

Calendar No. 1064

99TH CONGRESS
2D SESSION

S. 2575

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 SENATE OF THE UNITED STATES

JUNE 19 (legislative day, JUNE 16), 1986

Mr. LEAHY (for himself, Mr. MATHIAS, Mr. THURMOND, Mr. ANDREWS, Mr. STAFFORD, and Mr. DECONCINI) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

SEPTEMBER 27 (legislative day, SEPTEMBER 24), 1986

Reported by Mr. THURMOND, with an amendment

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

OCTOBER 1 (legislative day, SEPTEMBER 24), 1986

Referred to the Committee on Commerce, Science, and Transportation for a period of twenty-four hours

OCTOBER 2 (legislative day, SEPTEMBER 24), 1986

Committee discharged and placed on the calendar pursuant to the order of October 1, 1986

A BILL

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

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Electronic Communica-
3 tions Privacy Act of 1986”.

4 **TITLE I—INTERCEPTION OF COMMUNICA-**
5 **TIONS AND RELATED MATTERS**

6 **SEC. 101. FEDERAL PENALTIES FOR THE INTERCEPTION OF**
7 **COMMUNICATIONS.**

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

10 (A) by striking out “any communication” and in-
11 sserting “any aural transfer” in lieu thereof;

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

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

15 (D) by inserting before the semicolon at the end
16 the following: “or communications affecting interstate
17 or foreign commerce, but such term does not include
18 the radio portion of a cordless telephone communica-
19 tion that is transmitted between the cordless telephone
20 handset and the base unit”.

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

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

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

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

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

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

8 (A) by striking out “and” at the end of paragraph
9 (10);

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

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

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

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

23 “(B) any wire or oral communication;

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

1 ~~“(D) any communication from a tracking~~
 2 ~~device (as defined in section 3-117 of this title);~~

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

4 ~~“(A) uses an electronic communication serv-~~
 5 ~~ice; and~~

6 ~~“(B) is duly authorized by the provider of~~
 7 ~~such service to engage in such use;~~

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

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

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

20 ~~“(A) scrambled or encrypted;~~

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

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

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

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

15 “(17) ‘electronic storage’ means—

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

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

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

1 (b) EXCEPTIONS WITH RESPECT TO ELECTRONIC
2 COMMUNICATIONS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (e) TECHNICAL AND CONFORMING AMENDMENTS.—(1)

21 Chapter 119 of title 18, United States Code, is amended—

22 (A) in each of sections 2510(5), 2510(8),
 23 2510(9)(b), 2510(11), and 2511 through 2519 (except
 24 sections 2516(1) and 2518(10)), by striking out “wire
 25 or oral” each place it appears (including in any section

1 heading) and inserting “wire, oral, or electronic” in
2 lieu thereof; and

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

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

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

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

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

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

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

24 (C) by striking out “: *Provided*, That said commu-
25 nication common carriers” and inserting “, except that

1 a provider of wire communication service to the
2 public'' in lieu thereof.

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

5 (A) by striking out "communication common car-
6 riers'' and inserting "providers of wire or electronic
7 communication service'' in lieu thereof;

8 (B) by striking out "communication common carri-
9 er'' each place it appears and inserting "provider of
10 wire or electronic communication service'' in lieu
11 thereof; and

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

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

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

20 (B) by striking out "a communications common
21 carrier'' the second place it appears and inserting
22 "such a provider'' in lieu thereof; and

23 (C) by striking out "communications common car-
24 rier's business'' and inserting "business of providing

1 that wire or electronic communication service” in lieu
2 thereof.

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

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

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

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

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

1 “(i) if the communication is not the radio portion
2 of a cellular telephone communication, the offender
3 shall be fined under this title or imprisoned not more
4 than one year, or both; and

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

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

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

20 “(e) The remedies and sanctions described in this chap-
21 ter with respect to the interception of electronic communica-
22 tions are the only judicial remedies and sanctions for noneon-
23 stitutional violations of this chapter involving such communi-
24 cations.”.

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

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

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

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

15 “(i) as otherwise authorized in section 2511(2)(a)
16 or 2517 of this title;

17 “(ii) with the lawful consent of the originator or
18 any addressee or intended recipient of such communi-
19 cation;

20 “(iii) to a person employed or authorized, or
21 whose facilities are used, to forward such communica-
22 tion to its destination; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (1) in paragraph (c)—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (1) intercept encrypted or other official communi-
13 cations of United States executive branch entities or
14 United States Government contractors for communica-
15 tions security purposes;

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

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

24 **SEC. 108. MOBILE TRACKING DEVICES.**

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

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

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

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

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

“3117. Mobile tracking devices.”.

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

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

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

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

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

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

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

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

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

16 (a) **IN GENERAL.**—Chapter 119 of title 18, United
17 States Code, is amended by adding at the end the following:
18 **“§ 2521. Injunction against illegal interception**

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

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

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

“2521. Injunction against illegal interception.”.

12 **SEC. 111. EFFECTIVE DATE.**

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

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

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

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

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

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

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

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

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

“Sec.

“2701. Unlawful access to stored communications.

“2702. Disclosure of contents.

“2703. Requirements for governmental access.

“2704. 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 **“§ 2701. Unlawful access to stored communications**

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

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

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

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

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

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

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

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

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

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

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

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

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

8 **“§ 2702. Disclosure of contents**

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

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

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

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

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

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

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

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

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

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

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

24 “(6) to a law enforcement agency, if such con-
25 tents—

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

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

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

6 “(a) CONTENTS OF ELECTRONIC COMMUNICATIONS IN
7 ELECTRONIC STORAGE.—A governmental entity may re-
8 quire the disclosure by a provider of electronic communica-
9 tion service of the contents of a non-voice wire communica-
10 tion or an electronic communication, that is in electronic stor-
11 age in an electronic communications system for one hundred
12 and eighty days or less, only pursuant to a warrant issued
13 under the Federal Rules of Criminal Procedure or equivalent
14 State warrant. A governmental entity may require the diselo-
15 sure by a provider of electronic communications services of
16 the contents of an electronic communication that has been in
17 electronic storage in an electronic communications system for
18 more than one hundred and eighty days by the means avail-
19 able under subsection (b) of this section.

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

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

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

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

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

13 except that delayed notice may be given pursuant to
14 section 2705 of this title.

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

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

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

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

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

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

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

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

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

1 want to a legitimate law enforcement inquiry. In the case of a
2 State governmental authority, such a court order shall not
3 issue if prohibited by the law of such State.

4 **“§ 2704. Backup preservation**

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

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

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

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

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

4 ~~“(4) The service provider shall release such backup copy~~
5 ~~to the requesting governmental entity no sooner than four-~~
6 ~~teen days after the governmental entity’s notice to the sub-~~
7 ~~scriber or customer if such service provider—~~

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

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

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

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

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

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

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

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

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

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

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

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

1 **“§ 2705. Delayed notice**

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

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

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

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

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

25 **“(B) flight from prosecution;**

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

1 ~~“(D) intimidation of potential witnesses; or~~

2 ~~“(E) otherwise seriously jeopardizing an investiga-~~
 3 ~~tion or unduly delaying a trial.~~

4 ~~“(3) The governmental entity shall maintain a true copy~~
 5 ~~of certification under paragraph (1)(B).~~

6 ~~“(4) Extensions of the delay of notification provided in~~
 7 ~~section 2702 of up to ninety days each may be granted by the~~
 8 ~~court upon application, or by certification by a governmental~~
 9 ~~entity, but only in accordance with subsection (b) or (c) of this~~
 10 ~~section.~~

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

16 ~~“(A) states with reasonable specificity the nature~~
 17 ~~of the law enforcement inquiry; and~~

18 ~~“(B) informs such customer or subscriber—~~

19 ~~“(i) that information maintained for such cus-~~
 20 ~~tomers or subscribers by the service provider named~~
 21 ~~in such process or request was supplied to or re-~~
 22 ~~quested by that governmental authority and the~~
 23 ~~date on which the supplying or request took~~
 24 ~~place;~~

1 “(ii) that notification of such customer or
2 subscriber was delayed;

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

6 “(iv) which provision of this chapter allowed
7 such delay.

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

15 “(b) PRECLUSION OF NOTICE TO SUBJECT OF GOV-
16 ERNMENTAL ACCESS.—A governmental entity acting under
17 section 2703, when it is not required to notify the subscriber
18 or customer under section 2703(b)(1), or to the extent that it
19 may delay such notice pursuant to subsection (a) of this sec-
20 tion, may apply to a court for an order commanding a provid-
21 er of electronic communications service or remote computing
22 service to whom a warrant, subpoena, or court order is di-
23 rected, for such period as the court deems appropriate, not to
24 notify any other person of the existence of the warrant, sub-
25 poena, or court order. The court shall enter such an order if

1 it determines that there is reason to believe that notification
 2 of the existence of the warrant, subpoena, or court order will
 3 result in—

4 “(1) endangering the life or physical safety of an
 5 individual;

6 “(2) flight from prosecution;

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

8 “(4) intimidation of potential witnesses; or

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

11 **“§ 2706. Cost reimbursement**

12 “(a) PAYMENT.—Except as otherwise provided in sub-
 13 section (e), a governmental entity obtaining the contents of
 14 communications, records, or other information under section
 15 2702, 2703, or 2704 of this title shall pay to the person or
 16 entity assembling or providing such information a fee for re-
 17 imbursement for such costs as are reasonably necessary and
 18 which have been directly incurred in searching for, assem-
 19 bling, reproducing, or otherwise providing such information.
 20 Such reimbursable costs shall include any costs due to neces-
 21 sary disruption of normal operations of any electronic com-
 22 munication service or remote computing service in which
 23 such information may be stored.

24 “(b) AMOUNT.—The amount of the fee provided by sub-
 25 section (a) shall be as mutually agreed by the governmental

1 entity and the person or entity providing the information, or,
2 in the absence of agreement, shall be as determined by the
3 court which issued the order for production of such informa-
4 tion (or the court before which a criminal prosecution relating
5 to such information would be brought, if no court order was
6 issued for production of the information).

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

16 **“§ 2707. Civil action**

17 “(a) **CAUSE OF ACTION.**—Any provider of electronic
18 communication service, subscriber, or customer aggrieved by
19 any violation of this chapter in which the conduct constitut-
20 ing the violation is engaged in with a knowing or intentional
21 state of mind may, in a civil action, recover from the person
22 or entity which engaged in that violation such relief as may
23 be appropriate.

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

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

3 ~~“(2) damages under subsection (c); and~~

4 ~~“(3) a reasonable attorney’s fee and other litiga-~~
5 ~~tion costs reasonably incurred.~~

6 ~~“(c) DAMAGES.—The court may assess as damages in a~~
7 ~~civil action under this section the sum of the actual damages~~
8 ~~suffered by the plaintiff and any profits made by the violator~~
9 ~~as a result of the violation, but in no case shall a person~~
10 ~~entitled to recover receive less than the sum of \$1,000.~~

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

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

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

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

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

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

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

3 “(e) PROHIBITION OF CERTAIN DISCLOSURE.—No
4 communications common carrier or service provider, or offi-
5 cer, employee, or agent thereof, shall disclose to any person
6 that the Federal Bureau of Investigation has sought or ob-
7 tained access to information or records under this section.

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

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

24 “§ 2710. Definitions for chapter

25 “As used in this chapter—

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

4 “(2) the term ‘remote computing service’ means
5 the provision to the public of computer storage or pro-
6 cessing services by means of an electronic communica-
7 tions system.”.

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

**“21. Stored Wire and Electronic Communications and Trans-
 actional Records Access 2701”.**

11 **SEC. 202. EFFECTIVE DATE.**

12 This title and the amendments made by this title shall
13 take effect ninety days after the date of the enactment of this
14 Act and shall, in the case of conduct pursuant to a court
15 order or extension, apply only with respect to court orders or
16 extensions made after this title takes effect.

17 **TITLE III—PEN REGISTERS**

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

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

22 **“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.

1 **“§ 3121. General prohibition on pen register use; exception**

2 “(a) **IN GENERAL.**—Except as provided in this section,
3 no person may install or use a pen register without first ob-
4 taining a court order under section 3123 of this title or under
5 the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.
6 1801 et seq.).

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

10 “(1) relating to the operation, maintenance, and
11 testing of a wire or electronic communication service
12 or to the protection of the rights or property of such
13 provider, or to the protection of users of that service
14 from abuse of service or unlawful use of service; or

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

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

1 **“§ 3122. Application for an order for a pen register**

2 “(a) APPLICATION.—(1) An attorney for the Govern-
3 ment may make application for an order or an extension of an
4 order under section 3123 of this title authorizing or approv-
5 ing the installation and use of a pen register under this chap-
6 ter, in writing under oath or equivalent affirmation, to a court
7 of competent jurisdiction.

8 “(2) Unless prohibited by State law, a State investiga-
9 tive or law enforcement officer may make application for an
10 order or an extension of an order under section 3123 of this
11 title authorizing or approving the installation and use of a
12 pen register under this chapter, in writing under oath or
13 equivalent affirmation, to a court of competent jurisdiction of
14 such State.

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

17 “(1) the identity of the attorney for the Govern-
18 ment or the State law enforcement or investigative of-
19 ficer making the application and the identity of the law
20 enforcement agency conducting the investigation; and

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

24 **“§ 3123. Issuance of an order for a pen register**

25 “(a) IN GENERAL.—Upon an application made under
26 section 3122 of this title, the court shall enter an ex parte

1 order authorizing the installation and use of a pen register
 2 within the jurisdiction of the court if the court finds that the
 3 attorney for the government or the State law enforcement or
 4 investigative officer has certified to the court that the infor-
 5 mation likely to be obtained by such installation and use is
 6 relevant to an ongoing criminal investigation.

7 “(b) CONTENTS OF ORDER.—An order issued under
 8 this section—

9 “(1) shall specify—

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

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

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

19 “(D) a statement of the offense to which the
 20 information likely to be obtained by the pen regis-
 21 ter relates; and

22 “(2) shall direct, upon the request of the appli-
 23 cant, the furnishing of information, facilities, and tech-
 24 nical assistance necessary to accomplish the installation
 25 of the pen register under section 3124 of this title.

1 “(e) **TIME PERIOD AND EXTENSIONS.**—(1) An order
2 issued under this section shall authorize the installation and
3 use of a pen register for a period not to exceed sixty days.

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

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

12 “(1) the order be sealed until otherwise ordered
13 by the court; and

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

21 **“§ 3124. Assistance in installation and use of a pen regis-**
22 **ter**

23 “(a) **IN GENERAL.**—Upon the request of an attorney for
24 the government or an officer of a law enforcement agency
25 authorized to install and use a pen register under this chap-

1 ter, a provider of wire communication service, landlord, cus-
 2 todian, or other person shall furnish such investigative or law
 3 enforcement officer forthwith all information, facilities, and
 4 technical assistance necessary to accomplish the installation
 5 of the pen register unobtrusively and with a minimum of in-
 6 terference with the services that the person so ordered by the
 7 court accords the party with respect to whom the installation
 8 and use is to take place, if such assistance is directed by a
 9 court order as provided in section 3123(b)(2) of this title.

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

15 **“§ 3125. Reports concerning pen registers**

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

19 **“§ 3126. Definitions for chapter**

20 “As used in this chapter—

21 “(1) the term ‘communications common carrier’
 22 has the meaning set forth for the term ‘common carri-
 23 er’ in section 3(h) of the Communications Act of 1934
 24 (47 U.S.C. 153(h));

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

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

5 “(A) a district court of the United States (in-
6 cluding a magistrate of such a court) or a United
7 States Court of Appeals; or

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

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

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

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

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

“206. Pen Registers..... 2121”.

5 **SEC. 302. EFFECTIVE DATE.**

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

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

19 (1) the day before the date of the taking effect of
 20 changes in State law required in order to make orders
 21 or installations under Federal law as amended by this
 22 title; or

23 (2) the date two years after the date of the enact-
 24 ment of this Act.

1 **SECTION 1. SHORT TITLE.**

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

4 **TITLE I—INTERCEPTION OF**
5 **COMMUNICATIONS AND RELATED MATTERS**

6 **SEC. 101. FEDERAL PENALTIES FOR THE INTERCEPTION OF**
7 **COMMUNICATIONS.**

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

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

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

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

15 (D) *by inserting before the semicolon at the end*
16 *the following: “or communications affecting interstate*
17 *or foreign commerce and such term includes any elec-*
18 *tronic storage of such communication, but such term*
19 *does not include the radio portion of a cordless tele-*
20 *phone communication that is transmitted between the*
21 *cordless telephone handset and the base unit”.*

22 (2) *Section 2510(2) of title 18, United States Code, is*
23 *amended by inserting before the semicolon at the end the fol-*
24 *lowing: “, but such term does not include any electronic*
25 *communication”.*

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

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

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

5 (4) *Section 2510(5) of title 18, United States Code, is*
6 *amended in clause (a)(i) by inserting before the semicolon the*
7 *following: “or furnished by such subscriber or user for con-*
8 *nection to the facilities of such service and used in the ordi-*
9 *nary course of its business”.*

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

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

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

16 (10);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 “(A) scrambled or encrypted;

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

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

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

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

23 “(17) ‘electronic storage’ means—

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

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

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

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

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

14 (A) by striking out “violation of this sub-
15 paragraph by a communication common carrier or
16 an officer, employee, or agent thereof” and insert-
17 ing in lieu thereof “such disclosure”;

18 (B) by striking out “the carrier” and insert-
19 ing in lieu thereof “such person”; and

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

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

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

6 (A) by inserting “or chapter 121” after “this
7 chapter”; and

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

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

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

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

21 “(ii) to intercept any radio communication which
22 is transmitted—

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

1 “(II) by any governmental, law enforcement,
2 civil defense, private land mobile, or public safety
3 communications system, including police and fire,
4 readily accessible to the general public;

5 “(III) by a station operating on an author-
6 ized frequency within the bands allocated to the
7 amateur, citizens band, or general mobile radio
8 services; or

9 “(IV) by any marine or aeronautical com-
10 munications system;

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

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

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

17 “(iv) to intercept any wire or electronic communi-
18 cation the transmission of which is causing harmful
19 interference to any lawfully operating station or con-
20 sumer electronic equipment, to the extent necessary to
21 identify the source of such interference; or

22 “(v) for other users of the same frequency to inter-
23 cept any radio communication made through a system
24 that utilizes frequencies monitored by individuals en-

1 gaged in the provision or the use of such system, if
2 such communication is not scrambled or encrypted.

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

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

8 “(ii) for a provider of electronic communication
9 service to record the fact that a wire or electronic com-
10 munication was initiated or completed in order to pro-
11 tect such provider, another provider furnishing service
12 toward the completion of the wire or electronic commu-
13 nication, or a user of that service, from fraudulent, un-
14 lawful or abusive use of such service.”.

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

16 (1) Chapter 119 of title 18, United States Code, is
17 amended—

18 (A) in each of sections 2510(5), 2510(8),
19 2510(9)(b), 2510(11), and 2511 through 2519 (except
20 sections 2515, 2516(1) and 2518(10)), by striking out
21 “wire or oral” each place it appears (including in any
22 section heading) and inserting “wire, oral, or electron-
23 ic” in lieu thereof; and

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

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

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

8 (4) *Section 2510(5)(a) of title 18, United States Code,*
9 *is amended by striking out “communications common carri-*
10 *er” and inserting “provider of wire or electronic communica-*
11 *tion service” in lieu thereof.*

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

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

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

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

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

1 (A) by striking out “communication common car-
2 riers” and inserting “providers of wire or electronic
3 communication service” in lieu thereof;

4 (B) by striking out “communication common car-
5 rier” each place it appears and inserting “provider of
6 wire or electronic communication service” in lieu there-
7 of; and

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

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

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

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

19 (C) by striking out “communications common
20 carrier’s business” and inserting “business of provid-
21 ing that wire or electronic communication service” in
22 lieu thereof.

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

1 (A) *by striking out “communication common car-*
2 *rier” in both places it appears and inserting “provider*
3 *of wire or electronic communication service” in lieu*
4 *thereof; and*

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

7 (d) *PENALTIES MODIFICATION.—(1) Section 2511(1)*
8 *of title 18, United States Code, is amended by striking out*
9 *“shall be” and all that follows through “or both” and insert-*
10 *ing in lieu thereof “shall be punished as provided in subsec-*
11 *tion (4) or shall be subject to suit as provided in subsection*
12 *(5)”.*

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

16 “(4)(a) *Except as provided in paragraph (b) of this sub-*
17 *section or in subsection (5), whoever violates subsection (1) of*
18 *this section shall be fined under this title or imprisoned not*
19 *more than five years, or both.*

20 “(b) *If the offense is a first offense under paragraph (a)*
21 *of this subsection and is not for a tortious or illegal purpose*
22 *or for purposes of direct or indirect commercial advantage or*
23 *private commercial gain, and the wire or electronic communi-*
24 *cation with respect to which the offense under paragraph (a)*

1 *is a radio communication that is not scrambled or encrypted,*
2 *then—*

3 “(i) *if the communication is not the radio portion*
4 *of a cellular telephone communication, a public land*
5 *mobile radio service communication or a paging service*
6 *communication, and the conduct is not that described*
7 *in subsection (5), the offender shall be fined under this*
8 *title or imprisoned not more than one year, or both;*
9 *and*

10 “(ii) *if the communication is the radio portion of*
11 *a cellular telephone communication, a public land*
12 *mobile radio service communication or a paging service*
13 *communication, the offender shall be fined not more*
14 *than \$500.*

15 “(c) *Conduct otherwise an offense under this subsection*
16 *that consists of or relates to the interception of a satellite*
17 *transmission that is not encrypted or scrambled and that is*
18 *transmitted—*

19 “(i) *to a broadcasting station for purposes of re-*
20 *transmission to the general public; or*

21 “(ii) *as an audio subcarrier intended for redistri-*
22 *bution to facilities open to the public, but not including*
23 *data transmissions or telephone calls,*

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

4 “(5)(a)(i) *If the communication is—*

5 “(A) *a private satellite video communication that*
6 *is not scrambled or encrypted and the conduct in viola-*
7 *tion of this chapter is the private viewing of that com-*
8 *munication and is not for a tortious or illegal purpose*
9 *or for purposes of direct or indirect commercial advan-*
10 *tage or private commercial gain; or*

11 “(B) *a radio communication that is transmitted*
12 *on frequencies allocated under subpart D of part 74 of*
13 *the rules of the Federal Communications Commission*
14 *that is not scrambled or encrypted and the conduct in*
15 *violation of this chapter is not for a tortious or illegal*
16 *purpose or for purposes of direct or indirect commercial*
17 *advantage or private commercial gain,*

18 *then the person who engages in such conduct shall be subject*
19 *to suit by the Federal Government in a court of competent*
20 *jurisdiction.*

21 “(ii) *In an action under this subsection—*

22 “(A) *if the violation of this chapter is a first of-*
23 *fense for the person under paragraph (a) of subsection*
24 *(4) and such person has not been found liable in a*
25 *civil action under section 2520 of this title, the Federal*

1 *Government shall be entitled to appropriate injunctive*
2 *relief; and*

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

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

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

16 *“(c) The remedies and sanctions described in this chap-*
17 *ter with respect to the interception of electronic communica-*
18 *tions are the only judicial remedies and sanctions for noncon-*
19 *stitutional violations of this chapter involving such communi-*
20 *cations.”.*

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

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

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

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

8 “(3)(a) *Except as provided in paragraph (b) of this sub-*
9 *section, a person or entity providing an electronic communi-*
10 *cation service to the public shall not intentionally divulge the*
11 *contents of any communication (other than one to such*
12 *person or entity, or an agent thereof) while in transmission*
13 *on that service to any person or entity other than an address-*
14 *ee or intended recipient of such communication or an agent of*
15 *such addressee or intended recipient.*

16 “(b) *A person or entity providing electronic communica-*
17 *tion service to the public may divulge the contents of any*
18 *such communication—*

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

21 “(ii) *with the lawful consent of the originator or*
22 *any addressee or intended recipient of such communi-*
23 *cation;*

1 “(iii) to a person employed or authorized, or
2 whose facilities are used, to forward such communica-
3 tion to its destination; or

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

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

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

11 **“§ 2520. Recovery of civil damages authorized**

12 “(a) *IN GENERAL.*—Except as provided in section
13 2511(2)(a)(ii), any person whose wire, oral, or electronic
14 communication is intercepted, disclosed, or intentionally used
15 in violation of this chapter may in a civil action recover from
16 the person or entity which engaged in that violation such
17 relief as may be appropriate.

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

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

22 “(2) damages under subsection (c) and punitive
23 damages in appropriate cases; and

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

1 “(c) *COMPUTATION OF DAMAGES.—(1) In an action*
2 *under this section, if the conduct in violation of this chapter*
3 *is the private viewing of a private satellite video communica-*
4 *tion that is not scrambled or encrypted or if the communica-*
5 *tion is a radio communication that is transmitted on frequen-*
6 *cies allocated under subpart D of part 74 of the rules of the*
7 *Federal Communications Commission that is not scrambled*
8 *or encrypted and the conduct is not for a tortious or illegal*
9 *purpose or for purposes of direct or indirect commercial ad-*
10 *vantage or private commercial gain, then the court shall*
11 *assess damages as follows:*

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

19 “(B) *If, on one prior occasion, the person who en-*
20 *gaged in that conduct has been enjoined under section*
21 *2511(5) or has been found liable in a civil action*
22 *under this section, the court shall assess the greater of*
23 *the sum of actual damages suffered by the plaintiff, or*
24 *statutory damages of not less than \$100 and not more*
25 *than \$1000.*

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

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

6 “(B) *statutory damages of whichever is the great-*
7 *er of \$100 a day for each day of violation or \$10,000.*

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

9 “(1) *a court warrant or order, a grand jury sub-*
10 *poena, a legislative authorization, or a statutory*
11 *authorization;*

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

14 “(3) *a good faith determination that section*
15 *2511(3) of this title permitted the conduct complained*
16 *of;*

17 *is a complete defense against any civil or criminal action*
18 *brought under this chapter or any other law.*

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

1 **SEC. 104. CERTAIN APPROVALS BY JUSTICE DEPARTMENT**
2 **OFFICIALS.**

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

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

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

13 (1) *in paragraph (c)—*

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

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

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

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

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

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

17 (F) by—

18 (i) striking out “or” before “*section*
19 *351”* and inserting in lieu thereof a comma;
20 and

21 (ii) inserting before the semicolon at the
22 end thereof the following: “, *section 831 (re-*
23 *lating to prohibited transactions involving*
24 *nuclear materials), section 33 (relating to de-*
25 *struction of motor vehicles or motor vehicle*

1 *facilities), or section 1992 (relating to wreck-*
2 *ing trains)”;*

3 *(2) by striking out “or” at the end of paragraph*
4 *(g);*

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

6 *“(h) any felony violation of sections 2511 and 2512*
7 *(relating to interception and disclosure of certain communica-*
8 *tions and to certain intercepting devices) of this title;*

9 *“(i) any violation of section 1679a(c)(2) (relating to de-*
10 *struction of a natural gas pipeline) or subsection (i) or (n) of*
11 *section 1472 (relating to aircraft piracy) of title 49, of the*
12 *United States Code;*

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

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

17 *(4) by redesignating paragraph (h) as paragraph*
18 *(l); and*

19 *(5) in paragraph (a) by—*

20 *(A) inserting after “Atomic Energy Act of*
21 *1954),” the following: “section 2284 of title 42 of*
22 *the United States Code (relating to sabotage of*
23 *nuclear facilities or fuel),”;*

24 *(B) striking out “or” after “(relating to trea-*
25 *son),”; and*

1 (C) inserting before the semicolon at the end
2 thereof the following: “chapter 65 (relating to ma-
3 licious mischief), chapter 111 (relating to destruc-
4 tion of vessels), or chapter 81 (relating to
5 piracy)”.

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

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

19 **SEC. 106. APPLICATIONS, ORDERS, AND IMPLEMENTATION OF**
20 **ORDERS.**

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

1 *“within the territorial jurisdiction of the court in which the*
2 *judge is sitting”.*

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

8 (c) *COMMENCEMENT OF THIRTY-DAY PERIOD AND*
9 *POSTPONEMENT OF MINIMIZATION.*—Section 2518(5) of
10 *title 18 of the United States Code is amended—*

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

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

1 enforcement officer authorized to conduct the inter-
2 ception.”.

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

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

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

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

17 “(a) *in the case of an application with respect to*
18 *the interception of an oral communication—*

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

1 “(i) the application contains a full and com-
2 plete statement as to why such specification is not
3 practical and identifies the person committing the
4 offense and whose communications are to be inter-
5 cepted; and

6 “(iii) the judge finds that such specification
7 is not practical; and

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

10 “(i) the application is by a Federal investi-
11 gative or law enforcement officer and is approved
12 by the Attorney General, the Deputy Attorney
13 General, the Associate Attorney General, an As-
14 sistant Attorney General, or an acting Assistant
15 Attorney General;

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

22 “(iii) the judge finds that such purpose has
23 been adequately shown.

24 “(12) An interception of a communication under an
25 order with respect to which the requirements of subsections

1 *(1)(b)(ii) and (3)(d) of this section do not apply by reason of*
 2 *subsection (11) shall not begin until the facilities from which,*
 3 *or the place where, the communication is to be intercepted is*
 4 *ascertained by the person implementing the interception*
 5 *order. A provider of wire or electronic communications serv-*
 6 *ice that has received an order as provided for in subsection*
 7 *(11)(b) may move the court to modify or quash the order on*
 8 *the ground that its assistance with respect to the interception*
 9 *cannot be performed in a timely or reasonable fashion. The*
 10 *court, upon notice to the government, shall decide such a*
 11 *motion expeditiously.”.*

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

18 **SEC. 107. INTELLIGENCE ACTIVITIES.**

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

22 *(b) CERTAIN ACTIVITIES UNDER PROCEDURES AP-*
 23 *PROVED BY THE ATTORNEY GENERAL.—Nothing in chap-*
 24 *ter 119 or chapter 121 of title 18, United States Code, shall*
 25 *affect the conduct, by officers or employees of the United*

1 *States Government in accordance with other applicable Fed-*
2 *eral law, under procedures approved by the Attorney General*
3 *of activities intended to—*

4 (1) *intercept encrypted or other official communi-*
5 *cations of United States executive branch entities or*
6 *United States Government contractors for communica-*
7 *tions security purposes;*

8 (2) *intercept radio communications transmitted*
9 *between or among foreign powers or agents of a foreign*
10 *power as defined by the Foreign Intelligence Surveil-*
11 *lance Act of 1978; or*

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

16 **SEC. 108. MOBILE TRACKING DEVICES.**

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

19 **“§ 3117. Mobile tracking devices**

20 “(a) *IN GENERAL.—If a court is empowered to issue a*
21 *warrant or other order for the installation of a mobile track-*
22 *ing device, such order may authorize the use of that device*
23 *within the jurisdiction of the court, and outside that jurisdic-*
24 *tion if the device is installed in that jurisdiction.*”

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

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

“3117. *Mobile tracking devices.*”.

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

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

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

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

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

17 “(c) *NOTICE OF CERTAIN ELECTRONIC SURVEIL-*
18 *LANCE.*—Whoever, having knowledge that a Federal investi-
19 gative or law enforcement officer has been authorized or has
20 applied for authorization under chapter 119 to intercept a
21 wire, oral, or electronic communication, in order to obstruct,
22 impede, or prevent such interception, gives notice or attempts
23 to give notice of the possible interception to any person shall
24 be fined under this title or imprisoned not more than five
25 years, or both.

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

9 **SEC. 110. INJUNCTIVE REMEDY.**

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

12 ***“§ 2521. Injunction against illegal interception***

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

1 *been returned against the respondent, discovery is governed*
 2 *by the Federal Rules of Criminal Procedure.”*

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

“2521. Injunction against illegal interception.”

6 **SEC. 111. EFFECTIVE DATE.**

7 **(a) IN GENERAL.**—*Except as provided in subsection*
 8 *(b) or (c), this title and the amendments made by this title*
 9 *shall take effect 90 days after the date of the enactment of*
 10 *this Act and shall, in the case of conduct pursuant to a court*
 11 *order or extension, apply only with respect to court orders or*
 12 *extensions made after this title takes effect.*

13 **(b) SPECIAL RULE FOR STATE AUTHORIZATIONS OF**
 14 **INTERCEPTIONS.**—*Any interception pursuant to section*
 15 *2516(2) of title 18 of the United States Code which would be*
 16 *valid and lawful without regard to the amendments made by*
 17 *this title shall be valid and lawful notwithstanding such*
 18 *amendments if such interception occurs during the period be-*
 19 *ginning on the date such amendments take effect and ending*
 20 *on the earlier of—*

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

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

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

6 **TITLE II—STORED WIRE AND ELECTRONIC**
7 **COMMUNICATIONS AND TRANSACTIONAL**
8 **RECORDS ACCESS**

9 **SEC. 201. TITLE 18 AMENDMENT.**

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

12 **“CHAPTER 121—STORED WIRE AND ELECTRONIC**
13 **COMMUNICATIONS AND TRANSACTIONAL**
14 **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.*

15 **“§ 2701. Unlawful access to stored communications**

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

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

1 “(2) intentionally exceeds an authorization to
2 access that facility;
3 and thereby obtains, alters, or prevents authorized access to a
4 wire or electronic communication while it is in electronic
5 storage in such system shall be punished as provided in sub-
6 section (b) of this section.

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

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

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

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

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

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

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

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

3 “(3) in section 2703, 2704 or 2518 of this title.

4 **“§ 2702. Disclosure of contents**

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

7 “(1) a person or entity providing an electronic
8 communication service to the public shall not knowingly
9 divulge to any person or entity the contents of a
10 communication while in electronic storage by that serv-
11 ice; and

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

16 “(A) on behalf of, and received by means of
17 electronic transmission from (or created by means
18 of computer processing of communications received
19 by means of electronic transmission from), a sub-
20 scriber or customer of such service; and

21 “(B) solely for the purpose of providing stor-
22 age or computer processing services to such sub-
23 scriber or customer, if the provider is not author-
24 ized to access the contents of any such communi-

1 *cations for purposes of providing any services*
2 *other than storage or computer processing.*

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

5 “(1) *to an addressee or intended recipient of such*
6 *communication or an agent of such addressee or in-*
7 *tended recipient;*

8 “(2) *as otherwise authorized in section 2516,*
9 *2511(2)(a), or 2703 of this title;*

10 “(3) *with the lawful consent of the originator or*
11 *an addressee or intended recipient of such communica-*
12 *tion, or the subscriber in the case of remote computing*
13 *service;*

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

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

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

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

24 “(B) *appear to pertain to the commission of*
25 *a crime.*

1 ***“§ 2703. Requirements for governmental access***

2 “(a) ***CONTENTS OF ELECTRONIC COMMUNICATIONS***
3 ***IN ELECTRONIC STORAGE.***—A governmental entity may
4 require the disclosure by a provider of electronic communica-
5 tion service of the contents of an electronic communication,
6 that is in electronic storage in an electronic communications
7 system for one hundred and eighty days or less, only pursu-
8 ant to a warrant issued under the Federal Rules of Criminal
9 Procedure or equivalent State warrant. A governmental
10 entity may require the disclosure by a provider of electronic
11 communications services of the contents of an electronic com-
12 munication that has been in electronic storage in an electron-
13 ic communications system for more than one hundred and
14 eighty days by the means available under subsection (b) of
15 this section.

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

22 “(A) without required notice to the subscriber or
23 customer, if the governmental entity obtains a warrant
24 issued under the Federal Rules of Criminal Procedure
25 or equivalent State warrant; or

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

4 “(i) uses an administrative subpoena author-
5 ized by a Federal or State statute or a Federal or
6 State grand jury subpoena; or

7 “(ii) obtains a court order for such disclosure
8 under subsection (d) of this section;
9 except that delayed notice may be given pursuant to
10 section 2705 of this title.

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

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

19 “(B) solely for the purpose of providing storage or
20 computer processing services to such subscriber or cus-
21 tomer, if the provider is not authorized to access the
22 contents of any such communications for purposes of
23 providing any services other than storage or computer
24 processing.

1 “(c) *RECORDS CONCERNING ELECTRONIC COMMUNI-*
2 *CATION SERVICE OR REMOTE COMPUTING SERVICE.—*

3 *(1)(A) Except as provided in subparagraph (B), a provider of*
4 *electronic communication service or remote computing service*
5 *may disclose a record or other information pertaining to a*
6 *subscriber to or customer of such service (not including the*
7 *contents of communications covered by subsection (a) or (b)*
8 *of this section) to any person other than a governmental*
9 *entity.*

10 “(B) *A provider of electronic communication service or*
11 *remote computing service shall disclose a record or other in-*
12 *formation pertaining to a subscriber to or customer of such*
13 *service (not including the contents of communications covered*
14 *by subsection (a) or (b) of this section) to a governmental*
15 *entity only when the governmental entity—*

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

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

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

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

1 “(2) A governmental entity receiving records or infor-
2 mation under this subsection is not required to provide notice
3 to a subscriber or customer.

4 “(d) *REQUIREMENTS FOR COURT ORDER.*—A court
5 order for disclosure under subsection (b) or (c) of this section
6 shall issue only if the governmental entity shows that there is
7 reason to believe the contents of a wire or electronic commu-
8 nication, or the records or other information sought, are rele-
9 vant to a legitimate law enforcement inquiry. In the case of a
10 State governmental authority, such a court order shall not
11 issue if prohibited by the law of such State. A court issuing
12 an order pursuant to this section, on a motion made promptly
13 by the service provider, may quash or modify such order, if
14 the information or records requested are unusually volumi-
15 nous in nature or compliance with such order otherwise
16 would cause an undue burden on such provider.

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

1 **“§ 2704. Backup preservation**

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

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

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

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

22 “(B) *the resolution of any proceedings (including*
23 *appeals of any proceeding) concerning the government’s*
24 *subpoena or court order.*

25 “(4) *The service provider shall release such backup copy*
26 *to the requesting governmental entity no sooner than fourteen*

1 *days after the governmental entity's notice to the subscriber*
2 *or customer if such service provider—*

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

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

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

16 *“(b) CUSTOMER CHALLENGES.—(1) Within fourteen*
17 *days after notice by the governmental entity to the subscriber*
18 *or customer under subsection (a)(2) of this section, such sub-*
19 *scriber or customer may file a motion to quash such subpoena*
20 *or vacate such court order, with copies served upon the gov-*
21 *ernmental entity and with written notice of such challenge to*
22 *the service provider. A motion to vacate a court order shall be*
23 *filed in the court which issued such order. A motion to quash*
24 *a subpoena shall be filed in the appropriate United States*

1 *district court or State court. Such motion or application shall*
2 *contain an affidavit or sworn statement—*

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

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

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

19 “(3) *If the court finds that the customer has complied*
20 *with paragraphs (1) and (2) of this subsection, the court shall*
21 *order the governmental entity to file a sworn response, which*
22 *may be filed in camera if the governmental entity includes in*
23 *its response the reasons which make in camera review appro-*
24 *priate. If the court is unable to determine the motion or appli-*
25 *cation on the basis of the parties’ initial allegations and re-*

1 *sponse, the court may conduct such additional proceedings as*
2 *it deems appropriate. All such proceedings shall be completed*
3 *and the motion or application decided as soon as practicable*
4 *after the filing of the governmental entity's response.*

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

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

21 **“§ 2705. Delayed notice**

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

24 “(A) *where a court order is sought, include in the*
25 *application a request, which the court shall grant, for*

1 *an order delaying the notification required under sec-*
2 *tion 2703(b) of this title for a period not to exceed*
3 *ninety days, if the court determines that there is reason*
4 *to believe that notification of the existence of the court*
5 *order may have an adverse result described in para-*
6 *graph (2) of this subsection; or*

7 *“(B) where an administrative subpoena author-*
8 *ized by a Federal or State statute or a Federal or*
9 *State grand jury subpoena is obtained, delay the noti-*
10 *fication required under section 2703(b) of this title for*
11 *a period not to exceed ninety days upon the execution*
12 *of a written certification of a supervisory official that*
13 *there is reason to believe that notification of the exist-*
14 *ence of the subpoena may have an adverse result de-*
15 *scribed in paragraph (2) of this subsection.*

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

18 *“(A) endangering the life or physical safety of an*
19 *individual;*

20 *“(B) flight from prosecution;*

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

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

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

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

3 “(4) *Extensions of the delay of notification provided in*
4 *section 2703 of up to ninety days each may be granted by the*
5 *court upon application, or by certification by a governmental*
6 *entity, but only in accordance with subsection (b) of this*
7 *section.*

8 “(5) *Upon expiration of the period of delay of notifica-*
9 *tion under paragraph (1) or (4) of this subsection, the govern-*
10 *mental entity shall serve upon, or deliver by registered or*
11 *first-class mail to, the customer or subscriber a copy of the*
12 *process or request together with notice that—*

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

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

16 “(i) *that information maintained for such*
17 *customer or subscriber by the service provider*
18 *named in such process or request was supplied to*
19 *or requested by that governmental authority and*
20 *the date on which the supplying or request took*
21 *place;*

22 “(ii) *that notification of such customer or*
23 *subscriber was delayed;*

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

4 “(iv) which provision of this chapter allowed
5 such delay.

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

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

1 *of the existence of the warrant, subpoena, or court order will*
2 *result in—*

3 “(1) *endangering the life or physical safety of an*
4 *individual;*

5 “(2) *flight from prosecution;*

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

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

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

10 **“§ 2706. Cost reimbursement**

11 “(a) *PAYMENT.—Except as otherwise provided in sub-*
12 *section (c), a governmental entity obtaining the contents of*
13 *communications, records, or other information under section*
14 *2702, 2703, or 2704 of this title shall pay to the person or*
15 *entity assembling or providing such information a fee for re-*
16 *imbursement for such costs as are reasonably necessary and*
17 *which have been directly incurred in searching for, assem-*
18 *bling, reproducing, or otherwise providing such information.*
19 *Such reimbursable costs shall include any costs due to neces-*
20 *sary disruption of normal operations of any electronic com-*
21 *munication service or remote computing service in which*
22 *such information may be stored.*

23 “(b) *AMOUNT.—The amount of the fee provided by sub-*
24 *section (a) shall be as mutually agreed by the governmental*
25 *entity and the person or entity providing the information, or,*

1 *in the absence of agreement, shall be as determined by the*
2 *court which issued the order for production of such informa-*
3 *tion (or the court before which a criminal prosecution relating*
4 *to such information would be brought, if no court order was*
5 *issued for production of the information).*

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

14 **“§ 2707. Civil action**

15 “(a) **CAUSE OF ACTION.**—*Except as provided in sec-*
16 *tion 2703(e), any provider of electronic communication serv-*
17 *ice, subscriber, or customer aggrieved by any violation of this*
18 *chapter in which the conduct constituting the violation is en-*
19 *gaged in with a knowing or intentional state of mind may, in*
20 *a civil action, recover from the person or entity which en-*
21 *gaged in that violation such relief as may be appropriate.*

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

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

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

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

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

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

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

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

15 “(3) a good faith determination that section
16 2511(3) of this title permitted the conduct complained
17 of;

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

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

1 ***“§ 2708. Exclusivity of remedies***

2 *“The remedies and sanctions described in this chapter*
3 *are the only judicial remedies and sanctions for nonconstitu-*
4 *tional violations of this chapter.*

5 ***“§ 2709. Counterintelligence access to telephone toll and***
6 ***transactional records***

7 *“(a) DUTY TO PROVIDE.—A wire or electronic commu-*
8 *nication service provider shall comply with a request for sub-*
9 *scriber information and toll billing records information, or*
10 *electronic communication transactional records in its custody*
11 *or possession made by the Director of the Federal Bureau of*
12 *Investigation under subsection (b) of this section.*

13 *“(b) REQUIRED CERTIFICATION.—The Director of the*
14 *Federal Bureau of Investigation (or an individual within the*
15 *Federal Bureau of Investigation designated for this purpose*
16 *by the Director) may request any such information and*
17 *records if the Director (or the Director’s designee) certifies in*
18 *writing to the wire or electronic communication service pro-*
19 *vider to which the request is made that—*

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

22 *“(2) there are specific and articulable facts giving*
23 *reason to believe that the person or entity to whom the*
24 *information sought pertains is a foreign power or an*
25 *agent of a foreign power as defined in section 101 of*

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

3 *“(c) PROHIBITION OF CERTAIN DISCLOSURE.—No*
4 *wire or electronic communication service provider, or officer,*
5 *employee, or agent thereof, shall disclose to any person that*
6 *the Federal Bureau of Investigation has sought or obtained*
7 *access to information or records under this section.*

8 *“(d) DISSEMINATION BY BUREAU.—The Federal*
9 *Bureau of Investigation may disseminate information and*
10 *records obtained under this section only as provided in guide-*
11 *lines approved by the Attorney General for foreign intelli-*
12 *gence collection and foreign counterintelligence investigations*
13 *conducted by the Federal Bureau of Investigation, and, with*
14 *respect to dissemination to an agency of the United States,*
15 *only if such information is clearly relevant to the authorized*
16 *responsibilities of such agency.*

17 *“(e) REQUIREMENT THAT CERTAIN CONGRESSIONAL*
18 *BODIES BE INFORMED.—On a semiannual basis the Direc-*
19 *tor of the Federal Bureau of Investigation shall fully inform*
20 *the Permanent Select Committee on Intelligence of the House*
21 *of Representatives and the Select Committee on Intelligence*
22 *of the Senate concerning all requests made under subsection*
23 *(b) of this section.*

24 **“§ 2710. Definitions for chapter**

25 *“As used in this chapter—*

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

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

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

“121. Stored Wire and Electronic Communications and Transac-
tional Records Access 2701”.

11 **SEC. 202. EFFECTIVE DATE.**

12 *This title and the amendments made by this title shall*
13 *take effect ninety days after the date of the enactment of this*
14 *Act and shall, in the case of conduct pursuant to a court*
15 *order or extension, apply only with respect to court orders or*
16 *extensions made after this title takes effect.*

17 **TITLE III—PEN REGISTERS AND TRAP AND**
18 **TRACE DEVICES**

19 **SEC. 301. TITLE 18 AMENDMENT.**

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

1 “(1) the identity of the attorney for the Govern-
2 ment or the State law enforcement or investigative offi-
3 cer making the application and the identity of the law
4 enforcement agency conducting the investigation; and

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

8 **“§ 3123. Issuance of an order for a pen register or a trap**
9 **and trace device**

10 “(a) *IN GENERAL.*—Upon an application made under
11 section 3122 of this title, the court shall enter an *ex parte*
12 order authorizing the installation and use of a pen register or
13 a trap and trace device within the jurisdiction of the court if
14 the court finds that the attorney for the Government or the
15 State law enforcement or investigative officer has certified to
16 the court that the information likely to be obtained by such
17 installation and use is relevant to an ongoing criminal
18 investigation.

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

21 “(1) shall specify—

22 “(A) the identity, if known, of the person to
23 whom is leased or in whose name is listed the
24 telephone line to which the pen register or trap
25 and trace device is to be attached;

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

3 “(C) the number and, if known, physical lo-
4 cation of the telephone line to which the pen regis-
5 ter or trap and trace device is to be attached and,
6 in the case of a trap and trace device, the geo-
7 graphic limits of the trap and trace order; and

8 “(D) a statement of the offense to which the
9 information likely to be obtained by the pen regis-
10 ter or trap and trace device relates; and

11 “(2) shall direct, upon the request of the appli-
12 cant, the furnishing of information, facilities, and tech-
13 nical assistance necessary to accomplish the installa-
14 tion of the pen register or trap and trace device under
15 section 3124 of this title.

16 “(c) *TIME PERIOD AND EXTENSIONS.*—(1) An order
17 issued under this section shall authorize the installation and
18 use of a pen register or a trap and trace device for a period
19 not to exceed sixty days.

20 “(2) Extensions of such an order may be granted, but
21 only upon an application for an order under section 3122 of
22 this title and upon the judicial finding required by subsection
23 (a) of this section. The period of extension shall be for a
24 period not to exceed sixty days.

1 “(d) *NONDISCLOSURE OF EXISTENCE OF PEN REG-*
2 *ISTER OR A TRAP AND TRACE DEVICE.*—An order author-
3 izing or approving the installation and use of a pen register
4 or a trap and trace device shall direct that—

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

7 “(2) *the person owning or leasing the line to*
8 *which the pen register or a trap and trace device is at-*
9 *tached, or who has been ordered by the court to provide*
10 *assistance to the applicant, not disclose the existence of*
11 *the pen register or trap and trace device or the exist-*
12 *ence of the investigation to the listed subscriber, or to*
13 *any other person, unless or until otherwise ordered by*
14 *the court.*

15 “***§ 3124. Assistance in installation and use of a pen register***
16 ***or a trap and trace device***

17 “(a) *PEN REGISTERS.*—Upon the request of an attor-
18 ney for the Government or an officer of a law enforcement
19 agency authorized to install and use a pen register under this
20 chapter, a provider of wire or electronic communication serv-
21 ice, landlord, custodian, or other person shall furnish such
22 investigative or law enforcement officer forthwith all informa-
23 tion, facilities, and technical assistance necessary to accom-
24 plish the installation of the pen register unobtrusively and
25 with a minimum of interference with the services that the

1 *person so ordered by the court accords the party with respect*
2 *to whom the installation and use is to take place, if such*
3 *assistance is directed by a court order as provided in section*
4 *3123(b)(2) of this title.*

5 “(b) *TRAP AND TRACE DEVICE.*—*Upon the request of*
6 *an attorney for the Government or an officer of a law en-*
7 *forcement agency authorized to receive the results of a trap*
8 *and trace device under this chapter, a provider of a wire or*
9 *electronic communication service, landlord, custodian, or*
10 *other person shall install such device forthwith on the appro-*
11 *priate line and shall furnish such investigative or law en-*
12 *forcement officer all additional information, facilities and*
13 *technical assistance including installation and operation of*
14 *the device unobtrusively and with a minimum of interference*
15 *with the services that the person so ordered by the court ac-*
16 *ords the party with respect to whom the installation and use*
17 *is to take place, if such installation and assistance is directed*
18 *by a court order as provided in section 3123(b)(2) of this*
19 *title. Unless otherwise ordered by the court, the results of the*
20 *trap and trace device shall be furnished to the officer of a law*
21 *enforcement agency, designated in the court, at reasonable*
22 *intervals during regular business hours for the duration of*
23 *the order.*

24 “(c) *COMPENSATION.*—*A provider of a wire or elec-*
25 *tronic communication service, landlord, custodian, or other*

1 *have the meanings set forth for such terms in section*
2 *2510 of this title;*

3 “(2) the term ‘court of competent jurisdiction’
4 *means—*

5 “(A) a district court of the United States
6 *(including a magistrate of such a court) or a*
7 *United States Court of Appeals; or*

8 “(B) a court of general criminal jurisdiction
9 *of a State authorized by the law of that State to*
10 *enter orders authorizing the use of a pen register*
11 *or a trap and trace device;*

12 “(3) the term ‘pen register’ means a device which
13 *records or decodes electronic or other impulses which*
14 *identify the numbers dialed or otherwise transmitted on*
15 *the telephone line to which such device is attached, but*
16 *such term does not include any device used by a pro-*
17 *vider or customer of a wire or electronic communica-*
18 *tion service for billing, or recording as an incident to*
19 *billing, for communications services provided by such*
20 *provider or any device used by a provider or customer*
21 *of a wire communication service for cost accounting or*
22 *other like purposes in the ordinary course of— — its*
23 *business;*

24 “(4) the term ‘trap and trace device’ means a
25 *device which captures the incoming electronic or other*

1 *impulses which identify the originating number of an*
 2 *instrument or device from which a wire or electronic*
 3 *communication was transmitted;*

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

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

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

“206. Pen Registers and Trap and Trace Devices 3121”.

14 **SEC. 302. EFFECTIVE DATE.**

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

21 **(b) SPECIAL RULE FOR STATE AUTHORIZATIONS OF**
 22 **INTERCEPTIONS.—***Any pen register or trap and trace device*
 23 *order or installation which would be valid and lawful without*
 24 *regard to the amendments made by this title shall be valid*
 25 *and lawful notwithstanding such amendments if such order*

1 or installation occurs during the period beginning on the date
2 such amendments take effect and ending on the earlier of—

3 (1) the day before the date of the taking effect of
4 changes in State law required in order to make orders
5 or installations under Federal law as amended by this
6 title; or

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

9 **SEC. 303. INTERFERENCE WITH THE OPERATION OF A SATEL-**
10 **LITE.**

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

13 “§ 1367. *Interference with the operation of a satellite*

14 “(a) *Whoever, without the authority of the satellite oper-*
15 *ator, intentionally or maliciously interferes with the author-*
16 *ized operation of a communications or weather satellite or*
17 *obstructs or hinders any satellite transmission shall be fined*
18 *in accordance with this title or imprisoned not more than ten*
19 *years or both.*

20 “(b) *This section does not prohibit any lawfully author-*
21 *ized investigative, protective, or intelligence activity of a law*
22 *enforcement agency or of an intelligence agency of the United*
23 *States.*”

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

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

Calendar No. 1064

99TH CONGRESS
2D SESSION

S. 2575

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.

SEPTEMBER 27 (legislative day, SEPTEMBER 24), 1986

Reported with an amendment

OCTOBER 1 (legislative day, SEPTEMBER 24), 1986

Referred to the Committee on Commerce, Science, and Transportation for a period of 24 hours

OCTOBER 2 (legislative day, SEPTEMBER 24), 1986

Committee discharged and placed on the calendar pursuant to the order of October 1, 1986