

113TH CONGRESS
1ST SESSION

H. R. 983

To amend title 18, United States Code, with respect to disclosures to governments by communications-related service providers of certain information consisting of or relating to communications, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 6, 2013

Ms. LOFGREN (for herself, Mr. POE of Texas, and Ms. DELBENE) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Select Committee on Intelligence (Permanent Select), for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend title 18, United States Code, with respect to disclosures to governments by communications-related service providers of certain information consisting of or relating to communications, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Online Communica-
5 tions and Geolocation Protection Act”.

1 **SEC. 2. WARRANT REQUIRED FOR CONTENTS OF COMMU-**
2 **NICATIONS.**

3 (a) **COMPELLED DISCLOSURE OF COMMUNICATION**
4 **CONTENTS.—**

5 (1) **IN GENERAL.—**Section 2703 of title 18,
6 United States Code, is amended—

7 (A) in subsection (a)—

8 (i) by striking “**IN ELECTRONIC**
9 **STORAGE**” in the subsection header;

10 (ii) by inserting “or remote computing
11 service” in the first sentence after “elec-
12 tronic communication service”;

13 (iii) by striking “that is in electronic
14 storage in an electronic communications
15 system for one hundred and eighty days or
16 less,” and inserting “that is stored, held,
17 or maintained by that service,”; and

18 (iv) by striking the final sentence and
19 inserting “Within three days after a gov-
20 ernmental entity receives such contents
21 from a service provider pursuant to this
22 subsection, the governmental entity shall
23 serve upon, or deliver by registered or
24 first-class mail, or other means reasonably
25 calculated to be effective as specified by
26 the court issuing the warrant to the sub-

1 scriber, customer, or user a copy of the
2 warrant and a notice that includes the in-
3 formation referenced in section
4 2705(a)(4)(A) and (B)(i), except that de-
5 layed notice may be provided pursuant to
6 section 2705 of this title.”; and

7 (B) by striking subsection (b).

8 (2) CONFORMING AMENDMENT.—Section
9 2703(d) of title 18, United States Code, is amended
10 by striking “(b) or”.

11 (b) VOLUNTARY DISCLOSURE OF COMMUNICATION
12 CONTENTS.—

13 (1) IN GENERAL.—Section 2702(a)(3) of title
14 18, United States Code, is amended—

15 (A) by inserting “to any governmental en-
16 tity the contents of communication covered by
17 subsection (a) of section 2703 or any” after
18 “divulge”;

19 (B) by inserting “or user” after “cus-
20 tomer”; and

21 (C) by striking “(not including the con-
22 tents of communications covered by paragraph
23 (1) or (2))”.

24 (2) CONFORMING AMENDMENTS.—Section 2705
25 of title 18, United States Code, is amended—

1 (A) in subsection (a)(1)—

2 (i) in the subsection heading, by strik-
3 ing “2703(b)” and inserting “2703(a)”;

4 (ii) in subparagraph (A), by striking
5 “court order” each place it appears and in-
6 serting “warrant”;

7 (iii) in subparagraph (A), by striking
8 “2703(b)” and inserting “2703(a)”;

9 (iv) by striking subparagraph (B);

10 (B) by striking subsection (a)(3);

11 (C) in subsection (a)(4), by striking “or by
12 certification by a governmental entity, but only
13 in accordance with subsection (b) of this sec-
14 tion.”;

15 (D) in subsection (a)(5)—

16 (i) by inserting after “first-class
17 mail,” the following: “or other means rea-
18 sonably calculated to be effective as speci-
19 fied by the court issuing the warrant”;

20 (ii) by striking “the process or re-
21 quest” and replacing it with “warrant”;
22 and

23 (iii) in subsection (5)(A)(iii), by strik-
24 ing “governmental entity or” and “certifi-
25 cation or”;

1 (E) by striking subsection (a)(6); and

2 (F) in subsection (b)—

3 (i) by striking “when it is not re-
4 quired to notify the subscriber or customer
5 under section 2703(b)(1), or”; and

6 (ii) by striking “subpoena or court
7 order” each place it appears.

8 **SEC. 3. GEOLOCATION INFORMATION PROTECTION.**

9 (a) IN GENERAL.—

10 (1) IN GENERAL.—Part 1 of title 18, United
11 States Code, is amended by inserting after chapter
12 119 the following:

13 **“CHAPTER 120—GEOLOCATION**
14 **INFORMATION**

“Sec.

“2601. Definitions.

“2602. Interception and disclosure of geolocation information.

“2603. Prohibition on disclosing geolocation information to governmental enti-
ties.

“2604. Prohibition of use of unlawfully obtained geolocation information as evi-
dence.

“2605. Recovery of civil damages and administrative discipline authorized.

15 **“§ 2601. Definitions**

16 “In this chapter:

17 “(1) ELECTRONIC COMMUNICATION SERVICE.—

18 The term ‘electronic communication service’ has the
19 meaning given that term in section 2510.

20 “(2) ELECTRONIC SURVEILLANCE.—The term
21 ‘electronic surveillance’ has the meaning given that

1 term in section 101 of the Foreign Intelligence Sur-
2 veillance Act of 1978 (50 U.S.C. 1801).

3 “(3) GEOLOCATION INFORMATION.—The term
4 ‘geolocation information’ means, with respect to an
5 individual, any information that is not the content of
6 a communication, concerning the location of a wire-
7 less communication device or tracking device (as
8 that term is defined section 3117) that, in whole or
9 in part, is generated by or derived from the oper-
10 ation of that device and that could be used to deter-
11 mine or infer information regarding the present,
12 prospective, or historical location of the individual.

13 “(4) GEOLOCATION INFORMATION SERVICE.—
14 The term ‘geolocation information service’ means a
15 service that generates or uses geolocation informa-
16 tion for the provision of a mapping, locational, or di-
17 rectional information service to the public, or to such
18 class of users as to be effectively available to the
19 public, by or through the operation of any wireless
20 communication device.

21 “(5) GOVERNMENTAL ENTITY.—The term ‘gov-
22 ernmental entity’ means any employee or agent of
23 the United States, or any State or political subdivi-
24 sion thereof.

1 “(6) INTERCEPT.—The term ‘intercept’ means
2 the acquisition of geolocation information through
3 the use of any electronic, mechanical, or other de-
4 vice.

5 “(7) INVESTIGATIVE OR LAW ENFORCEMENT
6 OFFICER.—The term ‘investigative or law enforce-
7 ment officer’ means any officer of the United States
8 or of a State or political subdivision thereof, who is
9 empowered by law to conduct investigations of, or to
10 make arrests for, offenses enumerated in this chap-
11 ter, and any attorney authorized by law to prosecute
12 or participate in the prosecution of such offenses.

13 “(8) REMOTE COMPUTING SERVICE.—The term
14 ‘remote computing service’ has the meaning given
15 that term in section 2711.

16 “(9) STATE.—The term ‘State’ means any
17 State of the United States, the District of Columbia,
18 the Commonwealth of Puerto Rico, and any territory
19 or possession of the United States.

20 “(10) WIRELESS COMMUNICATION DEVICE.—
21 The term ‘wireless communication device’ means any
22 device that enables access to, or use of, an electronic
23 communication system or service, remote computing
24 service, or geolocation information service, if that de-
25 vice utilizes a radio signal or other wireless connec-

1 tion to access or use such system or service, includ-
2 ing any mobile telephone, global positioning system
3 receiving device, mobile computer, or other similar
4 or successor device.

5 “(11) COVERED SERVICE.—The term ‘covered
6 services’ means electronic communication service, re-
7 mote computing service, or geolocation information
8 service.

9 **“§ 2602. Interception and disclosure of geolocation in-**
10 **formation**

11 “(a) IN GENERAL.—Except as otherwise provided in
12 this chapter, it shall be unlawful for any governmental en-
13 tity to—

14 “(1) intentionally intercept, endeavor to inter-
15 cept, or direct any person to intercept or endeavor
16 to intercept, geolocation information pertaining to
17 an individual;

18 “(2) intentionally disclose, or endeavor to dis-
19 close, or direct any person to disclose or endeavor to
20 disclose geolocation information pertaining to an in-
21 dividual, knowing or having reason to know that the
22 information was obtained in violation of this sub-
23 section; or

24 “(3) intentionally use, or endeavor to use, any
25 geolocation information, knowing or having reason

1 to know that the information was obtained in viola-
2 tion of this subsection.

3 “(b) EXCEPTION FOR CONDUCTING FOREIGN INTEL-
4 LIGENCE SURVEILLANCE.—Notwithstanding any other
5 provision of this chapter, it shall not be unlawful for an
6 officer, employee, or agent of the United States in the nor-
7 mal course of the official duty of the officer, employee,
8 or agent to conduct electronic surveillance, as authorized
9 by the Foreign Intelligence Surveillance Act of 1978 (50
10 U.S.C. 1801 et seq.).

11 “(c) EXCEPTION FOR CONSENT.—

12 “(1) IN GENERAL.—It shall not be unlawful
13 under this chapter for a governmental entity to
14 intercept, use, or disclose geolocation information
15 pertaining to an individual if that individual has
16 given prior consent to that governmental entity for
17 such interception, use or disclosure.

18 “(2) CHILDREN.—A parent or legal guardian of
19 a child may consent on behalf of a child for the pur-
20 poses of paragraph (1).

21 “(d) EXCEPTION FOR PUBLIC INFORMATION.—It
22 shall not be unlawful under this chapter for a govern-
23 mental entity to intercept or access geolocation informa-
24 tion pertaining to an individual through any system that

1 is configured so that such information is readily accessible
2 to the general public.

3 “(e) EXCEPTION FOR EMERGENCY ASSISTANCE.—It
4 shall not be unlawful under this chapter for any investiga-
5 tive or law enforcement officer or other emergency re-
6 sponder to intercept, access, use, or disclose geolocation
7 information pertaining to an individual if such information
8 is used—

9 “(1) to respond to a request made by such indi-
10 vidual for assistance; or

11 “(2) to assist the individual in circumstances in
12 which it is reasonable to believe that the life or safe-
13 ty of the individual is in jeopardy.

14 “(f) EXCEPTION FOR WARRANT.—

15 “(1) IN GENERAL.—A governmental entity may
16 intercept geolocation information or require the dis-
17 closure of geolocation information by a provider of
18 covered services only pursuant to a warrant issued
19 by a court of competent jurisdiction using the proce-
20 dures described in the Federal Rules of Criminal
21 Procedure (or, in the case of a State court, issued
22 using State warrant procedures), or as otherwise
23 provided in this chapter or the Foreign Intelligence
24 Surveillance Act of 1978 (50 U.S.C. 1801 et seq.).

1 “(2) COURT OF COMPETENT JURISDICTION.—

2 For the purposes of this subsection, the term ‘court
3 of competent jurisdiction’ includes—

4 “(A) any district court of the United
5 States (including a magistrate judge of such a
6 court) or any United States court of appeals
7 that—

8 “(i) has jurisdiction over the offense
9 being investigated;

10 “(ii) is in or for a district in which the
11 provider of a geolocation information serv-
12 ice is located or in which the geolocation
13 information is stored; or

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

17 “(B) a court of general criminal jurisdic-
18 tion of a State authorized by the law of that
19 State to issue search warrants.

20 “(g) EMERGENCY SITUATION EXCEPTION.—

21 “(1) IN GENERAL.—Notwithstanding any other
22 provision of this chapter, any investigative or law en-
23 forcement officer, specially designated by the Attor-
24 ney General, the Deputy Attorney General, the Asso-
25 ciate Attorney General, or by the principal pros-

1 ecuting attorney of any State or subdivision thereof
2 acting pursuant to a statute of that State, may
3 intercept or use geolocation information if—

4 “(A) such officer reasonably determines
5 that an emergency situation exists that—

6 “(i) involves—

7 “(I) immediate danger of death
8 or serious physical injury to any indi-
9 vidual;

10 “(II) conspiratorial activities
11 threatening the national security in-
12 terest; or

13 “(III) conspiratorial activities
14 characteristic of organized crime; and

15 “(ii) requires geolocation information
16 be intercepted or used before an order au-
17 thorizing such interception or use can, with
18 due diligence, be obtained;

19 “(B) there are grounds upon which an
20 order could be entered to authorize such inter-
21 ception or use; and

22 “(C) an application for an order approving
23 such interception or use is made within 48
24 hours after the interception or use has occurred
25 or begins to occur.

1 “(2) FAILURE TO OBTAIN COURT ORDER.—

2 “(A) TERMINATION OF ACQUISITION.—In
3 the absence of an order, an interception or use
4 of geolocation information carried out under
5 paragraph (1) shall immediately terminate
6 when the information sought is obtained or
7 when the application for the order is denied,
8 whichever is earlier.

9 “(B) PROHIBITION ON USE AS EVIDENCE.—In the event such application for ap-
10 proval is denied, the geolocation information
11 shall be treated as having been obtained in vio-
12 lation of this chapter and an inventory shall be
13 served on each individual who is reasonably able
14 to be contacted and to whom any such
15 geolocation information pertains.
16

17 **“§ 2603. Prohibition on disclosing geolocation infor-**
18 **mation to governmental entities**

19 “(a) IN GENERAL.—Except as provided in subsection
20 (b), a person providing covered services shall not inten-
21 tionally disclose to any governmental entity geolocation in-
22 formation pertaining to an individual.

23 “(b) EXCEPTIONS.—A person providing covered serv-
24 ices may disclose geolocation information—

1 “(1) as otherwise authorized in subsections (b)
2 through (g) of section 2602;

3 “(2) with the lawful consent of—

4 “(A) the individual to whom the
5 geolocation information pertains; or

6 “(B) the parent or guardian of a child to
7 whom the geolocation information pertains;

8 “(3) as permitted under section 222(d)(4) of
9 the Communications Act of 1934 (47 U.S.C.
10 222(d)(4)); or

11 “(4) which was inadvertently obtained by the
12 service provider and which appears to pertain to the
13 commission of a crime, if such disclosure is made to
14 a law enforcement agency.

15 **“§ 2604. Prohibition of use of unlawfully obtained**
16 **geolocation information as evidence**

17 “If any geolocation information has been intercepted,
18 used, or disclosed in violation of this chapter, no part of
19 such information and no evidence derived therefrom may
20 be received in evidence in any trial, hearing, or other pro-
21 ceeding in or before any court, grand jury, department,
22 officer, agency, regulatory body, legislative committee, or
23 other authority of the United States, a State, or a political
24 subdivision thereof, except in a civil action to obtain relief
25 for a violation of this chapter.

1 **“§ 2605. Recovery of civil damages and administra-**
2 **tive discipline authorized**

3 “(a) IN GENERAL.—Any individual whose geolocation
4 information is intentionally disclosed or used in violation
5 of this chapter may in a civil action recover such relief
6 as may be appropriate from the person, other than the
7 United States, which engaged in that violation.

8 “(b) RELIEF.—In an action under this section, ap-
9 propriate relief includes—

10 “(1) such preliminary and other equitable or
11 declaratory relief as the court may deem appro-
12 priate;

13 “(2) damages under subsection (c) and punitive
14 damages as the court may deem appropriate; and

15 “(3) a reasonable attorney’s fee and other liti-
16 gation costs reasonably incurred.

17 “(c) COMPUTATION OF DAMAGES.—The court may
18 assess as damages under this section whichever is the
19 greater of—

20 “(1) the sum of the actual damages suffered by
21 the plaintiff; or

22 “(2) statutory damages of whichever is the
23 greater of \$100 a day for each day of violation or
24 \$10,000.

1 “(d) DEFENSE.—It is a defense against any civil ac-
2 tion to obtain relief for a violation of this chapter that
3 the defendant acted in a good faith reliance on—

4 “(1) a warrant or court order, grand jury sub-
5 poena, legislative authorization, or statutory author-
6 ization; or

7 “(2) a reasonable determination that an excep-
8 tion under section 2602 permitted the conduct com-
9 plained of.

10 “(e) LIMITATION.—A civil action under this section
11 may not be commenced later than two years after the date
12 upon which the claimant first has a reasonable oppor-
13 tunity to discover the violation.

14 “(f) ADMINISTRATIVE DISCIPLINE.—If a court or ap-
15 propriate department or agency determines that the
16 United States or any of its departments or agencies has
17 violated any provision of this chapter, and the court or
18 appropriate department or agency finds that the cir-
19 cumstances surrounding the violation raise serious ques-
20 tions about whether or not an officer or employee of the
21 United States acted willfully or intentionally with respect
22 to the violation, the department or agency shall, upon re-
23 ceipt of a true and correct copy of the decision and find-
24 ings of the court or appropriate department or agency
25 promptly initiate a proceeding to determine whether dis-

1 disciplinary action against the officer or employee is war-
 2 ranted. If the head of the department or agency involved
 3 determines that disciplinary action is not warranted, such
 4 head shall notify the Inspector General with jurisdiction
 5 over the department or agency concerned and shall provide
 6 the Inspector General with the reasons for such deter-
 7 mination.”.

8 (2) CLERICAL AMENDMENT.—The table of
 9 chapters for part 1 of title 18, United States Code,
 10 is amended by inserting after the item relating to
 11 chapter 119 the following:

“120. Geolocation information 2601”.

12 (3) CONFORMING AMENDMENTS.—Section
 13 3512(a) of title 18, United States Code, is amend-
 14 ed—

15 (A) in paragraph (2)—

16 (i) by redesignating subparagraphs
 17 (B), (C), and (D) as subparagraphs (C),
 18 (D), and (E), respectively; and

19 (ii) by inserting after subparagraph
 20 (A) the following:

21 “(B) a warrant or order for geolocation in-
 22 formation or records related thereto, as pro-
 23 vided under section 2602 of this title;”.

1 (b) REQUIREMENT FOR SEARCH WARRANTS TO OB-
2 TAIN GEOLOCATION INFORMATION.—Rule 41(a) of the
3 Federal Rules of Criminal Procedure is amended—

4 (1) in paragraph (2)(A), by striking the period
5 at the end and inserting a comma and “including
6 geolocation information.”; and

7 (2) by adding at the end the following:

8 “(F) ‘Geolocation information’ has the
9 meaning given that term in section 2601 of title
10 18, United States Code.”.

11 (c) STATEMENT OF EXCLUSIVE MEANS OF OBTAIN-
12 ING GEOLOCATION INFORMATION.—

13 (1) IN GENERAL.—No person may obtain the
14 geolocation information of a person for protective ac-
15 tivities or law enforcement or intelligence purposes
16 except pursuant to a warrant issued pursuant to
17 rule 41 of the Federal Rules of Criminal Procedure,
18 as amended by subsection (b), or the amendments
19 made by this section, or the Foreign Intelligence
20 Surveillance Act of 1978 (50 U.S.C. 1801).

21 (2) GEOLOCATION INFORMATION DEFINED.—In
22 this subsection, the term “geolocation information”
23 has the meaning given that term in section 2601 of

1 title 18, United States Code, as amended by sub-
2 section (a).

○