

# Union Calendar No. 562

106<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5018

[Report No. 106-932]

To amend title 18, United States Code, to modify certain provisions of law relating to the interception of communications, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 27, 2000

Mr. CANADY of Florida (for himself and Mr. HUTCHINSON) introduced the following bill; which was referred to the Committee on the Judiciary

OCTOBER 4, 2000

Additional sponsors: Mr. BLUNT, Mr. BACHUS, Mr. PAUL, and Mr. WAMP

OCTOBER 4, 2000

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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

[For text of introduced bill, see copy of bill as introduced on July 27, 2000]

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## A BILL

To amend title 18, United States Code, to modify certain provisions of law relating to the interception of communications, 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 2000”.*

4 **SEC. 2. USE AS EVIDENCE.**

5 *(a) IN GENERAL.—Section 2515 of title 18, United*  
6 *States Code, is amended—*

7 *(1) by striking “**wire or oral**” in the heading*  
8 *and inserting “**wire, oral, or electronic**”.*

9 *(2) by striking “Whenever any wire or oral com-*  
10 *munication has been intercepted” and inserting “(a)*  
11 *Except as provided in subsection (b), whenever any*  
12 *wire, oral, or electronic communication has been*  
13 *intercepted, or any electronic communication in elec-*  
14 *tronic storage has been disclosed”;*

15 *(3) by inserting “or chapter 121” after “this*  
16 *chapter”;* and

17 *(4) by adding at the end the following:*

18 *“(b) Subsection (a) does not apply to the disclosure,*  
19 *before a grand jury or in a criminal trial, hearing, or other*  
20 *criminal proceeding, of the contents of a communication,*  
21 *or evidence derived therefrom, against a person alleged to*  
22 *have intercepted, used, or disclosed the communication in*  
23 *violation of this chapter, or chapter 121, or participated*  
24 *in such violation.”.*

25 *(b) SECTION 2517.—Paragraphs (1) and (2) of section*  
26 *2517 are each amended by inserting “or under the cir-*

1 *cumstances described in section 2515(b)” after “by this*  
2 *chapter”.*

3 (c) *SECTION 2518.—Section 2518 of title 18, United*  
4 *States Code, is amended—*

5 (1) *in subsection (7), by striking “subsection*  
6 *(d)” and inserting “subsection (8)(d)”;* and

7 (2) *in subsection (10)—*

8 (A) *in paragraph (a)—*

9 (i) *by striking “or oral” each place it*  
10 *appears and inserting “, oral, or elec-*  
11 *tronic”;*

12 (ii) *by striking the period at the end of*  
13 *clause (iii) and inserting a semicolon; and*

14 (iii) *by inserting “except that no*  
15 *supresssion may be ordered under the cir-*  
16 *cumstances described in section 2515(b).”*  
17 *before “Such motion”;* and

18 (B) *by striking paragraph (c).*

19 (d) *CLERICAL AMENDMENT.—The item relating to sec-*  
20 *tion 2515 in the table of sections at the beginning of chapter*  
21 *119 of title 18, United States Code, is amended to read as*  
22 *follows:*

*“2515. Prohibition of use as evidence of intercepted wire, oral, or electronic com-*  
*munications.”.*

1 **SEC. 3. REPORTS CONCERNING THE DISCLOSURE OF THE**  
2 **CONTENTS OF ELECTRONIC COMMUNICA-**  
3 **TIONS.**

4 *Section 2703 of title 18, United States Code, is amend-*  
5 *ed by adding at the end the following:*

6 *“(g) REPORTS CONCERNING THE DISCLOSURE OF THE*  
7 *CONTENTS OF ELECTRONIC COMMUNICATIONS.—*

8 *“(1) By January 31 of each calendar year, the*  
9 *judge issuing or denying an order, warrant, or sub-*  
10 *poena, or the authority issuing or denying a sub-*  
11 *poena, under subsection (a) or (b) of this section dur-*  
12 *ing the preceding calendar year shall report on each*  
13 *such order, warrant, or subpoena to the Administra-*  
14 *tive Office of the United States Courts—*

15 *“(A) the fact that the order, warrant, or*  
16 *subpoena was applied for;*

17 *“(B) the kind of order, warrant, or sub-*  
18 *poena applied for;*

19 *“(C) the fact that the order, warrant, or*  
20 *subpoena was granted as applied for, was modi-*  
21 *fied, or was denied;*

22 *“(D) the offense specified in the order, war-*  
23 *rant, subpoena, or application;*

24 *“(E) the identity of the agency making the*  
25 *application; and*

1           “(F) the nature of the facilities from which  
2           or the place where the contents of electronic com-  
3           munications were to be disclosed.

4           “(2) In January of each year the Attorney Gen-  
5           eral or an Assistant Attorney General specially des-  
6           ignated by the Attorney General shall report to the  
7           Administrative Office of the United States Courts—

8           “(A) the information required by subpara-  
9           graphs (A) through (F) of paragraph (1) of this  
10          subsection with respect to each application for  
11          an order, warrant, or subpoena made during the  
12          preceding calendar year; and

13          “(B) a general description of the disclosures  
14          made under each such order, warrant, or sub-  
15          poena, including—

16               “(i) the approximate number of all  
17               communications disclosed and, of those, the  
18               approximate number of incriminating com-  
19               munications disclosed;

20               “(ii) the approximate number of other  
21               communications disclosed; and

22               “(iii) the approximate number of per-  
23               sons whose communications were disclosed.

24          “(3) In June of each year, beginning in 2002,  
25          the Director of the Administrative Office of the

1 *United States Courts shall transmit to the Congress*  
2 *a full and complete report concerning the number of*  
3 *applications for orders, warrants, or subpoenas au-*  
4 *thorizing or requiring the disclosure of the contents of*  
5 *electronic communications pursuant to subsections (a)*  
6 *and (b) of this section and the number of orders, war-*  
7 *rants, or subpoenas granted or denied pursuant to*  
8 *subsections (a) and (b) of this section during the pre-*  
9 *ceding calendar year. Such report shall include a*  
10 *summary and analysis of the data required to be filed*  
11 *with the Administrative Office by paragraphs (1) and*  
12 *(2) of this subsection. The Director of the Administra-*  
13 *tive Office of the United States Courts is authorized*  
14 *to issue binding regulations dealing with the content*  
15 *and form of the reports required to be filed by para-*  
16 *graphs (1) and (2) of this subsection.”.*

17 **SEC. 4. PEN REGISTERS AND TRAP AND TRACE DEVICES.**

18 (a) *REQUIREMENT FOR SHOWING.*—Section  
19 *3122(b)(2) of title 18, United States Code, is amended to*  
20 *read as follows:*

21 “(2) *a statement of facts showing that the re-*  
22 *quirements of section 3123 have been met.”.*

23 (b) *FINDING BY COURT.*—Subsection (a) of section  
24 *3123 of title 18, United States Code, is amended by striking*  
25 *“the attorney for the Government” and all that follows*

1 *through the end of such subsection and inserting “specific*  
2 *and articulable facts reasonably indicate that a crime has*  
3 *been, is being, or will be committed, and information likely*  
4 *to be obtained by such installation and use is relevant to*  
5 *the investigation of that crime.”.*

6 **SEC. 5. CIVIL DAMAGES.**

7 *Section 2520(c)(2) of title 18, United States Code, is*  
8 *amended—*

9 *(1) by striking “court may” and inserting “court*  
10 *shall”;*

11 *(2) by striking “greater” and inserting “great-*  
12 *est”;*

13 *(3) in subparagraph (A), by striking “or” after*  
14 *the semicolon;*

15 *(4) in subparagraph (B), by striking “whichever*  
16 *is the greater of \$100 a day for each day of violation*  
17 *or \$10,000.” and inserting “\$500 a day for each vio-*  
18 *lation; or”; and*

19 *(5) by inserting after subparagraph (B), the fol-*  
20 *lowing:*

21 *“(C) statutory damages of \$10,000.”.*

22 **SEC. 6. NOTIFICATION.**

23 *Section 2705(a)(4) of title 18, United States Code, is*  
24 *amended by striking “or by certification by a governmental*  
25 *entity, but only in accordance with subsection (b) of this*

1 *section.” and inserting “if the court determines that there*  
 2 *is reason to believe that notification of the existence of the*  
 3 *court order or subpoena may have an adverse result de-*  
 4 *scribed in paragraph (2) of this subsection.”.*

5 **SEC. 7. GOVERNMENT ACCESS TO LOCATION INFORMA-**  
 6 **TION.**

7 *(a) COURT ORDER REQUIRED.—Section 2703 of title*  
 8 *18, United States Code, as amended by section 3 of this*  
 9 *Act, is further amended by adding at the end the following:*

10 *“(h) DISCLOSURE OF LOCATION INFORMATION TO*  
 11 *GOVERNMENTAL ENTITIES.—*

12 *“(1) DISCLOSURE UPON COURT ORDER.—Except*  
 13 *as provided in paragraph (2), a provider of mobile*  
 14 *electronic communication service shall provide to a*  
 15 *governmental entity information generated by and*  
 16 *disclosing the current physical location of a sub-*  
 17 *scriber’s equipment only if the governmental entity*  
 18 *obtains a court order issued upon a finding that there*  
 19 *is probable cause to believe that—*

20 *“(A) a person is committing, has com-*  
 21 *mitted, or is about to commit a felony offense;*  
 22 *and*

23 *“(B) the location information sought to be*  
 24 *obtained concerns the location of the person be-*  
 25 *lieved to have committed, be committing, or be*

1           *about to commit that offense or a victim of that*  
2           *offense.*

3           “(2) *PERMITTED DISCLOSURES WITHOUT COURT*  
4           *ORDER.—A provider of mobile electronic communica-*  
5           *tion service may provide information described in*  
6           *paragraph (1)—*

7                   “(A) *to a public safety answering point,*  
8                   *emergency medical service provider or emergency*  
9                   *dispatch provider, public safety, fire service or*  
10                   *law enforcement official, or hospital emergency*  
11                   *or trauma care facility, in order to respond to*  
12                   *the user’s call for emergency services;*

13                   “(B) *to inform the user’s legal guardian or*  
14                   *members of the user’s immediate family of the*  
15                   *user’s location in an emergency situation that*  
16                   *involves the risk of death or serious physical*  
17                   *harm; or*

18                   “(C) *with the express consent of the sub-*  
19                   *scriber or the user of the equipment concerned.*

20           “(3) *DEFINITION.—The term ‘public safety an-*  
21           *swering point’ means a facility that has been des-*  
22           *ignated to receive emergency calls and route them to*  
23           *emergency service personnel.”.*

24           “(b) *CONFORMING AMENDMENT.—Subsection (c)(1)(A)*  
25           *of section 2703 of title 18, United States Code, is amended*

1 *by striking “(b) of this section” and inserting “(b), or wire-*  
2 *less location information covered by subsection (g)”.*

3 **SEC. 8. COMPUTER CRIME AMENDMENTS.**

4 *(a) GENERALLY.—Section 1030 of title 18, United*  
5 *States Code, is amended—*

6 *(1) in subsection (a)(3), by striking “such a com-*  
7 *puter” and inserting “without or in excess of author-*  
8 *ization a computer”;*

9 *(2) in subsection (a)(5), by inserting after sub-*  
10 *paragraph (C) the following:*

11 *“(B) whose conduct described in clause (i), (ii),*  
12 *or (iii) of subparagraph (A)—*

13 *“(i) caused loss to one or more persons dur-*  
14 *ing any one-year period (including loss resulting*  
15 *from a related course of conduct affecting one or*  
16 *more other protected computers) aggregating at*  
17 *least \$5,000;*

18 *“(ii) modified or impaired, or potentially*  
19 *modified or impaired, the medical examination,*  
20 *diagnosis, treatment, or care of one or more in-*  
21 *dividuals;*

22 *“(iii) caused physical injury to any indi-*  
23 *vidual;*

24 *“(iv) threatened public health or safety;*

1           “(v) caused damage affecting a computer  
2           system used by or for a government entity in  
3           furtherance of the administration of justice, na-  
4           tional defense, or national security; or

5           “(vi) intentionally defaced, damaged, or de-  
6           stroyed images or information made available to  
7           the public and thereby interfered with the rights  
8           protected under the First Amendment to the Con-  
9           stitution;”.

10           (3) in subsection (a)(5)(A), by inserting “(i)”  
11           after “(5)(A)”;

12           (4) in subsection (a)(5)(B), by striking “(B)”  
13           and inserting “(i)”;

14           (5) in subsection (a)(5)(C)—

15           (A) by striking “(C)” and inserting “(iii)”;

16           and

17           (B) by inserting “and” after the semicolon;

18           (6) in subsection (a)(7), by striking “, firm, as-  
19           sociation, educational institution, financial institu-  
20           tion, government entity, or other legal entity,”;

21           (7) in subsection (b), by adding before the period  
22           “as if such person had committed the completed of-  
23           fense”;

1           (8) *in subsection (c)(1)(A) and (B), by striking*  
2           *“; or an attempt to commit an offense punishable*  
3           *under this subparagraph”;*

4           (9) *in subsection (c)(1)(A), by inserting “,*  
5           *(a)(5)(A)(i), or (a)(5)(A)(ii)” after “(a)(1)”;*

6           (10) *by amending subsection (c)(2)(A) to read as*  
7           *follows:*

8           *“(2)(A) except as provided in subsection*  
9           *(c)(2)(B), a fine under this title or imprisonment for*  
10           *not more than one year, or both, in the case of an of-*  
11           *fense under subsection (a)(2), (a)(3), (a)(5)(A)(iii), or*  
12           *(a)(6) of this section which does not occur after a con-*  
13           *viction for another offense under this section;”;*

14           (11) *by striking subparagraph (C) of subsection*  
15           *(c)(2);*

16           (12) *in subsection (c)(3)—*

17           (A) *by striking “(3)(A)” and inserting*  
18           *“(3)”;*

19           (B) *by striking “, (a)(5)(A), (a)(5)(B),”;*

20           (C) *by striking “; or an attempt to commit*  
21           *an offense punishable under this subparagraph;*  
22           *and” and inserting “; and”; and*

23           (D) *by striking subparagraph (B) and in-*  
24           *serting:*

1           “(4) a fine under this title or imprisonment for  
2           not more than ten years, or both, in the case of an  
3           offense under subsection (a)(2), (a)(3), (a)(4), (a)(5),  
4           (a)(6), or (a)(7) of this section which occurs after a  
5           conviction for another offense under this section.”;

6           (13) in subsection (d)—

7           (A) by striking “subsections (a)(2)(A),  
8           (a)(2)(B), (a)(3), (a)(4), (a)(5), and (a)(6) of”;  
9           and

10           (B) by striking “which shall be entered into  
11           by” and inserting “between”;

12           (14) in subsection (e)(7), by striking “and” after  
13           the semicolon;

14           (15) in subsection (e)(8), by striking all after  
15           “information” and inserting a semicolon;

16           (16) in subsection (e)(9), by striking the period  
17           at the end and inserting a semicolon;

18           (17) by inserting the following after subsection  
19           (e)(9):

20           “(10) the term ‘conviction for another offense  
21           under this section’ includes a State conviction for a  
22           crime punishable by imprisonment for more than 1  
23           year, an element of which is unauthorized access, or  
24           exceeding authorized access, to a computer;

1           “(11) the term ‘loss’ means any reasonable cost  
2           to any victim, including responding to the offense,  
3           conducting a damage assessment, restoring any data,  
4           program, system, or information to its condition be-  
5           fore the offense, and any revenue lost or costs incurred  
6           because of interruption of service; and

7           “(12) the term ‘person’ includes any individual,  
8           firm, association, educational institution, financial  
9           institution, corporation, company, partnership, gov-  
10          ernment entity, or other legal entity.”;

11          (18) by amending subsection (g) to read as fol-  
12          lows:

13          “(g) Except as herein provided, any person who suffers  
14          damage or loss by reason of a violation of this section may  
15          maintain a civil action against the violator to obtain com-  
16          pensatory damages and injunctive or other equitable relief.  
17          A suit for a violation of subsection (a)(5) may be brought  
18          only if the conduct involves one or more of the factors enu-  
19          merated in subsection (a)(5)(B). No action may be brought  
20          under this subsection unless such action is begun within  
21          2 years of the date of the act complained of or the date  
22          of the discovery of the damage.”; and

23          (19) by adding the following subsection after sub-  
24          section (h):

1       “(i)(1) *The court, in imposing sentence on any person*  
2 *convicted of a violation of this section, shall order, in addi-*  
3 *tion to any other sentence imposed and irrespective of any*  
4 *provision of State law, that such person forfeit to the United*  
5 *States—*

6               “(A) *such person’s interest in any personal prop-*  
7 *erty that was used or intended to be used to commit*  
8 *or to facilitate the commission of such violation; and*

9               “(B) *any property, real or personal, constituting*  
10 *or derived from, any proceeds that such person ob-*  
11 *tained, directly or indirectly, as a result of such vio-*  
12 *lation.*

13       “(2) *The criminal forfeiture of property under this*  
14 *subsection, any seizure and disposition thereof, and any ad-*  
15 *ministrative or judicial proceeding in relation thereto, shall*  
16 *be governed by the provisions of section 413 of the Com-*  
17 *prehensive Drug Abuse Prevention and Control Act of 1970*  
18 *(21 U.S.C. 853), except subsection (d) of that section.”.*

19       (b) *SENTENCING COMMISSION.—Section 805(c) of the*  
20 *Antiterrorism and Effective Death Penalty Act of 1996*  
21 *(Public Law 104–132; 28 U.S.C. 994 note) is amended by*  
22 *striking “shall amend the sentencing guidelines to ensure*  
23 *any individual convicted of a violation of paragraph (4)*  
24 *or (5)” and inserting “shall amend the sentencing guide-*  
25 *lines to ensure any individual convicted of a violation of*

1 paragraph (4) or a felony violation of paragraph (5)(A)(i)  
 2 (but not of paragraph (5)(A)(ii) or (5)(A)(iii)).

3 **SEC. 9. INTERCEPTION OF WIRE, ORAL, AND ELECTRONIC**  
 4 **COMMUNICATIONS AMENDMENTS.**

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

7 (1) in section 2510(10), by striking “153(h)”  
 8 and inserting “153(10)”;

9 (2) in section 2516(1), by striking “wire or oral”  
 10 and inserting “wire, oral, or electronic”;

11 (3) in the first paragraph (p) of section 2516(1),  
 12 by inserting “section 1030 (relating to computer  
 13 fraud and abuse), section 1362 (relating to destruc-  
 14 tion of government communications facilities),” after  
 15 “identification documents,”; and

16 (4) in section 2516(1), by redesignating the sec-  
 17 ond paragraph (p) as paragraph (q).

18 **SEC. 10. AMENDMENTS TO THE ELECTRONIC COMMUNICA-**  
 19 **TIONS PRIVACY ACT.**

20 (a) **PENALTIES FOR UNLAWFUL ACCESS TO STORED**  
 21 **COMMUNICATIONS.**—Section 2701 of title 18, United States  
 22 Code, is amended—

23 (1) in subsection (b)(1)—

24 (A) by striking “purposes of” and inserting  
 25 “a tortious or illegal purpose,”;

1           (B) in subparagraph (A), by striking “one  
2           year” and inserting “three years”; and

3           (C) in subparagraph (B), by striking “two”  
4           and inserting “five”; and

5           (2) by amending subsection (b)(2) to read as fol-  
6           lows:

7           “(2) in any other case—

8           “(A) a fine under this title or imprisonment  
9           for not more than one year, or both, in the case  
10          of a first offense under this subparagraph; and

11          “(B) a fine under this title or imprison-  
12          ment for not more than five years, or both, for  
13          any subsequent offense under this subpara-  
14          graph.”.

15          (b) *VOLUNTARY DISCLOSURE OF CUSTOMER COMMU-  
16          NICATIONS OR RECORDS.*—Section 2702 of title 18, United  
17          States Code, is amended—

18          (1) by amending the catchline to read as follows:

19          “**§ 2702. Voluntary disclosure of customer communica-  
20          tions or records**”;

21          (2) in subsection (a)(1)—

22                  (A) by striking “person or entity providing  
23                  an” and inserting “provider of”; and

24                  (B) by striking “and” at the end;

25          (3) in subsection (a)(2)—

1           (A) by striking “person or entity pro-  
2           viding” and inserting “provider of”; and

3           (B) by striking the period at the end and  
4           inserting “; and”;

5           (4) in subsection (a), by adding the following  
6           paragraph after paragraph (2):

7           “(3) a provider of remote computing service or  
8           electronic communication service to the public shall  
9           not knowingly divulge a record or other information  
10          pertaining to a subscriber to or customer of such serv-  
11          ice (not including the contents of communications  
12          covered by paragraph (1) or (2) of this subsection) to  
13          any governmental entity.”;

14          (5) in the heading of subsection (b) by inserting  
15          “FOR DISCLOSURE OF COMMUNICATIONS” after “EX-  
16          CEPTIONS”;

17          (6) in subsection (b), by striking “person or enti-  
18          ty” and inserting “provider described in subsection  
19          (a)”;

20          (7) by adding the following subsection after sub-  
21          section (b):

22          “(c) *EXCEPTIONS FOR DISCLOSURE OF CUSTOMER*  
23          *RECORDS.*—A provider described in subsection (a) may di-  
24          vulge a record or other information pertaining to a sub-  
25          scriber to or customer of such service (not including the con-

1 *tents of communications covered by subsection (a)(1) or*  
2 *(a)(2) of this section)—*

3           *“(1) as otherwise authorized in section 2703 of*  
4 *this title;*

5           *“(2) with the lawful consent of the customer or*  
6 *subscriber;*

7           *“(3) as may be necessarily incident to the ren-*  
8 *dition of the service or to the protection of the rights*  
9 *or property of the provider of that service;*

10           *“(4) to a governmental entity, if the provider*  
11 *reasonably believes that an emergency involving im-*  
12 *mediate danger of death or serious physical injury to*  
13 *any person justifies disclosure of the information; or*

14           *“(5) to any person other than a governmental*  
15 *entity where not otherwise prohibited by law.”.*

16       *(c) CONFORMING AMENDMENTS.—Section 2703 of title*  
17 *18, United States Code, as amended by section 7 of this*  
18 *Act, is further amended—*

19           *(1) in subsection (c) by—*

20                   *(A) redesignating paragraph (2) as para-*  
21 *graph (3); and*

22                   *(B) redesignating subparagraph (C) of*  
23 *paragraph (1) as paragraph (2);*

24           *(2) in subsection (c)(1) by—*

1           (A) striking “(A) Except as provided in  
2           subparagraph (B),” and inserting “A govern-  
3           mental entity may require”;

4           (B) striking “may disclose” and inserting  
5           “to disclose”; and

6           (C) striking “to any person other than a  
7           governmental entity.”;

8           (D) striking “(B) A provider of” through  
9           “to a governmental entity”;

10          (E) redesignating subclauses (i) through  
11          (iv) as subparagraphs (A) through (D);

12          (F) striking “or” at the end of subpara-  
13          graph (C) as redesignated;

14          (G) striking the period at the end of sub-  
15          paragraph (D) as redesignated and inserting “;  
16          or”; and

17          (H) adding the following subparagraph  
18          after subparagraph (D) as redesignated:

19          “(E) seeks information pursuant to paragraph  
20          (2).”; and

21          (3) in subsection (c)(2) as redesignated by—

22               (A) striking “an administrative subpoena  
23               authorized by a Federal or State statute or a  
24               Federal or State grand jury or trial subpoena”  
25               and inserting “a Federal or State grand jury or

1           *trial subpoena, or a subpoena or equivalent proc-*  
2           *ess authorized by a Federal or State statute,”;*  
3           *and*

4                     *(B) striking “subparagraph (B).” and in-*  
5                     *serting “paragraph (1).”.*

6           *(d) CIVIL DAMAGES.—Section 2707(c) of title 18,*  
7           *United States Code, is amended by striking “\$1,000” and*  
8           *inserting “\$5,000”.*

9           *(e) CLERICAL AMENDMENT.—The item relating to sec-*  
10          *tion 2702 in the table of sections at the beginnning of chap-*  
11          *ter 121 of title 18, United States Code, is amended to read*  
12          *as follows:*

*“2702. Voluntary disclosure of customer communications or records.”.*

13   **SEC. 11. ADDITIONAL PROVISIONS RELATING TO PEN REG-**  
14                     **ISTERS.**

15          *(a) EMERGENCY PROVISIONS.—Section 3125 of title*  
16          *18, United States Code, is amended—*

17                     *(1) in subsection (a)(1)—*

18                             *(A) in subparagraph (A), by striking “or”*  
19                             *after the semicolon;*

20                             *(B) in subparagraph (B), by striking the*  
21                             *comma after “crime” and inserting a semicolon;*  
22                             *and*

23                             *(C) by inserting after subparagraph (B),*  
24                             *the following:*

1           “(C) an immediate threat to a national se-  
2           curity interest; or

3           “(D) an ongoing attack on the integrity or  
4           availability of a protected computer in violation  
5           of section 1030(a)(5)(A)(i) or 1030(a)(5)(A)(ii)  
6           of this title.”;

7           (2) at the end of the matter following subsection  
8           (a)(2), by inserting the following: “In the event an  
9           application for such order is denied, or in any other  
10          case where the installation and use of a pen register  
11          or trap and trace device is terminated without an  
12          order having been issued, any information obtained  
13          by such installation and use shall be treated as hav-  
14          ing been obtained in violation of this chapter, and an  
15          inventory shall be served as provided for in subsection  
16          (b) of this section on the person named in the appli-  
17          cation.”;

18          (3) by inserting the following after subsection  
19          (a):

20          “(b) Within a reasonable time but not later than 90  
21          days after the filing of an application for an order of ap-  
22          proval under subsection (a)(2) of this section which is de-  
23          nied, the denying judge shall cause to be served, on the per-  
24          sons named in the order or the application, and such other  
25          parties to the information obtained by such installation and

1 *use of a pen register or trap and trace device as the judge*  
2 *may determine in his discretion is in the interest of justice,*  
3 *an inventory which shall include notice of—*

4           “(1) *the fact of the entry of the application;*

5           “(2) *the date of the entry and the date of the de-*  
6  *denial of the application; and*

7           “(3) *the fact that during the period covered by*  
8 *the application, information was obtained by the in-*  
9  *stallation and use of a pen register or trap and trace*  
10  *device.*

11 *The judge, upon the filing of a motion, may in his discre-*  
12  *tion make available to such person or his counsel for inspec-*  
13  *tion such portions of the applications as the judge deter-*  
14  *mines to be in the interest of justice. On an ex parte show-*  
15  *ing of good cause to a judge of competent jurisdiction the*  
16  *serving of the inventory required by this subsection may*  
17  *be postponed.”; and*

18           (4) *by redesignating subsections (b) through (d)*  
19 *as subsections (c) through (e), respectively.*

20       (b) *DEFINITIONS.—Section 3127 of title 18, United*  
21 *States Code, is amended—*

22           (1) *in paragraph (6), by striking the period and*  
23 *inserting “; and”; and*

24           (2) *by adding the following paragraph after*  
25 *paragraph (6):*

1           “(7) the term ‘protected computer’ has the mean-  
2           ing set forth in section 1030 of this title.”.

3   **SEC. 12. GOVERNMENT ACCESS TO CONTENTS OF STORED**  
4                           **ELECTRONIC COMMUNICATIONS.**

5           Section 2703(a) of title 18, United States Code, is  
6           amended by striking “one hundred and eighty days” each  
7           place it appears and inserting “one year”.

8   **SEC. 13. ENHANCED PRIVACY PROTECTION FOR INFORMA-**  
9                           **TION ON COMPUTER NETWORKS.**

10          Section 2510(17) of title 18, United States Code, is  
11          amended—

12                 (1) by striking “and” at the end of subpara-  
13                 graph (A); and

14                 (2) by inserting at the end the following:

15                         “(C) any storage of an electronic commu-  
16                         nication by an electronic communication service  
17                         without regard to whether the communication  
18                         has been accessed by the intended recipient;  
19                         and”.



**Calendar No. 562**

106TH CONGRESS  
2D SESSION

**H. R. 5018**

**[Report No. 106-932]**

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**A BILL**

To amend title 18, United States Code, to modify certain provisions of law relating to the interception of communications, and for other purposes.

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OCTOBER 4, 2000

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed