3)(a) Except as provided in paragraph (b) of this subsection, a person or entity providing an electronic communication service to the public shall not intentionally 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 2517 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.**—Except as provided in section 2511(2)(a)(ii), any person whose wire, oral, or electronic communication is intercepted, disclosed, or intentionally 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.**—(1) In an action under this section, if the conduct in violation of this chapter is the private viewing of a private satellite video communication that is not scrambled or encrypted or if the communication is a radio communication that is transmitted on frequencies allocated under subpart D of part 74 of the rules of the Federal Communications Commission that is not scrambled or encrypted and the conduct is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain, then the court shall assess damages as follows:

“(A) If the person who engaged in that conduct has not previously been enjoined under section 2511(5) and has not been found liable in a prior civil action under this section, the court shall assess the greater of the sum of actual damages suffered by the plaintiff, or statutory damages of not less than \$50 and not more than \$500.

“(B) If, on one prior occasion, the person who engaged in that conduct has been enjoined under section 2511(5) or has been found liable in a civil action under this section, the court shall assess the greater of the sum of actual damages suffered by the plaintiff, or statutory damages of not less than \$100 and not more than \$1000.

“(2) In any other action under this section, the court may assess as damages whichever is the greater of—

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

“(B) 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 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),”;

(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);” and

(F) by—

(i) striking out “or” before “section 351” and inserting in lieu thereof a comma; and

(ii) inserting before the semicolon at the end thereof the following: “, section 831 (relating to prohibited transactions involving nuclear materials), section 33 (relating to destruction of motor vehicles or motor vehicle facilities), or section 1992 (relating to wrecking trains)”;

(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) any violation of section 1679a(c)(2) (relating to destruction of a natural gas pipeline) or subsection (i) or (n) of section 1472 (relating to aircraft piracy) of title 49, of the United States Code;

“(j) any criminal violation of section 2778 of title 22 (relating to the Arms Export Control Act); or”;

“(k) the location of any fugitive from justice from an offense described in this section;

Motor vehicles.
Aircraft and
air carriers.

Energy.
Mail.
Fraud.

Hazardous
materials.
Motor vehicles.

Natural gas.
Aircraft and air
carriers.

22 USC 2751
note.

- (4) by redesignating paragraph (h) as paragraph (l); and
 (5) in paragraph (a) by—

Hazardous
materials.

(A) inserting after “Atomic Energy Act of 1954,” the following: “section 2284 of title 42 of the United States Code (relating to sabotage of nuclear facilities or fuel),”;

(B) striking out “or” after “(relating to treason),”;

(C) inserting before the semicolon at the end thereof the following: “chapter 65 (relating to malicious mischief), chapter 111 (relating to destruction of vessels), or chapter 81 (relating to piracy)”.

18 USC 1361 *et*
seq.

18 USC 2271 *et*
seq.

Maritime
affairs.

18 USC 1651 *et*
seq.

18 USC app.

(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 THIRTY-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 18 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—

"(a) 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

"(b) 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 Assistant Attorney General, or an acting Assistant Attorney General;

"(ii) the application identifies the person believed to be committing the offense and whose communications are to be intercepted and the applicant 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. A provider of wire or electronic communications service that has received an order as provided for in subsection (11)(b) may move the court to modify or quash the order on the ground that its assistance with respect to the interception cannot be performed in a timely or reasonable fashion. The court, upon notice to the government, shall decide such a motion expeditiously."

(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 sections 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".

18 USC 2510
note.

SEC. 107. INTELLIGENCE ACTIVITIES.

(a) **IN GENERAL.**—Nothing in this Act or the amendments made by this Act constitutes authority for the conduct of any intelligence activity.

18 USC 2510 *et*
seq.; *post*,
p. 1860.

(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 Federal law, under procedures approved by the Attorney General of activities intended to—

50 USC 1801
note.

- (1) intercept encrypted or other official communications of United States executive branch entities or United States Government contractors for communications security purposes;
- (2) intercept radio communications transmitted between or among foreign powers or agents of a foreign power as defined by the Foreign Intelligence Surveillance Act of 1978; or
- (3) access an electronic communication system used exclusively by a foreign power or agent of a foreign power as defined by the Foreign Intelligence Surveillance Act of 1978.

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:

18 USC 3117.

“§ 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:

Law
enforcement
and crime.
18 USC 2510 *et*
seq.; *post*,
p. 1859.

“(c) **NOTICE OF CERTAIN ELECTRONIC SURVEILLANCE.**—Whoever, having knowledge that a Federal investigative 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 attempts 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 Surveillance 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

18 USC 2521.

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

28 USC app.

18 USC app.

(b) **CLERICAL AMENDMENT.**—The table of sections at the beginning 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.

18 USC 2510
note.

(a) **IN GENERAL.**—Except as provided in subsection (b) or (c), 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 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 beginning on the date such amendments take effect and ending on the earlier of—

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

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

18 USC 2510 et
seq.

(c) **EFFECTIVE DATE FOR CERTAIN APPROVALS BY JUSTICE DEPARTMENT OFFICIALS.**—Section 104 of this Act shall take effect on the date of enactment 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. Backup preservation.

“2705. Delayed notice.

“2706. Cost reimbursement.

“2707. Civil action.

“2708. Exclusivity of remedies.

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

“2710. Definitions.

18 USC 2701.

“§ 2701. Unlawful access to stored communications

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

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

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

and thereby obtains, alters, or prevents authorized access to a wire or electronic communication while it is in electronic storage in such system 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, 2704 or 2518 of this title.

18 USC 2702.

“§ 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 knowingly 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 knowingly 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 require the disclosure by a provider of electronic communication service of the contents of an electronic communication, that is in electronic storage in an electronic communications system for one hundred and eighty days or less, only pursuant to a warrant issued under the Federal Rules of Criminal Procedure or equivalent State warrant. A governmental entity may require the disclosure by a provider of electronic communications services of the contents of an electronic communication that has been in electronic storage in an electronic communications system for more than one hundred and eighty 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

18 USC 2516,
2511; *infra*.

State and local
governments.
18 USC 2703.

18 USC app.

18 USC app.

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 2705 of this title.

Post, p. 1864.

“(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 COMMUNICATION SERVICE OR REMOTE COMPUTING SERVICE.—(1)(A) Except as provided in subparagraph (B), a provider of electronic communication service or remote computing service may 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) to any person other than a governmental entity.

“(B) A provider of electronic communication service or remote computing service shall 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) to a governmental entity only when the governmental entity—

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

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

“(iii) obtains a court order for such disclosure under subsection (d) of this section; or

“(iv) has the consent of the subscriber or customer to such disclosure.

“(2) A governmental entity receiving records or information under this subsection is not required to provide notice to a subscriber or customer.

Records.

“(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 communication, or the records or other information sought, are relevant to a legitimate law enforcement inquiry. In the case of a State governmental authority, such a court order shall not issue if prohibited by the law of such State. A court issuing an order pursuant to this section, on a motion made promptly by the service provider, may quash or modify such order, if

the information or records requested are unusually voluminous in nature or compliance with such order otherwise would cause an undue burden on such provider.

“(e) **NO CAUSE OF ACTION AGAINST A PROVIDER DISCLOSING INFORMATION UNDER THIS CHAPTER.**—No cause of action shall lie in any court against any provider of wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order, warrant, subpoena, or certification under this chapter.

“§ 2704. **Backup preservation**

18 USC 2704.

“(a) **BACKUP PRESERVATION.**—(1) A governmental entity acting under section 2703(b)(2) may include in its subpoena 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 subscriber or customer of such subpoena or court order, such service provider shall create such backup copy as soon as practicable consistent with its regular business practices and shall confirm to the governmental entity that such backup copy has been made. Such backup copy shall be created within two business days after receipt by the service provider of the subpoena or court order.

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

“(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 no sooner than fourteen 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 fourteen 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 governmental 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 application 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 chapter 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 in the Federal Rules of Civil Procedure.

28 USC app.

“(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 as soon as practicable after the filing of the governmental entity’s response.

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

18 USC 2705.

“§ 2705. Delayed notice

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

“(A) where a court order is sought, include in the application a request, which the court shall grant, for an order delaying the notification required under section 2703(b) of this title for a period not to exceed ninety 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

State and local governments.

“(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 ninety 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 investigation 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 ninety days each may be granted by the court upon application, or by certification by a governmental entity, but only in accordance with subsection (b) of this section.

“(5) Upon expiration of the period of delay of notification under paragraph (1) or (4) of this subsection, the governmental entity shall serve upon, or deliver by registered or first-class 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 customer or subscriber by the service provider named in such process or request was supplied to or requested 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 an equivalent of an investigating agency’s headquarters or regional office, or the chief prosecuting attorney or the first assistant prosecuting attorney or an equivalent of a prosecuting attorney’s headquarters or regional office.

“(b) 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 subsection (a) of this section, 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.

18 USC 2706.

“§ 2706. Cost reimbursement

“(a) **PAYMENT.**—Except as otherwise provided in subsection (c), a governmental entity obtaining the contents of communications, records, or other information under 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).

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

“§ 2707. Civil action

“(a) **CAUSE OF ACTION.**—Except as provided in section 2703(e), any provider of electronic communication service, subscriber, or customer aggrieved by any violation of this chapter in which the conduct constituting the violation is engaged in with a knowing or intentional state of mind may, in a civil action, recover from the person or entity which engaged in that violation such relief as may be appropriate.

“(b) **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.

“§ 2708. Exclusivity of remedies

18 USC 2708.

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

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

18 USC 2709.

“(a) DUTY TO PROVIDE.—A wire or electronic communication service provider shall comply with a request for subscriber information and toll billing records information, or electronic communication transactional records in its custody or possession 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 wire or electronic communication service 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 wire or electronic communication 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.

18 USC 2710.

“§ 2710. 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”.

18 USC 2701 note.

SEC. 202. EFFECTIVE DATE.

This title and the amendments made by this title shall take effect ninety 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 AND TRAP AND TRACE DEVICES

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 AND TRAP AND TRACE DEVICES

“Sec.

“3121. General prohibition on pen register and trap and trace device use; exception.

“3122. Application for an order for a pen register or a trap and trace device.

“3123. Issuance of an order for a pen register or a trap or trace device.

“3124. Assistance in installation and use of a pen register or a trap and trace device.

“3125. Reports concerning pen registers and trap and trace devices.

“3126. Definitions for chapter.

18 USC 3121.

“§ 3121. General prohibition on pen register and trap and trace device use; exception

“(a) IN GENERAL.—Except as provided in this section, no person may install or use a pen register or a trap and trace device 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 or a trap and trace device by a provider of electronic or wire communication service—

“(1) relating to the operation, maintenance, and testing of a wire or electronic 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 (3) where the consent of the user of that service has been obtained.

“(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 or a trap and trace device

18 USC 3122.

“(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 or a trap and trace device under this chapter, in writing under oath or equivalent affirmation, to a court of competent jurisdiction.

“(2) Unless prohibited by State law, 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 or a trap and trace device under this chapter, in writing under oath or equivalent affirmation, to a court of competent jurisdiction of such State.

State and local governments.

“(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 or a trap and trace device

“(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 or a trap and trace device 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 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 or trap and trace device 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 or trap and trace device is to be attached and, in the case of a trap and trace device, the geographic limits of the trap and trace order; and

“(D) a statement of the offense to which the information likely to be obtained by the pen register or trap and trace device 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 or trap and trace device under section 3124 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 or a trap and trace device for a period not to exceed sixty 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 sixty days.

“(d) **NONDISCLOSURE OF EXISTENCE OF PEN REGISTER OR A TRAP AND TRACE DEVICE.**—An order authorizing or approving the installation and use of a pen register or a trap and trace device 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 or a trap and trace device 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 trap and trace device or the existence of the investigation to the listed subscriber, or to any other person, unless or until otherwise ordered by the court.

18 USC 3124.

“§ 3124. Assistance in installation and use of a pen register or a trap and trace device

“(a) **PEN REGISTERS.**—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 or electronic 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 interference 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) **TRAP AND TRACE DEVICE.**—Upon the request of an attorney for the Government or an officer of a law enforcement agency authorized to receive the results of a trap and trace device under this chapter, a provider of a wire or electronic communication service, landlord, custodian, or other person shall install such device forthwith on the appropriate line and shall furnish such investigative or law enforcement officer all additional information, facilities and technical assistance including installation and operation of the

device unobtrusively and with a minimum of interference 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 installation and assistance is directed by a court order as provided in section 3123(b)(2) of this title. Unless otherwise ordered by the court, the results of the trap and trace device shall be furnished to the officer of a law enforcement agency, designated in the court, at reasonable intervals during regular business hours for the duration of the order.

“(c) **COMPENSATION.**—A provider of a wire or electronic communication service, landlord, custodian, or other person who furnishes facilities or technical assistance pursuant to this section shall be reasonably compensated for such reasonable expenses incurred in providing such facilities and assistance.

“(d) **NO CAUSE OF ACTION AGAINST A PROVIDER DISCLOSING INFORMATION UNDER THIS CHAPTER.**—No cause of action shall lie in any court against any provider of a wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order under this chapter.

“(e) **DEFENSE.**—A good faith reliance on a court order, a legislative authorization, or a statutory authorization is a complete defense against any civil or criminal action brought under this chapter or any other law.

“§ 3125. **Reports concerning pen registers and trap and trace devices** 18 USC 3125.

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

“§ 3126. **Definitions for chapter**

“As used in this chapter—

“(1) the terms ‘wire communication’, ‘electronic communication’, and ‘electronic communication service’ have the meanings set forth for such terms in section 2510 of this title;

“(2) 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 or a trap and trace device;

“(3) the term ‘pen register’ means a device which records or decodes electronic or other impulses which identify the numbers dialed or otherwise transmitted on the telephone line to which such device is attached, but such term does not include any device used by a provider or customer of a wire or electronic communication service for billing, or recording as an incident to billing, for communications services provided by such provider or any device used by a provider or customer of a wire communication service for cost accounting or other like purposes in the ordinary course of its business;

“(4) the term ‘trap and trace device’ means a device which captures the incoming electronic or other impulses which identify the originating number of an instrument or device from which a wire or electronic communication was transmitted;

“(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 and Trap and Trace Devices 3121”.

18 USC 3121
note.

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 ninety 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 or trap and trace device 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.

SEC. 303. INTERFERENCE WITH THE OPERATION OF A SATELLITE.

(a) OFFENSE.—Chapter 65 of title 18, United States Code, is amended by inserting at the end the following:

18 USC 1367.

“§ 1367. Interference with the operation of a satellite

“(a) Whoever, without the authority of the satellite operator, intentionally or maliciously interferes with the authorized operation of a communications or weather satellite or obstructs or hinders any satellite transmission shall be fined in accordance with this title or imprisoned not more than ten years or both.

“(b) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency or of an intelligence agency of the United States.”

(b) **CONFORMING AMENDMENT.**—The table of sections for chapter 65 of title 18, United States Code, is amended by adding at the end the following new item:

“1367. Interference with the operation of a satellite.”.

Approved October 21, 1986.

LEGISLATIVE HISTORY—H.R. 4952 (S. 2575):

HOUSE REPORTS: No. 99-647 (Comm. on the Judiciary).

CONGRESSIONAL RECORD, Vol. 132 (1986):

June 23, considered and passed House.

Oct. 1, considered and passed Senate, amended.

Oct. 2, House concurred in Senate amendments.