tions Assistance for Law Enforcement Act have the meanings provided, respectively, in such section.

(Added Pub. L. 103–414, title II, § 201(a), Oct. 25, 1994, 108 Stat. 4289.)

REFERENCES IN TEXT

The Foreign Intelligence Surveillance Act of 1978, referred to in subsec. (a), is Pub. L. 95–511, Oct. 25, 1978, 92 Stat. 1783, as amended, which is classified principally to chapter 36 (§ 1801 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of Title 50 and Tables.

The Communications Assistance for Law Enforcement Act, referred to in subsecs. (a) and (b), is title I of Pub. L. 103–414, Oct. 25, 1994, 108 Stat. 4279, which is classified generally to subchapter I (§ 1001 et seq.) of chapter 9 of Title 47, Telegraphs, Telephones, and Radiotelegraphs. Sections 102 and 108 of the Act are classified to sections 1001 and 1007, respectively, of Title 47. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 47 and Tables.

CHAPTER 121—STORED WIRE AND ELECTRONIC COMMUNICATIONS AND TRANSACTIONAL RECORDS ACCESS

Sec.
2701. Unlawful access to stored communications.
2702. Voluntary disclosure of customer communications or records.
2703. Required disclosure of customer communications or records.
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2711. Definitions for chapter.
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AMENDMENTS

2002—Pub. L. 107–273, div. B, title IV, § 4005(b), Nov. 2, 2002, 116 Stat. 1812, made technical correction to directory language of Pub. L. 107–56, title II, § 223(c)(2), Oct. 26, 2001, 115 Stat. 295, effective Oct. 26, 2001. See 2001 Amendment note below.

2001—Pub. L. 107–56, title II, §§ 223(c)(2), 224, Oct. 26, 2001, 115 Stat. 295, as amended by Pub. L. 107–273, div. B, title IV, § 4005(b), Nov. 2, 2002, 116 Stat. 1812, temporarily added item 2712.

Pub. L. 107–56, title II, §§ 212(a)(2), (b)(2), 224, Oct. 26, 2001, 115 Stat. 285, 295, temporarily substituted ''Voluntary disclosure of customer communications or records'' for ''Disclosure of contents'' in item 2702 and ''Required disclosure of customer communications or records'' for ''Requirements for governmental access'' in item 2703.

1988—Pub. L. 100–690, title VII, § 7067, Nov. 18, 1988, 102 Stat. 4405, which directed amendment of item 2710 by inserting ''for chapter'' after ''Definitions'' was executed by making the insertion in item 2711 to reflect the probable intent of Congress and the intervening redesignation of item 2710 as 2711 by Pub. L. 100–618, see below.

Pub. L. 100–618, § 2(b), Nov. 5, 1988, 102 Stat. 3197, added item 2710 and redesignated former item 2710 as 2711.

§ 2701. Unlawful access to stored communications

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

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

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

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

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

(1) if the offense is committed for purposes of commercial advantage, malicious destruction or damage, or private commercial gain, or in furtherance of any criminal or tortious act in violation of the Constitution or laws of the United States or any State—

(A) a fine under this title or imprisonment for not more than 5 years, or both, in the case of a first offense under this subparagraph; and

(B) a fine under this title or imprisonment for not more than 10 years, or both, for any subsequent offense under this subparagraph; and

(2) in any other case—

(A) a fine under this title or imprisonment for not more than 1 year or both, in the case of a first offense under this paragraph; and

(B) a fine under this title or imprisonment for not more than 5 years, or both, in the case of an offense under this subparagraph that occurs after a conviction of another offense under this section.

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

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

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

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

(Added Pub. L. 99–508, title II, § 201[(a)], Oct. 21, 1986, 100 Stat. 1860; amended Pub. L. 103–322, title XXXIII, § 330016(1)(K), (U), Sept. 13, 1994, 108 Stat. 2147, 2148; Pub. L. 104–294, title VI, § 601(a)(3), Oct. 11, 1996, 110 Stat. 3498; Pub. L. 107–296, title II, § 225(j)(2), Nov. 25, 2002, 116 Stat. 2158.)

AMENDMENTS

2002—Subsec. (b)(1). Pub. L. 107–296, § 225(j)(2)(A), in introductory provisions, inserted '', or in furtherance of any criminal or tortious act in violation of the Constitution or laws of the United States or any State'' after ''commercial gain''.

Subsec. (b)(1)(A). Pub. L. 107–296, § 225(j)(2)(B), substituted ''5 years'' for ''one year''.

Subsec. (b)(1)(B). Pub. L. 107–296, § 225(j)(2)(C), substituted ''10 years'' for ''two years''.

Subsec. (b)(2). Pub. L. 107–296, § 225(j)(2)(D), added par. (2) and struck out former par. (2) which read as follows: ''a fine under this title or imprisonment for not more than six months, or both, in any other case.''

1996—Subsec. (b)(1)(A), (2). Pub. L. 104–294 substituted ''fine under this title'' for ''fine of under this title''.

1994—Subsec. (b)(1)(A). Pub. L. 103–322, § 330016(1)(U), substituted ''under this title'' for ''not more than $250,000''.

Subsec. (b)(2). Pub. L. 103–322, § 330016(1)(K), substituted ''under this title'' for ''not more than $5,000''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

EFFECTIVE DATE

Section 202 of title II of Pub. L. 99–508 provided that: ''This title and the amendments made by this title [enacting this chapter] shall take effect ninety days after the date of the enactment of this Act [Oct. 21, 1986] and shall, in the case of conduct pursuant to a court order or extension, apply only with respect to court orders or extensions made after this title takes effect.''

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100–618, § 1, Nov. 5, 1988, 102 Stat. 3195, provided that: ''This Act [enacting section 2710 of this title and renumbering former section 2710 as 2711 of this title] may be cited as the 'Video Privacy Protection Act of 1988'.''

§ 2702. Voluntary disclosure of customer communications or records

(a) PROHIBITIONS.—Except as provided in subsection (b) or (c)—

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

(2) a person or entity providing remote computing service to the public shall not knowingly divulge to any person or entity the contents of any communication which is carried or maintained on that service—

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

(B) solely for the purpose of providing storage or computer processing services to such subscriber or customer, if the provider is not authorized to access the contents of any such communications for purposes of providing any services other than storage or computer processing; and

(3) a provider of remote computing service or electronic communication service to the public shall not knowingly divulge a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by paragraph (1) or (2)) to any governmental entity.

(b) EXCEPTIONS FOR DISCLOSURE OF COMMUNICATIONS.—A provider described in subsection (a) may divulge the contents of a communication—

(1) to an addressee or intended recipient of such communication or an agent of such addressee or intended recipient;

(2) as otherwise authorized in section 2517, 2511(2)(a), or 2703 of this title;

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

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

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

(6) to the National Center for Missing and Exploited Children, in connection with a report submitted thereto under section 2258A;

(7) to a law enforcement agency—

(A) if the contents—

(i) were inadvertently obtained by the service provider; and

(ii) appear to pertain to the commission of a crime; or

[(B) Repealed. Pub. L. 108–21, title V, § 508(b)(1)(A), Apr. 30, 2003, 117 Stat. 684]

(8) to a governmental entity, if the provider, in good faith, believes that an emergency involving danger of death or serious physical injury to any person requires disclosure without delay of communications relating to the emergency.

(c) EXCEPTIONS FOR DISCLOSURE OF CUSTOMER RECORDS.—A provider described in subsection (a) may divulge a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by subsection (a)(1) or (a)(2))—

(1) as otherwise authorized in section 2703;

(2) with the lawful consent of the customer or subscriber;

(3) as may be necessarily incident to the rendition of the service or to the protection of the rights or property of the provider of that service;

(4) to a governmental entity, if the provider, in good faith, believes that an emergency involving danger of death or serious physical injury to any person requires disclosure without delay of information relating to the emergency;

(5) to the National Center for Missing and Exploited Children, in connection with a report submitted thereto under section 2258A; or

(6) to any person other than a governmental entity.

(d) REPORTING OF EMERGENCY DISCLOSURES.—On an annual basis, the Attorney General shall submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report containing—

(1) the number of accounts from which the Department of Justice has received voluntary disclosures under subsection (b)(8); and

(2) a summary of the basis for disclosure in those instances where—

(A) voluntary disclosures under subsection (b)(8) were made to the Department of Justice; and

(B) the investigation pertaining to those disclosures was closed without the filing of criminal charges.

(Added Pub. L. 99–508, title II, § 201[(a)], Oct. 21, 1986, 100 Stat. 1860; amended Pub. L. 100–690, title VII, § 7037, Nov. 18, 1988, 102 Stat. 4399; Pub. L. 105–314, title VI, § 604(b), Oct. 30, 1998, 112 Stat.

2984; Pub. L. 107–56, title II, § 212(a)(1), Oct. 26, 2001, 115 Stat. 284; Pub. L. 107–296, title II, § 225(d)(1), Nov. 25, 2002, 116 Stat. 2157; Pub. L. 108–21, title V, § 508(b), Apr. 30, 2003, 117 Stat. 684; Pub. L. 109–177, title I, § 107(a), (b)(1), (c), Mar. 9, 2006, 120 Stat. 202, 203; Pub. L. 110–401, title V, § 501(b)(2), Oct. 13, 2008, 122 Stat. 4251.)

AMENDMENTS

2008—Subsecs. (b)(6), (c)(5). Pub. L. 110–401 substituted ''section 2258A'' for ''section 227 of the Victims of Child Abuse Act of 1990 (42 U.S.C. 13032)''.

2006—Subsec. (a). Pub. L. 109–177, § 107(c), inserted ''or (c)'' after ''Except as provided in subsection (b)''.

Subsec. (b)(8). Pub. L. 109–177, § 107(b)(1)(A), struck out ''Federal, State, or local'' before ''governmental entity''.

Subsec. (c)(4). Pub. L. 109–177, § 107(b)(1)(B), added par. (4) and struck out former par. (4) which read as follows: ''to a governmental entity, if the provider reasonably believes that an emergency involving immediate danger of death or serious physical injury to any person justifies disclosure of the information;''.

Subsec. (d). Pub. L. 109–177, § 107(a), added subsec. (d).

2003—Subsec. (b)(5). Pub. L. 108–21, § 508(b)(1)(C), which directed amendment of par. (5) by striking ''or'' at the end, could not be executed because ''or'' did not appear at the end. See 2002 Amendment note below.

Subsec. (b)(6). Pub. L. 108–21, § 508(b)(1)(D), added par. (6). Former par. (6) redesignated (7).

Subsec. (b)(6)(B). Pub. L. 108–21, § 508(b)(1)(A), struck out subpar. (B) which read as follows: ''if required by section 227 of the Crime Control Act of 1990; or''.

Subsec. (b)(7), (8). Pub. L. 108–21, § 508(b)(1)(B), redesignated pars. (6) and (7) as (7) and (8), respectively.

Subsec. (c)(5), (6). Pub. L. 108–21, § 508(b)(2), added par. (5) and redesignated former par. (5) as (6).

2002—Subsec. (b)(5). Pub. L. 107–296, § 225(d)(1)(A), struck out ''or'' at end.

Subsec. (b)(6)(A). Pub. L. 107–296, § 225(d)(1)(B), inserted ''or'' at end.

Subsec. (b)(6)(C). Pub. L. 107–296, § 225(d)(1)(C), struck out subpar. (C) which read as follows: ''if the provider reasonably believes that an emergency involving immediate danger of death or serious physical injury to any person requires disclosure of the information without delay.''

Subsec. (b)(7). Pub. L. 107–296, § 225(d)(1)(D), added par. (7).

2001—Pub. L. 107–56, § 212(a)(1)(A), substituted ''Voluntary disclosure of customer communications or records'' for ''Disclosure of contents'' in section catchline.

Subsec. (a)(3). Pub. L. 107–56, § 212(a)(1)(B), added par. (3).

Subsec. (b). Pub. L. 107–56, § 212(a)(1)(C), substituted ''Exceptions for disclosure of communications'' for ''Exceptions'' in heading and ''A provider described in subsection (a)'' for ''A person or entity'' in introductory provisions.

Subsec. (b)(6)(C). Pub. L. 107–56, § 212(a)(1)(D), added subpar. (C).

Subsec. (c). Pub. L. 107–56, § 212(a)(1)(E), added subsec. (c).

1998—Subsec. (b)(6). Pub. L. 105–314 amended par. (6) generally. Prior to amendment, par. (6) read as follows: ''to a law enforcement agency, if such contents—

''(A) were inadvertently obtained by the service provider; and

''(B) appear to pertain to the commission of a crime.''

1988—Subsec. (b)(2). Pub. L. 100–690 substituted ''2517'' for ''2516''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

§ 2703. Required disclosure of customer communications or records

(a) CONTENTS OF WIRE OR ELECTRONIC COMMUNICATIONS IN ELECTRONIC STORAGE.—A governmental entity may require the disclosure by a provider of electronic communication service of the contents of a wire or electronic communication, that is in electronic storage in an electronic communications system for one hundred and eighty days or less, only pursuant to a warrant issued using the procedures described in the Federal Rules of Criminal Procedure (or, in the case of a State court, issued using State warrant procedures) by a court of competent jurisdiction. A governmental entity may require the disclosure by a provider of electronic communications services of the contents of a wire or electronic communication that has been in electronic storage in an electronic communications system for more than one hundred and eighty days by the means available under subsection (b) of this section.

(b) CONTENTS OF WIRE OR ELECTRONIC COMMUNICATIONS IN A REMOTE COMPUTING SERVICE.—(1) A governmental entity may require a provider of remote computing service to disclose the contents of any wire or electronic communication to which this paragraph is made applicable by paragraph (2) of this subsection—

(A) without required notice to the subscriber or customer, if the governmental entity obtains a warrant issued using the procedures described in the Federal Rules of Criminal Procedure (or, in the case of a State court, issued using State warrant procedures) by a court of competent jurisdiction; or

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

(i) uses an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury or trial subpoena; or

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

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

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

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

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

(c) RECORDS CONCERNING ELECTRONIC COMMUNICATION SERVICE OR REMOTE COMPUTING SERVICE.—(1) A governmental entity may require a provider of electronic communication service or remote computing service to disclose a record or other information pertaining to a subscriber to

or customer of such service (not including the contents of communications) only when the governmental entity—

(A) obtains a warrant issued using the procedures described in the Federal Rules of Criminal Procedure (or, in the case of a State court, issued using State warrant procedures) by a court of competent jurisdiction;

(B) obtains a court order for such disclosure under subsection (d) of this section;

(C) has the consent of the subscriber or customer to such disclosure;

(D) submits a formal written request relevant to a law enforcement investigation concerning telemarketing fraud for the name, address, and place of business of a subscriber or customer of such provider, which subscriber or customer is engaged in telemarketing (as such term is defined in section 2325 of this title); or

(E) seeks information under paragraph (2).

(2) A provider of electronic communication service or remote computing service shall disclose to a governmental entity the—

(A) name;

(B) address;

(C) local and long distance telephone connection records, or records of session times and durations;

(D) length of service (including start date) and types of service utilized;

(E) telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and

(F) means and source of payment for such service (including any credit card or bank account number),

of a subscriber to or customer of such service when the governmental entity uses an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury or trial subpoena or any means available under paragraph (1).

(3) A governmental entity receiving records or information under this subsection is not required to provide notice to a subscriber or customer.

(d) REQUIREMENTS FOR COURT ORDER.—A court order for disclosure under subsection (b) or (c) may be issued by any court that is a court of competent jurisdiction and shall issue only if the governmental entity offers specific and articulable facts showing that there are reasonable grounds to believe that the contents of a wire or electronic communication, or the records or other information sought, are relevant and material to an ongoing criminal investigation. In the case of a State governmental authority, such a court order shall not issue if prohibited by the law of such State. A court issuing an order pursuant to this section, on a motion made promptly by the service provider, may quash or modify such order, if the information or records requested are unusually voluminous in nature or compliance with such order otherwise would cause an undue burden on such provider.

(e) NO CAUSE OF ACTION AGAINST A PROVIDER DISCLOSING INFORMATION UNDER THIS CHAPTER.—No cause of action shall lie in any court against any provider of wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order, warrant, subpoena, statutory authorization, or certification under this chapter.

(f) REQUIREMENT TO PRESERVE EVIDENCE.—

(1) IN GENERAL.—A provider of wire or electronic communication services or a remote computing service, upon the request of a governmental entity, shall take all necessary steps to preserve records and other evidence in its possession pending the issuance of a court order or other process.

(2) PERIOD OF RETENTION.—Records referred to in paragraph (1) shall be retained for a period of 90 days, which shall be extended for an additional 90-day period upon a renewed request by the governmental entity.

(g) PRESENCE OF OFFICER NOT REQUIRED.—Notwithstanding section 3105 of this title, the presence of an officer shall not be required for service or execution of a search warrant issued in accordance with this chapter requiring disclosure by a provider of electronic communications service or remote computing service of the contents of communications or records or other information pertaining to a subscriber to or customer of such service.

(Added Pub. L. 99–508, title II, § 201[(a)], Oct. 21, 1986, 100 Stat. 1861; amended Pub. L. 100–690, title VII, §§ 7038, 7039, Nov. 18, 1988, 102 Stat. 4399; Pub. L. 103–322, title XXXIII, § 330003(b), Sept. 13, 1994, 108 Stat. 2140; Pub. L. 103–414, title II, § 207(a), Oct. 25, 1994, 108 Stat. 4292; Pub. L. 104–132, title VIII, § 804, Apr. 24, 1996, 110 Stat. 1305; Pub. L. 104–293, title VI, § 601(b), Oct. 11, 1996, 110 Stat. 3469; Pub. L. 104–294, title VI, § 605(f), Oct. 11, 1996, 110 Stat. 3510; Pub. L. 105–184, § 8, June 23, 1998, 112 Stat. 522; Pub. L. 107–56, title II, §§ 209(2), 210, 212(b)(1), 220(a)(1), (b), Oct. 26, 2001, 115 Stat. 283, 285, 291, 292; Pub. L. 107–273, div. B, title IV, § 4005(a)(2), div. C, title I, § 11010, Nov. 2, 2002, 116 Stat. 1812, 1822; Pub. L. 107–296, title II, § 225(h)(1), Nov. 25, 2002, 116 Stat. 2158; Pub. L. 109–162, title XI, § 1171(a)(1), Jan. 5, 2006, 119 Stat. 3123; Pub. L. 111–79, § 2(1), Oct. 19, 2009, 123 Stat. 2086.)

REFERENCES IN TEXT

The Federal Rules of Criminal Procedure, referred to in subsecs. (a), (b)(1)(A), and (c)(1)(B)(i), are set out in the Appendix to this title.

AMENDMENTS

2009—Subsecs. (a), (b)(1)(A), (c)(1)(A). Pub. L. 111–79, which directed substitution of ''(or, in the case of a State court, issued using State warrant procedures) by a court of competent jurisdiction'' for ''by a court with jurisdiction over the offense under investigation or an equivalent State warrant'', was executed by making the substitution for ''by a court with jurisdiction over the offense under investigation or equivalent State warrant'' to reflect the probable intent of Congress.

2006—Subsec. (c)(1)(C). Pub. L. 109–162 struck out ''or'' at end.

2002—Subsec. (c)(1)(E). Pub. L. 107–273, § 4005(a)(2), realigned margins.

Subsec. (e). Pub. L. 107–296 inserted '', statutory authorization'' after ''subpoena''.

Subsec. (g). Pub. L. 107–273, § 11010, added subsec. (g).

2001—Pub. L. 107–56, § 212(b)(1)(A), substituted ''Required disclosure of customer communications or

records'' for ''Requirements for governmental access'' in section catchline.

Subsec. (a). Pub. L. 107–56, §§ 209(2)(A), (B), 220(a)(1), substituted ''Contents of Wire or Electronic'' for ''Contents of Electronic'' in heading and ''contents of a wire or electronic'' for ''contents of an electronic'' in two places and ''using the procedures described in the Federal Rules of Criminal Procedure by a court with jurisdiction over the offense under investigation'' for ''under the Federal Rules of Criminal Procedure'' in text.

Subsec. (b). Pub. L. 107–56, § 209(2)(A), substituted ''Contents of Wire or Electronic'' for ''Contents of Electronic'' in heading.

Subsec. (b)(1). Pub. L. 107–56, §§ 209(2)(C), 220(a)(1), substituted ''any wire or electronic communication'' for ''any electronic communication'' in introductory provisions and ''using the procedures described in the Federal Rules of Criminal Procedure by a court with jurisdiction over the offense under investigation'' for ''under the Federal Rules of Criminal Procedure'' in subpar. (A).

Subsec. (b)(2). Pub. L. 107–56, § 209(2)(C), substituted ''any wire or electronic communication'' for ''any electronic communication'' in introductory provisions.

Subsec. (c)(1). Pub. L. 107–56, §§ 212(b)(1)(C), 220(a)(1), designated subpar. (A) and introductory provisions of subpar. (B) as par. (1), substituted ''A governmental entity may require a provider of electronic communication service or remote computing service to'' for ''(A) Except as provided in subparagraph (B), a provider of electronic communication service or remote computing service may'' and a closing parenthesis for provisions which began with ''covered by subsection (a) or (b) of this section) to any person other than a governmental entity.'' in former subpar. (A) and ended with ''(B) A provider of electronic communication service or remote computing service shall disclose a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by subsection (a) or (b) of this section) to a governmental entity'', redesignated clauses (i) to (iv) of former subpar. (B) as subpars. (A) to (D), respectively, substituted ''using the procedures described in the Federal Rules of Criminal Procedure by a court with jurisdiction over the offense under investigation'' for ''under the Federal Rules of Criminal Procedure'' in subpar. (A) and ''; or'' for period at end of subpar. (D), added subpar. (E), and redesignated former subpar. (C) as par. (2).

Subsec. (c)(2). Pub. L. 107–56, § 210, amended par. (2), as redesignated by section 212 of Pub. L. 107–56, by substituting ''entity the—'' for ''entity the name, address, local and long distance telephone toll billing records, telephone number or other subscriber number or identity, and length of service of a subscriber'' in introductory provisions, inserting subpars. (A) to (F), striking out ''and the types of services the subscriber or customer utilized,'' before ''when the governmental entity uses an administrative subpoena'', inserting ''of a subscriber'' at beginning of concluding provisions and designating ''to or customer of such service when the governmental entity uses an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury or trial subpoena or any means available under paragraph (1).'' as remainder of concluding provisions.

Pub. L. 107–56, § 212(b)(1)(C)(iii), (D), redesignated subpar. (C) of par. (1) as par. (2) and temporarily substituted ''paragraph (1)'' for ''subparagraph (B)''.

Pub. L. 107–56, § 212(b)(1)(B), redesignated par. (2) as (3).

Subsec. (c)(3). Pub. L. 107–56, § 212(b)(1)(B), redesignated par. (2) as (3).

Subsec. (d). Pub. L. 107–56, § 220(b), struck out ''described in section 3127(2)(A)'' after ''court of competent jurisdiction''.

1998—Subsec. (c)(1)(B)(iv). Pub. L. 105–184 added cl. (iv).

1996—Subsec. (c)(1)(C). Pub. L. 104–293 inserted ''local and long distance'' after ''address,''.

Subsec. (d). Pub. L. 104–294 substituted ''in section 3127(2)(A)'' for ''in section 3126(2)(A)''.

Subsec. (f). Pub. L. 104–132 added subsec. (f).

1994—Subsec. (c)(1)(B). Pub. L. 103–414, § 207(a)(1)(A), redesignated cls. (ii) to (iv) as (i) to (iii), respectively, and struck out former cl. (i) which read as follows: ''uses an administrative subpoena authorized by a Federal or State statute, or a Federal or State grand jury or trial subpoena;''.

Subsec. (c)(1)(C). Pub. L. 103–414, § 207(a)(1)(B), added subpar. (C).

Subsec. (d). Pub. L. 103–414, § 207(a)(2), amended first sentence generally. Prior to amendment, first sentence read as follows: ''A court order for disclosure under subsection (b) or (c) of this section may be issued by any court that is a court of competent jurisdiction set forth in section 3127(2)(A) of this title and shall issue only if the governmental entity shows that there is reason to believe the contents of a wire or electronic communication, or the records or other information sought, are relevant to a legitimate law enforcement inquiry.''

Pub. L. 103–322 substituted ''section 3127(2)(A)'' for ''section 3126(2)(A)''.

1988—Subsecs. (b)(1)(B)(i), (c)(1)(B)(i). Pub. L. 100–690, § 7038, inserted ''or trial'' after ''grand jury''.

Subsec. (d). Pub. L. 100–690, § 7039, inserted ''may be issued by any court that is a court of competent jurisdiction set forth in section 3126(2)(A) of this title and'' before ''shall issue''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

§ 2704. Backup preservation

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

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

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

(A) the delivery of the information; or

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

(4) The service provider shall release such backup copy to the requesting governmental entity no sooner than fourteen days after the governmental entity's notice to the subscriber or customer if such service provider—

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

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

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

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

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

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

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

(3) If the court finds that the customer has complied with paragraphs (1) and (2) of this subsection, the court shall order the governmental entity to file a sworn response, which may be filed in camera if the governmental entity includes in its response the reasons which make in camera review appropriate. If the court is unable to determine the motion or application on the basis of the parties' initial allegations and response, the court may conduct such additional proceedings as it deems appropriate. All such proceedings shall be completed and the motion or application decided as soon as practicable after the filing of the governmental entity's response.

(4) If the court finds that the applicant is not the subscriber or customer for whom the communications sought by the governmental entity are maintained, or that there is a reason to believe that the law enforcement inquiry is legitimate and that the communications sought are relevant to that inquiry, it shall deny the motion or application and order such process enforced. If the court finds that the applicant is the subscriber or customer for whom the communications sought by the governmental entity are maintained, and that there is not a reason to believe that the communications sought are relevant to a legitimate law enforcement inquiry, or that there has not been substantial compliance with the provisions of this chapter, it shall order the process quashed.

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

(Added Pub. L. 99–508, title II, § 201[(a)], Oct. 21, 1986, 100 Stat. 1863.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (b)(2), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

§ 2705. Delayed notice

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

(A) where a court order is sought, include in the application a request, which the court shall grant, for an order delaying the notification required under section 2703(b) of this title for a period not to exceed ninety days, if the court determines that there is reason to believe that notification of the existence of the court order may have an adverse result described in paragraph (2) of this subsection; or

(B) where an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury subpoena is obtained, delay the notification required under section 2703(b) of this title for a period not to exceed ninety days upon the execution of a written certification of a supervisory official that there is reason to believe that notification of the existence of the subpoena may have an adverse result described in paragraph (2) of this subsection.

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

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

(B) flight from prosecution;

(C) destruction of or tampering with evidence;

(D) intimidation of potential witnesses; or

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

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

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

(5) Upon expiration of the period of delay of notification under paragraph (1) or (4) of this subsection, the governmental entity shall serve upon, or deliver by registered or first-class mail to, the customer or subscriber a copy of the process or request together with notice that—

(A) states with reasonable specificity the nature of the law enforcement inquiry; and

(B) informs such customer or subscriber—

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

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

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

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

(6) As used in this subsection, the term ''supervisory official'' means the investigative agent in charge or assistant investigative agent in charge or an equivalent of an investigating agency's headquarters or regional office, or the chief prosecuting attorney or the first assistant prosecuting attorney or an equivalent of a prosecuting attorney's headquarters or regional office.

(b) PRECLUSION OF NOTICE TO SUBJECT OF GOVERNMENTAL ACCESS.—A governmental entity acting under section 2703, when it is not required to notify the subscriber or customer under section 2703(b)(1), or to the extent that it may delay such notice pursuant to subsection (a) of this section, may apply to a court for an order commanding a provider of electronic communications service or remote computing service to whom a warrant, subpoena, or court order is directed, for such period as the court deems appropriate, not to notify any other person of the existence of the warrant, subpoena, or court order. The court shall enter such an order if it determines that there is reason to believe that notification of the existence of the warrant, subpoena, or court order will result in—

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

(2) flight from prosecution;

(3) destruction of or tampering with evidence;

(4) intimidation of potential witnesses; or

(5) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

(Added Pub. L. 99–508, title II, § 201[(a)], Oct. 21, 1986, 100 Stat. 1864.)

§ 2706. Cost reimbursement

(a) PAYMENT.—Except as otherwise provided in subsection (c), a governmental entity obtaining the contents of communications, records, or other information under section 2702, 2703, or 2704 of this title shall pay to the person or entity assembling or providing such information a fee for reimbursement for such costs as are reasonably necessary and which have been directly incurred in searching for, assembling, reproducing, or otherwise providing such information. Such reimbursable costs shall include any costs due to necessary disruption of normal operations of any electronic communication service or remote computing service in which such information may be stored.

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

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

(Added Pub. L. 99–508, title II, § 201[(a)], Oct. 21, 1986, 100 Stat. 1866; amended Pub. L. 100–690, title VII, § 7061, Nov. 18, 1988, 102 Stat. 4404.)

AMENDMENTS

1988—Subsec. (c). Pub. L. 100–690 inserted heading.

§ 2707. Civil action

(a) CAUSE OF ACTION.—Except as provided in section 2703(e), any provider of electronic communication service, subscriber, or other person aggrieved by any violation of this chapter in which the conduct constituting the violation is engaged in with a knowing or intentional state of mind may, in a civil action, recover from the person or entity, other than the United States, which engaged in that violation such relief as may be appropriate.

(b) RELIEF.—In a civil action under this section, appropriate relief includes—

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

(2) damages under subsection (c); and

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

(c) DAMAGES.—The court may assess as damages in a civil action under this section the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation, but in no case shall a person entitled to recover receive less than the sum of $1,000. If the violation is willful or intentional, the court may assess punitive damages. In the case of a successful action to enforce liability under this section, the court may assess the costs of the action, together with reasonable attorney fees determined by the court.

(d) ADMINISTRATIVE DISCIPLINE.—If a court or appropriate department or agency determines that the United States or any of its departments or agencies has violated any provision of this chapter, and the court or appropriate department or agency finds that the circumstances surrounding the violation raise serious questions about whether or not an officer or employee of the United States acted willfully or intentionally with respect to the violation, the department or agency shall, upon receipt of a true and correct copy of the decision and findings of the court or appropriate department or agency promptly initiate a proceeding to determine whether disciplinary action against the officer

or employee is warranted. If the head of the department or agency involved determines that disciplinary action is not warranted, he or she shall notify the Inspector General with jurisdiction over the department or agency concerned and shall provide the Inspector General with the reasons for such determination.

(e) DEFENSE.—A good faith reliance on—

(1) a court warrant or order, a grand jury subpoena, a legislative authorization, or a statutory authorization (including a request of a governmental entity under section 2703(f) of this title);

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

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

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

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

(g) IMPROPER DISCLOSURE.—Any willful disclosure of a ''record'', as that term is defined in section 552a(a) of title 5, United States Code, obtained by an investigative or law enforcement officer, or a governmental entity, pursuant to section 2703 of this title, or from a device installed pursuant to section 3123 or 3125 of this title, that is not a disclosure made in the proper performance of the official functions of the officer or governmental entity making the disclosure, is a violation of this chapter. This provision shall not apply to information previously lawfully disclosed (prior to the commencement of any civil or administrative proceeding under this chapter) to the public by a Federal, State, or local governmental entity or by the plaintiff in a civil action under this chapter.

(Added Pub. L. 99–508, title II, § 201[(a)], Oct. 21, 1986, 100 Stat. 1866; amended Pub. L. 104–293, title VI, § 601(c), Oct. 11, 1996, 110 Stat. 3469; Pub. L. 107–56, title II, §§ 223(b), title VIII, § 815, Oct. 26, 2001, 115 Stat. 293, 384; Pub. L. 107–273, div. B, title IV, § 4005(f)(2), Nov. 2, 2002, 116 Stat. 1813.)

AMENDMENTS

2002—Subsec. (e)(1). Pub. L. 107–273 made technical correction to directory language of Pub. L. 107–56, § 815. See 2001 Amendment note below.

2001—Subsec. (a). Pub. L. 107–56, § 223(b)(1), inserted '', other than the United States,'' after ''person or entity''.

Subsec. (d). Pub. L. 107–56, § 223(b)(2), added subsec. (d) and struck out heading and text of former subsec. (d). Text read as follows: ''If a court determines that any agency or department of the United States has violated this chapter and the court finds that the circumstances surrounding the violation raise the question whether or not an officer or employee of the agency or department acted willfully or intentionally with respect to the violation, the agency or department concerned shall promptly initiate a proceeding to determine whether or not disciplinary action is warranted against the officer or employee.''

Subsec. (e)(1). Pub. L. 107–56, § 815, as amended by Pub. L. 107–273, inserted ''(including a request of a governmental entity under section 2703(f) of this title)'' after ''or a statutory authorization''.

Subsec. (g). Pub. L. 107–56, § 223(b)(3), added subsec. (g).

1996—Subsec. (a). Pub. L. 104–293, § 601(c)(1), substituted ''other person'' for ''customer''.

Subsec. (c). Pub. L. 104–293, § 601(c)(2), inserted at end ''If the violation is willful or intentional, the court may assess punitive damages. In the case of a successful action to enforce liability under this section, the court may assess the costs of the action, together with reasonable attorney fees determined by the court.''

Subsecs. (d) to (f). Pub. L. 104–293, § 601(c)(3), (4), added subsec. (d) and redesignated former subsecs. (d) and (e) as (e) and (f), respectively.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–273, div. B, title IV, § 4005(f)(2), Nov. 2, 2002, 116 Stat. 1813, provided that the amendment made by section 4005(f)(2) is effective Oct. 26, 2001.

§ 2708. Exclusivity of remedies

The remedies and sanctions described in this chapter are the only judicial remedies and sanctions for nonconstitutional violations of this chapter.

(Added Pub. L. 99–508, title II, § 201[(a)], Oct. 21, 1986, 100 Stat. 1867.)

§ 2709. Counterintelligence access to telephone toll and transactional records

(a) DUTY TO PROVIDE.—A wire or electronic communication service provider shall comply with a request for subscriber information and toll billing records information, or electronic communication transactional records in its custody or possession made by the Director of the Federal Bureau of Investigation under subsection (b) of this section.

(b) REQUIRED CERTIFICATION.—The Director of the Federal Bureau of Investigation, or his designee in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge in a Bureau field office designated by the Director, may—

(1) request the name, address, length of service, and local and long distance toll billing records of a person or entity if the Director (or his designee) certifies in writing to the wire or electronic communication service provider to which the request is made that the name, address, length of service, and toll billing records sought are relevant to an authorized investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely on the basis of activities protected by the first amendment to the Constitution of the United States; and

(2) request the name, address, and length of service of a person or entity if the Director (or his designee) certifies in writing to the wire or electronic communication service provider to which the request is made that the information sought is relevant to an authorized investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution of the United States.

(c) PROHIBITION OF CERTAIN DISCLOSURE.—

(1) If the Director of the Federal Bureau of Investigation, or his designee in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge in a Bureau field office designated by the Director, certifies that otherwise there may result a danger to the national security of the United States, interference with a criminal, counterterrorism, or counterintelligence investigation, interference with diplomatic relations, or danger to the life or physical safety of any person, no wire or electronic communications service provider, or officer, employee, or agent thereof, shall disclose to any person (other than those to whom such disclosure is necessary to comply with the request or an attorney to obtain legal advice or legal assistance with respect to the request) that the Federal Bureau of Investigation has sought or obtained access to information or records under this section.

(2) The request shall notify the person or entity to whom the request is directed of the nondisclosure requirement under paragraph (1).

(3) Any recipient disclosing to those persons necessary to comply with the request or to an attorney to obtain legal advice or legal assistance with respect to the request shall inform such person of any applicable nondisclosure requirement. Any person who receives a disclosure under this subsection shall be subject to the same prohibitions on disclosure under paragraph (1).

(4) At the request of the Director of the Federal Bureau of Investigation or the designee of the Director, any person making or intending to make a disclosure under this section shall identify to the Director or such designee the person to whom such disclosure will be made or to whom such disclosure was made prior to the request, except that nothing in this section shall require a person to inform the Director or such designee of the identity of an attorney to whom disclosure was made or will be made to obtain legal advice or legal assistance with respect to the request under subsection (a).

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

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

(f) LIBRARIES.—A library (as that term is defined in section 213(1) of the Library Services and Technology Act (20 U.S.C. 9122(1)), the services of which include access to the Internet, books, journals, magazines, newspapers, or other similar forms of communication in print or digitally by patrons for their use, review, examination, or circulation, is not a wire or electronic communication service provider for purposes of this section, unless the library is providing the services defined in section 2510(15) (''electronic communication service'') of this title.

(Added Pub. L. 99–508, title II, § 201[(a)], Oct. 21, 1986, 100 Stat. 1867; amended Pub. L. 103–142, Nov. 17, 1993, 107 Stat. 1491; Pub. L. 104–293, title VI, § 601(a), Oct. 11, 1996, 110 Stat. 3469; Pub. L. 107–56, title V, § 505(a), Oct. 26, 2001, 115 Stat. 365; Pub. L. 109–177, title I, § 116(a), Mar. 9, 2006, 120 Stat. 213; Pub. L. 109–178, §§ 4(b), 5, Mar. 9, 2006, 120 Stat. 280, 281.)

AMENDMENTS

2006—Subsec. (c). Pub. L. 109–177 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''No wire or electronic communication service provider, or officer, employee, or agent thereof, shall disclose to any person that the Federal Bureau of Investigation has sought or obtained access to information or records under this section.''

Subsec. (c)(4). Pub. L. 109–178, § 4(b), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''At the request of the Director of the Federal Bureau of Investigation or the designee of the Director, any person making or intending to make a disclosure under this section shall identify to the Director or such designee the person to whom such disclosure will be made or to whom such disclosure was made prior to the request, but in no circumstance shall a person be required to inform the Director or such designee that the person intends to consult an attorney to obtain legal advice or legal assistance.''

Subsec. (f). Pub. L. 109–178, § 5, added subsec. (f).

2001—Subsec. (b). Pub. L. 107–56, § 505(a)(1), inserted ''at Bureau headquarters or a Special Agent in Charge in a Bureau field office designated by the Director'' after ''Deputy Assistant Director'' in introductory provisions.

Subsec. (b)(1). Pub. L. 107–56, § 505(a)(2), struck out ''in a position not lower than Deputy Assistant Director'' after ''(or his designee'' and substituted ''made that the name, address, length of service, and toll billing records sought are relevant to an authorized investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely on the basis of activities protected by the first amendment to the Constitution of the United States; and'' for ''made that—

''(A) the name, address, length of service, and toll billing records sought are relevant to an authorized foreign counterintelligence investigation; and

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

Subsec. (b)(2). Pub. L. 107–56, § 505(a)(3), struck out ''in a position not lower than Deputy Assistant Director'' after ''(or his designee'' and substituted ''made that the information sought is relevant to an authorized investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is

not conducted solely upon the basis of activities protected by the first amendment to the Constitution of the United States.'' for ''made that—

''(A) the information sought is relevant to an authorized foreign counterintelligence investigation; and

''(B) there are specific and articulable facts giving reason to believe that communication facilities registered in the name of the person or entity have been used, through the services of such provider, in communication with—

''(i) an individual who is engaging or has engaged in international terrorism as defined in section 101(c) of the Foreign Intelligence Surveillance Act or clandestine intelligence activities that involve or may involve a violation of the criminal statutes of the United States; or

''(ii) a foreign power or an agent of a foreign power under circumstances giving reason to believe that the communication concerned international terrorism as defined in section 101(c) of the Foreign Intelligence Surveillance Act or clandestine intelligence activities that involve or may involve a violation of the criminal statutes of the United States.''

1996—Subsec. (b)(1). Pub. L. 104–293 inserted ''local and long distance'' before ''toll billing records''.

1993—Subsec. (b). Pub. L. 103–142, § 1, amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''REQUIRED CERTIFICATION.—The Director of the Federal Bureau of Investigation (or an individual within the Federal Bureau of Investigation designated for this purpose by the Director) may request any such information and records if the Director (or the Director's designee) certifies in writing to the wire or electronic communication service provider to which the request is made that—

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

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

Subsec. (e). Pub. L. 103–142, § 2, inserted '', and the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate,'' after ''Senate''.

§ 2710. Wrongful disclosure of video tape rental or sale records

(a) DEFINITIONS.—For purposes of this section—

(1) the term ''consumer'' means any renter, purchaser, or subscriber of goods or services from a video tape service provider;

(2) the term ''ordinary course of business'' means only debt collection activities, order fulfillment, request processing, and the transfer of ownership;

(3) the term ''personally identifiable information'' includes information which identifies a person as having requested or obtained specific video materials or services from a video tape service provider; and

(4) the term ''video tape service provider'' means any person, engaged in the business, in or affecting interstate or foreign commerce, of rental, sale, or delivery of prerecorded video cassette tapes or similar audio visual materials, or any person or other entity to whom a disclosure is made under subparagraph (D) or (E) of subsection (b)(2), but only with respect to the information contained in the disclosure.

(b) VIDEO TAPE RENTAL AND SALE RECORDS.—(1) A video tape service provider who knowingly discloses, to any person, personally identifiable information concerning any consumer of such provider shall be liable to the aggrieved person for the relief provided in subsection (d).

(2) A video tape service provider may disclose personally identifiable information concerning any consumer—

(A) to the consumer;

(B) to any person with the informed, written consent of the consumer given at the time the disclosure is sought;

(C) to a law enforcement agency pursuant to a warrant issued under the Federal Rules of Criminal Procedure, an equivalent State warrant, a grand jury subpoena, or a court order;

(D) to any person if the disclosure is solely of the names and addresses of consumers and if—

(i) the video tape service provider has provided the consumer with the opportunity, in a clear and conspicuous manner, to prohibit such disclosure; and

(ii) the disclosure does not identify the title, description, or subject matter of any video tapes or other audio visual material; however, the subject matter of such materials may be disclosed if the disclosure is for the exclusive use of marketing goods and services directly to the consumer;

(E) to any person if the disclosure is incident to the ordinary course of business of the video tape service provider; or

(F) pursuant to a court order, in a civil proceeding upon a showing of compelling need for the information that cannot be accommodated by any other means, if—

(i) the consumer is given reasonable notice, by the person seeking the disclosure, of the court proceeding relevant to the issuance of the court order; and

(ii) the consumer is afforded the opportunity to appear and contest the claim of the person seeking the disclosure.

If an order is granted pursuant to subparagraph (C) or (F), the court shall impose appropriate safeguards against unauthorized disclosure.

(3) Court orders authorizing disclosure under subparagraph (C) shall issue only with prior notice to the consumer and only if the law enforcement agency shows that there is probable cause to believe that the records or other information sought are relevant to a legitimate law enforcement inquiry. In the case of a State government authority, such a court order shall not issue if prohibited by the law of such State. A court issuing an order pursuant to this section, on a motion made promptly by the video tape service provider, may quash or modify such order if the information or records requested are unreasonably voluminous in nature or if compliance with such order otherwise would cause an unreasonable burden on such provider.

(c) CIVIL ACTION.—(1) Any person aggrieved by any act of a person in violation of this section may bring a civil action in a United States district court.

(2) The court may award—

(A) actual damages but not less than liquidated damages in an amount of $2,500;

(B) punitive damages;

(C) reasonable attorneys' fees and other litigation costs reasonably incurred; and

(D) such other preliminary and equitable relief as the court determines to be appropriate.

(3) No action may be brought under this subsection unless such action is begun within 2 years from the date of the act complained of or the date of discovery.

(4) No liability shall result from lawful disclosure permitted by this section.

(d) PERSONALLY IDENTIFIABLE INFORMATION.—Personally identifiable information obtained in any manner other than as provided in this section shall not be received in evidence in any trial, hearing, arbitration, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the United States, a State, or a political subdivision of a State.

(e) DESTRUCTION OF OLD RECORDS.—A person subject to this section shall destroy personally identifiable information as soon as practicable, but no later than one year from the date the information is no longer necessary for the purpose for which it was collected and there are no pending requests or orders for access to such information under subsection (b)(2) or (c)(2) or pursuant to a court order.

(f) PREEMPTION.—The provisions of this section preempt only the provisions of State or local law that require disclosure prohibited by this section.

(Added Pub. L. 100–618, § 2(a)(2), Nov. 5, 1988, 102 Stat. 3195.)

REFERENCES IN TEXT

The Federal Rules of Criminal Procedure, referred to in subsec. (b)(2)(C), are set out in the Appendix to this title.

PRIOR PROVISIONS

A prior section 2710 was renumbered section 2711 of this title.

§ 2711. Definitions for chapter

As used in this chapter—

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

(2) the term ''remote computing service'' means the provision to the public of computer storage or processing services by means of an electronic communications system;

(3) the term ''court of competent jurisdiction'' includes—

(A) any district court of the United States (including a magistrate judge of such a court) or any United States court of appeals that—

(i) has jurisdiction over the offense being investigated;

(ii) is in or for a district in which the provider of a wire or electronic communication service is located or in which the wire or electronic communications, records, or other information are stored; or

(iii) is acting on a request for foreign assistance pursuant to section 3512 of this title; or

(B) a court of general criminal jurisdiction of a State authorized by the law of that State to issue search warrants; and

(4) the term ''governmental entity'' means a department or agency of the United States or any State or political subdivision thereof.

(Added Pub. L. 99–508, title II, § 201[(a)], Oct. 21, 1986, 100 Stat. 1868, § 2710; renumbered § 2711, Pub. L. 100–618, § 2(a)(1), Nov. 5, 1988, 102 Stat. 3195; amended Pub. L. 107–56, title II, § 220(a)(2), Oct. 26, 2001, 115 Stat. 292; Pub. L. 109–177, title I, § 107(b)(2), Mar. 9, 2006, 120 Stat. 202; Pub. L. 111–79, § 2(2), Oct. 19, 2009, 123 Stat. 2086.)

AMENDMENTS

2009—Par. (3). Pub. L. 111–79 substituted ''includes—'' and subpars. (A) and (B) for ''has the meaning assigned by section 3127, and includes any Federal court within that definition, without geographic limitation; and''.

2006—Par. (4). Pub. L. 109–177 added par. (4).

2001—Par. (3). Pub. L. 107–56 added par. (3).

1988—Pub. L. 100–618 renumbered section 2710 of this title as this section.

§ 2712. Civil actions against the United States

(a) IN GENERAL.—Any person who is aggrieved by any willful violation of this chapter or of chapter 119 of this title or of sections 106(a), 305(a), or 405(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) may commence an action in United States District Court against the United States to recover money damages. In any such action, if a person who is aggrieved successfully establishes such a violation of this chapter or of chapter 119 of this title or of the above specific provisions of title 50, the Court may assess as damages—

(1) actual damages, but not less than $10,000, whichever amount is greater; and

(2) litigation costs, reasonably incurred.

(b) PROCEDURES.—(1) Any action against the United States under this section may be commenced only after a claim is presented to the appropriate department or agency under the procedures of the Federal Tort Claims Act, as set forth in title 28, United States Code.

(2) Any action against the United States under this section shall be forever barred unless it is presented in writing to the appropriate Federal agency within 2 years after such claim accrues or unless action is begun within 6 months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the agency to which it was presented. The claim shall accrue on the date upon which the claimant first has a reasonable opportunity to discover the violation.

(3) Any action under this section shall be tried to the court without a jury.

(4) Notwithstanding any other provision of law, the procedures set forth in section 106(f), 305(g), or 405(f) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) shall be the exclusive means by which materials governed by those sections may be reviewed.

(5) An amount equal to any award against the United States under this section shall be reimbursed by the department or agency concerned to the fund described in section 1304 of title 31, United States Code, out of any appropriation,

fund, or other account (excluding any part of such appropriation, fund, or account that is available for the enforcement of any Federal law) that is available for the operating expenses of the department or agency concerned.

(c) ADMINISTRATIVE DISCIPLINE.—If a court or appropriate department or agency determines that the United States or any of its departments or agencies has violated any provision of this chapter, and the court or appropriate department or agency finds that the circumstances surrounding the violation raise serious questions about whether or not an officer or employee of the United States acted willfully or intentionally with respect to the violation, the department or agency shall, upon receipt of a true and correct copy of the decision and findings of the court or appropriate department or agency promptly initiate a proceeding to determine whether disciplinary action against the officer or employee is warranted. If the head of the department or agency involved determines that disciplinary action is not warranted, he or she shall notify the Inspector General with jurisdiction over the department or agency concerned and shall provide the Inspector General with the reasons for such determination.

(d) EXCLUSIVE REMEDY.—Any action against the United States under this subsection shall be the exclusive remedy against the United States for any claims within the purview of this section.

(e) STAY OF PROCEEDINGS.—(1) Upon the motion of the United States, the court shall stay any action commenced under this section if the court determines that civil discovery will adversely affect the ability of the Government to conduct a related investigation or the prosecution of a related criminal case. Such a stay shall toll the limitations periods of paragraph (2) of subsection (b).

(2) In this subsection, the terms ''related criminal case'' and ''related investigation'' mean an actual prosecution or investigation in progress at the time at which the request for the stay or any subsequent motion to lift the stay is made. In determining whether an investigation or a criminal case is related to an action commenced under this section, the court shall consider the degree of similarity between the parties, witnesses, facts, and circumstances involved in the 2 proceedings, without requiring that any one or more factors be identical.

(3) In requesting a stay under paragraph (1), the Government may, in appropriate cases, submit evidence ex parte in order to avoid disclosing any matter that may adversely affect a related investigation or a related criminal case. If the Government makes such an ex parte submission, the plaintiff shall be given an opportunity to make a submission to the court, not ex parte, and the court may, in its discretion, request further information from either party.

(Added Pub. L. 107–56, title II, § 223(c)(1), Oct. 26, 2001, 115 Stat. 294.)

REFERENCES IN TEXT

Sections 106, 305, and 405 of the Foreign Intelligence Surveillance Act of 1978, referred to in subsecs. (a) and (b)(4), are classified to sections 1806, 1825, and 1845, respectively, of Title 50, War and National Defense.

The Federal Tort Claims Act, referred to in subsec. (b)(1), is title IV of act Aug. 2, 1946, ch. 753, 60 Stat. 842, which was classified principally to chapter 20 (§§ 921, 922, 931–934, 941–946) of former Title 28, Judicial Code and Judiciary. Title IV of act Aug. 2, 1946, was substantially repealed and reenacted as sections 1346(b) and 2671 et seq. of Title 28, Judiciary and Judicial Procedure, by act June 25, 1948, ch. 646, 62 Stat. 992, the first section of which enacted Title 28. The Federal Tort Claims Act is also commonly used to refer to chapter 171 of Title 28, Judiciary and Judicial Procedure. For complete classification of title IV to the Code, see Tables. For distribution of former sections of Title 28 into the revised Title 28, see Table at the beginning of Title 28.

CHAPTER 123—PROHIBITION ON RELEASE AND USE OF CERTAIN PERSONAL INFORMATION FROM STATE MOTOR VEHICLE RECORDS

Sec.
2721. Prohibition on release and use of certain personal information from State motor vehicle records.
2722. Additional unlawful acts.
2723. Penalties.
2724. Civil action.
2725. Definitions.

AMENDMENTS

1996—Pub. L. 104–294, title VI, § 604(a)(3), Oct. 11, 1996, 110 Stat. 3506, added analysis.

§ 2721. Prohibition on release and use of certain personal information from State motor vehicle records

(a) IN GENERAL.—A State department of motor vehicles, and any officer, employee, or contractor thereof, shall not knowingly disclose or otherwise make available to any person or entity:

(1) personal information, as defined in 18 U.S.C. 2725(3), about any individual obtained by the department in connection with a motor vehicle record, except as provided in subsection (b) of this section; or

(2) highly restricted personal information, as defined in 18 U.S.C. 2725(4), about any individual obtained by the department in connection with a motor vehicle record, without the express consent of the person to whom such information applies, except uses permitted in subsections (b)(1), (b)(4), (b)(6), and (b)(9): *Provided*, That subsection (a)(2) shall not in any way affect the use of organ donation information on an individual's driver's license or affect the administration of organ donation initiatives in the States.

(b) PERMISSIBLE USES.—Personal information referred to in subsection (a) shall be disclosed for use in connection with matters of motor vehicle or driver safety and theft, motor vehicle emissions, motor vehicle product alterations, recalls, or advisories, performance monitoring of motor vehicles and dealers by motor vehicle manufacturers, and removal of non-owner records from the original owner records of motor vehicle manufacturers to carry out the purposes of titles I and IV of the Anti Car Theft Act of 1992, the Automobile Information Disclosure Act (15 U.S.C. 1231 et seq.), the Clean Air Act (42 U.S.C. 7401 et seq.), and chapters 301, 305, and 321–331 of title 49, and, subject to subsection (a)(2), may be disclosed as follows: