

105TH CONGRESS
2^D SESSION

S. 2052

[Report No. 105–185]

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 Retirement and Disability System, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 7, 1998

Mr. SHELBY, from the Select Committee on Intelligence, reported the following original bill; which was read twice and referred to the Committee on Armed Services, pursuant to the order of section 3(b) of S. Res. 400 for a period not to exceed 30 days of session

A BILL

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 Retirement and Disability System, 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,*

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

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

1 (b) TABLE OF CONTENTS.—The table of contents for
 2 this Act is as follows:

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.

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. Extension of application of sanctions laws to intelligence activities.
 Sec. 304. Extension of authority to engage in commercial activities as security
 for intelligence collection activities.
 Sec. 305. Modification of National Security Education Program.
 Sec. 306. Technical amendments.

TITLE IV—CENTRAL INTELLIGENCE AGENCY

Sec. 401. Extension of separation pay program for voluntary separation of CIA
 employees.
 Sec. 402. Additional duties for Inspector General of Central Intelligence
 Agency.

TITLE V—DISCLOSURE OF INFORMATION TO CONGRESS

Sec. 501. Encouragement of disclosure of certain information to Congress.

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 inter-
 national terrorism investigations.
 Sec. 603. Conforming and clerical amendments.

3 **TITLE I—INTELLIGENCE**
 4 **ACTIVITIES**

5 **SEC. 101. AUTHORIZATION OF APPROPRIATIONS.**

6 Funds are hereby authorized to be appropriated for
 7 fiscal year 1999 for the conduct of the intelligence and

1 intelligence-related activities of the following elements of
2 the United States Government:

3 (1) The Central Intelligence Agency.

4 (2) The Department of Defense.

5 (3) The Defense Intelligence Agency.

6 (4) The National Security Agency.

7 (5) The Department of the Army, the Depart-
8 ment of the Navy, and the Department of the Air
9 Force.

10 (6) The Department of State.

11 (7) The Department of the Treasury.

12 (8) The Department of Energy.

13 (9) The Federal Bureau of Investigation.

14 (10) The National Reconnaissance Office.

15 (11) The National Imagery and Mapping Agen-
16 cy.

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

18 (a) SPECIFICATIONS OF AMOUNTS AND PERSONNEL
19 CEILINGS.—The amounts authorized to be appropriated
20 under section 101, and the authorized personnel ceilings
21 as of September 30, 1999, for the conduct of the intel-
22 ligence and intelligence-related activities of the elements
23 listed in such section, are those specified in the classified
24 Schedule of Authorizations prepared to accompany the

1 conference report on the bill ____ of the One Hundred
2 Fifth Congress.

3 (b) AVAILABILITY OF CLASSIFIED SCHEDULE OF AU-
4 THORIZATIONS.—The Schedule of Authorizations shall be
5 made available to the Committees on Appropriations of
6 the Senate and House of Representatives and to the Presi-
7 dent. The President shall provide for suitable distribution
8 of the Schedule, or of appropriate portions of the Sched-
9 ule, within the Executive Branch.

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

11 (a) AUTHORITY FOR ADJUSTMENTS.—With the ap-
12 proval of the Director of the Office of Management and
13 Budget, the Director of Central Intelligence may authorize
14 employment of civilian personnel in excess of the number
15 authorized for fiscal year 1999 under section 102 when
16 the Director of Central Intelligence determines that such
17 action is necessary to the performance of important intel-
18 ligence functions, except that the number of personnel em-
19 ployed in excess of the number authorized under such sec-
20 tion may not, for any element of the intelligence commu-
21 nity, exceed two percent of the number of civilian person-
22 nel authorized under such section for such element.

23 (b) NOTICE TO INTELLIGENCE COMMITTEES.—The
24 Director of Central Intelligence shall promptly notify the
25 Permanent Select Committee on Intelligence of the House

1 of Representatives and the Select Committee on Intel-
2 ligence of the Senate whenever the Director exercises the
3 authority granted by this section.

4 **SEC. 104. COMMUNITY MANAGEMENT ACCOUNT.**

5 (a) AUTHORIZATION OF APPROPRIATIONS.—

6 (1) AUTHORIZATION.—There is authorized to
7 be appropriated for the Community Management
8 Account of the Director of Central Intelligence for
9 fiscal year 1999 the sum of \$173,633,000.

10 (2) AVAILABILITY OF CERTAIN FUNDS.—Within
11 such amount, funds identified in the classified
12 Schedule of Authorizations referred to in section
13 102(a) for the Advanced Research and Development
14 Committee, the Advanced Technology Group, and
15 the Environmental Intelligence and Applications
16 Program shall remain available until September 30,
17 2000.

18 (b) AUTHORIZED PERSONNEL LEVELS.—The ele-
19 ments within the Community Management Account of the
20 Director of Central Intelligence are authorized a total of
21 283 full-time personnel as of September 30, 1999. Person-
22 nel serving in such elements may be permanent employees
23 of the Community Management Account element or per-
24 sonnel detailed from other elements of the United States
25 Government.

1 (c) CLASSIFIED AUTHORIZATIONS.—

2 (1) AUTHORIZATION OF APPROPRIATIONS.—In
3 addition to amounts authorized to be appropriated
4 for the Community Management Account by sub-
5 section (a), there is also authorized to be appro-
6 priated for the Community Management Account for
7 fiscal year 1999 such additional amounts as are
8 specified in the classified Schedule of Authorizations
9 referred to in section 102(a). Such additional
10 amounts shall remain available until September 30,
11 2000.

12 (2) AUTHORIZATION OF PERSONNEL.—In addi-
13 tion to the personnel authorized by subsection (b)
14 for elements of the Community Management Ac-
15 count as of September 30, 1999, there is hereby au-
16 thorized such additional personnel for such elements
17 as of that date as is specified in the classified Sched-
18 ule of Authorizations.

19 (d) REIMBURSEMENT.—Except as provided in section
20 113 of the National Security Act of 1947 (50 U.S.C.
21 404h), during fiscal year 1999, any officer or employee
22 of the United States or member of the Armed Forces who
23 is detailed to the staff of an element within the Commu-
24 nity Management Account from another element of the
25 United States Government shall be detailed on a reimburs-

1 able basis, except that any such officer, employee, or mem-
2 ber may be detailed on a nonreimbursable basis for a pe-
3 riod of less than one year for the performance of tem-
4 porary functions as required by the Director of Central
5 Intelligence.

6 (e) NATIONAL DRUG INTELLIGENCE CENTER.—

7 (1) IN GENERAL.—Of the amount authorized to
8 be appropriated in subsection (a), the amount of
9 \$27,000,000 shall be available for the National
10 Drug Intelligence Center. Within such amount,
11 funds provided for research, development, test, and
12 evaluation purposes shall remain available until Sep-
13 tember 30, 2000, and funds provided for procure-
14 ment purposes shall remain available until Septem-
15 ber 30, 2001.

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

22 (3) LIMITATION.—Amounts available for the
23 Center may not be used in contravention of the pro-
24 visions of section 103(d)(1) of the National Security
25 Act of 1947 (50 U.S.C. 403–3(d)(1)).

1 (4) AUTHORITY OVER CENTER.—Notwithstand-
2 ing any other provision of law, the Attorney General
3 shall retain full authority over the operations of the
4 Center.

5 **TITLE II—CENTRAL INTEL-**
6 **LIGENCE AGENCY RETIRE-**
7 **MENT AND DISABILITY SYS-**
8 **TEM**

9 **SEC. 201. AUTHORIZATION OF APPROPRIATIONS.**

10 There is authorized to be appropriated for the Cen-
11 tral Intelligence Agency Retirement and Disability Fund
12 for fiscal year 1999 the sum of \$201,500,000.

13 **TITLE III—GENERAL**
14 **PROVISIONS**

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

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

22 **SEC. 302. RESTRICTION ON CONDUCT OF INTELLIGENCE**
23 **ACTIVITIES.**

24 The authorization of appropriations by this Act shall
25 not be deemed to constitute authority for the conduct of

1 any intelligence activity which is not otherwise authorized
2 by the Constitution or the laws of the United States.

3 **SEC. 303. EXTENSION OF APPLICATION OF SANCTIONS**
4 **LAWS TO INTELLIGENCE ACTIVITIES.**

5 Section 905 of the National Security Act of 1947 (50
6 U.S.C. 441d) is amended by striking out “January 6,
7 1999” and inserting in lieu thereof “January 6, 2000”.

8 **SEC. 304. EXTENSION OF AUTHORITY TO ENGAGE IN COM-**
9 **MERCIAL ACTIVITIES AS SECURITY FOR IN-**
10 **TELLIGENCE COLLECTION ACTIVITIES.**

11 Section 431(a) of title 10, United States Code, is
12 amended in the second sentence by striking out “Decem-
13 ber 31, 1998” and inserting in lieu thereof “December 31,
14 2000”.

15 **SEC. 305. MODIFICATION OF NATIONAL SECURITY EDU-**
16 **CATION PROGRAM.**

17 (a) ASSISTANCE FOR COUNTERPROLIFERATION
18 STUDIES.—The David L. Boren National Security Edu-
19 cation Act of 1991 (50 U.S.C. 1901 et seq.) is amended
20 as follows:

21 (1) In section 801 (50 U.S.C. 1901), by insert-
22 ing “counterproliferation studies,” after “area stud-
23 ies,” each place it appears in subsections (b)(7) and
24 (c)(2).

25 (2) In section 802 (50 U.S.C. 1902)—

1 (A) by inserting “counterproliferation
2 studies,” after “area studies,” each place it ap-
3 pears in paragraphs (1)(B)(i), (1)(C), and (4)
4 of subsection (a); and

5 (B) by inserting “counterproliferation
6 study,” after “area study,” each place it ap-
7 pears subparagraphs (A)(ii) and (B)(ii) of sub-
8 section (b)(2).

9 (3) In section 803(b)(8) (50 U.S.C.
10 1903(b)(8)), by striking out “and area” and insert-
11 ing in lieu thereof “area, and counterproliferation”.

12 (4) In section 806(b)(1) (50 U.S.C.
13 1906(b)(1)), by striking out “and area” and insert-
14 ing in lieu thereof “area, and counterproliferation”.

15 (b) REVISION OF MEMBERSHIP OF NATIONAL SECUR-
16 ITY EDUCATION BOARD.—Section 803(b) of that Act (50
17 U.S.C. 1903(b)) is further amended—

18 (1) by striking out paragraph (6); and

19 (2) by inserting in lieu thereof the following
20 new paragraph (6):

21 “(6) The Secretary of Energy.”.

22 **SEC. 306. TECHNICAL AMENDMENTS.**

23 (a) CENTRAL INTELLIGENCE AGENCY ACT OF
24 1949.—(1) Section 5(a)(1) of the Central Intelligence
25 Agency Act of 1949 (50 U.S.C. 403f(a)(1)) is amended—

1 (A) by striking out “subparagraphs (B) and (C)
 2 of section 102(a)(2), subsections (c)(5)” and insert-
 3 ing in lieu thereof “paragraphs (2) and (3) of sec-
 4 tion 102(a), subsections (c)(6)”;

5 (B) by striking out “(50 U.S.C. 403(a)(2)” and
 6 inserting in lieu thereof “(50 U.S.C. 403(a)”.

7 (2) Section 6 of that Act (50 U.S.C. 403g) is amend-
 8 ed by striking out “section 103(e)(5) of the National Secu-
 9 rity Act of 1947 (50 U.S.C. 403–3(c)(5))” and inserting
 10 in lieu thereof “section 103(e)(6) of the National Security
 11 Act of 1947 (50 U.S.C. 403–3(c)(6))”.

12 (b) CENTRAL INTELLIGENCE AGENCY RETIREMENT
 13 ACT.—Section 201(e) of the Central Intelligence Agency
 14 Retirement Act (50 U.S.C. 2011(c)) is amended by strik-
 15 ing out “section 103(e)(5) of the National Security Act
 16 of 1947 (50 U.S.C. 403–3(c)(5))” and inserting in lieu
 17 thereof “section 103(e)(6) of the National Security Act
 18 of 1947 (50 U.S.C. 403–3(c)(6))”.

19 **TITLE IV—CENTRAL**
 20 **INTELLIGENCE AGENCY**

21 **SEC. 401. EXTENSION OF SEPARATION PAY PROGRAM FOR**
 22 **VOLUNTARY SEPARATION OF CIA EMPLOY-**
 23 **EES.**

24 (a) EXTENSION.—Subsection (f) of section 2 of the
 25 Central Intelligence Agency Voluntary Separation Pay Act

1 (50 U.S.C. 403–4 note) is amended by striking out “Sep-
2 tember 30, 1999” and inserting in lieu thereof “Septem-
3 ber 30, 2001”.

4 (b) CONFORMING AMENDMENT.—Subsection (i) of
5 that section is amended by striking out “fiscal year 1998
6 or fiscal year 1999” and inserting in lieu thereof “fiscal
7 year 1998, 1999, 2000, or 2001”

8 **SEC. 402. ADDITIONAL DUTIES FOR INSPECTOR GENERAL**
9 **OF CENTRAL INTELLIGENCE AGENCY.**

10 Section 17(c) of the Central Intelligence Agency Act
11 of 1949 (50 U.S.C. 403q(c)) is amended—

12 (1) by redesignating paragraphs (3) and (4) as
13 paragraphs (4) and (5), respectively; and

14 (2) by inserting after paragraph (2) the follow-
15 ing new paragraph (3):

16 “(3) to review existing and proposed legislation
17 relating to the programs and operations of the Agen-
18 cy and to make recommendations in the semiannual
19 reports required by subsection (d) concerning the
20 impact of such legislation on economy and efficiency
21 in the administration of, or prevention and detection
22 of fraud and abuse in, the programs and operations
23 administered or financed by the Agency;”.

1 **TITLE V—DISCLOSURE OF**
2 **INFORMATION TO CONGRESS**

3 **SEC. 501. ENCOURAGEMENT OF DISCLOSURE OF CERTAIN**
4 **INFORMATION TO CONGRESS.**

5 (a) ENCOURAGEMENT.—

6 (1) IN GENERAL.—Not later than 30 days after
7 the date of enactment of this Act, the President
8 shall take appropriate actions to inform the employ-
9 ees of the covered agencies, and employees of con-
10 tractors carrying out activities under classified con-
11 tracts with covered agencies, that—

12 (A) except as provided in paragraph (4),
13 the disclosure of information described in para-
14 graph (2) to the individuals referred to in para-
15 graph (3) is not prohibited by law, executive
16 order, or regulation or otherwise contrary to
17 public policy;

18 (B) the individuals referred to in para-
19 graph (3) are presumed to have a need to know
20 and to be authorized to receive such informa-
21 tion; and

22 (C) the individuals referred to in para-
23 graph (3) may receive information so disclosed
24 only in their capacity as members of the com-
25 mittees concerned.

1 (2) COVERED INFORMATION.—Paragraph (1)
2 applies to information, including classified informa-
3 tion, that an employee reasonably believes to provide
4 direct and specific evidence of—

5 (A) a violation of any law, rule, or regula-
6 tion;

7 (B) a false statement to Congress on an
8 issue of material fact; or

9 (C) gross mismanagement, a gross waste
10 of funds, a flagrant abuse of authority, or a
11 substantial and specific danger to public health
12 or safety.

13 (3) COVERED INDIVIDUALS.—The individuals to
14 whom information described in paragraph (2) may
15 be disclosed are the members of a committee of Con-
16 gress having as its primary responsibility the over-
17 sight of a department, agency, or element of the
18 Federal Government to which such information re-
19 lates.

20 (4) SCOPE.—Paragraph (1)(A) does not apply
21 to information otherwise described in paragraph (2)
22 if the disclosure of the information is prohibited by
23 Rule 6(e) of the Federal Rules of Criminal Proce-
24 dure.

1 (b) REPORT.—Not later than 60 days after the date
2 of enactment of this Act, the President shall submit to
3 Congress a report on the actions taken under subsection
4 (a).

5 (c) CONSTRUCTION WITH OTHER REPORTING RE-
6 QUIREMENTS.—Nothing in this section may be construed
7 to modify, alter, or otherwise affect any reporting require-
8 ment relating to intelligence activities that arises under
9 the National Security Act of 1947 (50 U.S.C. 401 et seq.)
10 or any other provision of law.

11 (d) COVERED AGENCIES DEFINED.—In this section,
12 the term “covered agencies” means the following:

13 (1) The Central Intelligence Agency.

14 (2) The Defense Intelligence Agency.

15 (3) The National Imagery and Mapping Agen-
16 cy.

17 (4) The National Security Agency.

18 (5) The Federal Bureau of Investigation.

19 (6) The National Reconnaissance Office.

20 (7) Any other Executive agency, or element or
21 unit thereof, determined by the President under sec-
22 tion 2302(a)(2)(C)(ii) of title 5, United States Code,
23 to have as its principal function the conduct of for-
24 eign intelligence or counterintelligence activities.

1 **TITLE VI—FOREIGN INTEL-**
 2 **LIGENCE AND INTER-**
 3 **NATIONAL TERRORISM IN-**
 4 **VESTIGATIONS**

5 **SEC. 601. PEN REGISTERS AND TRAP AND TRACE DEVICES**
 6 **IN FOREIGN INTELLIGENCE AND INTER-**
 7 **NATIONAL TERRORISM INVESTIGATIONS.**

8 The Foreign Intelligence Surveillance Act of 1978
 9 (50 U.S.C. 1801 et seq.) is amended—

10 (1) by redesignating title IV as title VI and sec-
 11 tion 401 as section 601, respectively; and

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

14 “TITLE IV—PEN REGISTERS AND TRAP AND
 15 TRACE DEVICES FOR FOREIGN INTEL-
 16 LIGENCE PURPOSES

17 “DEFINITIONS

18 “SEC. 401. As used in this title:

19 “(1) The terms ‘foreign power’, ‘agent of a for-
 20 eign power’, ‘international terrorism’, ‘foreign intel-
 21 ligence information’, ‘Attorney General’, ‘United
 22 States person’, ‘United States’, ‘person’, and ‘State’
 23 shall have the same meanings as in section 101 of
 24 this Act.

1 “(2) The terms ‘pen register’ and ‘trap and
2 trace device’ have the meanings given such terms in
3 section 3127 of title 18, United States Code.

4 “(3) The term ‘aggrieved person’ means any
5 person—

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

9 “(B) whose communication instrument or
10 device was subject to the use of a pen register
11 or trap and trace device authorized by this title
12 to capture incoming electronic or other commu-
13 nications impulses.

14 “PEN REGISTERS AND TRAP AND TRACE DEVICES FOR
15 FOREIGN INTELLIGENCE AND INTERNATIONAL TER-
16 RORISM INVESTIGATIONS

17 “SEC. 402. (a) Notwithstanding any provision of title
18 I of this Act with respect to electronic surveillance under
19 that title as defined in section 101(f)(4) of this Act, the
20 Attorney General or a designated attorney for the Govern-
21 ment may make an application for an order or an exten-
22 sion of an order authorizing or approving the installation
23 and use of a pen register or trap and trace device for any
24 investigation to gather foreign intelligence information or
25 information concerning international terrorism which is
26 being conducted by the Federal Bureau of Investigation

1 under such guidelines as the Attorney General approves
2 pursuant to Executive Order No. 12333, or a successor
3 order.

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

6 “(1) a judge of the court established by section
7 103(a) of this Act; or

8 “(2) a United States Magistrate Judge under
9 chapter 43 of title 28, United States Code, who is
10 publicly designated by the Chief Justice of the
11 United States to have the power to hear applications
12 for and grant orders approving the installation and
13 use of a pen register or trap or trace device on be-
14 half of a judge of that court.

15 “(c) Each application under this section shall require
16 the approval of the Attorney General, or a designated at-
17 torney for the Government, and shall include—

18 “(1) the identity of the Federal officer seeking
19 to use the pen register or trap and trace device cov-
20 ered by the application;

21 “(2) a certification by the applicant that the in-
22 formation likely to be obtained is relevant to an on-
23 going foreign intelligence or international terrorism
24 investigation being conducted by the Federal Bureau

1 of Investigation under guidelines approved by the
2 Attorney General; and

3 “(3) information which demonstrates that there
4 is reason to believe that the telephone line to which
5 the pen register or trap and trace device is to be at-
6 tached, or the communication instrument or device
7 to be covered by the pen register or trap and trace
8 device, has been or is about to be used in commu-
9 nication with—

10 “(A) an individual who is engaging or has
11 engaged in international terrorism or clandes-
12 tine intelligence activities that involve or may
13 involve a violation of the criminal laws of the
14 United States; or

15 “(B) a foreign power or agent of a foreign
16 power under circumstances giving reason to be-
17 lieve that the communication concerns or con-
18 cerned international terrorism or clandestine in-
19 telligence activities that involve or may involve
20 a violation of the criminal laws of the United
21 States.

22 “(d)(1) Upon an application made pursuant to this
23 section, the judge shall enter an ex parte order as re-
24 quested, or as modified, approving the installation and use
25 of a pen register or trap and trace device if the judge finds

1 that the application satisfies the requirements of this sec-
2 tion.

3 “(2) An order issued under this section—

4 “(A) shall specify—

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

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

12 “(I) the identity, if known, of the per-
13 son to whom is leased or in whose name
14 the telephone line is listed; and

15 “(II) the number and, if known, phys-
16 ical location of the telephone line; and

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

21 “(I) the identity, if known, of the per-
22 son who owns or leases the instrument or
23 device or in whose name the instrument or
24 device is listed; and

1 “(II) the number of the instrument or
2 device; and

3 “(B) shall direct that—

4 “(i) upon request of the applicant, the pro-
5 vider of a wire or electronic communication
6 service, landlord, custodian, or other person
7 shall furnish any information, facilities, or tech-
8 nical assistance necessary to accomplish the in-
9 stallation and operation of the pen register or
10 trap and trace device in such a manner as will
11 protect its secrecy and produce a minimum
12 amount of interference with the services that
13 such provider, landlord, custodian, or other per-
14 son is providing the person concerned;

15 “(ii) such provider, landlord, custodian, or
16 other person—

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

21 “(II) shall maintain, under security
22 procedures approved by the Attorney Gen-
23 eral and the Director of Central Intel-
24 ligence pursuant to section 105(b)(2)(C) of
25 this Act, any records concerning the pen

1 register or trap and trace device or the aid
2 furnished; and

3 “(iii) the applicant shall compensate such
4 provider, landlord, custodian, or other person
5 for reasonable expenses incurred by such pro-
6 vider, landlord, custodian, or other person in
7 providing such information, facilities, or tech-
8 nical assistance.

9 “(e) An order issued under this section shall author-
10 ize the installation and use of a pen register or trap and
11 trace device for a period not to exceed 90 days. Extensions
12 of such an order may be granted, but only upon an appli-
13 cation for an order under this section and upon the judi-
14 cial finding required by subsection (d). The period of ex-
15 tension shall be for a period not to exceed 90 days.

16 “(f) No cause of action shall lie in any court against
17 any provider of a wire or electronic communication service,
18 landlord, custodian, or other person (including any officer,
19 employee, agent, or other specified person thereof) that
20 furnishes any information, facilities, or technical assist-
21 ance under subsection (d) in accordance with the terms
22 of a court under this section.

23 “(g) Unless otherwise ordered by the judge, the re-
24 sults of a pen register or trap and trace device shall be
25 furnished at reasonable intervals during regular business

1 hours for the duration of the order to the authorized Gov-
2 ernment official or officials.

3 “AUTHORIZATION DURING EMERGENCIES

4 “SEC. 403. (a) Notwithstanding any other provision
5 of this title, when the Attorney General makes a deter-
6 mination described in subsection (b), the Attorney General
7 may authorize the installation and use of a pen register
8 or trap and trace device on an emergency basis to gather
9 foreign intelligence information or information concerning
10 international terrorism if—

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

17 “(2) an application in accordance with section
18 402 of this Act is made to such judge as soon as
19 practicable, but not more than 48 hours, after the
20 Attorney General authorizes the installation and use
21 of the pen register or trap and trace device, as the
22 case may be, under this section.

23 “(b) A determination under this subsection is a rea-
24 sonable determination by the Attorney General that—

25 “(1) an emergency requires the installation and
26 use of a pen register or trap and trace device to ob-

1 tain foreign intelligence information or information
2 concerning international terrorism before an order
3 authorizing the installation and use of the pen reg-
4 ister or trap and trace device, as the case may be,
5 can with due diligence be obtained under section 402
6 of this Act; and

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

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

17 “(A) when the information sought is obtained;

18 “(B) when the application for the order is de-
19 nied under section 402 of this Act; or

20 “(C) 48 hours after the time of the authoriza-
21 tion by the Attorney General.

22 “(2) In the event that an application for an order
23 applied for under subsection (a)(2) is denied, or in any
24 other case where the installation and use of a pen register
25 or trap and trace device under this section is terminated

1 and no order under section 402 of this Act is issued ap-
2 proving the installation and use of the pen register or trap
3 and trace device, as the case may be, no information ob-
4 tained or evidence derived from the use of the pen register
5 or trap and trace device, as the case may be, shall be re-
6 ceived in evidence or otherwise disclosed in any trial, hear-
7 ing, or other proceeding in or before any court, grand jury,
8 department, office, agency, regulatory body, legislative
9 committee, or other authority of the United States, a
10 State, or political subdivision thereof, and no information
11 concerning any United States person acquired from the
12 use of the pen register or trap and trace device, as the
13 case may be, shall subsequently be used or disclosed in
14 any other manner by Federal officers or employees with-
15 out the consent of such person, except with the approval
16 of the Attorney General if the information indicates a
17 threat of death or serious bodily harm to any person.

18 “AUTHORIZATION DURING TIME OF WAR

19 “SEC. 404. Notwithstanding any other provision of
20 law, the President, through the Attorney General, may au-
21 thorize the use of a pen register or trap and trace device
22 without a court order under this title to acquire foreign
23 intelligence information for a period not to exceed 15 cal-
24 endar days following a declaration of war by Congress.

1 “USE OF INFORMATION

2 “SEC. 405. (a)(1) Information acquired from the use
3 of a pen register or trap and trace device installed pursu-
4 ant to this title concerning any United States person may
5 be used and disclosed by Federal officers and employees
6 without the consent of the United States person only in
7 accordance with the provisions of this section.

8 “(2) No information acquired from a pen register or
9 trap and trace device installed and used pursuant to this
10 title may be used or disclosed by Federal officers or em-
11 ployees except for lawful purposes.

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

18 “(c) Whenever the United States intends to enter into
19 evidence or otherwise use or disclose in any trial, hearing,
20 or other proceeding in or before any court, department,
21 officer, agency, regulatory body, or other authority of the
22 United States against an aggrieved person any informa-
23 tion obtained or derived from the use of a pen register
24 or trap and trace device pursuant to this title, the United
25 States shall, before the trial, hearing, or the other proceed-

1 ing or at a reasonable time before an effort to so disclose
2 or so use that information or submit it in evidence, notify
3 the aggrieved person and the court or other authority in
4 which the information is to be disclosed or used that the
5 United States intends to so disclose or so use such infor-
6 mation.

7 “(d) Whenever any State or political subdivision
8 thereof intends to enter into evidence or otherwise use or
9 disclose in any trial, hearing, or other proceeding in or
10 before any court, department, officer, agency, regulatory
11 body, or other authority of the State or political subdivi-
12 sion thereof against an aggrieved person any information
13 obtained or derived from the use of a pen register or trap
14 and trace device pursuant to this title, the State or politi-
15 cal subdivision thereof shall notify the aggrieved person,
16 the court or other authority in which the information is
17 to be disclosed or used, and the Attorney General that the
18 State or political subdivision thereof intends to so disclose
19 or so use such information.

20 “(e)(1) Any aggrieved person against whom evidence
21 obtained or derived from the use of a pen register or trap
22 and trace device is to be, or has been, introduced or other-
23 wise used or disclosed in any trial, hearing, or other pro-
24 ceeding in or before any court, department, officer, agen-
25 cy, regulatory body, or other authority of the United

1 States, or a State or political subdivision thereof, may
2 move to suppress the evidence obtained or derived from
3 the use of the pen register or trap and trace device, as
4 the case may be, on the grounds that—

5 “(A) the information was unlawfully acquired;
6 or

7 “(B) the use of the pen register or trap and
8 trace device, as the case may be, was not made in
9 conformity with an order of authorization or ap-
10 proval under this title.

11 “(2) A motion under paragraph (1) shall be made be-
12 fore the trial, hearing, or other proceeding unless there
13 was no opportunity to make such a motion or the ag-
14 grieved person concerned was not aware of the grounds
15 of the motion.

16 “(f)(1) Whenever a court or other authority is noti-
17 fied pursuant to subsection (c) or (d), whenever a motion
18 is made pursuant to subsection (e), or whenever any mo-
19 tion or request is made by an aggrieved person pursuant
20 to any other statute or rule of the United States or any
21 State before any court or other authority of the United
22 States or any State to discover or obtain applications or
23 orders or other materials relating to the use of a pen reg-
24 ister or trap and trace device authorized by this title or
25 to discover, obtain, or suppress evidence or information

1 obtained or derived from the use of a pen register or trap
2 and trace device authorized by this title, the United States
3 district court or, where the motion is made before another
4 authority, the United States district court in the same dis-
5 trict as the authority shall, notwithstanding any other pro-
6 vision of law and if the Attorney General files an affidavit
7 under oath that disclosure or any adversary hearing would
8 harm the national security of the United States, review
9 in camera and ex parte the application, order, and such
10 other materials relating to the use of the pen register or
11 trap and trace device, as the case may be, as may be nec-
12 essary to determine whether the use of the pen register
13 or trap and trace device, as the case may be, was lawfully
14 authorized and conducted.

15 “(2) In making a determination under paragraph (1),
16 the court may disclose to the aggrieved person, under ap-
17 propriate security procedures and protective orders, por-
18 tions of the application, order, or other materials relating
19 to the use of the pen register or trap and trace device,
20 as the case may be, or may require the Attorney General
21 to provide to the aggrieved person a summary of such ma-
22 terials, only where such disclosure is necessary to make
23 an accurate determination of the legality of the use of the
24 pen register or trap and trace device, as the case may be.

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

9 “(2) If the court determines that the use of the pen
10 register or trap and trace device, as the case may be, was
11 lawfully authorized or conducted, it may deny the motion
12 of the aggrieved person except to the extent that due proc-
13 ess requires discovery or disclosure.

14 “(h) Orders granting motions or requests under sub-
15 section (g), decisions under this section that the use of
16 a pen register or trap and trace device was not lawfully
17 authorized or conducted, and orders of the United States
18 district court requiring review or granting disclosure of
19 applications, orders, or other materials relating to the in-
20 stallation and use of a pen register or trap and trace de-
21 vice shall be final orders and binding upon all courts of
22 the United States and the several States except a United
23 States Court of Appeals or the Supreme Court.

24 “CONGRESSIONAL OVERSIGHT

25 “SEC. 406. (a) On a semiannual basis, the Attorney
26 General shall fully inform the Permanent Select Commit-

1 tee on Intelligence of the House of Representatives and
2 the Select Committee on Intelligence of the Senate con-
3 cerning all uses of pen registers and trap and trace devices
4 pursuant to this title.

5 “(b) On a semiannual basis, the Attorney General
6 shall also provide to the committees referred to in sub-
7 section (a) and to the Committees on the Judiciary of the
8 House of Representatives and the Senate a report setting
9 forth with respect to the preceding six-month period—

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

13 “(2) the total number of such orders either
14 granted, modified, or denied.”.

15 **SEC. 602. ACCESS TO CERTAIN BUSINESS RECORDS FOR**
16 **FOREIGN INTELLIGENCE AND INTER-**
17 **NATIONAL TERRORISM INVESTIGATIONS.**

18 The Foreign Intelligence Surveillance Act of 1978
19 (50 U.S.C. 1801 et seq.), as amended by section 601 of
20 this Act, is further amended by inserting after title IV,
21 as added by such section 601, the following new title:

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

4 “DEFINITIONS

5 “SEC. 501. As used in this title:

6 “(1) The terms ‘foreign power’, ‘agent of a for-
7 eign power’, ‘foreign intelligence information’, ‘inter-
8 national terrorism’, and ‘Attorney General’ shall
9 have the same meanings as in section 101 of this
10 Act.

11 “(2) The term ‘common carrier’ means any per-
12 son or entity transporting people or property by
13 land, rail, water, or air for compensation.

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

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

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

1 “ACCESS TO CERTAIN BUSINESS RECORDS FOR FOREIGN
2 INTELLIGENCE AND INTERNATIONAL TERRORISM IN-
3 VESTIGATIONS

4 “SEC. 502. (a) The Director of the Federal Bureau
5 of Investigation or a designee of the Director (whose rank
6 shall be no lower than Assistant Special Agent in Charge)
7 may make an application for an order authorizing a com-
8 mon carrier, public accommodation facility, physical stor-
9 age facility, or vehicle rental facility to release records in
10 its possession for an investigation to gather foreign intel-
11 ligence information or an investigation concerning inter-
12 national terrorism which investigation is being conducted
13 by the Federal Bureau of Investigation under such guide-
14 lines as the Attorney General approves pursuant to Execu-
15 tive Order No. 12333, or a successor order.

16 “(b) Each application under this section—

17 “(1) shall be made to—

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

20 “(B) a United States Magistrate Judge
21 under chapter 43 of title 28, United States
22 Code, who is publicly designated by the Chief
23 Justice of the United States to have the power
24 to hear applications and grant orders for the

1 release of records under this section on behalf
2 of a judge of that court; and

3 “(2) shall specify that—

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

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

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

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

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

21 “(2) No common carrier, public accommodation facil-
22 ity, physical storage facility, or vehicle rental facility, or
23 officer, employee, or agent thereof, shall disclose to any
24 person (other than those officers, agents, or employees of
25 such common carrier, public accommodation facility, phys-

1 ical storage facility, or vehicle rental facility necessary to
 2 fulfill the requirement to disclose information to the Fed-
 3 eral Bureau of Investigation under this section) that the
 4 Federal Bureau of Investigation has sought or obtained
 5 records pursuant to an order under this section.

6 “CONGRESSIONAL OVERSIGHT

7 “SEC. 503. (a) On a semiannual basis, the Attorney
 8 General shall fully inform the Permanent Select Commit-
 9 tee on Intelligence of the House of Representatives and
 10 the Select Committee on Intelligence of the Senate con-
 11 cerning all requests for records under this title.

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

16 “(1) the total number of applications made for
 17 orders approving requests for records under this
 18 title; and

19 “(2) the total number of such orders either
 20 granted, modified, or denied.”.

21 **SEC. 603. CONFORMING AND CLERICAL AMENDMENTS.**

22 (a) CONFORMING AMENDMENT.—Section 601 of the
 23 Foreign Intelligence Surveillance Act of 1978, as redesign-
 24 nated by section 601(1) of this Act, is amended by striking
 25 out “other than title III” and inserting in lieu thereof
 26 “other than titles III, IV, and V”.

1 (b) CLERICAL AMENDMENT.—The table of contents
 2 at the beginning of the Foreign Intelligence Surveillance
 3 Act of 1978 is amended by striking out the items relating
 4 to title IV and section 401 and inserting in lieu thereof
 5 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 inter-
 national 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 inter-
 national terrorism investigations.

“503. Congressional oversight.

“TITLE VI—EFFECTIVE DATE

“601. Effective date.”.

