

Action
OCA 86-2011

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OFFICE OF CONGRESSIONAL AFFAIRS
Routing Slip

	ACTION	INFO
1. D/OCA		X
2. DD/Legislation		X
3. DD/Senate Affairs		X
4. Ch/Senate Affairs		
5. DD/House Affairs		X
6. Ch/House Affairs		
7. Admin Officer		
8. Executive Officer		X
9. FOIA Officer		
10. Constituent Inquiries Officer		
11. <input type="checkbox"/>	X	
12. <input type="checkbox"/>		

SUSPENSE 25 June 86
Date

Action Officer:

Remarks: attachment with action officer ✓
Action completed 6/18/86

No objection relayed to telephone
to DMB , GJ / 12 June 86

Name/Date

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Sanitized Copy Approved for Release 2011/02/07 : CIA-RDP90B01390R000801090031-8

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CONGRESSIONAL AFFAIRS
86-2011



**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503**

June 11, 1986

LEGISLATIVE REFERRAL MEMORANDUM

SPECIAL

TO: Department of Justice
Department of Defense
Department of the Treasury
~~Central Intelligence Agency~~
National Security Council
Department of State
General Services Administration
Departemnt of Commerce

OCA FILE Legislation
RECPT # Chrono

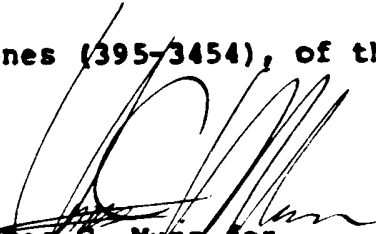
SUBJECT: H.R. 4952 -- Electronic Communications Privacy Act of 1986.

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with Circular A-19.

Please provide us with your views no later than June 25, 1986.

(NOTE -- This bill was ordered reported on 6/10/86, without major amendments.)

Direct your questions to Gregory Jones (395-3454), of this office.


James C. Murr for
Assistant Director for
Legislative Reference

Enclosures

cc: Sherri Alpert Karen Wilson John Cooney
David Reed Arnold Donahue

HR 4952

T8-4/85.3

James

MDB712

[5 June 1986]

AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 3378, AS
INTRODUCED
OFFERED BY MR. KASTENMEIER OF WISCONSIN

Strike out all after the enacting clause and insert in
lieu thereof the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the ``Electronic Communications
3 Privacy Act of 1986``.

4 TITLE I--INTERCEPTION OF COMMUNICATIONS AND RELATED MATTERS
5 SEC. 101. FEDERAL PENALTIES FOR THE INTERCEPTION OF
6 COMMUNICATIONS.

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

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

11 (B) by striking out ``as a common carrier`` and

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

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1 (2) Section 2510(2) of title 18, United States Code, is
2 amended by inserting before the semicolon at the end the
3 following: `` , but such term does not include any electronic
4 communication``.

5 (3) Section 2510(4) of title 18, United States Code, is
6 amended--

7 (A) by inserting ``or other`` after ``aural``; and

8 (b) by inserting `` , electronic,`` after ``wire``.

9 (4) Section 2510(8) of title 18, United States Code, is
10 amended by striking out ``identity of the parties to such
11 communication or the existence,``.

12 (5) Section 2510 of title 18, United States Code, is
13 amended--

14 (A) by striking out ``and`` at the end of paragraph
15 (10);

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

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

20 `` (12) `electronic communication` means any transfer
21 of signs, signals, writing, images, sounds, data, or
22 intelligence of any nature transmitted in whole or in
23 part by a wire, radio, electromagnetic, photoelectronic
24 or photooptical system that affects interstate or foreign
25 commerce, but does not include--

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

4 “(B) any wire or oral communication;

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

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

9 “(13) ‘user’ means any person or entity who--

10 “(A) uses an electronic communication service;
11 and

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

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

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

23 “(16) ‘readily accessible to the general public’
24 means, with respect to a radio communication, that such
25 communication is not--

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- 1 “(A) encrypted;
- 2 “(B) transmitted using modulation techniques
- 3 whose essential parameters have been withheld from
- 4 the public with the intention of preserving the
- 5 privacy of such communication;
- 6 “(C) carried on a subcarrier or other signal
- 7 subsidiary to a radio transmission;
- 8 “(D) transmitted over a communication system
- 9 provided by a common carrier, unless the
- 10 communication is a tone only paging system
- 11 communication; or
- 12 “(E) transmitted on frequencies allocated under
- 13 part 25, subpart D, E, or F of part 74 , or part 94
- 14 of the Rules of the Federal Communications
- 15 Commission, unless, in the case of a communication
- 16 transmitted on a frequency allocated under part 74
- 17 that is not exclusively allocated to broadcast
- 18 auxillary services, the communication is a two-way
- 19 voice communication by radio;
- 20 “(17) ‘electronic storage’ means--
- 21 “(A) any temporary, intermediate storage of a
- 22 wire or electronic communication incidental to the
- 23 electronic transmission thereof; and
- 24 “(B) any storage of such communication by an
- 25 electronic communication service for purposes of

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1 backup protection of such communication; and
2 `` (18) `aural transfer' means a transfer containing
3 the human voice at any point between and including the
4 point of origin and the point of reception.'`.

5 (b) EXCEPTIONS WITH RESPECT TO ELECTRONIC
6 COMMUNICATIONS.--(1) Section 2511(2)(a)(i) of title 18,
7 United States Code, is amended by striking out ``of such
8 communication''.

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

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

14 (A) by inserting ``or chapter 121'' after ``this
15 chapter''; and

16 (B) by striking out ``by'' the second place it
17 appears and inserting in lieu thereof `` , or foreign
18 intelligence activities conducted in accordance with
19 otherwise applicable Federal law involving a foreign
20 electronic communications system, utilizing''.

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

23 `` (g) It shall not be unlawful under this chapter or
24 chapter 121 of this title for any person--

25 `` (i) to intercept or access an electronic

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1 communication made through an electronic communication
2 system that is configured so that such electronic
3 communication is readily accessible to the general
4 public;

5 `` (ii) to intercept any radio communication which is
6 transmitted--

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

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

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

17 `` (IV) by any marine or aeronautical
18 communications system;

19 `` (iii) to engage in any conduct which--

20 `` (I) is prohibited by section 633 of the
21 Communications Act of 1934; or

22 `` (II) is excepted from the application of
23 section 705(a) of the Communications Act of 1934 by
24 section 705(b) of that Act;

25 `` (iv) to intercept any wire or electronic

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1 communication the transmission of which is causing
2 harmful interference to any lawfully operating station,
3 to the extent necessary to identify the source of such
4 interference; or.

5 `` (v) for other users of the same frequency to
6 intercept any radio communication made through a common
7 carrier system that utilizes frequencies monitored by
8 individuals engaged in the provision or the use of such
9 system, if such communication is not encrypted.

10 `` (h) It shall not be unlawful under this chapter--

11 `` (i) to use a pen register (as that term is defined
12 for the purposes of chapter 206 (relating to pen
13 registers) of this title);

14 `` (ii) for a provider of wire or electronic
15 communication service to record the fact that a wire or
16 electronic communication was initiated or completed in
17 order to protect such provider, another provider
18 furnishing service toward the completion of the wire or
19 electronic communication, or a user of that service, from
20 fraudulent, unlawful or abusive use of such service; or

21 `` (iii) to use a device that captures the incoming
22 electronic or other impulses which identify the numbers
23 of an instrument from which a wire communication was
24 transmitted.''.
25

(c) TECHNICAL AND CONFORMING AMENDMENTS.--(1) Chapter 119

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1 of title 18, United States Code, is amended--

2 (A) in each of sections 2510(5), 2510 (8),
3 2510(9)(b), 2510(11), and 2511 through 2519 (except
4 sections 2516(1) and 2518(10)), by striking out ``wire or
5 oral`` each place it appears (including in any section
6 heading) and inserting ``wire, oral, or electronic`` in
7 lieu thereof; and

8 (B) in section 2511(2)(b), by inserting ``or
9 electronic`` after ``wire``.

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

13 (3) The item relating to chapter 119 in the table of
14 chapters at the beginning of part I of title 18 of the United
15 States Code is amended by inserting ``and electronic
16 communications`` after ``Wire``.

17 (4) Section 2510(5)(a) of title 18, United States Code,
18 is amended by striking out ``communications common carrier``
19 and inserting ``provider of wire or electronic communication
20 service`` in lieu thereof.

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

23 (A) by striking out ``any communication common
24 carrier`` and inserting ``a provider of wire or
25 electronic communication service`` in lieu thereof;

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1 (B) by striking out ``of the carrier of such
2 communication`` and inserting ``of the provider of that
3 service`` in lieu thereof; and

4 (C) by striking out ``: Provided, That said
5 communication common carriers`` and inserting `` , except
6 that a provider of wire communication service to the
7 public`` in lieu thereof.

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

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

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

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

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

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

24 (B) by striking out ``a communications common
25 carrier`` the second place it appears and inserting

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1 ``such a provider`` in lieu thereof; and

2 (C) by striking out ``communications common carrier's
3 business`` and inserting ``business of providing that
4 wire or electronic communication service`` in lieu
5 thereof.

6 (d) PENALTIES MODIFICATION.--(1) Section 2511(1) of title
7 18, United States Code, is amended by striking out ``shall
8 be`` and all that follows through ``or both`` and inserting
9 in lieu thereof ``shall be punished as provided in subsection
10 (4)``.

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

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

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

24 ``(i) if the communication is not the radio portion
25 of a cellular telephone communication, the offender shall

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

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

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

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

18 `` (c) The remedies and sanctions described in this
19 chapter with respect to the interception of electronic
20 communications are the only judicial remedies and sanctions
21 for nonconstitutional violations of this chapter involving
22 such communications.``.

23 SEC. 102. REQUIREMENTS FOR CERTAIN DISCLOSURES.

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

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

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

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

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

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

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

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

25 Section 2520 of title 18, United States Code, is amended

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1 to read as follows:

2 ``§2520. Recovery of civil damages authorized

3 ``(a) IN GENERAL.--Any person whose wire, oral, or
4 electronic communication is intercepted, disclosed, or
5 willfully used in violation of this chapter may in a civil
6 action recover from the person or entity which engaged in
7 that violation such relief as may be appropriate.

8 ``(b) RELIEF.--In an action under this section,
9 appropriate relief includes--

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

12 ``(2) damages under subsection (c) and punitive
13 damages in appropriate cases; and

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

16 ``(c) COMPUTATION OF DAMAGES.--The court may assess as
17 damages in an action under this section whichever is the
18 greater of--

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

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

24 ``(d) DEFENSE.--A good faith reliance on--

25 ``(1) a court warrant or order, a grand jury

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1 subpoena, a legislative authorization, or a statutory
2 authorization;

3 `` (2) a request of an investigative or law
4 enforcement officer under section 2518(7) of this title;
5 or

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

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

14 **SEC. 104. CERTAIN APPROVALS BY JUSTICE DEPARTMENT OFFICIALS.**

15 Section 2516(1) of title 18 of the United States Code is
16 amended by striking out ``or any Assistant Attorney General``
17 and inserting in lieu thereof ``any Assistant Attorney
18 General, any acting Assistant Attorney General, or any Deputy
19 Assistant Attorney General in the Criminal Division``.

20 **SEC. 105. ADDITION OF OFFENSES TO CRIMES FOR WHICH**

21 **INTERCEPTION IS AUTHORIZED.**

22 (a) **WIRE AND ORAL INTERCEPTIONS.**--Section 2516(1) of
23 title 18 of the United States Code is amended--

24 (1) in paragraph (c)--

25 (A) by inserting ``section 751 (relating to

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1 escape),'' after ``wagering information),'';

2 (B) by striking out ``2314'' and inserting

3 ``2312, 2313, 2314,`` in lieu thereof;

4 (C) by inserting ``the second section 2320

5 (relating to trafficking in certain motor vehicles or

6 motor vehicle parts), section 1203 (relating to

7 hostage taking), section 1029 (relating to fraud and

8 related activity in connection with access devices),

9 section 3146 (relating to penalty for failure to

10 appear), section 3521(b)(3) (relating to witness

11 relocation and assistance), section 32 (relating to

12 destruction of aircraft or aircraft facilities),''

13 after ``stolen property),'';

14 (D) by inserting ``section 1952A (relating to use

15 of interstate commerce facilities in the commission

16 of murder for hire), section 1952B (relating to

17 violent crimes in aid of racketeering activity),''

18 after ``1952 (interstate and foreign travel or

19 transportation in aid of racketeering

20 enterprises),''; and

21 (E) by inserting `` , section 115 (relating to

22 threatening or retaliating against a Federal

23 official), the section in chapter 65 relating to

24 destruction of an energy facility, and section 1341

25 (relating to mail fraud),'' after ``section 1963

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1 (violations with respect to racketeer influenced and
2 corrupt organizations)'';

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
8 communications and to certain intercepting devices) of
9 this title;

10 `` (i) the location of any fugitive from justice from
11 an offense described in this section; and''; and

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

13 (b) INTERCEPTION OF ELECTRONIC COMMUNICATIONS.--Section
14 2516 of title 18 of the United States Code is amended by
15 adding at the end the following:

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

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

2 (a) PLACE OF AUTHORIZED INTERCEPTION.--Section 2518(3) of
3 title 18 of the United States Code is amended by inserting
4 ``and outside that jurisdiction but within the United States
5 in the case of a mobile interception device authorized by a
6 Federal court within such jurisdiction)'' after ``within the
7 territorial jurisdiction of the court in which the judge is
8 sitting''.

9 (b) REIMBURSEMENT FOR ASSISTANCE.--Section 2518(4) of
10 title 18 of the United States Code is amended by striking out
11 ``at the prevailing rates'' and inserting in lieu thereof
12 ``for reasonable expenses incurred in providing such
13 facilities or assistance''.

14 (c) COMMENCEMENT OF 30-DAY PERIOD AND POSTPONEMENT OF
15 MINIMIZATION.--Section 2518(5) of title 18 of the United
16 States Code is amended--

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

22 (2) by adding at the end the following: ``In the
23 event the intercepted communication is in a code or
24 foreign language, and an expert in that foreign language
25 or code is not reasonably available during the

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1 interception period, minimization may be accomplished as
2 soon as practicable after such interception. An
3 interception under this chapter may be conducted in whole
4 or in part by Government personnel, or by an individual
5 operating under a contract with the Government, acting
6 under the supervision of an investigative or law
7 enforcement officer authorized to conduct the
8 interception.''.
9

10 (d) ALTERNATIVE TO DESIGNATING SPECIFIC FACILITIES FROM
11 WHICH COMMUNICATIONS ARE TO BE INTERCEPTED.--(1) Section
12 2518(1)(b)(ii) of title of the United States Code is amended
13 by inserting ``except as provided in subsection (11),``
14 before ``a particular description``.

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

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

20 `` (11) The requirements of subsections (1)(b)(ii) and
21 (3)(d) of this section relating to the specification of the
22 facilities from which, or the place where, the communication
23 is to be intercepted do not apply if--

24 `` (i) in the case of an application with respect to
25 the interception of an oral communication--

`` (I) the application is by a Federal

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1 investigative or law enforcement officer and is
2 approved by the Attorney General, the Deputy Attorney
3 General, the Associate Attorney General, an Assistant
4 Attorney General, or an acting Assistant Attorney
5 General;

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

11 ``(III) the judge finds that such specification
12 is not practical; and

13 ``(ii) in the case of an application with respect to
14 a wire or electronic communication--

15 ``(I) the application is by a Federal
16 investigative or law enforcement officer and is
17 approved by the Attorney General, the Deputy Attorney
18 General, the Associate Attorney General, an Assistant
19 Attorney General, or an acting Assistant Attorney
20 General;

21 ``(II) the application identifies the person
22 believed to be committing the offense and whose
23 communications are to be intercepted and the
24 applicant makes a showing of a purpose, on the part
25 that person, to thwart interception by changing

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1 facilities; and

2 `` (III) the judge finds that such purpose has
3 been adequately shown.

4 `` (12) An interception of a communication under an order
5 with respect to which the requirements of subsections
6 (1)(b)(ii) and (3)(d) of this section do not apply by reason
7 of subsection (11) shall not begin until the facilities from
8 which, or the place where, the communication is to be
9 intercepted is ascertained by the person implementing the
10 interception order.``.

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

17 **SEC. 107. INTELLIGENCE ACTIVITIES.**

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

21 (b) **CERTAIN ACTIVITIES UNDER PROCEDURES APPROVED BY THE**
22 **ATTORNEY GENERAL.**--Nothing in chapter 119 or chapter 121 of
23 title 18, United States Code, shall affect the conduct, by
24 officers or employees of the United States Government in
25 accordance with other applicable Federal law, under

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1 procedures approved by the Attorney General of activities
2 intended to--

3 (1) intercept encrypted or other official
4 communications of United States entities or contractors
5 for communications security purposes;

6 (2) intercept radio communications transmitted
7 between foreign powers or agents of a foreign power as
8 defined by the Foreign Intelligence Surveillance Act of
9 1978; or

10 (3) access an electronic communication system used
11 exclusively by a foreign power or agent of a foreign
12 power as defined by the Foreign Intelligence Surveillance
13 Act of 1978.

14 SEC. 108. MOBILE TRACKING DEVICES.

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

17 ``§3117. Mobile tracking devices

18 `` (a) IN GENERAL.--If a court is empowered to issue a
19 warrant or other order for the installation of a mobile
20 tracking device, such order may authorize the use of that
21 device within the jurisdiction of the court, and outside that
22 jurisdiction if the device is installed in that jurisdiction.

23 `` (b) DEFINITION.--As used in this section, the term
24 `tracking device' means an electronic or mechanical device
25 which permits the tracking of the movement of a person or

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1 object.''.

2 (b) CLERICAL AMENDMENT.--The table of contents at the
3 beginning of chapter 205 of title 18, United States Code, is
4 amended by adding at the end the following:

''3117. Mobile tracking devices.''.

5 SEC. 109. WARNING SUBJECT OF SURVEILLANCE.

6 Section 2232 of title 18, United States Code, is
7 amended--

8 (1) by inserting ''(a) PHYSICAL INTERFERENCE WITH
9 SEARCH.--'' before ''Whoever'' the first place it
10 appears;

11 (2) by inserting ''(b) NOTICE OF SEARCH.--'' before
12 ''Whoever'' the second place it appears; and

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

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

23 ''Whoever, having knowledge that a Federal officer has
24 been authorized or has applied for authorization to conduct

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1 electronic surveillance under the Foreign Intelligence
2 Surveillance Act (50 U.S.C. 1801, et seq.), in order to
3 obstruct, impede, or prevent such activity, gives notice or
4 attempts to give notice of the possible activity to any
5 person shall be fined under this title or imprisoned not more
6 than five years, or both." .

7 SEC. 110. INJUNCTIVE REMEDY.

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

10 ``§2521. Injunction against illegal interception

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

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1 Criminal Procedure.''.

2 (b) CLERICAL AMENDMENT.--The chapter heading of chapter
3 119 of title 18, United States Code, is amended by adding at
4 the end thereof the following:

``2521. Injunction against illegal interception.''.

5 SEC. 111. 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 90 days after the date of the enactment of this Act
9 and shall, in the case of conduct pursuant to a court order
10 or extension, apply only with respect to court orders or
11 extensions made after this title takes effect.

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

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

24 (2) the date two years after the date of the

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1 enactment of this Act.

2 TITLE II--STORED WIRE AND ELECTRONIC COMMUNICATIONS AND

3 TRANSACTIONAL RECORDS ACCESS

4 SEC. 201. TITLE 18 AMENDMENT.

5 Title 18, United States Code, is amended by inserting

6 after chapter 119 the following:

7 ``CHAPTER 121--STORED WIRE AND ELECTRONIC COMMUNICATIONS AND

8 TRANSACTIONAL RECORDS ACCESS

``Sec.

``2701. Unlawful access to stored communications.

``2702. Disclosure of contents.

``2703. Requirements for governmental access.

``2704. Delayed notice

``2705. Cost reimbursement

``2706. Civil action.

``2707. Exclusivity of remedies.

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

``2709. Definitions.

9 ``§2701. Unlawful access to stored communications

10 `` (a) OFFENSE.--Except as provided in subsection (c) of
11 this section whoever--

12 `` (1) willfully accesses without authorization a
13 facility through which an electronic communication
14 service is provided; or

15 `` (2) willfully exceeds an authorization to access
16 that facility;

17 and thereby obtains, alters, or prevents authorized access to
18 a wire or electronic communication while it is in electronic
19 storage in such system shall be punished as provided in

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1 subsection (b) of this section.

2 `` (b) PUNISHMENT.--The punishment for an offense under
3 subsection (a) of this section is--

4 `` (1) if the offense is committed for purposes of
5 commercial advantage, malicious destruction or damage, or
6 private commercial gain--

7 `` (A) a fine of not more than \$250,000 or
8 imprisonment for not more than one year, or both, in
9 the case of a first offense under this subparagraph;
10 and

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

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

16 `` (c) EXCEPTIONS.--Subsection (a) of this section does
17 not apply with respect to conduct authorized--

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

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

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

23 `` §2702. Disclosure of contents

24 `` (a) PROHIBITIONS.--Except as provided in subsection
25 (b)--

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

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

10 “(A) on behalf of, and received by means of
11 electronic transmission from (or created by means of
12 computer processing of communications received by
13 means of electronic transmission from), a subscriber
14 or customer of such service; and

15 “(B) solely for the purpose of providing
16 storage or computer processing services to such
17 subscriber or customer, if the provider is not
18 authorized to access the contents of any such
19 communications for purposes of providing any services
20 other than storage or computer processing.

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

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

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

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

6 ``(4) to a person employed or authorized or whose
7 facilities are used to forward such communication to its
8 destination;

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

12 ``(6) to a law enforcement agency, if such contents--
13 ``(A) were inadvertently obtained by the service
14 provider; and

15 ``(B) appear to pertain to the commission of a
16 crime.

17 ``§2703. Requirements for governmental access

18 ``(a) CONTENTS OF ELECTRONIC COMMUNICATIONS IN ELECTRONIC
19 STORAGE.--A governmental entity may require the disclosure by
20 a provider of electronic communications services of the
21 contents of an electronic communication that is in electronic
22 storage in an electronic communications system for 180 days
23 or less only pursuant to a warrant issued under the Federal
24 Rules of Criminal Procedure or equivalent State warrant. A
25 governmental entity may require the disclosure by a provider

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1 of electronic communications services of the contents of an
2 electronic communication that has been in electronic storage
3 in an electronic communications system for more than 180 days
4 by the means available under subsection (b) of this section.

5 `` (b) CONTENTS OF ELECTRONIC COMMUNICATIONS IN A REMOTE
6 COMPUTING SERVICE.--(1) A governmental entity may require a
7 provider of remote computing service to disclose the contents
8 of any electronic communication to which this paragraph is
9 made applicable by paragraph (2) of this subsection--

10 `` (A) without required notice to the subscriber or
11 customer, if the governmental entity obtains a warrant
12 issued under the Federal Rules of Criminal Procedure or
13 equivalent State warrant; or

14 `` (B) with prior notice from the governmental entity
15 to the subscriber or customer if the governmental
16 entity--

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

20 `` (ii) obtains a court order for such disclosure
21 under subsection (d) of this section;
22 except that delayed notice may be given pursuant to
23 section 2704 of this title.

24 `` (2) Paragraph (1) is applicable with respect to any
25 electronic communication that is held or maintained on that

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1 service--

2 ``(A) on behalf of, and received by means of
3 electronic transmission from (or created by means of
4 computer processing of communications received by means
5 of electronic transmission from), a subscriber or
6 customer of such remote computing service; and

7 ``(B) solely for the purpose of providing storage or
8 computer processing services to such subscriber or
9 customer, if the provider is not authorized to access the
10 contents of any such communications for purposes of
11 providing any services other than storage or computer
12 processing.

13 ``(c) RECORDS CONCERNING ELECTRONIC COMMUNICATIONS
14 SERVICE OR REMOTE COMPUTING SERVICE.--A governmental entity
15 may require a provider of electronic communications service
16 or remote computing service to disclose a record or other
17 information pertaining to a subscriber to or customer of such
18 service (not including the contents of communications covered
19 by subsection (a) or (b) of this section) without required
20 notice to the subscriber or customer if the governmental
21 entity--

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

25 ``(2) obtains a warrant issued under the Federal

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1 Rules of Criminal Procedure or equivalent State warrant;

2 or

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

5 `` (d) REQUIREMENTS FOR COURT ORDER.--A court order for
6 disclosure under subsection (b) or (c) of this section shall
7 issue only if the governmental entity shows that there is
8 reason to believe the contents of a wire or electronic
9 communication, or the records or other information sought,
10 are relevant to a legitimate law enforcement inquiry.

11 `` §2704. Backup preservation; delayed notice

12 `` (a) BACKUP PRESERVATION.--(1) A governmental entity
13 acting under section 2703(b)(2) may include in its subpoena
14 or court order a requirement that the service provider to
15 whom the request is directed create a backup copy of the
16 contents of the electronic communications sought in order to
17 preserve those communications. Without notifying the
18 subscriber or customer of such subpoena or court order, such
19 service provider shall create such backup copy as soon as
20 practicable consistent with its regular business practices
21 and shall confirm to the governmental entity that such backup
22 copy has been made. Such backup copy shall be created within
23 two business days after receipt by the service provider of
24 the subpoena or court order.

25 `` (2) Notice to the subscriber or customer shall be made

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1 by the governmental entity within three days after receipt of
2 such confirmation, unless such notice is delayed pursuant to
3 section 2704(c).

4 `` (3) The service provider shall not destroy such backup
5 copy until the later of--

6 `` (A) the delivery of the information; or

7 `` (B) the resolution of any proceedings (including
8 appeals of any proceeding) concerning the government's
9 subpoena or court order.

10 `` (4) The service provider shall release such backup copy
11 to the requesting governmental entity within 14 days after
12 the governmental entity's notice to the subscriber or
13 customer if such service provider--

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

17 `` (B) has not initiated proceedings to challenge the
18 request of the governmental entity.

19 `` (5) A governmental entity may seek to require the
20 creation of a backup copy under subsection (a)(1) of this
21 section if in its sole discretion such entity determines that
22 there is reason to believe that notification under section
23 2703 of this title of the existence of the subpoena or court
24 order may result in destruction of or tampering with
25 evidence. This determination is not subject to challenge by

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1 the subscriber or customer or service provider.

2 ``(b) CUSTOMER CHALLENGES.--(1) Within 14 days after
3 notice by the governmental entity to the subscriber or
4 customer under subsection (a)(2) of this section, such
5 subscriber or customer may file a motion to quash such
6 subpoena or vacate such court order, with copies served upon
7 the governmental entity and with written notice of such
8 challenge to the service provider. A motion to vacate a
9 court order shall be filed in the court which issued such
10 order. A motion to quash a subpoena shall be filed in the
11 appropriate United States district court or State court. Such
12 motion or application shall contain an affidavit or sworn
13 statement--

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

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

23 ``(2) Service shall be made under this section upon a
24 governmental entity by delivering or mailing by registered or
25 certified mail a copy of the papers to the person, office, or

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1 department specified in the notice which the customer has
2 received pursuant to this chapter. For the purposes of this
3 section, the term 'delivery' has the meaning given that term
4 in the Federal Rules of Civil Procedure.

5 ``(3) If the court finds that the customer has complied
6 with paragraphs (1) and (2) of this subsection, the court
7 shall order the governmental entity to file a sworn response,
8 which may be filed in camera if the governmental entity
9 includes in its response the reasons which make in camera
10 review appropriate. If the court is unable to determine the
11 motion or application on the basis of the parties' initial
12 allegations and response, the court may conduct such
13 additional proceedings as it deems appropriate. All such
14 proceedings shall be completed and the motion or application
15 decided within seven calendar days after the filing of the
16 governmental entity's response.

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

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1 maintained, and that there is not a reason to believe that
2 the communications sought are relevant to a legitimate law
3 enforcement inquiry, or that there has not been substantial
4 compliance with the provisions of this chapter, it shall
5 order the process quashed.

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

9 `` (c) DELAY OF NOTIFICATION.--(1) A governmental entity
10 acting under section 2703(b) of this title may--

11 `` (A) where a court order is sought, include in the
12 application a request, which the court shall grant, for
13 an order delaying the notification required under section
14 2703(b) of this title for a period not to exceed 90 days
15 if the ~~governmental entity~~ determines that there is
16 reason to believe that notification of the existence of
17 the court order may have an adverse result described in
18 paragraph (2) of this subsection; or

19 `` (B) where an administrative subpoena authorized by
20 a Federal or State statute or a Federal or State grand
21 jury subpoena is obtained, after the execution of a
22 written certification of a supervisory official, delay
23 the notification required under section 2703(b) of this
24 title for a period not to exceed 90 days upon the
25 execution of a written certification that there is reason

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1 to believe that notification of the existence of the
2 subpoena may have an adverse result described in
3 paragraph (2) of this subsection.

4 `` (2) An adverse result for the purposes of paragraph ✓
5 (1) of this subsection is--

6 `` (A) endangering the life or physical safety of an
7 individual;

8 `` (B) flight from prosecution;

9 `` (C) destruction of or tampering with evidence;

10 `` (D) intimidation of potential witnesses; or

11 `` (E) otherwise seriously jeopardizing an
12 investigation or unduly delaying a trial.

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

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

20 `` (5) Upon expiration of the period of delay of
21 notification under paragraph (1) or (4) of this subsection,
22 the governmental entity shall serve upon, or mail to, the
23 customer or subscriber a copy of the process or request
24 together with notice that--

25 `` (A) states with reasonable specificity the nature

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1 of the law enforcement inquiry; and

2 `` (B) informs such customer or subscriber--

3 `` (i) that information maintained for such
4 customer or subscriber by the service provider named
5 in such process or request was supplied to or
6 requested by that governmental authority and the date
7 on which the supplying or request took place;

8 `` (ii) that notification of such customer or
9 subscriber was delayed;

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

13 `` (iv) which provision of this chapter allowed
14 such delay.'

15 `` (6) As used in this subsection, the term
16 'supervisory official' means the investigative agent in
17 charge or assistant investigative agent in charge or his
18 equivalent of an investigating agency's headquarters or
19 regional office, or the chief prosecuting attorney or the
20 first assistant prosecuting attorney or his equivalent of
21 a prosecuting attorney's headquarters or regional
22 office.'`.

23 `` (d) PRECLUSION OF NOTICE TO SUBJECT OF GOVERNMENTAL
24 ACCESS.--A governmental entity acting under section 2703,
25 when it is not required to notify the subscriber or customer

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1 under section 2703(b)(1), or to the extent that it may delay
2 such notice pursuant to section 2704(c), may apply to a court
3 for an order commanding a provider of electronic
4 communications service or remote computing service to whom a
5 warrant, subpoena, or court order is directed, for such
6 period as the court deems appropriate, not to notify any
7 other person of the existence of the warrant, subpoena, or
8 court order. The court shall enter such an order if it
9 determines that there is reason to believe that notification
10 of the existence of the warrant, subpoena, or court order
11 will result in--

12 “(1) endangering the life or physical safety of an
13 individual;
14 “(2) flight from prosecution;
15 “(3) destruction of or tampering with evidence;
16 “(4) intimidation of potential witnesses; or
17 “(5) otherwise seriously jeopardizing an
18 investigation or unduly delaying a trial.

19 “§2705. Cost reimbursement

20 “(a) PAYMENT.--Except as otherwise provided by law, a
21 governmental entity obtaining communications, records, or
22 other information under section 2702, 2703, or 2704 of this
23 title shall pay to the person or entity assembling or
24 providing such information a fee for reimbursement for such
25 costs as are reasonably necessary and which have been

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1 directly incurred in searching for, assembling, reproducing,
2 or otherwise providing such information. Such reimbursable
3 costs shall include any costs due to necessary disruption of
4 normal operations of any electronic communication service or
5 remote computing service in which such information may be
6 stored.

7 ``(b) AMOUNT.--The amount of the fee provided by
8 subsection (a) shall be as mutually agreed by the
9 governmental entity and the person or entity providing the
10 information, or, in the absence of agreement, shall be as
11 determined by the court which issued the order for production
12 of such information (or the court before which a criminal
13 prosecution relating to such information would be brought, if
14 no court order was issued for production of the information).

15 ``§2706. Civil action

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

21 ``(b) RELIEF.--In a civil action under this section,
22 appropriate relief includes--

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

25 ``(2) damages under subsection (c); and

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

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

9 ``(d) DEFENSE.--A good faith reliance on--

10 ``(1) a court warrant or order, a grand jury
11 subpoena, a legislative authorization, or a statutory
12 authorization;

13 ``(2) a request of an investigative or law
14 enforcement officer under section 2518(7) of this title;
15 or

16 ``(3) a good faith determination that section 2511(3)
17 of this title permitted the conduct complained 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 may
21 not be commenced later than two years after the date upon
22 which the claimant first discovered or had a reasonable
23 opportunity to discover the violation.

24 ``§2707. Exclusivity of remedies

25 ``The remedies and sanctions described in this chapter

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1 are the only judicial remedies and sanctions for
2 nonconstitutional violations of this chapter.

3 ``§2708. Counterintelligence access to telephone toll and
4 transactional records

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

11 `` (b) REQUIRED CERTIFICATION.--The Director of the
12 Federal Bureau of Investigation (or an individual within the
13 Federal Bureau of Investigation designated for this purpose by
14 the Director) may request any such information and records if
15 the Director (or the Director's designee) certifies in
16 writing to the carrier or provider to which the request is
17 made that--

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

20 `` (2) there are specific and articulable facts giving
21 reason to believe that the person or entity to whom the
22 information sought pertains is a foreign power or an
23 agent of a foreign power as defined in section 101 of the
24 Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.
25 1801).

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1 ``(c) PROHIBITION OF CERTAIN DISCLOSURE.--No
2 communications common carrier or service provider, or
3 officer, employee, or agent thereof, shall disclose to any
4 person that the Federal Bureau of Investigation has sought or
5 obtained access to information or records under this section.

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

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

22 ``§2709. Definitions for chapter

23 ``As used in this chapter--

24 ``(1) the terms defined in section 2510 of this title
25 have, respectively, the definitions given such terms in

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1 that section; and

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

6 (b) Clerical Amendment.--The table of chapters at the
7 beginning of part I of title 18, United States Code, is
8 amended by adding at the end the following:

``121. Stored Wire and Electronic Communications and
Transactional Records
Access.....2701``.

9 SEC. 202. EFFECTIVE DATE.

10 This title and the amendments made by this title shall
11 take effect 90 days after the date of the enactment of this
12 Act and shall, in the case of conduct pursuant to a court
13 order or extension, apply only with respect to court orders
14 or extensions made after this title takes effect.

15 TITLE III--PEN REGISTERS

16 SEC. 301. TITLE 18 AMENDMENT.

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

20 ``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.

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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, no
3 person may install or use a pen register without first
4 obtaining a court order under section 3123 of this title or
5 under the Foreign Intelligence Surveillance Act of 1978 (50
6 U.S.C. 1801 et seq.).

7 `` (b) EXCEPTION.--The prohibition of subsection (a) does
8 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 communication service or to the
12 protection of the rights or property of such provider, or
13 to the protection of users of that service from abuse of
14 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
18 service toward the completion of the wire communication,
19 or a user of that service, from fraudulent, unlawful or
20 abusive use of service.

21 `` (c) PENALTY.--Whoever knowingly violates subsection (a)
22 shall be fined under this title or imprisoned not more than
23 one year, or both.

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1 ``§3122. Application for an order for a pen register

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

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

14 `` (b) CONTENTS OF APPLICATION.--An application under
15 subsection (a) of this section shall include--

16 `` (1) the identity of the attorney for the Government
17 or the State law enforcement or investigative officer
18 making the application and the identity of the law
19 enforcement agency conducting the investigation; and

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

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

25 `` (a) IN GENERAL.--Upon an application made under section

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1 3122 of this title, the court shall enter an ex parte order
2 authorizing the installation and use of a pen register within
3 the jurisdiction of the court if the court finds that the
4 attorney for the government or the State law enforcement or
5 investigative officer has certified to the court that the
6 information likely to be obtained by such installation and
7 use is relevant to an ongoing criminal investigation.

8 `` (b) CONTENTS OF ORDER.--An order issued under this
9 section--

10 `` (1) shall specify--

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

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

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

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

23 `` (2) shall direct, upon the request of the
24 applicant, the furnishing of information, facilities, and
25 technical assistance necessary to accomplish the

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1 installation of the pen register under section 3125 of
2 this title.

3 `` (c) TIME PERIOD AND EXTENSIONS.--(1) An order issued
4 under this section shall authorize the installation and use
5 of a pen register for a period not to exceed 60 days.

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

11 `` (d) NONDISCLOSURE OF EXISTENCE OF PEN REGISTER.--An
12 order authorizing or approving the installation and use of a
13 pen register shall direct that--

14 `` (1) the order be sealed until otherwise ordered by
15 the court; and

16 `` (2) the person owning or leasing the line to which
17 the pen register is attached, or who has been ordered by
18 the court to provide assistance to the applicant, not
19 disclose the existence of the pen register or the
20 existence of the investigation to the listed subscriber,
21 or to any other person, unless or until otherwise ordered
22 by the court.

23 `` §3124. Assistance in installation and use of a pen register

24 `` (a) IN GENERAL.--Upon the request of an attorney for
25 the government or an officer of a law enforcement agency

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1 authorized to install and use a pen register under this
2 chapter, a provider of wire communication service, landlord,
3 custodian, or other person shall furnish such investigative
4 or law enforcement officer forthwith all information,
5 facilities, and technical assistance necessary to accomplish
6 the installation of the pen register unobtrusively and with a
7 minimum of interference with the services that the person so
8 ordered by the court accords the party with respect to whom
9 the installation and use is to take place, if such assistance
10 is directed by a court order as provided in section
11 3123(b)(2) of this title.

12 `` (b) COMPENSATION.--A provider of wire communication
13 service, landlord, custodian, or other person who furnishes
14 facilities or technical assistance pursuant to this section
15 shall be reasonably compensated for such reasonable expenses
16 incurred in providing such facilities and assistance.

17 ``§3125. Reports concerning pen registers

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

21 ``§3126. Definitions for chapter

22 ``As used in this chapter--

23 `` (1) the term 'communications common carrier' has
24 the meaning set forth for the term 'common carrier' in
25 section 3(h) of the Communications Act of 1934 (47 U.S.C.

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1 153(h));

2 `` (2) the term `wire communication` has the meaning
3 set forth for such term in section 2510 of this title;

4 `` (3) the term `court of competent jurisdiction`
5 means--

6 `` (A) a district court of the United States
7 (including a magistrate of such a court) or a United
8 States Court of Appeals; or

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

12 `` (4) 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,
15 with respect to wire communications, on the telephone
16 line to which such device is attached, but such term does
17 not include any device used by a provider of wire
18 communication service for billing, or recording as an
19 incident to billing, for communications services provided
20 by such provider; and

21 `` (5) the term `attorney for the Government` has the
22 meaning given such term for the purposes of the Federal
23 Rules of Criminal Procedure; and

24 `` (6) the term `State` means a State, the District of
25 Columbia, Puerto Rico, and any other possession or

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1 territory of the United States.''.

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

``206. Pen Registers.....3121''.

6 SEC. 302. EFFECTIVE DATE.

7 (a) IN GENERAL.--Except as provided in subsection (b),
8 this title and the amendments made by this title shall take
9 effect 90 days after the date of the enactment of this Act
10 and shall, in the case of conduct pursuant to a court order
11 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 pen register order or installation which
15 would be valid and lawful without regard to the amendments
16 made by this title shall be valid and lawful notwithstanding
17 such amendments if such order or installation occurs during
18 the period beginning on the date such amendments take effect
19 and ending on the earlier of--

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

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