

106TH CONGRESS
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S. 2092

To amend title 18, United States Code, to modify authorities relating to the use of pen registers and trap and trace devices, to modify provisions relating to fraud and related activities in connection with computers, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 24, 2000

Mr. SCHUMER (for himself and Mr. KYL) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, to modify authorities relating to the use of pen registers and trap and trace devices, to modify provisions relating to fraud and related activities in connection with computers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. MODIFICATION OF AUTHORITIES RELATING TO**
2 **USE OF PEN REGISTERS AND TRAP AND**
3 **TRACE DEVICES.**

4 (a) GENERAL LIMITATION ON USE BY GOVERN-
5 MENTAL AGENCIES.—Section 3121(c) of title 18, United
6 States Code, is amended—

7 (1) by inserting “or trap and trace device”
8 after “pen register”;

9 (2) by inserting “, routing, addressing,” after
10 “dialing”; and

11 (3) by striking “call processing” and inserting
12 “the processing and transmitting of wire and elec-
13 tronic communications”.

14 (b) ISSUANCE OF ORDERS.—

15 (1) IN GENERAL.—Subsection (a) of section
16 3123 of that title is amended to read as follows:

17 “(a) IN GENERAL.—(1) Upon an application made
18 under section 3122(a)(1) of this title, the court shall enter
19 an ex parte order authorizing the installation and use of
20 a pen register or trap and trace device if the court finds
21 that the attorney for the Government has certified to the
22 court that the information likely to be obtained by such
23 installation and use is relevant to an ongoing criminal in-
24 vestigation. The order shall, upon service of the order,
25 apply to any entity providing wire or electronic commu-

1 nication service in the United States whose assistance is
2 required to effectuate the order.

3 “(2) Upon an application made under section
4 3122(a)(2) of this title, the court shall enter an ex parte
5 order authorizing the installation and use of a pen register
6 or trap and trace device within the jurisdiction of the court
7 if the court finds that the State law enforcement or inves-
8 tigative officer has certified to the court that the informa-
9 tion likely to be obtained by such installation and use is
10 relevant to an ongoing criminal investigation.”.

11 (2) CONTENTS OF ORDER.—Subsection (b)(1)
12 of that section is amended—

13 (A) in subparagraph (A)—

14 (i) by inserting “or other facility”
15 after “telephone line”; and

16 (ii) by inserting before the semicolon
17 at the end “or applied”; and

18 (B) by striking subparagraph (C) and in-
19 serting the following new subparagraph (C):

20 “(C) a description of the communications
21 to which the order applies, including the num-
22 ber or other identifier and, if known, the loca-
23 tion of the telephone line or other facility to
24 which the pen register or trap and trace device
25 is to be attached or applied, and, in the case of

1 an order authorizing installation and use of a
2 trap and trace device under subsection (a)(2),
3 the geographic limits of the order; and”.

4 (3) NONDISCLOSURE REQUIREMENTS.—Sub-
5 section (d)(2) of that section is amended—

6 (A) by inserting “or other facility” after
7 “the line”; and

8 (B) by striking “or who has been ordered
9 by the court” and inserting “or applied or who
10 is obligated by the order”.

11 (c) EMERGENCY INSTALLATION.—Section
12 3125(a)(1) of that title is amended—

13 (1) in subparagraph (A), by striking “or” at
14 the end;

15 (2) in subparagraph (B), by striking the comma
16 at the end and inserting a semicolon; and

17 (3) by inserting after subparagraph (B) the fol-
18 lowing new subparagraphs:

19 “(C) immediate threat to the national se-
20 curity interests of the United States;

21 “(D) immediate threat to public health or
22 safety; or

23 “(E) an attack on the integrity or avail-
24 ability of a protected computer which attack

1 would be an offense punishable under section
2 1030(c)(2)(C) of this title.”.

3 (d) DEFINITIONS.—

4 (1) COURT OF COMPETENT JURISDICTION.—

5 Paragraph (2) of section 3127 of that title is
6 amended by striking subparagraph (A) and inserting
7 the following new subparagraph (A):

8 “(A) any district court of the United
9 States (including a magistrate judge of such a
10 court) or any United States Court of Appeals
11 having jurisdiction over the offense being inves-
12 tigated; or”.

13 (2) PEN REGISTER.—Paragraph (3) of that sec-
14 tion is amended—

15 (A) by striking “electronic or other im-
16 pulses” and all that follows through “is at-
17 tached” and inserting “dialing, routing, ad-
18 dressing, or signalling information transmitted
19 by an instrument or facility from which a wire
20 or electronic communication is transmitted”;
21 and

22 (B) by inserting “or process” after “de-
23 vice” each place it appears.

24 (3) TRAP AND TRACE DEVICE.—Paragraph (4)
25 of that section is amended—

1 (A) by inserting “or process” after “a de-
2 vice”; and

3 (B) by striking “of an instrument” and all
4 that follows through the end and inserting “or
5 other dialing, routing, addressing, and signal-
6 ling information relevant to identifying the
7 source of a wire or electronic communication;”.

8 **SEC. 2. MODIFICATION OF PROVISIONS RELATING TO**
9 **FRAUD AND RELATED ACTIVITY IN CONNEC-**
10 **TION WITH COMPUTERS.**

11 (a) PENALTIES.—Subsection (c) of section 1030 of
12 title 18, United States Code, is amended—

13 (1) in paragraph (2)—

14 (A) in subparagraph (A)—

15 (i) by inserting “except as provided in
16 subparagraphs (B) and (C),” before “a
17 fine”;

18 (ii) by striking “(a)(5)(C),” and in-
19 serting “(a)(5),”; and

20 (iii) by striking “and” at the end;

21 (B) in subparagraph (B)—

22 (i) by inserting “or an attempt to
23 commit an offense punishable under this
24 subparagraph,” after “subsection (a)(2),”
25 in the matter preceding clause (i); and

1 (ii) by adding “and” at the end; and

2 (C) by striking subparagraph (C) and in-
3 serting the following new subparagraph (C):

4 “(C) a fine under this title or imprisonment for
5 not more than 10 years, or both, in the case of an
6 offense under subsection (a)(5)(A) or (a)(5)(B), or
7 an attempt to commit an offense punishable under
8 this subparagraph, if the offense caused (or, in the
9 case of an attempted offense, would, if completed,
10 have caused)—

11 “(i) loss to one or more persons during any
12 one-year period (including loss resulting from a
13 related course of conduct affecting one or more
14 other protected computers) aggregating at least
15 \$5,000 in value;

16 “(ii) the modification or impairment, or
17 potential modification or impairment, of the
18 medical examination, diagnosis, treatment, or
19 care of one or more individuals;

20 “(iii) physical injury to any person;

21 “(iv) a threat to public health or safety; or

22 “(v) damage affecting a computer system
23 used by or for a government entity in further-
24 ance of the administration of justice, national
25 defense, or national security; and”;

1 (2) by redesignating subparagraph (B) of para-
2 graph (3) as paragraph (4);

3 (3) in paragraph (3)—

4 (A) by striking “(A)” at the beginning;

5 and

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

7 and

8 (4) in paragraph (4), as designated by para-
9 graph (2) of this subsection, by striking “(a)(4),
10 (a)(5)(A), (a)(5)(B), (a)(5)(C),” and inserting
11 “(a)(2), (a)(3), (a)(4), (a)(6),”.

12 (b) DEFINITIONS.—Subsection (e) of that section is
13 amended—

14 (1) in paragraph (2)(B), by inserting “, includ-
15 ing a computer located outside the United States”
16 before the semicolon;

17 (2) in paragraph (7), by striking “and” at the
18 end;

19 (3) by striking paragraph (8) and inserting the
20 following new paragraph (8):

21 “(8) the term ‘damage’ means any impairment
22 to the integrity or availability of data, a program, a
23 system, or information;”;

24 (4) in paragraph (9), by striking the period at
25 the end and inserting “; and”; and

1 (5) by adding at the end the following new
2 paragraphs:

3 “(10) the term ‘conviction’ shall include an ad-
4 judication of juvenile delinquency for a violation of
5 this section; and

6 “(11) the term ‘loss’ means any reasonable cost
7 to any victim, including the cost of responding to an
8 offense, conducting a damage assessment, and re-
9 storing the data, program, system, or information to
10 its condition prior to the offense, and any revenue
11 lost or cost incurred because of interruption of serv-
12 ice.”.

13 (c) DAMAGES IN CIVIL ACTIONS.—Subsection (g) of
14 that section is amended in the second sentence by striking
15 “involving damage” and all that follows through the pe-
16 riod and inserting “of subsection (a)(5) shall be limited
17 to loss unless such action includes one of the elements set
18 forth in clauses (ii) through (v) of subsection (c)(2)(C).”.

19 (d) CRIMINAL FORFEITURE.—That section is further
20 amended by adding at the end the following new sub-
21 section:

22 “(i)(1) The court, in imposing sentence on any person
23 convicted of a violation of this section, shall order, in addi-
24 tion to any other sentence imposed and irrespective of any

1 provision of State law, that such person forfeit to the
2 United States—

3 “(A) the interest of such person in any prop-
4 erty, whether real or personal, that was used or in-
5 tended to be used to commit or to facilitate the com-
6 mission of such violation; and

7 “(B) any property, whether real or personal,
8 constituting or derived from any proceeds that such
9 person obtained, whether directly or indirectly, as a
10 result of such violation.

11 “(2) The criminal forfeiture of property under this
12 subsection, any seizure and disposition thereof, and any
13 administrative or judicial proceeding relating thereto, shall
14 be governed by the provisions of section 413 of the Con-
15 trolled Substances Act (21 U.S.C. 853), except subsection
16 (d) of that section.”.

17 (e) CIVIL FORFEITURE.—That section, as amended
18 by subsection (d) of this section, is further amended by
19 adding at the end the following new subsection:

20 “(j)(1) The following shall be subject to forfeiture to
21 the United States, and no property right shall exist in
22 them:

23 “(A) Any property, whether real or personal,
24 that is used or intended to be used to commit or to

1 facilitate the commission of any violation of this sec-
2 tion.

3 “(B) Any property, whether real or personal,
4 that constitutes or is derived from proceeds trace-
5 able to any violation of this section.

6 “(2) The provisions of chapter 46 of this title relating
7 to civil forfeiture shall apply to any seizure or civil for-
8 feiture under this subsection.”.

9 **SEC. 3. JUVENILE DELINQUENCY.**

10 Clause (3) of the first paragraph of section 5032 of
11 title 18, United States Code, is amended—

12 (1) by striking “or” before “section 1002(a)”;

13 (2) by striking “or” before “section 924(b)”;

14 and

15 (3) by inserting after “or (h) of this title,” the
16 following: “or section 1030(a)(1), (a)(2)(B), or
17 (a)(3) of this title, or is a felony violation of section
18 1030(a)(5) of this title where such violation of such
19 section 1030(a)(5) is punishable under clauses (ii)
20 through (v) of section 1030(e)(5)(C) of this title,”.

21 **SEC. 4. AMENDMENT TO SENTENCING GUIDELINES.**

22 Section 805(c) of the Antiterrorism and Effective
23 Death Penalty Act of 1996 (Public Law 104–132; 28
24 U.S.C. 994 note) is amended by striking “paragraph (4)

1 or (5)” and inserting “paragraph (4) or a felony violation
2 of paragraph (5)(A)”.

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