

Public Law 105-271  
105th Congress

An Act

Oct. 19, 1998  
[S. 2392]

To encourage the disclosure and exchange of information about computer processing problems, solutions, test practices and test results, and related matters in connection with the transition to the year 2000.

Year 2000  
Information and  
Readiness  
Disclosure Act.  
15 USC 1 note.

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Year 2000 Information and Readiness Disclosure Act".

**SEC. 2. FINDINGS AND PURPOSES.**

(a) FINDINGS.—Congress finds the following:

(1)(A) At least thousands but possibly millions of information technology computer systems, software programs, and semiconductors are not capable of recognizing certain dates in 1999 and after December 31, 1999, and will read dates in the year 2000 and thereafter as if those dates represent the year 1900 or thereafter or will fail to process those dates.

(B) The problem described in subparagraph (A) and resulting failures could incapacitate systems that are essential to the functioning of markets, commerce, consumer products, utilities, government, and safety and defense systems, in the United States and throughout the world.

(C) Reprogramming or replacing affected systems before the problem incapacitates essential systems is a matter of national and global interest.

(2) The prompt, candid, and thorough disclosure and exchange of information related to year 2000 readiness of entities, products, and services—

(A) would greatly enhance the ability of public and private entities to improve their year 2000 readiness; and

(B) is therefore a matter of national importance and a vital factor in minimizing any potential year 2000 related disruption to the Nation's economic well-being and security.

(3) Concern about the potential for legal liability associated with the disclosure and exchange of year 2000 readiness information is impeding the disclosure and exchange of such information.

(4) The capability to freely disseminate and exchange information relating to year 2000 readiness, solutions, test practices and test results, with the public and other entities without undue concern about litigation is critical to the ability of public and private entities to address year 2000 needs in a timely manner.

(5) The national interest will be served by uniform legal standards in connection with the disclosure and exchange of year 2000 readiness information that will promote disclosures and exchanges of such information in a timely fashion.

(b) **PURPOSES.**—Based upon the powers contained in article I, section 8, clause 3 of the Constitution of the United States, the purposes of this Act are—

(1) to promote the free disclosure and exchange of information related to year 2000 readiness;

(2) to assist consumers, small businesses, and local governments in effectively and rapidly responding to year 2000 problems; and

(3) to lessen burdens on interstate commerce by establishing certain uniform legal principles in connection with the disclosure and exchange of information related to year 2000 readiness.

### SEC. 3. DEFINITIONS.

In this Act:

(1) **ANTITRUST LAWS.**—The term “antitrust laws”—

(A) has the meaning given to it in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), except that such term includes section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent such section 5 applies to unfair methods of competition; and

(B) includes any State law similar to the laws referred to in subparagraph (A).

(2) **CONSUMER.**—The term “consumer” means an individual who acquires a consumer product for purposes other than resale.

(3) **CONSUMER PRODUCT.**—The term “consumer product” means any personal property or service which is normally used for personal, family, or household purposes.

(4) **COVERED ACTION.**—The term “covered action” means a civil action of any kind, whether arising under Federal or State law, except for an action brought by a Federal, State, or other public entity, agency, or authority acting in a regulatory, supervisory, or enforcement capacity.

(5) **MAKER.**—The term “maker” means each person or entity, including the United States or a State or political subdivision thereof, that—

(A) issues or publishes any year 2000 statement;

(B) develops or prepares any year 2000 statement;

or

(C) assists in, contributes to, or reviews, reports or comments on during, or approves, or otherwise takes part in the preparing, developing, issuing, approving, or publishing of any year 2000 statement.

(6) **REPUBLICATION.**—The term “republication” means any repetition, in whole or in part, of a year 2000 statement originally made by another.

(7) **YEAR 2000 INTERNET WEBSITE.**—The term “year 2000 Internet website” means an Internet website or other similar electronically accessible service, clearly designated on the website or service by the person or entity creating or controlling the content of the website or service as an area where year

2000 statements concerning that person or entity are posted or otherwise made accessible to the general public.

(8) **YEAR 2000 PROCESSING.**—The term “year 2000 processing” means the processing (including calculating, comparing, sequencing, displaying, or storing), transmitting, or receiving of date data from, into, and between the 20th and 21st centuries, and during the years 1999 and 2000, and leap year calculations.

(9) **YEAR 2000 READINESS DISCLOSURE.**—The term “year 2000 readiness disclosure” means any written year 2000 statement—

(A) clearly identified on its face as a year 2000 readiness disclosure;

(B) inscribed on a tangible medium or stored in an electronic or other medium and retrievable in perceivable form; and

(C) issued or published by or with the approval of a person or entity with respect to year 2000 processing of that person or entity or of products or services offered by that person or entity.

(10) **YEAR 2000 REMEDIATION PRODUCT OR SERVICE.**—The term “year 2000 remediation product or service” means a software program or service licensed, sold, or rendered by a person or entity and specifically designed to detect or correct year 2000 processing problems with respect to systems, products, or services manufactured or rendered by another person or entity.

(11) **YEAR 2000 STATEMENT.**—

(A) **IN GENERAL.**—The term “year 2000 statement” means any communication or other conveyance of information by a party to another or to the public, in any form or medium—

(i) concerning an assessment, projection, or estimate concerning year 2000 processing capabilities of an entity, product, service, or set of products and services;

(ii) concerning plans, objectives, or timetables for implementing or verifying the year 2000 processing capabilities of an entity, product, service, or set of products and services;

(iii) concerning test plans, test dates, test results, or operational problems or solutions related to year 2000 processing by—

(I) products; or

(II) services that incorporate or utilize products; or

(iv) reviewing, commenting on, or otherwise directly or indirectly relating to year 2000 processing capabilities.

(B) **NOT INCLUDED.**—For the purposes of any action brought under the securities laws, as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)), the term “year 2000 statement” does not include statements contained in any documents or materials filed with the Securities and Exchange Commission, or with Federal banking regulators, pursuant to section 12(i) of the Securities Exchange Act of 1934 (15 U.S.C.

781(i)), or disclosures or writing that when made accompanied the solicitation of an offer or sale of securities.

#### SEC. 4. PROTECTION FOR YEAR 2000 STATEMENTS.

(a) **EVIDENCE EXCLUSION.**—No year 2000 readiness disclosure, in whole or in part, shall be admissible against the maker of that disclosure to prove the accuracy or truth of any year 2000 statement set forth in that disclosure, in any covered action brought by another party except that—

(1) a year 2000 readiness disclosure may be admissible to serve as the basis for a claim for anticipatory breach, or repudiation of a contract, or a similar claim against the maker, to the extent provided by applicable law; and

(2) the court in any covered action shall have discretion to limit application of this subsection in any case in which the court determines that the maker's use of the year 2000 readiness disclosure amounts to bad faith or fraud, or is otherwise beyond what is reasonable to achieve the purposes of this Act.

(b) **FALSE, MISLEADING AND INACCURATE YEAR 2000 STATEMENTS.**—Except as provided in subsection (c), in any covered action, to the extent that such action is based on an allegedly false, inaccurate, or misleading year 2000 statement, the maker of that year 2000 statement shall not be liable under Federal or State law with respect to that year 2000 statement unless the claimant establishes, in addition to all other requisite elements of the applicable action, by clear and convincing evidence, that—

(1) the year 2000 statement was material; and

(2)(A) to the extent the year 2000 statement was not a republication, that the maker made the year 2000 statement—

(i) with actual knowledge that the year 2000 statement was false, inaccurate, or misleading;

(ii) with intent to deceive or mislead; or

(iii) with a reckless disregard as to the accuracy of the year 2000 statement; or

(B) to the extent the year 2000 statement was a republication, that the maker of the republication made the year 2000 statement—

(i) with actual knowledge that the year 2000 statement was false, inaccurate, or misleading;

(ii) with intent to deceive or mislead; or

(iii) without notice in that year 2000 statement that—

(I) the maker has not verified the contents of the republication; or

(II) the maker is not the source of the republication and the republication is based on information supplied by another person or entity identified in that year 2000 statement or republication.

(c) **DEFAMATION OR SIMILAR CLAIMS.**—In a covered action arising under any Federal or State law of defamation, trade disparagement, or a similar claim, to the extent such action is based on an allegedly false, inaccurate, or misleading year 2000 statement, the maker of that year 2000 statement shall not be liable with respect to that year 2000 statement, unless the claimant establishes by clear and convincing evidence, in addition to all other requisite elements of the applicable action, that the year 2000 statement

was made with knowledge that the year 2000 statement was false or made with reckless disregard as to its truth or falsity.

(d) YEAR 2000 INTERNET WEBSITE.—

(1) IN GENERAL.—Except as provided in paragraph (2), in any covered action other than a covered action involving personal injury or serious physical damage to property, in which the adequacy of notice about year 2000 processing is at issue, the posting, in a commercially reasonable manner and for a commercially reasonable duration, of a notice by the entity charged with giving such notice on the year 2000 Internet website of that entity shall be deemed an adequate mechanism for providing that notice.

(2) EXCEPTION.—Paragraph (1) shall not apply if the court finds that the use of the mechanism of notice—

(A) is contrary to express prior representations regarding the mechanism of notice made by the party giving notice;

(B) is materially inconsistent with the regular course of dealing between the parties; or

(C) occurs where there have been no prior representations regarding the mechanism of notice, no regular course of dealing exists between the parties, and actual notice is clearly the most commercially reasonable means of providing notice.

(3) CONSTRUCTION.—Nothing in this subsection shall—

(A) alter or amend any Federal or State statute or regulation requiring that notice about year 2000 processing be provided using a different mechanism;

(B) create a duty to provide notice about year 2000 processing;

(C) preclude or suggest the use of any other medium for notice about year 2000 processing or require the use of an Internet website; or

(D) mandate the content or timing of any notices about year 2000 processing.

(e) LIMITATION ON EFFECT OF YEAR 2000 STATEMENTS.—

(1) IN GENERAL.—In any covered action, a year 2000 statement shall not be interpreted or construed as an amendment to or alteration of a contract or warranty, whether entered into by or approved for a public or private entity.

(2) NOT APPLICABLE.—

(A) IN GENERAL.—This subsection shall not apply—

(i) to the extent the party whose year 2000 statement is alleged to have amended or altered a contract or warranty has otherwise agreed in writing to so alter or amend the contract or warranty;

(ii) to a year 2000 statement made in conjunction with the formation of the contract or warranty; or

(iii) if the contract or warranty specifically provides for its amendment or alteration through the making of a year 2000 statement.

(B) RULE OF CONSTRUCTION.—Nothing in this subsection shall affect applicable Federal or State law in effect as of the date of enactment of this Act with respect to determining the extent to which a year 2000 statement affects a contract or warranty.

(f) SPECIAL DATA GATHERING.—

(1) **IN GENERAL.**—A Federal entity, agency, or authority may expressly designate a request for the voluntary provision of information relating to year 2000 processing, including year 2000 statements, as a special year 2000 data gathering request made pursuant to this subsection.

(2) **SPECIFICS.**—A special year 2000 data gathering request made under this subsection shall specify a Federal entity, agency, or authority, or, with its consent, another public or private entity, agency, or authority, to gather responses to the request.

(3) **PROTECTIONS.**—Except with the express consent or permission of the provider of information described in paragraph (1), any year 2000 statements or other such information provided by a party in response to a special year 2000 data gathering request made under this subsection—

(A) shall be exempt from disclosure under subsection (b)(4) of section 552 of title 5, United States Code, commonly known as the “Freedom of Information Act”;

(B) shall not be disclosed to any third party; and

(C) may not be used by any Federal entity, agency, or authority or by any third party, directly or indirectly, in any civil action arising under any Federal or State law.

(4) **EXCEPTIONS.**—

(A) **INFORMATION OBTAINED ELSEWHERE.**—Nothing in this subsection shall preclude a Federal entity, agency, or authority, or any third party, from separately obtaining the information submitted in response to a request under this subsection through the use of independent legal authorities, and using such separately obtained information in any action.

(B) **VOLUNTARY DISCLOSURE.**—A restriction on use or disclosure of information under this subsection shall not apply to any information disclosed to the public with the express consent of the party responding to a special year 2000 data gathering request or disclosed by such party separately from a response to a special year 2000 data gathering request.

#### **SEC. 5. TEMPORARY ANTITRUST EXEMPTION.**

(a) **EXEMPTION.**—Except as provided in subsection (b), the anti-trust laws shall not apply to conduct engaged in, including making and implementing an agreement, solely for the purpose of and limited to—

(1) facilitating responses intended to correct or avoid a failure of year 2000 processing in a computer system, in a component of a computer system, in a computer program or software, or services utilizing any such system, component, program, or hardware; or

(2) communicating or disclosing information to help correct or avoid the effects of year 2000 processing failure

(b) **APPLICABILITY.**—Subsection (a) shall apply only to conduct that occurs, or an agreement that is made and implemented, after the date of enactment of this Act and before July 14, 2001.

(c) **EXCEPTION TO EXEMPTION.**—Subsection (a) shall not apply with respect to conduct that involves or results in an agreement



to boycott any person, to allocate a market, or to fix prices or output.

(d) **RULE OF CONSTRUCTION.**—The exemption granted by this section shall be construed narrowly.

**SEC. 6. EXCLUSIONS.**

(a) **EFFECT ON INFORMATION DISCLOSURE.**—This Act does not affect, abrogate, amend, or alter the authority of a Federal or State entity, agency, or authority to enforce a requirement to provide or disclose, or not to provide or disclose, information under a Federal or State statute or regulation or to enforce such statute or regulation.

(b) **CONTRACTS AND OTHER CLAIMS.**—

(1) **IN GENERAL.**—Except as may be otherwise provided in subsections (a) and (e) of section 4, this Act does not affect, abrogate, amend, or alter any right established by contract or tariff between any person or entity, whether entered into by a public or private person or entity, under any Federal or State law.

(2) **OTHER CLAIMS.**—

(A) **IN GENERAL.**—In any covered action brought by a consumer, this Act does not apply to a year 2000 statement expressly made in a solicitation, including an advertisement or offer to sell, to that consumer by a seller, manufacturer, or provider of a consumer product.

(B) **SPECIFIC NOTICE REQUIRED.**—In any covered action, this Act shall not apply to a year 2000 statement, concerning a year 2000 remediation product or service, expressly made in an offer to sell or in a solicitation (including an advertisement) by a seller, manufacturer, or provider, of that product or service unless, during the course of the offer or solicitation, the party making the offer or solicitation provides the following notice in accordance with section 4(d):

“Statements made to you in the course of this sale are subject to the Year 2000 Information and Readiness Disclosure Act (\_\_\_ U.S.C. \_\_\_). In the case of a dispute, this Act may reduce your legal rights regarding the use of any such statements, unless otherwise specified by your contract or tariff.”

(3) **RULE OF CONSTRUCTION.**—Nothing in this Act shall be construed to preclude any claims that are not based exclusively on year 2000 statements.

(c) **DUTY OR STANDARD OF CARE.**—

(1) **IN GENERAL.**—This Act shall not impose upon the maker of any year 2000 statement any more stringent obligation, duty, or standard of care than is otherwise applicable under any other Federal law or State law.

(2) **ADDITIONAL DISCLOSURE.**—This Act does not preclude any party from making or providing any additional disclosure, disclaimer, or similar provisions in connection with any year 2000 readiness disclosure or year 2000 statement.

(3) **DUTY OF CARE.**—This Act shall not be deemed to alter any standard or duty of care owed by a fiduciary, as defined or determined by applicable Federal or State law.

(d) **INTELLECTUAL PROPERTY RIGHTS.**—This Act does not affect, abrogate, amend, or alter any right in a patent, copyright, semiconductor mask work, trade secret, trade name, trademark, or service mark, under any Federal or State law.

(e) **INJUNCTIVE RELIEF.**—Nothing in this Act shall be deemed to preclude a claimant from seeking injunctive relief with respect to a year 2000 statement.

#### SEC. 7. APPLICABILITY.

(a) **EFFECTIVE DATE.**—

(1) **IN GENERAL.**—Except as otherwise provided in this section, this Act shall become effective on the date of enactment of this Act.

(2) **APPLICATION TO LAWSUITS PENDING.**—This Act shall not affect or apply to any lawsuit pending on July 14, 1998.

(3) **APPLICATION TO STATEMENTS AND DISCLOSURES.**—Except as provided in subsection (b)—

(A) this Act shall apply to any year 2000 statement made beginning on July 14, 1998 and ending on July 14, 2001; and

(B) this Act shall apply to any year 2000 readiness disclosure made beginning on the date of enactment of this Act and ending on July 14, 2001.

(b) **PREVIOUSLY MADE READINESS DISCLOSURE.**—

(1) **IN GENERAL.**—For the purposes of section 4(a), a person or entity that issued or published a year 2000 statement after January 1, 1996, and before the date of enactment of this Act, may designate that year 2000 statement as a year 2000 readiness disclosure if—

(A) the year 2000 statement complied with the requirements of section 3(9) when made, other than being clearly designated on its face as a disclosure; and

(B) within 45 days after the date of enactment of this Act, the person or entity seeking the designation—

Deadline.

(i) provides individual notice that meets the requirements of paragraph (2) to all recipients of the applicable year 2000 statement; or

(ii) prominently posts notice that meets the requirements of paragraph (2) on its year 2000 Internet website, commencing prior to the end of the 45-day period under this subparagraph and extending for a minimum of 45 consecutive days and also uses the same method of notification used to originally provide the applicable year 2000 statement.

(2) **REQUIREMENTS.**—A notice under paragraph (1)(B) shall—

(A) state that the year 2000 statement that is the subject of the notice is being designated a year 2000 readiness disclosure; and

(B) include a copy of the year 2000 statement with a legend labeling the statement as a “Year 2000 Readiness Disclosure”.

(c) **EXCEPTION.**—No designation of a year 2000 statement as a year 2000 readiness disclosure under subsection (b) shall apply with respect to any person or entity that—

(1) proves, by clear and convincing evidence, that it relied on the year 2000 statement prior to the receipt of notice



described in subsection (b)(1)(B) and it would be prejudiced by the retroactive designation of the year 2000 statement as a year 2000 readiness disclosure; and

(2) provides to the person or entity seeking the designation a written notice objecting to the designation within 45 days after receipt of individual notice under subsection (b)(1)(B)(i), or within 180 days after the date of enactment of this Act, in the case of notice provided under subsection (b)(1)(B)(ii).

#### SEC. 8. YEAR 2000 COUNCIL WORKING GROUPS.

##### (a) IN GENERAL.—

(1) WORKING GROUPS.—The President's Year 2000 Council (referred to in this section as the "Council") may establish and terminate working groups composed of Federal employees who will engage outside organizations in discussions to address the year 2000 problems identified in section 2(a)(1) to share information related to year 2000 readiness, and otherwise to serve the purposes of this Act.

Records.  
Public  
information.

(2) LIST OF GROUPS.—The Council shall maintain and make available to the public a printed and electronic list of the working groups, the members of each working group, and a point of contact, together with an address, telephone number, and electronic mail address for the point of contact, for each working group created under this section.

(3) BALANCE.—The Council shall seek to achieve a balance of participation and representation among the working groups.

Records.  
Public  
information.

(4) ATTENDANCE.—The Council shall maintain and make available to the public a printed and electronic list of working group members who attend each meeting of a working group as well as any other individuals or organizations participating in each meeting.

(5) MEETINGS.—Each meeting of a working group shall be announced in advance in accordance with procedures established by the Council. The Council shall encourage working groups to hold meetings open to the public to the extent feasible and consistent with the activities of the Council and the purposes of this Act.

(b) FACAA.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the working groups established under this section.

(c) PRIVATE RIGHT OF ACTION.—This section creates no private right of action to sue for enforcement of the provisions of this section.

(d) EXPIRATION.—The authority conferred by this section shall expire on December 31, 2000.

#### SEC. 9. NATIONAL INFORMATION CLEARINGHOUSE AND WEBSITE.

##### (a) NATIONAL WEBSITE.—

(1) IN GENERAL.—The Administrator of General Services shall create and maintain until July 14, 2002, a national year 2000 website, and promote its availability, designed to assist consumers, small business, and local governments in obtaining information from other governmental websites, hotlines, or information clearinghouses about year 2000 processing of computers, systems, products, and services, including websites maintained by independent agencies and other departments.

(2) CONSULTATION.—In creating the national year 2000 website, the Administrator of General Services shall consult with—

(A) the Director of the Office of Management and Budget;

(B) the Administrator of the Small Business Administration;

(C) the Consumer Product Safety Commission;

(D) officials of State and local governments;

(E) the Director of the National Institute of Standards and Technology;

(F) representatives of consumer and industry groups; and

(G) representatives of other entities, as determined appropriate.

(b) REPORT.—The Administrator of General Services shall submit a report to the Committees on the Judiciary of the Senate and the House of Representatives and the Committee on Governmental Affairs of the Senate and the Committee on Government Reform and Oversight of the House of Representatives not later than 60 days after the date of enactment of this Act regarding planning to comply with the requirements of this section.

Deadline.

Approved October 19, 1998.

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LEGISLATIVE HISTORY—S. 2392:

CONGRESSIONAL RECORD, Vol. 144 (1998):

Sept. 28, considered and passed Senate.

Oct. 1, considered and passed House.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 34 (1998):

Oct. 19, Presidential statement.

described in subsection (b)(1)(B) and it would be prejudiced by the retroactive designation of the year 2000 statement as a year 2000 readiness disclosure; and

(2) provides to the person or entity seeking the designation a written notice objecting to the designation within 45 days after receipt of individual notice under subsection (b)(1)(B)(i), or within 180 days after the date of enactment of this Act, in the case of notice provided under subsection (b)(1)(B)(ii).

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Records.  
Public  
information.

(2) LIST OF GROUPS.—The Council shall maintain and make available to the public a printed and electronic list of the working groups, the members of each working group, and a point of contact, together with an address, telephone number, and electronic mail address for the point of contact, for each working group created under this section.

(3) BALANCE.—The Council shall seek to achieve a balance of participation and representation among the working groups.

Records.  
Public  
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(4) ATTENDANCE.—The Council shall maintain and make available to the public a printed and electronic list of working group members who attend each meeting of a working group as well as any other individuals or organizations participating in each meeting.

(5) MEETINGS.—Each meeting of a working group shall be announced in advance in accordance with procedures established by the Council. The Council shall encourage working groups to hold meetings open to the public to the extent feasible and consistent with the activities of the Council and the purposes of this Act.

(b) FACAA.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the working groups established under this section.

(c) PRIVATE RIGHT OF ACTION.—This section creates no private right of action to sue for enforcement of the provisions of this section.

(d) EXPIRATION.—The authority conferred by this section shall expire on December 31, 2000.

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(2) CONSULTATION.—In creating the national year 2000 website, the Administrator of General Services shall consult with—

(A) the Director of the Office of Management and Budget;

(B) the Administrator of the Small Business Administration;

(C) the Consumer Product Safety Commission;

(D) officials of State and local governments;

(E) the Director of the National Institute of Standards and Technology;

(F) representatives of consumer and industry groups; and

(G) representatives of other entities, as determined appropriate.

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WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 34 (1998):

Oct. 19, Presidential statement.

Public Law 105-272  
105th Congress

An Act

Oct. 20, 1998

[H.R. 3694]

Intelligence  
Authorization  
Act for Fiscal  
Year 1999.

To authorize appropriations for fiscal year 1999 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

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

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) **SHORT TITLE.**—This Act may be cited as the “Intelligence Authorization Act for Fiscal Year 1999”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follow:

Sec. 1. Short title; table of contents.

**TITLE I—INTELLIGENCE ACTIVITIES**

Sec. 101. Authorization of appropriations.

Sec. 102. Classified schedule of authorizations.

Sec. 103. Personnel ceiling adjustments.

Sec. 104. Community Management Account.

Sec. 105. Authorization of emergency supplemental appropriations for fiscal year 1998.

**TITLE II—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND  
DISABILITY SYSTEM**

Sec. 201. Authorization of appropriations.

**TITLE III—GENERAL PROVISIONS**

Sec. 301. Increase in employee compensation and benefits authorized by law.

Sec. 302. Restriction on conduct of intelligence activities.

Sec. 303. One-year extension of application of sanctions laws to intelligence activities.

Sec. 304. Sense of Congress on intelligence community contracting.

Sec. 305. Modification of national security education program.

Sec. 306. Requirement to direct competitive analysis of analytical products having National importance.

Sec. 307. Annual reports to Congress.

Sec. 308. Quadrennial intelligence review.

Sec. 309. Designation of headquarters compound of Central Intelligence Agency as the George Bush Center for Intelligence.

**TITLE IV—CENTRAL INTELLIGENCE AGENCY**

Sec. 401. Enhanced protective authority for CIA personnel and family members.

Sec. 402. Authority for retroactive payment of specified special pay allowance.

Sec. 403. Technical amendments.

**TITLE V—DEPARTMENT OF DEFENSE INTELLIGENCE ACTIVITIES**

Sec. 501. Extension of authority to engage in commercial activities as security for intelligence collection activities.

**TITLE VI—FOREIGN INTELLIGENCE AND INTERNATIONAL TERRORISM INVESTIGATIONS**

- Sec. 601. Pen registers and trap and trace devices in foreign intelligence and international terrorism investigations.  
Sec. 602. Access to certain business records for foreign intelligence and international terrorism investigations.  
Sec. 603. Conforming and clerical amendments.  
Sec. 604. Wire and electronic communications interception requirements.  
Sec. 605. Authority of Attorney General to accept voluntary services.

**TITLE VII—WHISTLEBLOWER PROTECTION FOR INTELLIGENCE COMMUNITY EMPLOYEES REPORTING URGENT CONCERNS TO CONGRESS**

- Sec. 701. Short title; findings.  
Sec. 702. Protection of intelligence community employees who report urgent concerns to Congress.

**TITLE I—INTELLIGENCE ACTIVITIES****SEC. 101. AUTHORIZATION OF APPROPRIATIONS.**

Funds are hereby authorized to be appropriated for fiscal year 1999 for the conduct of the intelligence and intelligence-related activities of the following elements of the United States Government:

- (1) The Central Intelligence Agency.
- (2) The Department of Defense.
- (3) The Defense Intelligence Agency.
- (4) The National Security Agency.
- (5) The Department of the Army, the Department of the Navy, and the Department of the Air Force.
- (6) The Department of State.
- (7) The Department of the Treasury.
- (8) The Department of Energy.
- (9) The Federal Bureau of Investigation.
- (10) The National Reconnaissance Office.
- (11) The National Imagery and Mapping Agency.

**SEC. 102. CLASSIFIED SCHEDULE OF AUTHORIZATIONS.**

(a) SPECIFICATIONS OF AMOUNTS AND PERSONNEL CEILINGS.—The amounts authorized to be appropriated under section 101, and the authorized personnel ceilings as of September 30, 1999, for the conduct of the intelligence and intelligence-related activities of the elements listed in such section, are those specified in the classified Schedule of Authorizations prepared to accompany the conference report on the bill H.R. 3694 of the 105th Congress.

(b) AVAILABILITY OF CLASSIFIED SCHEDULE OF AUTHORIZATIONS.—The Schedule of Authorizations shall be made available to the Committees on Appropriations of the Senate and House of Representatives and to the President. The President shall provide for suitable distribution of the Schedule, or of appropriate portions of the Schedule, within the Executive Branch.

President.

**SEC. 103. PERSONNEL CEILING ADJUSTMENTS.**

(a) AUTHORITY FOR ADJUSTMENTS.—With the approval of the Director of the Office of Management and Budget, the Director of Central Intelligence may authorize employment of civilian personnel in excess of the number authorized for fiscal year 1999 under section 102 when the Director of Central Intelligence determines that such action is necessary to the performance of important intelligence functions, except that the number of personnel



employed in excess of the number authorized under such section may not, for any element of the intelligence community, exceed 2 percent of the number of civilian personnel authorized under such section for such element.

(b) NOTICE TO INTELLIGENCE COMMITTEES.—The Director of Central Intelligence shall promptly notify the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate upon an exercise of the authority granted by this section.

#### SEC. 104. COMMUNITY MANAGEMENT ACCOUNT.

(a) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for the Community Management Account of the Director of Central Intelligence for fiscal year 1999 the sum of \$129,123,000. Within such amount, funds identified in the classified Schedule of Authorizations referred to in section 102(a) for the Advanced Research and Development Committee and the Advanced Technology Group shall remain available until September 30, 2000.

(b) AUTHORIZED PERSONNEL LEVELS.—The elements within the Community Management Account of the Director of Central Intelligence are authorized 283 full-time personnel as of September 30, 1999. Personnel serving in such elements may be permanent employees of the Community Management Staff or personnel detailed from other elements of the United States Government.

##### (c) CLASSIFIED AUTHORIZATIONS.—

(1) AUTHORIZATION OF APPROPRIATIONS.—In addition to amounts authorized to be appropriated for the Community Management Account by subsection (a), there is also authorized to be appropriated for the Community Management Account for fiscal year 1999 such additional amounts as are specified in the classified Schedule of Authorizations referred to in section 102(a). Such additional amounts shall remain available until September 30, 2000.

(2) AUTHORIZATION OF PERSONNEL.—In addition to the personnel authorized by subsection (b) for elements of the Community Management Account as of September 30, 1999, there is authorized such additional personnel for such elements as of that date as is specified in the classified Schedule of Authorizations.

(d) REIMBURSEMENT.—Except as provided in section 113 of the National Security Act of 1947 (50 U.S.C. 404h), during fiscal year 1999, any officer or employee of the United States or member of the Armed Forces who is detailed to the staff of an element within the Community Management Account from another element of the United States Government shall be detailed on a reimbursable basis, except that any such officer, employee, or member may be detailed on a nonreimbursable basis for a period of less than 1 year for the performance of temporary functions as required by the Director of Central Intelligence.

##### (e) NATIONAL DRUG INTELLIGENCE CENTER.—

(1) IN GENERAL.—Of the amount appropriated pursuant to the authorization in subsection (a), the amount of \$27,000,000 shall be available for the National Drug Intelligence Center. Within such amount, funds provided for research, development, test, and evaluation purposes shall remain available until September 30, 2000, and funds provided

for procurement purposes shall remain available until September 30, 2001.

(2) **TRANSFER OF FUNDS.**—The Director of Central Intelligence shall transfer to the Attorney General of the United States funds available for the National Drug Intelligence Center under paragraph (1). The Attorney General shall utilize funds so transferred for the activities of the National Drug Intelligence Center.

(3) **LIMITATION.**—Amounts available for the National Drug Intelligence Center may not be used in contravention of the provisions of section 103(d)(1) of the National Security Act of 1947 (50 U.S.C. 403-3(d)(1)).

(4) **AUTHORITY.**—Notwithstanding any other provision of law, the Attorney General shall retain full authority over the operations of the National Drug Intelligence Center.

**(f) TRANSFER AUTHORITY FOR FUNDS FOR SECURITY REQUIREMENTS AT OVERSEAS LOCATIONS.**—

(1) **IN GENERAL.**—Of the amount appropriated pursuant to the authorization in subsection (a), the Director of Central Intelligence may transfer funds to departments or other agencies for the sole purpose of supporting certain intelligence community security requirements at overseas locations, as specified by the Director.

(2) **LIMITATION.**—Amounts made available for departments or agencies under paragraph (1) shall be—

(A) transferred to the specific appropriation;

(B) allocated to the specific account in the specific amount, as determined by the Director;

(C) merged with funds in such account that are available for architectural and engineering support expenses at overseas locations; and

(D) available only for the same purposes, and subject to the same terms and conditions, as the funds described in subparagraph (C).

**SEC. 105. AUTHORIZATION OF EMERGENCY SUPPLEMENTAL APPROPRIATIONS FOR FISCAL YEAR 1998.**

(a) **AUTHORIZATION.**—Amounts authorized to be appropriated for fiscal year 1998 under section 101 of the Intelligence Authorization Act for Fiscal Year 1998 (Public Law 105-107) for the conduct of the intelligence activities of elements of the United States Government listed in such section are hereby increased, with respect to any such authorized amount, by the amount by which appropriations pursuant to such authorization were increased by the following:

(1) An emergency supplemental appropriation in title I of the 1998 Supplemental Appropriations and Rescissions Act (Public Law 105-174).

(2) An emergency supplemental appropriation in a supplemental appropriations Act for fiscal year 1998 that is enacted after September 28, 1998, for such amounts as are designated by Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)(2)(A)).

(b) **RATIFICATION.**—For purposes of section 504 of the National Security Act of 1947 (50 U.S.C. 414), any obligation or expenditure of those amounts deemed to have been specifically authorized by

Congress in the Act referred to in subsection (a)(1) and in the supplemental appropriations Act referred to in subsection (a)(2) is hereby ratified and confirmed.

## **TITLE II—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABIL- ITY SYSTEM**

### **SEC. 201. AUTHORIZATION OF APPROPRIATIONS.**

There is authorized to be appropriated for the Central Intelligence Agency Retirement and Disability Fund for fiscal year 1999 the sum of \$201,500,000.

## **TITLE III—GENERAL PROVISIONS**

### **SEC. 301. INCREASE IN EMPLOYEE COMPENSATION AND BENEFITS AUTHORIZED BY LAW.**

Appropriations authorized by this Act for salary, pay, retirement, and other benefits for Federal employees may be increased by such additional or supplemental amounts as may be necessary for increases in such compensation or benefits authorized by law.

### **SEC. 302. RESTRICTION ON CONDUCT OF INTELLIGENCE ACTIVITIES.**

The authorization of appropriations by this Act shall not be deemed to constitute authority for the conduct of any intelligence activity which is not otherwise authorized by the Constitution or the laws of the United States.

### **SEC. 303. ONE-YEAR EXTENSION OF APPLICATION OF SANCTIONS LAWS TO INTELLIGENCE ACTIVITIES.**

Section 905 of the National Security Act of 1947 (50 U.S.C. 441d) is amended by striking out "January 6, 1999" and inserting in lieu thereof "January 6, 2000".

### **SEC. 304. SENSE OF CONGRESS ON INTELLIGENCE COMMUNITY CONTRACTING.**

It is the sense of Congress that the Director of Central Intelligence should continue to direct that elements of the intelligence community, whenever compatible with the national security interests of the United States and consistent with operational and security concerns related to the conduct of intelligence activities, and where fiscally sound, should competitively award contracts in a manner that maximizes the procurement of products properly designated as having been made in the United States.

### **SEC. 305. MODIFICATION OF NATIONAL SECURITY EDUCATION PROGRAM.**

(a) ASSISTANCE FOR COUNTERPROLIFERATION STUDIES.—The David L. Boren National Security Education Act of 1991 (50 U.S.C. 1901 et seq.) is amended as follows:

(1) Section 801 (50 U.S.C. 1901) is amended by inserting "counterproliferation studies," after "area studies," in subsections (b)(7) and (c)(2).

(2) Section 802 (50 U.S.C. 1902) is amended—

(A) in subsection (a), by inserting “counterproliferation studies,” after “area studies,” in paragraphs (1)(B)(i), (1)(C), and (4); and

(B) in subsection (b)(2), by inserting “counterproliferation study,” after “area study,” in subparagraphs (A)(ii) and (B)(ii).

(3) Section 803 (50 U.S.C. 1903) is amended by striking out “and area” in subsections (b)(8) and (d)(4) and inserting in lieu thereof “area, and counterproliferation”.

(4) Section 806(b)(1) (50 U.S.C. 1906(b)(1)) is amended by striking out “and area” and inserting in lieu thereof “area, and counterproliferation”.

(b) REVISION OF MEMBERSHIP OF NATIONAL SECURITY EDUCATION BOARD.—Section 803(b)(6) of such Act (50 U.S.C. 1903(b)(6)) is amended to read as follows:

“(6) The Secretary of Energy.”

**SEC. 306. REQUIREMENT TO DIRECT COMPETITIVE ANALYSIS OF ANALYTICAL PRODUCTS HAVING NATIONAL IMPORTANCE.**

Section 102(g)(2) of the National Security Act of 1947 (50 U.S.C. 403(g)(2)) is amended—

(1) by redesignating subparagraphs (D) and (E) as subparagraphs (E) and (F), respectively; and

(2) by inserting after subparagraph (C) the following new subparagraph (D):

“(D) direct competitive analysis of analytical products having National importance;”.

**SEC. 307. ANNUAL REPORTS TO CONGRESS.**

(a) ADDITIONAL ANNUAL REPORTS FROM THE DIRECTOR OF CENTRAL INTELLIGENCE.—Title I of the National Security Act of 1947 (50 U.S.C. 401 et seq.) is amended by adding at the end the following new section:

“ADDITIONAL ANNUAL REPORTS FROM THE DIRECTOR OF CENTRAL INTELLIGENCE

“SEC. 114. (a) REPORT ON INTELLIGENCE COMMUNITY COOPERATION WITH FEDERAL LAW ENFORCEMENT AGENCIES.—(1) Not later than December 31 of each year, the Director of Central Intelligence shall submit to the congressional intelligence committees and the congressional leadership a report describing the nature and extent of cooperation and assistance provided by the intelligence community to Federal law enforcement agencies with respect to efforts to stop the illegal importation into the United States of controlled substances (as that term is defined in section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)) that are included in schedule I or II under part B of such Act.

50 USC 404i.  
Deadline.

“(2) Each such report shall include a discussion of the following:

“(A) Illegal importation of such controlled substances through transit zones such as the Caribbean Sea and across the Southwest and northern borders of the United States.

“(B) Methodologies used for such illegal importation.

“(C) Additional routes used for such illegal importation.

“(D) Quantities of such controlled substances transported through each route.

"(3) Each such report may be prepared in classified form, unclassified form, or unclassified form with a classified annex.

"(b) ANNUAL REPORT ON THE SAFETY AND SECURITY OF RUSSIAN NUCLEAR FACILITIES AND NUCLEAR MILITARY FORCES.—(1) The Director of Central Intelligence shall, on an annual basis, submit to the congressional intelligence committees and the congressional leadership an intelligence report assessing the safety and security of the nuclear facilities and nuclear military forces in Russia.

"(2) Each such report shall include a discussion of the following:

"(A) The ability of the Government of Russia to maintain its nuclear military forces.

"(B) The security arrangements at civilian and military nuclear facilities in Russia.

"(C) The reliability of controls and safety systems at civilian nuclear facilities in Russia.

"(D) The reliability of command and control systems and procedures of the nuclear military forces in Russia.

"(3) Each such report shall be submitted in unclassified form, but may contain a classified annex.

"(c) DEFINITIONS.—In this section:

"(1) The term 'congressional intelligence committees' means the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

"(2) The term 'congressional leadership' means the Speaker and the minority leader of the House of Representatives and the majority leader and the minority leader of the Senate."

(b) CLERICAL AMENDMENT.—The table of contents in the first section of such Act is amended by inserting after the item relating to section 113 the following new item:

"Sec. 114. Additional annual reports from the Director of Central Intelligence."

(c) DATE FOR FIRST REPORT ON COOPERATION WITH CIVILIAN LAW ENFORCEMENT AGENCIES.—The first report under section 114(a) of the National Security Act of 1947, as added by subsection (a), shall be submitted not later than December 31, 1999.

#### SEC. 308. QUADRENNIAL INTELLIGENCE REVIEW.

(a) SENSE OF CONGRESS.—It is the sense of Congress—

(1) that the Director of Central Intelligence and the Secretary of Defense should jointly complete, in 1999 and every 4 years thereafter, a comprehensive review of United States intelligence programs and activities, with each such review—

(A) to include assessments of intelligence policy, resources, manpower, organization, and related matters; and

(B) to encompass the programs and activities funded under the National Foreign Intelligence Program (NFIP), the Joint Military Intelligence Program (JMIP), and the Tactical Intelligence and Related Activities (TIARA) accounts;

(2) that the results of each review should be shared with the appropriate committees of Congress and the congressional leadership; and

(3) that the Director, in conjunction with the Secretary, should establish a nonpartisan, independent panel (with members chosen in consultation with the appropriate committees

of Congress and the congressional leadership from individuals in the private sector) in order to—

(A) assess each review under paragraph (1);

(B) conduct an assessment of alternative intelligence structures to meet the anticipated intelligence requirements for the national security and foreign policy of the United States through the year 2010; and

(C) make recommendations to the Director and the Secretary regarding the optimal intelligence structure for the United States in light of the assessment under subparagraph (B).

(b) **REPORT.**—(1) Not later than December 1, 1998, the Director of Central Intelligence and the Secretary of Defense shall jointly submit to the committees specified in paragraph (2) the views of the Director and the Secretary regarding—

Deadline.

(A) the potential value of conducting quadrennial intelligence reviews as described in subsection (a)(1); and

(B) the potential value of assessments of such reviews as described in subsection (a)(3)(A).

(2) The committees referred to in paragraph (1) are the following:

(A) The Select Committee on Intelligence, the Committee on Armed Services, and the Committee on Appropriations of the Senate.

(B) The Permanent Select Committee on Intelligence, the Committee on National Security, and the Committee on Appropriations of the House of Representatives.

**SEC. 309. DESIGNATION OF HEADQUARTERS COMPOUND OF CENTRAL INTELLIGENCE AGENCY AS THE GEORGE BUSH CENTER FOR INTELLIGENCE.**

Virginia.  
50 USC 403-1  
note.

(a) **DESIGNATION.**—The headquarters compound of the Central Intelligence Agency located in Langley, Virginia, shall be known and designated as the “George Bush Center for Intelligence”.

(b) **REFERENCES.**—Any reference in a law, map, regulation, document, paper, or other record of the United States to the headquarters compound referred to in subsection (a) shall be deemed to be a reference to the “George Bush Center for Intelligence”.

## **TITLE IV—CENTRAL INTELLIGENCE AGENCY**

**SEC. 401. ENHANCED PROTECTIVE AUTHORITY FOR CIA PERSONNEL AND FAMILY MEMBERS.**

Section 5(a)(4) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403f(a)(4)) is amended by striking out “and the protection of Agency personnel and of defectors, their families,” and inserting in lieu thereof “and the protection of current and former Agency personnel and their immediate families, defectors and their immediate families.”

**SEC. 402. AUTHORITY FOR RETROACTIVE PAYMENT OF SPECIFIED SPECIAL PAY ALLOWANCE.**

(a) **AUTHORIZATION.**—The Director of Central Intelligence may make payments with respect to the period beginning on January 30, 1998, and ending on April 7, 1998, of the special pay allowance



described in the Central Intelligence Agency notice dated April 7, 1998 (notwithstanding the otherwise applicable effective date for such payments of April 7, 1998).

(b) **FUNDS AVAILABLE.**—Payments authorized by subsection (a) may be made from amounts appropriated for the Central Intelligence Agency for fiscal year 1998 or for fiscal year 1999.

#### **SEC. 403. TECHNICAL AMENDMENTS.**

(a) **CENTRAL INTELLIGENCE AGENCY ACT OF 1949.**—The Central Intelligence Agency Act of 1949 is amended as follows:

(1) Section 5(a)(1) (50 U.S.C. 403f(a)(1)) is amended—

(A) by striking out “subparagraphs (B) and (C) of section 102(a)(2)” and inserting in lieu thereof “paragraphs (2) and (3) of section 102(a)”;

(B) by striking out “(c)(5)” and inserting in lieu thereof “(c)(6)”;

(C) by inserting “(3),” after “403(a)(2),”;

(D) by inserting “(c)(6), (d)” after “403–3”; and

(E) by inserting “(a), (g)” after “403–4”.

(2) Section 6 (50 U.S.C. 403g) is amended by striking out “(c)(5)” each place it appears and inserting in lieu thereof “(c)(6)”.

(b) **CENTRAL INTELLIGENCE AGENCY RETIREMENT ACT.**—Section 201(c) of the Central Intelligence Agency Retirement Act (50 U.S.C. 2011(c)) is amended by striking out “section 103(c)(5) of the National Security Act of 1947 (50 U.S.C. 403–3(c)(5))” and inserting in lieu thereof “paragraph (6) of section 103(c) of the National Security Act of 1947 (50 U.S.C. 403–3(c))”.

## **TITLE V—DEPARTMENT OF DEFENSE INTELLIGENCE ACTIVITIES**

#### **SEC. 501. EXTENSION OF AUTHORITY TO ENGAGE IN COMMERCIAL ACTIVITIES AS SECURITY FOR INTELLIGENCE COLLEC- TION ACTIVITIES.**

Section 431(a) of title 10, United States Code, is amended by striking out “December 31, 1998” and inserting in lieu thereof “December 31, 2000”.

## **TITLE VI—FOREIGN INTELLIGENCE AND INTERNATIONAL TERRORISM INVESTIGATIONS**

#### **SEC. 601. PEN REGISTERS AND TRAP AND TRACE DEVICES IN FOREIGN INTELLIGENCE AND INTERNATIONAL TERRORISM INVESTIGATIONS.**

The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended—

(1) by redesignating title IV as title VI and section 401 as section 601, respectively; and

(2) by inserting after title III the following new title:

**"TITLE IV—PEN REGISTERS AND TRAP AND TRACE  
DEVICES FOR FOREIGN INTELLIGENCE PURPOSES**

**"DEFINITIONS**

"SEC. 401. As used in this title:

50 USC 1841.

"(1) The terms 'foreign power', 'agent of a foreign power', 'international terrorism', 'foreign intelligence information', 'Attorney General', 'United States person', 'United States', 'person', and 'State' shall have the same meanings as in section 101 of this Act.

"(2) The terms 'pen register' and 'trap and trace device' have the meanings given such terms in section 3127 of title 18, United States Code.

"(3) The term 'aggrieved person' means any person—

"(A) whose telephone line was subject to the installation or use of a pen register or trap and trace device authorized by this title; or

"(B) whose communication instrument or device was subject to the use of a pen register or trap and trace device authorized by this title to capture incoming electronic or other communications impulses.

**"PEN REGISTERS AND TRAP AND TRACE DEVICES FOR FOREIGN  
INTELLIGENCE AND INTERNATIONAL TERRORISM INVESTIGATIONS**

"SEC. 402. (a)(1) Notwithstanding any other provision of law, the Attorney General or a designated attorney for the Government may make an application for an order or an extension of an order authorizing or approving the installation and use of a pen register or trap and trace device for any investigation to gather foreign intelligence information or information concerning international terrorism which is being conducted by the Federal Bureau of Investigation under such guidelines as the Attorney General approves pursuant to Executive Order No. 12333, or a successor order.

50 USC 1842.

"(2) The authority under paragraph (1) is in addition to the authority under title I of this Act to conduct the electronic surveillance referred to in that paragraph.

"(b) Each application under this section shall be in writing under oath or affirmation to—

"(1) a judge of the court established by section 103(a) of this Act; or

"(2) a United States Magistrate Judge under chapter 43 of title 28, United States Code, who is publicly designated by the Chief Justice of the United States to have the power to hear applications for and grant orders approving the installation and use of a pen register or trap and trace device on behalf of a judge of that court.

"(c) Each application under this section shall require the approval of the Attorney General, or a designated attorney for the Government, and shall include—

"(1) the identity of the Federal officer seeking to use the pen register or trap and trace device covered by the application;

"(2) a certification by the applicant that the information likely to be obtained is relevant to an ongoing foreign intelligence or international terrorism investigation being conducted by the Federal Bureau of Investigation under guidelines approved by the Attorney General; and

"(3) information which demonstrates that there is reason to believe that the telephone line to which the pen register or trap and trace device is to be attached, or the communication instrument or device to be covered by the pen register or trap and trace device, has been or is about to be used in communication with—

"(A) an individual who is engaging or has engaged in international terrorism or clandestine intelligence activities that involve or may involve a violation of the criminal laws of the United States; or

"(B) a foreign power or agent of a foreign power under circumstances giving reason to believe that the communication concerns or concerned international terrorism or clandestine intelligence activities that involve or may involve a violation of the criminal laws of the United States.

"(d)(1) Upon an application made pursuant to this section, the judge shall enter an ex parte order as requested, or as modified, approving the installation and use of a pen register or trap and trace device if the judge finds that the application satisfies the requirements of this section.

"(2) An order issued under this section—

"(A) shall specify—

"(i) the identity, if known, of the person who is the subject of the foreign intelligence or international terrorism investigation;

"(ii) in the case of an application for the installation and use of a pen register or trap and trace device with respect to a telephone line—

"(I) the identity, if known, of the person to whom is leased or in whose name the telephone line is listed; and

"(II) the number and, if known, physical location of the telephone line; and

"(iii) in the case of an application for the use of a pen register or trap and trace device with respect to a communication instrument or device not covered by clause (ii)—

"(I) the identity, if known, of the person who owns or leases the instrument or device or in whose name the instrument or device is listed; and

"(II) the number of the instrument or device; and

"(B) shall direct that—

"(i) upon request of the applicant, the provider of a wire or electronic communication service, landlord, custodian, or other person shall furnish any information, facilities, or technical assistance necessary to accomplish the installation and operation of the pen register or trap and trace device in such a manner as will protect its secrecy and produce a minimum amount of interference with the services that such provider, landlord, custodian, or other person is providing the person concerned;

"(ii) such provider, landlord, custodian, or other person—

"(I) shall not disclose the existence of the investigation or of the pen register or trap and trace device to any person unless or until ordered by the court; and

"(II) shall maintain, under security procedures approved by the Attorney General and the Director of Central Intelligence pursuant to section 105(b)(2)(C) of this Act, any records concerning the pen register or trap and trace device or the aid furnished; and

"(iii) the applicant shall compensate such provider, landlord, custodian, or other person for reasonable expenses incurred by such provider, landlord, custodian, or other person in providing such information, facilities, or technical assistance.

Records.

"(e) An order issued under this section shall authorize the installation and use of a pen register or trap and trace device for a period not to exceed 90 days. Extensions of such an order may be granted, but only upon an application for an order under this section and upon the judicial finding required by subsection (d). The period of extension shall be for a period not to exceed 90 days.

"(f) No cause of action shall lie in any court against any provider of a wire or electronic communication service, landlord, custodian, or other person (including any officer, employee, agent, or other specified person thereof) that furnishes any information, facilities, or technical assistance under subsection (d) in accordance with the terms of a court under this section.

"(g) Unless otherwise ordered by the judge, the results of a pen register or trap and trace device shall be furnished at reasonable intervals during regular business hours for the duration of the order to the authorized Government official or officials.

#### "AUTHORIZATION DURING EMERGENCIES

"SEC. 403. (a) Notwithstanding any other provision of this title, when the Attorney General makes a determination described in subsection (b), the Attorney General may authorize the installation and use of a pen register or trap and trace device on an emergency basis to gather foreign intelligence information or information concerning international terrorism if—

50 USC 1843.

"(1) a judge referred to in section 402(b) of this Act is informed by the Attorney General or his designee at the time of such authorization that the decision has been made to install and use the pen register or trap and trace device, as the case may be, on an emergency basis; and

"(2) an application in accordance with section 402 of this Act is made to such judge as soon as practicable, but not more than 48 hours, after the Attorney General authorizes the installation and use of the pen register or trap and trace device, as the case may be, under this section.

"(b) A determination under this subsection is a reasonable determination by the Attorney General that—

"(1) an emergency requires the installation and use of a pen register or trap and trace device to obtain foreign intelligence information or information concerning international terrorism before an order authorizing the installation and use of the pen register or trap and trace device, as the case may be, can with due diligence be obtained under section 402 of this Act; and

"(2) the factual basis for issuance of an order under such section 402 to approve the installation and use of the pen register or trap and trace device, as the case may be, exists.

"(c)(1) In the absence of an order applied for under subsection (a)(2) approving the installation and use of a pen register or trap and trace device authorized under this section, the installation and use of the pen register or trap and trace device, as the case may be, shall terminate at the earlier of—

"(A) when the information sought is obtained;

"(B) when the application for the order is denied under section 402 of this Act; or

"(C) 48 hours after the time of the authorization by the Attorney General.

"(2) In the event that an application for an order applied for under subsection (a)(2) is denied, or in any other case where the installation and use of a pen register or trap and trace device under this section is terminated and no order under section 402 of this Act is issued approving the installation and use of the pen register or trap and trace device, as the case may be, no information obtained or evidence derived from the use of the pen register or trap and trace device, as the case may be, shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from the use of the pen register or trap and trace device, as the case may be, shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

#### "AUTHORIZATION DURING TIME OF WAR

50 USC 1844.

"SEC. 404. Notwithstanding any other provision of law, the President, through the Attorney General, may authorize the use of a pen register or trap and trace device without a court order under this title to acquire foreign intelligence information for a period not to exceed 15 calendar days following a declaration of war by Congress.

#### "USE OF INFORMATION

50 USC 1845.

"SEC. 405. (a)(1) Information acquired from the use of a pen register or trap and trace device installed pursuant to this title concerning any United States person may be used and disclosed by Federal officers and employees without the consent of the United States person only in accordance with the provisions of this section.

"(2) No information acquired from a pen register or trap and trace device installed and used pursuant to this title may be used or disclosed by Federal officers or employees except for lawful purposes.

"(b) No information acquired pursuant to this title shall be disclosed for law enforcement purposes unless such disclosure is accompanied by a statement that such information, or any information derived therefrom, may only be used in a criminal proceeding with the advance authorization of the Attorney General.

"(c) Whenever the United States intends to enter into evidence or otherwise use or disclose in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body,



or other authority of the United States against an aggrieved person any information obtained or derived from the use of a pen register or trap and trace device pursuant to this title, the United States shall, before the trial, hearing, or the other proceeding or at a reasonable time before an effort to so disclose or so use that information or submit it in evidence, notify the aggrieved person and the court or other authority in which the information is to be disclosed or used that the United States intends to so disclose or so use such information.

"(d) Whenever any State or political subdivision thereof intends to enter into evidence or otherwise use or disclose in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the State or political subdivision thereof against an aggrieved person any information obtained or derived from the use of a pen register or trap and trace device pursuant to this title, the State or political subdivision thereof shall notify the aggrieved person, the court or other authority in which the information is to be disclosed or used, and the Attorney General that the State or political subdivision thereof intends to so disclose or so use such information.

"(e)(1) Any aggrieved person against whom evidence obtained or derived from the use of a pen register or trap and trace device is to be, or has been, introduced or otherwise used or disclosed in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, or a State or political subdivision thereof, may move to suppress the evidence obtained or derived from the use of the pen register or trap and trace device, as the case may be, on the grounds that—

"(A) the information was unlawfully acquired; or

"(B) the use of the pen register or trap and trace device, as the case may be, was not made in conformity with an order of authorization or approval under this title.

"(2) A motion under paragraph (1) shall be made before the trial, hearing, or other proceeding unless there was no opportunity to make such a motion or the aggrieved person concerned was not aware of the grounds of the motion.

"(f)(1) Whenever a court or other authority is notified pursuant to subsection (c) or (d), whenever a motion is made pursuant to subsection (e), or whenever any motion or request is made by an aggrieved person pursuant to any other statute or rule of the United States or any State before any court or other authority of the United States or any State to discover or obtain applications or orders or other materials relating to the use of a pen register or trap and trace device authorized by this title or to discover, obtain, or suppress evidence or information obtained or derived from the use of a pen register or trap and trace device authorized by this title, the United States district court or, where the motion is made before another authority, the United States district court in the same district as the authority shall, notwithstanding any other provision of law and if the Attorney General files an affidavit under oath that disclosure or any adversary hearing would harm the national security of the United States, review in camera and ex parte the application, order, and such other materials relating to the use of the pen register or trap and trace device, as the case may be, as may be necessary to determine whether the use

Courts.



of the pen register or trap and trace device, as the case may be, was lawfully authorized and conducted.

"(2) In making a determination under paragraph (1), the court may disclose to the aggrieved person, under appropriate security procedures and protective orders, portions of the application, order, or other materials relating to the use of the pen register or trap and trace device, as the case may be, or may require the Attorney General to provide to the aggrieved person a summary of such materials, only where such disclosure is necessary to make an accurate determination of the legality of the use of the pen register or trap and trace device, as the case may be.

"(g)(1) If the United States district court determines pursuant to subsection (f) that the use of a pen register or trap and trace device was not lawfully authorized or conducted, the court may, in accordance with the requirements of law, suppress the evidence which was unlawfully obtained or derived from the use of the pen register or trap and trace device, as the case may be, or otherwise grant the motion of the aggrieved person.

"(2) If the court determines that the use of the pen register or trap and trace device, as the case may be, was lawfully authorized or conducted, it may deny the motion of the aggrieved person except to the extent that due process requires discovery or disclosure.

"(h) Orders granting motions or requests under subsection (g), decisions under this section that the use of a pen register or trap and trace device was not lawfully authorized or conducted, and orders of the United States district court requiring review or granting disclosure of applications, orders, or other materials relating to the installation and use of a pen register or trap and trace device shall be final orders and binding upon all courts of the United States and the several States except a United States Court of Appeals or the Supreme Court.

#### "CONGRESSIONAL OVERSIGHT

50 USC 1846.

"SEC. 406. (a) On a semiannual basis, the Attorney General shall fully inform the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate concerning all uses of pen registers and trap and trace devices pursuant to this title.

Reports.

"(b) On a semiannual basis, the Attorney General shall also provide to the committees referred to in subsection (a) and to the Committees on the Judiciary of the House of Representatives and the Senate a report setting forth with respect to the preceding 6-month period—

"(1) the total number of applications made for orders approving the use of pen registers or trap and trace devices under this title; and

"(2) the total number of such orders either granted, modified, or denied."

#### SEC. 602. ACCESS TO CERTAIN BUSINESS RECORDS FOR FOREIGN INTELLIGENCE AND INTERNATIONAL TERRORISM INVESTIGATIONS.

The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), as amended by section 601 of this Act, is further amended by inserting after title IV, as added by such section 601, the following new title:

“TITLE V—ACCESS TO CERTAIN BUSINESS RECORDS FOR  
FOREIGN INTELLIGENCE PURPOSES

“DEFINITIONS

“SEC. 501. As used in this title:

50 USC 1861.

“(1) The terms ‘foreign power’, ‘agent of a foreign power’, ‘foreign intelligence information’, ‘international terrorism’, and ‘Attorney General’ shall have the same meanings as in section 101 of this Act.

“(2) The term ‘common carrier’ means any person or entity transporting people or property by land, rail, water, or air for compensation.

“(3) The term ‘physical storage facility’ means any business or entity that provides space for the storage of goods or materials, or services related to the storage of goods or materials, to the public or any segment thereof.

“(4) The term ‘public accommodation facility’ means any inn, hotel, motel, or other establishment that provides lodging to transient guests.

“(5) The term ‘vehicle rental facility’ means any person or entity that provides vehicles for rent, lease, loan, or other similar use to the public or any segment thereof.

“ACCESS TO CERTAIN BUSINESS RECORDS FOR FOREIGN INTELLIGENCE  
AND INTERNATIONAL TERRORISM INVESTIGATIONS

“SEC. 502. (a) The Director of the Federal Bureau of Investigation or a designee of the Director (whose rank shall be no lower than Assistant Special Agent in Charge) may make an application for an order authorizing a common carrier, public accommodation facility, physical storage facility, or vehicle rental facility to release records in its possession for an investigation to gather foreign intelligence information or an investigation concerning international terrorism which investigation is being conducted by the Federal Bureau of Investigation under such guidelines as the Attorney General approves pursuant to Executive Order No. 12333, or a successor order.

50 USC 1862.

“(b) Each application under this section—

“(1) shall be made to—

“(A) a judge of the court established by section 103(a) of this Act; or

“(B) a United States Magistrate Judge under chapter 43 of title 28, United States Code, who is publicly designated by the Chief Justice of the United States to have the power to hear applications and grant orders for the release of records under this section on behalf of a judge of that court; and

“(2) shall specify that—

“(A) the records concerned are sought for an investigation described in subsection (a); and

“(B) there are specific and articulable facts giving reason to believe that the person to whom the records pertain is a foreign power or an agent of a foreign power.

“(c)(1) Upon application made pursuant to this section, the judge shall enter an ex parte order as requested, or as modified, approving the release of records if the judge finds that the application satisfies the requirements of this section.

"(2) An order under this subsection shall not disclose that it is issued for purposes of an investigation described in subsection (a).

"(d)(1) Any common carrier, public accommodation facility, physical storage facility, or vehicle rental facility shall comply with an order under subsection (c).

"(2) No common carrier, public accommodation facility, physical storage facility, or vehicle rental facility, or officer, employee, or agent thereof, shall disclose to any person (other than those officers, agents, or employees of such common carrier, public accommodation facility, physical storage facility, or vehicle rental facility necessary to fulfill the requirement to disclose information to the Federal Bureau of Investigation under this section) that the Federal Bureau of Investigation has sought or obtained records pursuant to an order under this section.

#### "CONGRESSIONAL OVERSIGHT

50 USC 1863.

"SEC. 503. (a) On a semiannual basis, the Attorney General shall fully inform the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate concerning all requests for records under this title.

Reports.

"(b) On a semiannual basis, the Attorney General shall provide to the Committees on the Judiciary of the House of Representatives and the Senate a report setting forth with respect to the preceding 6-month period—

"(1) the total number of applications made for orders approving requests for records under this title; and

"(2) the total number of such orders either granted, modified, or denied."

#### SEC. 603. CONFORMING AND CLERICAL AMENDMENTS.

50 USC 1801  
note.

(a) CONFORMING AMENDMENT.—Section 601 of the Foreign Intelligence Surveillance Act of 1978, as redesignated by section 601(1) of this Act, is amended by striking out "other than title III" and inserting in lieu thereof "other than titles III, IV, and V".

(b) CLERICAL AMENDMENT.—The table of contents at the beginning of the Foreign Intelligence Surveillance Act of 1978 is amended by striking out the items relating to title IV and section 401 and inserting in lieu thereof the following:

#### "TITLE IV—PEN REGISTERS AND TRAP AND TRACE DEVICES FOR FOREIGN INTELLIGENCE PURPOSES

"401. Definitions.

"402. Pen registers and trap and trace devices for foreign intelligence and international terrorism investigations.

"403. Authorization during emergencies.

"404. Authorization during time of war.

"405. Use of information.

"406. Congressional oversight.

#### "TITLE V—ACCESS TO CERTAIN BUSINESS RECORDS FOR FOREIGN INTELLIGENCE PURPOSES

"501. Definitions.

"502. Access to certain business records for foreign intelligence and international terrorism investigations.

"503. Congressional oversight.

## "TITLE VI—EFFECTIVE DATE

"601. Effective date."

**SEC. 604. WIRE AND ELECTRONIC COMMUNICATIONS INTERCEPTION REQUIREMENTS.**

(a) **IN GENERAL.**—Section 2518(11)(b) of title 18, United States Code, is amended—

(1) in clause (ii), by striking "of a purpose" and all that follows through the end of such clause and inserting "that there is probable cause to believe that the person's actions could have the effect of thwarting interception from a specified facility;"

(2) in clause (iii), by striking "such purpose" and all that follows through the end of such clause and inserting "such showing has been adequately made; and"; and

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

"(iv) the order authorizing or approving the interception is limited to interception only for such time as it is reasonable to presume that the person identified in the application is or was reasonably proximate to the instrument through which such communication will be or was transmitted."

(b) **CONFORMING AMENDMENTS.**—Section 2518(12) of title 18, United States Code, is amended—

(1) by inserting "(a)" after "by reason of subsection (11)";

(2) by striking "the facilities from which, or"; and

(3) by striking the comma following "where".

**SEC. 605. AUTHORITY OF ATTORNEY GENERAL TO ACCEPT VOLUNTARY SERVICES.**

Section 524(d)(1) of title 28, United States Code, is amended by inserting "or services" after "property".

## **TITLE VII—WHISTLEBLOWER PROTECTION FOR INTELLIGENCE COMMUNITY EMPLOYEES REPORTING URGENT CONCERNS TO CONGRESS**

Intelligence  
Community  
Whistleblower  
Protection Act of  
1998.

**SEC. 701. SHORT TITLE; FINDINGS.**

(a) **SHORT TITLE.**—This title may be cited as the "Intelligence Community Whistleblower Protection Act of 1998".

(b) **FINDINGS.**—The Congress finds that—

(1) national security is a shared responsibility, requiring joint efforts and mutual respect by Congress and the President;

(2) the principles of comity between the branches of Government apply to the handling of national security information;

(3) Congress, as a co-equal branch of Government, is empowered by the Constitution to serve as a check on the executive branch; in that capacity, it has a "need to know" of allegations of wrongdoing within the executive branch, including allegations of wrongdoing in the Intelligence Community;

(4) no basis in law exists for requiring prior authorization of disclosures to the intelligence committees of Congress by

5 USC app. 1  
note.

5 USC app. 8H  
note.

employees of the executive branch of classified information about wrongdoing within the Intelligence Community;

(5) the risk of reprisal perceived by employees and contractors of the Intelligence Community for reporting serious or flagrant problems to Congress may have impaired the flow of information needed by the intelligence committees to carry out oversight responsibilities; and

(6) to encourage such reporting, an additional procedure should be established that provides a means for such employees and contractors to report to Congress while safeguarding the classified information involved in such reporting.

**SEC. 702. PROTECTION OF INTELLIGENCE COMMUNITY EMPLOYEES WHO REPORT URGENT CONCERNS TO CONGRESS.**

(a) INSPECTOR GENERAL OF THE CENTRAL INTELLIGENCE AGENCY.—

(1) IN GENERAL.—Subsection (d) of section 17 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403q) is amended by adding at the end the following new paragraph:

“(5)(A) An employee of the Agency, or of a contractor to the Agency, who intends to report to Congress a complaint or information with respect to an urgent concern may report such complaint or information to the Inspector General.

Deadline.

“(B) Not later than the end of the 14-calendar day period beginning on the date of receipt from an employee of a complaint or information under subparagraph (A), the Inspector General shall determine whether the complaint or information appears credible. If the Inspector General determines that the complaint or information appears credible, the Inspector General shall, before the end of such period, transmit the complaint or information to the Director.

“(C) Upon receipt of a transmittal from the Inspector General under subparagraph (B), the Director shall, within 7 calendar days of such receipt, forward such transmittal to the intelligence committees, together with any comments the Director considers appropriate.

“(D)(i) If the Inspector General does not transmit, or does not transmit in an accurate form, the complaint or information described in subparagraph (B), the employee (subject to clause (ii)) may submit the complaint or information to Congress by contacting either or both of the intelligence committees directly.

“(ii) The employee may contact the intelligence committees directly as described in clause (i) only if the employee—

“(I) before making such a contact, furnishes to the Director, through the Inspector General, a statement of the employee’s complaint or information and notice of the employee’s intent to contact the intelligence committees directly; and

“(II) obtains and follows from the Director, through the Inspector General, direction on how to contact the intelligence committees in accordance with appropriate security practices.

“(iii) A member or employee of one of the intelligence committees who receives a complaint or information under clause (i) does so in that member or employee’s official capacity as a member or employee of that committee.

Notification.

“(E) The Inspector General shall notify an employee who reports a complaint or information to the Inspector General under this paragraph of each action taken under this paragraph with respect



to the complaint or information. Such notice shall be provided not later than 3 days after any such action is taken. Deadline.

“(F) An action taken by the Director or the Inspector General under this paragraph shall not be subject to judicial review.

“(G) In this paragraph:

“(i) The term ‘urgent concern’ means any of the following:

“(I) A serious or flagrant problem, abuse, violation of law or Executive order, or deficiency relating to the funding, administration, or operations of an intelligence activity involving classified information, but does not include differences of opinions concerning public policy matters.

“(II) A false statement to Congress, or a willful withholding from Congress, on an issue of material fact relating to the funding, administration, or operation of an intelligence activity.

“(III) An action, including a personnel action described in section 2302(a)(2)(A) of title 5, United States Code, constituting reprisal or threat of reprisal prohibited under subsection (e)(3)(B) in response to an employee’s reporting an urgent concern in accordance with this paragraph.

“(ii) The term ‘intelligence committees’ means the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.”

(2) CLERICAL AMENDMENT.—The heading to subsection (d) of such section is amended by inserting “; REPORTS TO CONGRESS ON URGENT CONCERNS” before the period.

50 USC 403q.

(b) ADDITIONAL PROVISIONS WITH RESPECT TO INSPECTORS GENERAL OF THE INTELLIGENCE COMMUNITY.—

(1) IN GENERAL.—The Inspector General Act of 1978 (5 U.S.C. App.) is amended by redesignating section 8H as section 8I and by inserting after section 8G the following new section:

“SEC. 8H. (a)(1)(A) An employee of the Defense Intelligence Agency, the National Imagery and Mapping Agency, the National Reconnaissance Office, or the National Security Agency, or of a contractor of any of those Agencies, who intends to report to Congress a complaint or information with respect to an urgent concern may report the complaint or information to the Inspector General of the Department of Defense (or designee).

“(B) An employee of the Federal Bureau of Investigation, or of a contractor of the Bureau, who intends to report to Congress a complaint or information with respect to an urgent concern may report the complaint or information to the Inspector General of the Department of Justice (or designee).

“(C) Any other employee of, or contractor to, an executive agency, or element or unit thereof, determined by the President under section 2302(a)(2)(C)(ii) of title 5, United States Code, to have as its principal function the conduct of foreign intelligence or counterintelligence activities, who intends to report to Congress a complaint or information with respect to an urgent concern may report the complaint or information to the appropriate Inspector General (or designee) under this Act or section 17 of the Central Intelligence Agency Act of 1949.

“(2) If a designee of an Inspector General under this section receives a complaint or information of an employee with respect to an urgent concern, that designee shall report the complaint