

(b) EXCEPTION.—The prohibition of subsection (a) does not apply with respect to the use of a pen register or a trap and trace device by a provider of electronic or wire communication service—

(1) relating to the operation, maintenance, and testing of a wire or electronic communication service or to the protection of the rights or property of such provider, or to the protection of users of that service from abuse of service or unlawful use of service; or

(2) to record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire communication, or a user of that service, from fraudulent, unlawful or abusive use of service; or (3) where the consent of the user of that service has been obtained.

(c) LIMITATION.—A government agency authorized to install and use a pen register or trap and trace device under this chapter or under State law shall use technology reasonably available to it that restricts the recording or decoding of electronic or other impulses to the dialing, routing, addressing, and signaling information utilized in the processing and transmitting of wire or electronic communications so as not to include the contents of any wire or electronic communications.

(d) PENALTY.—Whoever knowingly violates subsection (a) shall be fined under this title or imprisoned not more than one year, or both.

(Added Pub. L. 99-508, title III, §301(a), Oct. 21, 1986, 100 Stat. 1868; amended Pub. L. 103-414, title II, §207(b), Oct. 25, 1994, 108 Stat. 4292; Pub. L. 107-56, title II, §216(a), Oct. 26, 2001, 115 Stat. 288; Pub. L. 115-141, div. V, §104(3)(A), Mar. 23, 2018, 132 Stat. 1217.)

#### 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.

#### AMENDMENTS

2018—Subsec. (a). Pub. L. 115-141 inserted before period at end “or an order from a foreign government that is subject to an executive agreement that the Attorney General has determined and certified to Congress satisfies section 2523”.

2001—Subsec. (c). Pub. L. 107-56 inserted “or trap and trace device” after “pen register” and “, routing, addressing,” after “dialing” and substituted “the processing and transmitting of wire or electronic communications so as not to include the contents of any wire or electronic communications” for “call processing”.

1994—Subsecs. (c), (d). Pub. L. 103-414 added subsec. (c) and redesignated former subsec. (c) as (d).

#### EFFECTIVE DATE

Pub. L. 99-508, title III, §302, Oct. 21, 1986, 100 Stat. 1872, provided that:

“(a) IN GENERAL.—Except as provided in subsection (b), this title and the amendments made by this title [enacting this chapter and section 1367 of this title] 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.

“(b) SPECIAL RULE FOR STATE AUTHORIZATIONS OF INTERCEPTIONS.—Any pen register or trap and trace device order or installation which would be valid and lawful without regard to the amendments made by this title shall be valid and lawful notwithstanding such amendments if such order or installation occurs during the period beginning on the date such amendments take effect and ending on the earlier of—

“(1) the day before the date of the taking effect of changes in State law required in order to make orders or installations under Federal law as amended by this title; or

“(2) the date two years after the date of the enactment of this Act [Oct. 21, 1986].”

#### § 3122. Application for an order for a pen register or a trap and trace device

(a) APPLICATION.—(1) An attorney for the Government may make application for an order or an extension of an order under section 3123 of this title authorizing or approving the installation and use of a pen register or a trap and trace device under this chapter, in writing under oath or equivalent affirmation, to a court of competent jurisdiction.

(2) Unless prohibited by State law, a State investigative or law enforcement officer may make application for an order or an extension of an order under section 3123 of this title authorizing or approving the installation and use of a pen register or a trap and trace device under this chapter, in writing under oath or equivalent affirmation, to a court of competent jurisdiction of such State.

(b) CONTENTS OF APPLICATION.—An application under subsection (a) of this section shall include—

(1) the identity of the attorney for the Government or the State law enforcement or investigative officer making the application and the identity of the law enforcement agency conducting the investigation; and

(2) a certification by the applicant that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by that agency.

(Added Pub. L. 99-508, title III, §301(a), Oct. 21, 1986, 100 Stat. 1869.)

#### EFFECTIVE DATE

Section effective 90 days after Oct. 21, 1986, and, in case of conduct pursuant to court order or extension, applicable only with respect to court orders and extensions made after such date, with special rule for State authorizations of interceptions, see section 302 of Pub. L. 99-508, set out as a note under section 3121 of this title.

#### § 3123. Issuance of an order for a pen register or a trap and trace device

(a) IN GENERAL.—

(1) ATTORNEY FOR THE GOVERNMENT.—Upon an application made under section 3122(a)(1), the court shall enter an ex parte order authorizing the installation and use of a pen register or trap and trace device anywhere within the United States, if the court finds that the attorney for the Government has certified to the court that the information likely to be obtained by such installation and use is relevant