

Union Calendar No. 410

109TH CONGRESS
2^D SESSION

H. R. 5825

[Report No. 109-680, Parts I and II]

To update the Foreign Intelligence Surveillance Act of 1978.

IN THE HOUSE OF REPRESENTATIVES

JULY 18, 2006

Mrs. WILSON of New Mexico (for herself, Mr. SENSENBRENNER, Mr. HOEKSTRA, Mr. RENZI, Mrs. JOHNSON of Connecticut, Mr. EVERETT, Mr. THORNBERRY, Mr. ROGERS of Michigan, Mr. GALLEGLY, and Mr. ISSA) 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

SEPTEMBER 25, 2006

Reported from the Permanent Select Committee on Intelligence with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

SEPTEMBER 25, 2006

Additional sponsors: Mr. RAMSTAD, Mr. SCHWARZ of Michigan, Mr. MILLER of Florida, and Mrs. MYRICK

SEPTEMBER 25, 2006

Reported from the Committee on the Judiciary with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in boldface roman]

[For text of introduced bill, see copy of bill as introduced on July 18, 2006]

A BILL

To update the Foreign Intelligence Surveillance Act of 1978.

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 “Electronic Surveillance*
5 *Modernization Act”.*

6 **SEC. 2. FISA DEFINITIONS.**

7 *(a) AGENT OF A FOREIGN POWER.—Subsection (b)(1)*
8 *of section 101 of the Foreign Intelligence Surveillance Act*
9 *of 1978 (50 U.S.C. 1801) is amended—*

10 *(1) in subparagraph (B), by striking “; or” and*
11 *inserting “;”; and*

12 *(2) by adding at the end the following new sub-*
13 *paragraph:*

14 *“(D) possesses or is reasonably expected to*
15 *transmit or receive foreign intelligence informa-*
16 *tion while in the United States; or”.*

17 *(b) ELECTRONIC SURVEILLANCE.—Subsection (f) of*
18 *such section is amended to read as follows:*

19 *“(f) ‘Electronic surveillance’ means—*

1 “(1) the installation or use of a surveillance de-
2 vice for the intentional collection of information relat-
3 ing to a person who is reasonably believed to be in
4 the United States by intentionally targeting that per-
5 son, under circumstances in which the person has a
6 reasonable expectation of privacy and a warrant
7 would be required for law enforcement purposes; or

8 “(2) the intentional acquisition of the contents of
9 any communication, without the consent of a party
10 to the communication, under circumstances in which
11 a person has a reasonable expectation of privacy and
12 a warrant would be required for law enforcement pur-
13 poses, if both the sender and all intended recipients
14 are located within the United States.”.

15 (c) *MINIMIZATION PROCEDURES*.—Subsection (h) of
16 such section is amended—

17 (1) in paragraph (2), by striking “importance;”
18 and inserting “importance; and”;

19 (2) in paragraph (3), by striking “; and” and
20 inserting “.”; and

21 (3) by striking paragraph (4).

22 (d) *WIRE COMMUNICATION AND SURVEILLANCE DE-*
23 *VICE*.—Subsection (l) of such section is amended to read
24 as follows:

1 “(l) ‘Surveillance device’ is a device that allows sur-
 2 veillance by the Federal Government, but excludes any de-
 3 vice that extracts or analyzes information from data that
 4 has already been acquired by the Federal Government by
 5 lawful means.”.

6 (e) *PHYSICAL SEARCH*.—Section 301(5) of the *Foreign*
 7 *Intelligence Surveillance Act of 1978 (50 U.S.C. 1821(5))*
 8 is amended by striking “Act, or (B)” and inserting “Act,
 9 (B) activities described in section 102(b) of this Act, or
 10 (C)”.

11 **SEC. 3. AUTHORIZATION FOR ELECTRONIC SURVEILLANCE**
 12 **FOR FOREIGN INTELLIGENCE PURPOSES.**

13 Section 102 of the *Foreign Intelligence Surveillance*
 14 *Act of 1978 (50 U.S.C. 1802)* is amended—

15 (1) in subsection (a)(1)—

16 (A) in subparagraph (A)—

17 (i) in clause (i), by striking “trans-
 18 mitted by means of” and all that follows
 19 and inserting “of a foreign power, as de-
 20 fined in paragraph (1), (2), or (3) of section
 21 101(a), or an agent of a foreign power, as
 22 defined in section 101(b)(1); or”; and

23 (ii) in clause (ii), by striking “or (3);”
 24 and inserting “or (3); and”;

25 (B) by striking subparagraph (B); and

1 (C) by redesignating subparagraph (C) as
2 subparagraph (B);

3 (2) by striking subsection (a)(4);

4 (3) in subsection (b), to read as follows:

5 “(b)(1) *The Attorney General may require, by written*
6 *certification, any person with authorized access to electronic*
7 *communications or equipment used to transmit or store*
8 *electronic communications to provide information, facili-*
9 *ties, or technical assistance—*

10 “(A) *necessary to accomplish electronic surveil-*
11 *lance authorized under subsection (a); or*

12 “(B) *to an official designated by the President*
13 *for a period of up to one year, provided the Attorney*
14 *General certifies in writing, under oath, that the pro-*
15 *vision of the information, facilities, or technical as-*
16 *sistance does not constitute electronic surveillance.*

17 “(2) *The Attorney General may require a person pro-*
18 *viding information, facilities, or technical assistance under*
19 *paragraph (1) to—*

20 “(A) *provide the information, facilities, or tech-*
21 *nical assistance in such a manner as will protect the*
22 *secrecy of the provision of such information, facilities,*
23 *or technical assistance and produce a minimum of*
24 *interference with the services that such person is pro-*
25 *viding the customers of such person; and*

1 “(B) maintain under security procedures ap-
2 proved by the Attorney General and the Director of
3 National Intelligence any records concerning such
4 electronic surveillance or the information, facilities,
5 or technical assistance provided which such person
6 wishes to retain.

7 “(3) The Government shall compensate, at the pre-
8 vailing rate, a person for providing information, facilities,
9 or technical assistance pursuant to paragraph (1).”; and
10 (4) by adding at the end the following new sub-
11 section:

12 “(c) Notwithstanding any other provision of law, the
13 President may designate an official who may authorize elec-
14 tronic surveillance of international radio communications
15 of a diplomat or diplomatic mission or post of the govern-
16 ment of a foreign country in the United States in accord-
17 ance with procedures approved by the Attorney General.”.

18 **SEC. 4. APPLICATIONS FOR COURT ORDERS.**

19 Section 104 of the Foreign Intelligence Surveillance
20 Act of 1978 (50 U.S.C. 1804) is amended—

21 (1) in subsection (a)—

22 (A) by striking paragraphs (6), (9), and
23 (11);

1 (B) by redesignating paragraphs (7), (8),
2 and (10) as paragraphs (6), (7), and (8), respec-
3 tively;

4 (C) in paragraph (6), as redesignated by
5 subparagraph (B)—

6 (i) in the matter preceding subpara-
7 graph (A), by striking “or officials des-
8 ignated” and all that follows through “con-
9 sent of the Senate” and inserting “des-
10 ignated by the President to authorize elec-
11 tronic surveillance for foreign intelligence
12 purposes”;

13 (ii) in subparagraph (C), by striking
14 “techniques;” and inserting “techniques;
15 and”;

16 (iii) by striking subparagraphs (D)
17 and (E) and inserting the following:

18 “(D) including a statement of the basis for
19 the certification that the information sought is
20 the type of foreign intelligence information des-
21 ignated;”;

22 (D) in paragraph (7), as redesignated by
23 subparagraph (B)—

1 (i) by striking “a statement of the
2 means by which the surveillance will be ef-
3 fected and”; and

4 (ii) by adding “and” at the end; and
5 (E) in paragraph (8), as redesignated by
6 subparagraph (B), by striking “; and” and in-
7 serting a period;

8 (2) by striking subsection (b); and

9 (3) by redesignating subsections (c), (d), and (e)
10 as subsections (b), (c), and (d), respectively.

11 **SEC. 5. ISSUANCE OF AN ORDER.**

12 Section 105 of the Foreign Intelligence Surveillance
13 Act of 1978 (50 U.S.C. 1805) is amended—

14 (1) in subsection (a)—

15 (A) by striking paragraph (1); and

16 (B) by redesignating paragraphs (2), (3),
17 (4), and (5) as paragraphs (1), (2), (3), and (4),
18 respectively;

19 (2) in subsection (c)(1)—

20 (A) in subparagraph (B), by striking
21 “known;” and inserting “known; and”;

22 (B) by striking subparagraphs (C), (D),
23 and (F);

24 (C) by redesignating subparagraph (E) as
25 subparagraph (C); and

1 (D) in subparagraph (C), as redesignated
2 by subparagraph (C), by striking “approved;
3 and” and inserting “approved.”;

4 (3) by striking subsection (d);

5 (4) by redesignating subsections (e), (f), (g), (h),
6 and (i) as subsections (d), (e), (f), (g), and (h), re-
7 spectively;

8 (5) in subsection (d), as redesignated by para-
9 graph (4)—

10 (A) in paragraph (1), by striking “for the
11 period necessary” and all that follows and insert
12 “for a period not to exceed one year.”; and

13 (B) in paragraph (2), by striking “original
14 order, except that” and all that follows and in-
15 serting “original order for a period not to exceed
16 one year.”;

17 (6) in subsection (e), as redesignated by para-
18 graph (4), to read as follows:

19 “(e) Notwithstanding any other provision of this title,
20 the Attorney General may authorize the emergency employ-
21 ment of electronic surveillance if the Attorney General—

22 “(1) determines that an emergency situation ex-
23 ists with respect to the employment of electronic sur-
24 veillance to obtain foreign intelligence information be-

1 *fore an order authorizing such surveillance can with*
2 *due diligence be obtained;*

3 “(2) *determines that the factual basis for*
4 *issuance of an order under this title to approve such*
5 *surveillance exists;*

6 “(3) *informs a judge having jurisdiction under*
7 *section 103 at the time of such authorization that the*
8 *decision has been made to employ emergency elec-*
9 *tronic surveillance; and*

10 “(4) *makes an application in accordance with*
11 *this title to a judge having jurisdiction under section*
12 *103 as soon as practicable, but not more than 120*
13 *hours after the official authorizes such surveillance.*

14 *If the Attorney General authorizes such emergency employ-*
15 *ment of electronic surveillance, the Attorney General shall*
16 *require that the minimization procedures required by this*
17 *title for the issuance of a judicial order be followed. In the*
18 *absence of a judicial order approving such electronic sur-*
19 *veillance, the surveillance shall terminate when the infor-*
20 *mation sought is obtained, when the application for the*
21 *order is denied, or after the expiration of 120 hours from*
22 *the time of authorization by the Attorney General, which-*
23 *ever is earliest. In the event that such application for ap-*
24 *proval is denied, or in any other case where the electronic*
25 *surveillance is terminated and no order is issued approving*

1 *the surveillance, no information obtained or evidence de-*
2 *rived from such surveillance shall be received in evidence*
3 *or otherwise disclosed in any trial, hearing, or other pro-*
4 *ceeding in or before any court, grand jury, department, of-*
5 *fice, agency, regulatory body, legislative committee, or other*
6 *authority of the United States, a State, or political subdivi-*
7 *sion thereof, and no information concerning any United*
8 *States person acquired from such surveillance shall subse-*
9 *quently be used or disclosed in any other manner by Federal*
10 *officers or employees without the consent of such person, ex-*
11 *cept with the approval of the Attorney General if the infor-*
12 *mation indicates a threat of death or serious bodily harm*
13 *to any person. A denial of the application made under this*
14 *subsection may be reviewed as provided in section 103.”;*
15 *and*

16 *(7) in subsection (h), as redesignated by para-*
17 *graph (4), by striking “assistance in accordance with*
18 *a court order” and all that follows and inserting “as-*
19 *sistance—*

20 *“(1) in accordance with a court order or request*
21 *for emergency assistance under this Act for electronic*
22 *surveillance or physical search; or*

23 *“(2) in response to a certification by the Attor-*
24 *ney General or a designee of the Attorney General*
25 *seeking information, facilities, or technical assistance*

1 *from such person that does not constitute electronic*
2 *surveillance.”.*

3 **SEC. 6. USE OF INFORMATION.**

4 *Section 106(i) of the Foreign Intelligence Surveillance*
5 *Act of 1978 (50 U.S.C. 1806(i)) is amended—*

6 (1) *by striking “radio communication” and in-*
7 *serting “communication”; and*

8 (2) *by striking “contents indicates” and insert-*
9 *ing “contents contain significant foreign intelligence*
10 *information or indicate”.*

11 **SEC. 7. AUTHORIZATION AFTER AN ARMED ATTACK.**

12 (a) *ELECTRONIC SURVEILLANCE.—Section 111 of the*
13 *Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.*
14 *1811) is amended by striking “for a period not to exceed”*
15 *and all that follows and inserting the following: “for a pe-*
16 *riod not to exceed 60 days following an armed attack*
17 *against the territory of the United States if the President*
18 *submits to the Permanent Select Committee on Intelligence*
19 *of the House of Representatives and the Select Committee*
20 *on Intelligence of the Senate notification of the authoriza-*
21 *tion under this section.”.*

22 (b) *PHYSICAL SEARCH.—Section 309 of such Act (50*
23 *U.S.C. 1829) is amended by striking “for a period not to*
24 *exceed” and all that follows and inserting the following: “for*
25 *a period not to exceed 60 days following an armed attack*

1 *against the territory of the United States if the President*
2 *submits to the Permanent Select Committee on Intelligence*
3 *of the House of Representatives and the Select Committee*
4 *on Intelligence of the Senate notification of the authoriza-*
5 *tion under this section.”.*

6 **SEC. 8. AUTHORIZATION OF ELECTRONIC SURVEILLANCE**

7 **AFTER A TERRORIST ATTACK.**

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

10 *(1) by adding at the end of title I the following*
11 *new section:*

12 *“AUTHORIZATION FOLLOWING A TERRORIST ATTACK UPON*

13 *THE UNITED STATES*

14 *“SEC. 112. (a) IN GENERAL.—Notwithstanding any*
15 *other provision of law, but subject to the provisions of this*
16 *section, the President, acting through the Attorney General,*
17 *may authorize electronic surveillance without an order*
18 *under this title to acquire foreign intelligence information*
19 *for a period not to exceed 45 days following a terrorist at-*
20 *tack against the United States if the President submits a*
21 *notification to the congressional intelligence committees and*
22 *a judge having jurisdiction under section 103 that—*

23 *“(1) the United States has been the subject of a*
24 *terrorist attack; and*

1 “(2) identifies the terrorist organizations or af-
2 filiates of terrorist organizations believed to be re-
3 sponsible for the terrorist attack.

4 “(b) *SUBSEQUENT CERTIFICATIONS.*—At the end of the
5 45-day period described in subsection (a), and every 45
6 days thereafter, the President may submit a subsequent cer-
7 tification to the congressional intelligence committees and
8 a judge having jurisdiction under section 103 that the cir-
9 cumstances of the terrorist attack for which the President
10 submitted a certification under subsection (a) require the
11 President to continue the authorization of electronic surveil-
12 lance under this section for an additional 45 days. The
13 President shall be authorized to conduct electronic surveil-
14 lance under this section for an additional 45 days after each
15 such subsequent certification.

16 “(c) *ELECTRONIC SURVEILLANCE OF INDIVIDUALS.*—
17 The President, or an official designated by the President
18 to authorize electronic surveillance, may only conduct elec-
19 tronic surveillance of a person under this section if the
20 President or such official determines that—

21 “(1) there is a reasonable belief that such person
22 is communicating with a terrorist organization or an
23 affiliate of a terrorist organization that is reasonably
24 believed to be responsible for the terrorist attack; and

1 “(2) the information obtained from the electronic
2 surveillance may be foreign intelligence information.

3 “(d) *MINIMIZATION PROCEDURES.*—The President
4 may not authorize electronic surveillance under this section
5 until the Attorney General approves minimization proce-
6 dures for electronic surveillance conducted under this sec-
7 tion.

8 “(e) *UNITED STATES PERSONS.*—Notwithstanding
9 subsection (b), the President may not authorize electronic
10 surveillance of a United States person under this section
11 without an order under this title for a period of more than
12 90 days unless the President, acting through the Attorney
13 General, submits a certification to the congressional intel-
14 ligence committees that—

15 “(1) the continued electronic surveillance of the
16 United States person is vital to the national security
17 of the United States;

18 “(2) describes the circumstances that have pre-
19 vented the Attorney General from obtaining an order
20 under this title for continued surveillance;

21 “(3) describes the reasons for believing the
22 United States person is affiliated with or in commu-
23 nication with a terrorist organization or affiliate of
24 a terrorist organization that is reasonably believed to
25 be responsible for the terrorist attack; and

1 “(4) describes the foreign intelligence informa-
2 tion derived from the electronic surveillance conducted
3 under this section.

4 “(f) *USE OF INFORMATION.*—Information obtained
5 pursuant to electronic surveillance under this subsection
6 may be used to obtain an order authorizing subsequent elec-
7 tronic surveillance under this title.

8 “(g) *REPORTS.*—Not later than 14 days after the date
9 on which the President submits a certification under sub-
10 section (a), and every 30 days thereafter until the President
11 ceases to authorize electronic surveillance under subsection
12 (a) or (b), the President shall submit to the congressional
13 intelligence committees a report on the electronic surveil-
14 lance conducted under this section, including—

15 “(1) a description of each target of electronic
16 surveillance under this section; and

17 “(2) the basis for believing that each target is in
18 communication with a terrorist organization or an
19 affiliate of a terrorist organization.

20 “(h) *CONGRESSIONAL INTELLIGENCE COMMITTEES*
21 *DEFINED.*—In this section, the term ‘congressional intel-
22 ligence committees’ means the Permanent Select Committee
23 on Intelligence of the House of Representatives and the Se-
24 lect Committee on Intelligence of the Senate.”; and

1 (2) *in the table of contents in the first section,*
2 *by inserting after the item relating to section 111 the*
3 *following new item:*

“Sec. 112. Authorization following a terrorist attack upon the United States.”.

4 **SEC. 9. AUTHORIZATION OF ELECTRONIC SURVEILLANCE**
5 **DUE TO IMMINENT THREAT.**

6 *The Foreign Intelligence Surveillance Act of 1978 (50*
7 *U.S.C. 1801 et seq.) is further amended—*

8 (1) *by adding at the end of title I the following*
9 *new section:*

10 “AUTHORIZATION DUE TO IMMINENT THREAT

11 “SEC. 113. (a) *IN GENERAL.—Notwithstanding any*
12 *other provision of law, but subject to the provisions of this*
13 *section, the President, acting through the Attorney General,*
14 *may authorize electronic surveillance without an order*
15 *under this title to acquire foreign intelligence information*
16 *for a period not to exceed 90 days if the President submits*
17 *to the congressional leadership, the congressional intel-*
18 *ligence committees, and the Foreign Intelligence Surveil-*
19 *lance Court a written notification that the President has*
20 *determined that there exists an imminent threat of attack*
21 *likely to cause death, serious injury, or substantial eco-*
22 *nomie damage to the United States. Such notification—*

23 (1) *shall be submitted as soon as practicable,*
24 *but in no case later than 5 days after the date on*

1 *which the President authorizes electronic surveillance*
2 *under this section;*

3 “(2) shall specify the entity responsible for the
4 *threat and any affiliates of the entity;*

5 “(3) shall state the reason to believe that the
6 *threat of imminent attack exists;*

7 “(4) shall state the reason the President needs
8 *broader authority to conduct electronic surveillance in*
9 *the United States as a result of the threat of immi-*
10 *nent attack;*

11 “(5) shall include a description of the foreign in-
12 *telligence information that will be collected and the*
13 *means that will be used to collect such foreign intel-*
14 *ligence information; and*

15 “(6) may be submitted in classified form.

16 “(b) *SUBSEQUENT CERTIFICATIONS.*—*At the end of the*
17 *90-day period described in subsection (a), and every 90*
18 *days thereafter, the President may submit a subsequent*
19 *written notification to the congressional leadership, the con-*
20 *gressional intelligence committees, the other relevant com-*
21 *mittees, and the Foreign Intelligence Surveillance Court*
22 *that the circumstances of the threat for which the President*
23 *submitted a written notification under subsection (a) re-*
24 *quire the President to continue the authorization of elec-*
25 *tronic surveillance under this section for an additional 90*

1 *days. The President shall be authorized to conduct electronic*
2 *surveillance under this section for an additional 90 days*
3 *after each such subsequent written notification.*

4 “(c) *ELECTRONIC SURVEILLANCE OF INDIVIDUALS.—*
5 *The President, or an official designated by the President*
6 *to authorize electronic surveillance, may only conduct elec-*
7 *tronic surveillance of a person under this section if the*
8 *President or such official determines that—*

9 “(1) *there is a reasonable belief that such person*
10 *is communicating with an entity or an affiliate of an*
11 *entity that is reasonably believed to be responsible for*
12 *imminent threat of attack; and*

13 “(2) *the information obtained from the electronic*
14 *surveillance may be foreign intelligence information.*

15 “(d) *MINIMIZATION PROCEDURES.—The President*
16 *may not authorize electronic surveillance under this section*
17 *until the Attorney General approves minimization proce-*
18 *dures for electronic surveillance conducted under this sec-*
19 *tion.*

20 “(e) *UNITED STATES PERSONS.—Notwithstanding*
21 *subsections (a) and (b), the President may not authorize*
22 *electronic surveillance of a United States person under this*
23 *section without an order under this title for a period of*
24 *more than 60 days unless the President, acting through the*

1 *Attorney General, submits a certification to the congress-*
2 *sional intelligence committees that—*

3 “(1) *the continued electronic surveillance of the*
4 *United States person is vital to the national security*
5 *of the United States;*

6 “(2) *describes the circumstances that have pre-*
7 *vented the Attorney General from obtaining an order*
8 *under this title for continued surveillance;*

9 “(3) *describes the reasons for believing the*
10 *United States person is affiliated with or in commu-*
11 *nication with an entity or an affiliate of an entity*
12 *that is reasonably believed to be responsible for immi-*
13 *nent threat of attack; and*

14 “(4) *describes the foreign intelligence informa-*
15 *tion derived from the electronic surveillance conducted*
16 *under this section.*

17 “(f) *USE OF INFORMATION.—Information obtained*
18 *pursuant to electronic surveillance under this subsection*
19 *may be used to obtain an order authorizing subsequent elec-*
20 *tronic surveillance under this title.*

21 “(g) *DEFINITIONS.—In this section:*

22 “(1) *CONGRESSIONAL INTELLIGENCE COMMIT-*
23 *TEES.—The term ‘congressional intelligence commit-*
24 *tees’ means the Permanent Select Committee on Intel-*

1 *ligence of the House of Representatives and the Select*
 2 *Committee on Intelligence of the Senate.*

3 “(2) *CONGRESSIONAL LEADERSHIP.*—*The term*
 4 *‘congressional leadership’ means the Speaker and mi-*
 5 *nority leader of the House of Representatives and the*
 6 *majority leader and minority leader of the Senate.*

7 “(3) *FOREIGN INTELLIGENCE SURVEILLANCE*
 8 *COURT.*—*The term ‘Foreign Intelligence Surveillance*
 9 *Court’ means the court established under section*
 10 *103(a).*

11 “(4) *OTHER RELEVANT COMMITTEES.*—*The term*
 12 *‘other relevant committees’ means the Committees on*
 13 *Appropriations, the Committees on Armed Services,*
 14 *and the Committees on the Judiciary of the House of*
 15 *Representatives and the Senate.’; and*

16 (2) *in the table of contents in the first section,*
 17 *by inserting after the item relating to section 112, as*
 18 *added by section 8(2), the following new item:*

“Sec. 113. Authorization due to imminent threat.”.

19 **SEC. 10. CONGRESSIONAL OVERSIGHT.**

20 (a) *ELECTRONIC SURVEILLANCE UNDER FISA.*—*Sec-*
 21 *tion 108(a) of the Foreign Intelligence Surveillance Act of*
 22 *1978 (50 U.S.C. 1808(a)) is amended—*

23 (1) *in paragraph (2)—*

24 (A) *in subparagraph (B), by striking “and”*
 25 *at the end;*

1 (B) in subparagraph (C), by striking the
2 period and inserting “; and”; and

3 (C) by adding at the end the following new
4 subparagraph:

5 “(D) the authority under which the elec-
6 tronic surveillance is conducted.”; and

7 (2) by adding at the end the following new para-
8 graph:

9 “(3) Each report submitted under this subsection
10 shall include reports on electronic surveillance con-
11 ducted without a court order.”.

12 (b) *INTELLIGENCE ACTIVITIES.*—*The National Secu-*
13 *rity Act of 1947 (50 U.S.C. 401 et seq.) is amended—*

14 (1) in section 501 (50 U.S.C. 413)—

15 (A) by redesignating subsection (f) as sub-
16 section (g); and

17 (B) by inserting after subsection (e) the fol-
18 lowing new subsection:

19 “(f) The Chair of each of the congressional intelligence
20 committees, in consultation with the ranking member of the
21 committee for which the person is Chair, may inform—

22 “(1) on a bipartisan basis, all members or any
23 individual members of such committee, and

24 “(2) any essential staff of such committee,

1 of a report submitted under subsection (a)(1) or subsection
2 (b) as such Chair considers necessary.”;

3 (2) in section 502 (50 U.S.C. 414), by adding at
4 the end the following new subsection:

5 “(d) *INFORMING OF COMMITTEE MEMBERS.*—The
6 Chair of each of the congressional intelligence committees,
7 in consultation with the ranking member of the committee
8 for which the person is Chair, may inform—

9 (1) on a bipartisan basis, all members or any
10 individual members of such committee, and

11 (2) any essential staff of such committee,
12 of a report submitted under subsection (a) as such Chair
13 considers necessary.”; and

14 (3) in section 503 (50 U.S.C. 415), by adding at
15 the end the following new subsection:

16 “(g) The Chair of each of the congressional intelligence
17 committees, in consultation with the ranking member of the
18 committee for which the person is Chair, may inform—

19 (1) on a bipartisan basis, all members or any
20 individual members of such committee, and

21 (2) any essential staff of such committee,
22 of a report submitted under subsection (b), (c), or (d) as
23 such Chair considers necessary.”.

1 **SEC. 11. TECHNICAL AND CONFORMING AMENDMENTS.**

2 *The Foreign Intelligence Surveillance Act of 1978 (50*
3 *U.S.C. 1801 et seq.) is further amended—*

4 *(1) in section 102(a)(3)(A), by striking “sections*
5 *101(h)(4) and” and inserting “section”;*

6 *(2) in section 105(a)(4), as redesignated by sec-*
7 *tion 5(1)(B)—*

8 *(A) by striking “104(a)(7)(E)” and insert-*
9 *ing “104(a)(6)(D)”;* and

10 *(B) by striking “104(d)” and inserting*
11 *“104(c)”;*

12 *(3) in section 106—*

13 *(A) in subsection (j) in the matter preceding*
14 *paragraph (1), by striking “105(e)” and insert-*
15 *ing “105(d)”;* and

16 *(B) in subsection (k)(2), by striking*
17 *“104(a)(7)(B)” and inserting “104(a)(6)(B)”;*
18 *and*

19 *(4) in section 108(a)(2)(C), by striking “105(f)”*
20 *and inserting “105(e)”.*

21 **SECTION 1. SHORT TITLE.**

22 **This Act may be cited as the “Electronic**
23 **Surveillance Modernization Act”.**

24 **SEC. 2. FINDING.**

25 **Congress finds that article I, section 8,**
26 **clause 18 of the Constitution, known as the**

1 “necessary and proper clause”, grants Con-
2 gress clear authority to regulate the Presi-
3 dent’s inherent power to gather foreign intel-
4 ligence.

5 SEC. 3. FISA DEFINITIONS.

6 (a) AGENT OF A FOREIGN POWER.—Sub-
7 section (b)(1) of section 101 of the Foreign In-
8 telligence Surveillance Act of 1978 (50 U.S.C.
9 1801) is amended—

10 (1) in subparagraph (B), by striking “;
11 or” and inserting “;”; and

12 (2) by adding at the end the fol-
13 lowing:

14 “(D) is reasonably expected to
15 possess, control, transmit, or receive
16 foreign intelligence information while
17 such person is in the United States,
18 provided that the official making the
19 certification required by section
20 104(a)(7) deems such foreign intel-
21 ligence information to be significant;
22 or”.

23 (b) ELECTRONIC SURVEILLANCE.—Sub-
24 section (f) of such section is amended to read
25 as follows:

1 **“(f) ‘Electronic surveillance’ means—**

2 **“(1) the installation or use of an elec-**
3 **tronic, mechanical, or other surveillance**
4 **device for acquiring information by in-**
5 **tentionally directing surveillance at a**
6 **particular known person who is reason-**
7 **ably believed to be in the United States**
8 **under circumstances in which that per-**
9 **son has a reasonable expectation of pri-**
10 **vacancy and a warrant would be required**
11 **for law enforcement purposes; or**

12 **“(2) the intentional acquisition of the**
13 **contents of any communication under**
14 **circumstances in which a person has a**
15 **reasonable expectation of privacy and a**
16 **warrant would be required for law en-**
17 **forcement purposes, if both the sender**
18 **and all intended recipients are reason-**
19 **ably believed to be located within the**
20 **United States.”.**

21 **(c) CONTENTS.—Subsection (n) of such sec-**
22 **tion is amended to read as follows:**

23 **“(n) ‘Contents’, when used with respect to**
24 **a communication, includes any information**

1 **concerning the substance, purport, or mean-**
2 **ing of that communication.”.**

3 **SEC. 4. AUTHORIZATION FOR ELECTRONIC SURVEILLANCE**
4 **AND OTHER ACQUISITIONS FOR FOREIGN IN-**
5 **TELLIGENCE PURPOSES.**

6 **(a) IN GENERAL.—The Foreign Intelligence**
7 **Surveillance Act of 1978 (50 U.S.C. 1801 et**
8 **seq.) is further amended by striking section**
9 **102 and inserting the following:**

10 **“AUTHORIZATION FOR ELECTRONIC SURVEIL-**
11 **LANCE FOR FOREIGN INTELLIGENCE PUR-**
12 **POSES**

13 **“SEC. 102. (a) IN GENERAL.—Notwith-**
14 **standing any other law, the President, acting**
15 **through the Attorney General, may authorize**
16 **electronic surveillance without a court order**
17 **under this title to acquire foreign intelligence**
18 **information for periods of up to one year if**
19 **the Attorney General certifies in writing**
20 **under oath that—**

21 **“(1) the electronic surveillance is di-**
22 **rected at—**

23 **“(A) the acquisition of the con-**
24 **tents of communications of foreign**
25 **powers, as defined in paragraph (1),**
26 **(2), or (3) of section 101(a), or an**

1 **agent of a foreign power, as defined**
2 **in subparagraph (A) or (B) of section**
3 **101(b)(1); or**

4 **“(B) the acquisition of technical**
5 **intelligence, other than the spoken**
6 **communications of individuals, from**
7 **property or premises under the open**
8 **and exclusive control of a foreign**
9 **power, as defined in paragraph (1),**
10 **(2), or (3) of section 101(a); and**

11 **“(2) the proposed minimization proce-**
12 **dures with respect to such surveillance**
13 **meet the definition of minimization pro-**
14 **cedures under section 101(h);**

15 **if the Attorney General reports such mini-**
16 **mization procedures and any changes thereto**
17 **to the Permanent Select Committee on Intel-**
18 **ligence of the House of Representatives and**
19 **the Select Committee on Intelligence of the**
20 **Senate at least 30 days prior to the effective**
21 **date of such minimization procedures, unless**
22 **the Attorney General determines immediate**
23 **action is required and notifies the committees**
24 **immediately of such minimization procedures**

1 and the reason for their becoming effective
2 immediately.

3 **“(b) MINIMIZATION PROCEDURES.—An elec-**
4 **tronic surveillance authorized by this sub-**
5 **section may be conducted only in accordance**
6 **with the Attorney General’s certification and**
7 **the minimization procedures. The Attorney**
8 **General shall assess compliance with such**
9 **procedures and shall report such assessments**
10 **to the Permanent Select Committee on Intel-**
11 **ligence of the House of Representatives and**
12 **the Select Committee on Intelligence of the**
13 **Senate under the provisions of section 108(a).**

14 **“(c) SUBMISSION OF CERTIFICATION.—The**
15 **Attorney General shall immediately transmit**
16 **under seal to the court established under sec-**
17 **tion 103(a) a copy of his certification. Such**
18 **certification shall be maintained under secu-**
19 **rity measures established by the Chief Justice**
20 **with the concurrence of the Attorney General,**
21 **in consultation with the Director of National**
22 **Intelligence, and shall remain sealed unless—**

23 **“(1) an application for a court order with**
24 **respect to the surveillance is made under sec-**
25 **tion 104; or**

1 **being or may be used to transmit or store**
2 **such communications;**

3 **“(3) a significant purpose of the ac-**
4 **quisition is to obtain foreign intelligence**
5 **information; and**

6 **“(4) the proposed minimization proce-**
7 **dures with respect to such acquisition ac-**
8 **tivity meet the definition of minimization**
9 **procedures under section 101(h).**

10 **“(b) SPECIFIC PLACE NOT REQUIRED.—A cer-**
11 **tification under subsection (a) is not required**
12 **to identify the specific facilities, places, prem-**
13 **ises, or property at which the acquisition of**
14 **foreign intelligence information will be di-**
15 **rected.**

16 **“(c) SUBMISSION OF CERTIFICATION.—The**
17 **Attorney General shall immediately transmit**
18 **under seal to the court established under sec-**
19 **tion 103(a) a copy of a certification made**
20 **under subsection (a). Such certification shall**
21 **be maintained under security measures estab-**
22 **lished by the Chief Justice of the United**
23 **States and the Attorney General, in consulta-**
24 **tion with the Director of National Intel-**
25 **ligence, and shall remain sealed unless the**

1 certification is necessary to determine the le-
2 gality of the acquisition under section 102B.

3 “(d) **MINIMIZATION PROCEDURES.**—An ac-
4 quisition under this section may be conducted
5 only in accordance with the certification of
6 the Attorney General and the minimization
7 procedures adopted by the Attorney General.
8 The Attorney General shall assess compliance
9 with such procedures and shall report such
10 assessments to the Permanent Select Com-
11 mittee on Intelligence of the House of Rep-
12 resentatives and the Select Committee on In-
13 telligence of the Senate under section 108(a).

14 “**DIRECTIVES RELATING TO ELECTRONIC SURVEIL-**
15 **LANCE AND OTHER ACQUISITIONS OF FOREIGN**
16 **INTELLIGENCE INFORMATION**

17 “**SEC. 102B. (a) DIRECTIVE.**—With respect to
18 an authorization of electronic surveillance
19 under section 102 or an authorization of an
20 acquisition under section 102A, the Attorney
21 General may direct a person to—

22 “(1) immediately provide the Govern-
23 ment with all information, facilities, and
24 assistance necessary to accomplish the
25 acquisition of foreign intelligence infor-
26 mation in such a manner as will protect

1 the secrecy of the electronic surveillance
2 or acquisition and produce a minimum of
3 interference with the services that such
4 person is providing to the target; and

5 “(2) maintain under security proce-
6 dures approved by the Attorney General
7 and the Director of National Intelligence
8 any records concerning the electronic
9 surveillance or acquisition or the aid fur-
10 nished that such person wishes to main-
11 tain.

12 “(b) COMPENSATION.—The Government
13 shall compensate, at the prevailing rate, a
14 person for providing information, facilities, or
15 assistance pursuant to subsection (a).

16 “(c) FAILURE TO COMPLY.—In the case of a
17 failure to comply with a directive issued pur-
18 suant to subsection (a), the Attorney General
19 may petition the court established under sec-
20 tion 103(a) to compel compliance with the di-
21 rective. The court shall issue an order requir-
22 ing the person or entity to comply with the di-
23 rective if it finds that the directive was issued
24 in accordance with section 102(a) or 102A(a)
25 and is otherwise lawful. Failure to obey an

1 order of the court may be punished by the
2 court as contempt of court. Any process under
3 this section may be served in any judicial dis-
4 trict in which the person or entity may be
5 found.

6 “(d) REVIEW OF PETITIONS.—(1) IN GEN-
7 ERAL.—(A) CHALLENGE.—A person receiving a
8 directive issued pursuant to subsection (a)
9 may challenge the legality of that directive by
10 filing a petition with the pool established
11 under section 103(e)(1).

12 “(B) ASSIGNMENT OF JUDGE.—The presiding
13 judge designated pursuant to section 103(b)
14 shall assign a petition filed under subpara-
15 graph (A) to one of the judges serving in the
16 pool established by section 103(e)(1). Not later
17 than 24 hours after the assignment of such pe-
18 tition, the assigned judge shall conduct an ini-
19 tial review of the directive. If the assigned
20 judge determines that the petition is frivo-
21 lous, the assigned judge shall deny the peti-
22 tion and affirm the directive or any part of
23 the directive that is the subject of the peti-
24 tion. If the assigned judge determines the pe-
25 tition is not frivolous, the assigned judge

1 shall, within 72 hours, consider the petition in
2 accordance with the procedures established
3 under section 103(e)(2) and provide a written
4 statement for the record of the reasons for
5 any determination under this subsection.

6 “(2) STANDARD OF REVIEW.—A judge consid-
7 ering a petition to modify or set aside a direc-
8 tive may grant such petition only if the judge
9 finds that such directive does not meet the re-
10 quirements of this section or is otherwise un-
11 lawful. If the judge does not modify or set
12 aside the directive, the judge shall affirm
13 such directive, and order the recipient to
14 comply with such directive.

15 “(3) DIRECTIVES NOT MODIFIED.—Any direc-
16 tive not explicitly modified or set aside under
17 this subsection shall remain in full effect.

18 “(e) APPEALS.—The Government or a per-
19 son receiving a directive reviewed pursuant
20 to subsection (d) may file a petition with the
21 court of review established under section
22 103(b) for review of the decision issued pursu-
23 ant to subsection (d) not later than 7 days
24 after the issuance of such decision. Such
25 court of review shall have jurisdiction to con-

1 sider such petitions and shall provide for the
2 record a written statement of the reasons for
3 its decision. On petition by the Government
4 or any person receiving such directive for a
5 writ of certiorari, the record shall be trans-
6 mitted under seal to the Supreme Court,
7 which shall have jurisdiction to review such
8 decision.

9 “(f) PROCEEDINGS.—Judicial proceedings
10 under this section shall be concluded as expe-
11 ditiously as possible. The record of pro-
12 ceedings, including petitions filed, orders
13 granted, and statements of reasons for deci-
14 sion, shall be maintained under security
15 measures established by the Chief Justice of
16 the United States, in consultation with the At-
17 torney General and the Director of National
18 Intelligence.

19 “(g) SEALED PETITIONS.—All petitions
20 under this section shall be filed under seal. In
21 any proceedings under this section, the court
22 shall, upon request of the Government, review
23 ex parte and in camera any Government sub-
24 mission, or portions of a submission, which
25 may include classified information.

1 “(h) **LIABILITY.**—No cause of action shall
2 lie in any court against any person for pro-
3 viding any information, facilities, or assist-
4 ance in accordance with a directive under
5 this section.

6 “(i) **USE OF INFORMATION.**—Information ac-
7 quired pursuant to a directive by the Attor-
8 ney General under this section concerning
9 any United States person may be used and
10 disclosed by Federal officers and employees
11 without the consent of the United States per-
12 son only in accordance with the minimization
13 procedures required by section 102(a) or
14 102A(a). No otherwise privileged communica-
15 tion obtained in accordance with, or in viola-
16 tion of, the provisions of this section shall lose
17 its privileged character. No information from
18 an electronic surveillance under section 102
19 or an acquisition pursuant to section 102A
20 may be used or disclosed by Federal officers
21 or employees except for lawful purposes.

22 “(j) **USE IN LAW ENFORCEMENT.**—No infor-
23 mation acquired pursuant to this section shall
24 be disclosed for law enforcement purposes
25 unless such disclosure is accompanied by a

1 **statement that such information, or any infor-**
2 **mation derived from such information, may**
3 **only be used in a criminal proceeding with**
4 **the advance authorization of the Attorney**
5 **General.**

6 **“(k) DISCLOSURE IN TRIAL.—If the Govern-**
7 **ment intends to enter into evidence or other-**
8 **wise use or disclose in any trial, hearing, or**
9 **other proceeding in or before any court, de-**
10 **partment, officer, agency, regulatory body, or**
11 **other authority of the United States, against**
12 **an aggrieved person, any information ob-**
13 **tained or derived from an electronic surveil-**
14 **lance conducted under section 102 or an ac-**
15 **quisition authorized pursuant to section**
16 **102A, the Government shall, prior to the trial,**
17 **hearing, or other proceeding or at a reason-**
18 **able time prior to an effort to disclose or use**
19 **that information or submit it in evidence, no-**
20 **tify the aggrieved person and the court or**
21 **other authority in which the information is to**
22 **be disclosed or used that the Government in-**
23 **tends to disclose or use such information.**

24 **“(l) DISCLOSURE IN STATE TRIALS.—If a**
25 **State or political subdivision of a State in-**

1 tends to enter into evidence or otherwise use
2 or disclose in any trial, hearing, or other pro-
3 ceeding in or before any court, department,
4 officer, agency, regulatory body, or other au-
5 thority of a State or a political subdivision of
6 a State, against an aggrieved person, any in-
7 formation obtained or derived from an elec-
8 tronic surveillance authorized pursuant to
9 section 102 or an acquisition authorized pur-
10 suant to section 102A, the State or political
11 subdivision of such State shall notify the ag-
12 grieved person, the court, or other authority
13 in which the information is to be disclosed or
14 used and the Attorney General that the State
15 or political subdivision intends to disclose or
16 use such information.

17 “(m) MOTION TO EXCLUDE EVIDENCE.—(1) IN
18 GENERAL.—Any person against whom evi-
19 dence obtained or derived from an electronic
20 surveillance authorized pursuant to section
21 102 or an acquisition authorized pursuant to
22 section 102A is to be, or has been, used or dis-
23 closed in any trial, hearing, or other pro-
24 ceeding in or before any court, department,
25 officer, agency, regulatory body, or other au-

1 **thority of the United States, a State, or a polit-**
2 **ical subdivision thereof, may move to sup-**
3 **press the evidence obtained or derived from**
4 **such electronic surveillance or such acquisi-**
5 **tion on the grounds that—**

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

8 **“(B) the electronic surveillance or ac-**
9 **quisition was not properly made in con-**
10 **formity with an authorization under sec-**
11 **tion 102(a) or 102A(a).**

12 **“(2) TIMING.—A person moving to suppress**
13 **evidence under paragraph (1) shall make the**
14 **motion to suppress the evidence before the**
15 **trial, hearing, or other proceeding unless**
16 **there was no opportunity to make such a mo-**
17 **tion or the person was not aware of the**
18 **grounds of the motion.**

19 **“(n) REVIEW OF MOTIONS.—If a court or**
20 **other authority is notified pursuant to sub-**
21 **section (k) or (l), a motion is made pursuant**
22 **to subsection (m), or a motion or request is**
23 **made by an aggrieved person pursuant to any**
24 **other statute or rule of the United States or**

1 any State before any court or other authority
2 of the United States or any State—

3 “(1) to discover or obtain an Attorney
4 General directive or other materials re-
5 lating to an electronic surveillance au-
6 thorized pursuant to section 102 or an ac-
7 quisition authorized pursuant to section
8 102A, or

9 “(2) to discover, obtain, or suppress
10 evidence or information obtained or de-
11 rived from an electronic surveillance au-
12 thorized pursuant to section 102 or an ac-
13 quisition authorized pursuant to section
14 102A,

15 the United States district court or, where the
16 motion is made before another authority, the
17 United States district court in the same dis-
18 trict as the authority, shall, notwithstanding
19 any other law, if the Attorney General files an
20 affidavit under oath that disclosure or an ad-
21 versary hearing would harm the national se-
22 curity of the United States, review in camera
23 and ex parte the application, order, and such
24 other materials relating to such electronic
25 surveillance or such acquisition as may be

1 necessary to determine whether such elec-
2 tronic surveillance or such acquisition au-
3 thorized under this section was lawfully au-
4 thorized and conducted. In making this deter-
5 mination, the court may disclose to the ag-
6 grieved person, under appropriate security
7 procedures and protective orders, portions of
8 the directive or other materials relating to
9 the acquisition only where such disclosure is
10 necessary to make an accurate determination
11 of the legality of the acquisition.

12 “(o) DETERMINATIONS.—If, pursuant to sub-
13 section (n), a United States district court de-
14 termines that the acquisition authorized
15 under this section was not lawfully author-
16 ized or conducted, it shall, in accordance with
17 the requirements of law, suppress the evi-
18 dence which was unlawfully obtained or de-
19 rived or otherwise grant the motion of the ag-
20 grieved person. If the court determines that
21 such acquisition was lawfully authorized and
22 conducted, it shall deny the motion of the ag-
23 grieved person except to the extent that due
24 process requires discovery or disclosure.

1 **“(p) BINDING ORDERS.—Orders granting**
2 **motions or requests under subsection (m), de-**
3 **cisions under this section that an electronic**
4 **surveillance or an acquisition was not law-**
5 **fully authorized or conducted, and orders of**
6 **the United States district court requiring re-**
7 **view or granting disclosure of directives, or-**
8 **ders, or other materials relating to such ac-**
9 **quisition shall be final orders and binding**
10 **upon all courts of the United States and the**
11 **several States except a United States court of**
12 **appeals and the Supreme Court.**

13 **“(q) COORDINATION.—(1) IN GENERAL.—Fed-**
14 **eral officers who acquire foreign intelligence**
15 **information may consult with Federal law en-**
16 **forcement officers or law enforcement per-**
17 **sonnel of a State or political subdivision of a**
18 **State, including the chief executive officer of**
19 **that State or political subdivision who has the**
20 **authority to appoint or direct the chief law**
21 **enforcement officer of that State or political**
22 **subdivision, to coordinate efforts to inves-**
23 **tigate or protect against—**

1 “(A) actual or potential attack or
2 other grave hostile acts of a foreign
3 power or an agent of a foreign power;

4 “(B) sabotage, international ter-
5 rorism, or the development or prolifera-
6 tion of weapons of mass destruction by a
7 foreign power or an agent of a foreign
8 power; or

9 “(C) clandestine intelligence activities
10 by an intelligence service or network of a
11 foreign power or by an agent of a foreign
12 power.

13 “(2) CERTIFICATION REQUIRED.—Coordina-
14 tion authorized under paragraph (1) shall not
15 preclude the certification required by section
16 102(a) or 102A(a).

17 “(r) RETENTION OF DIRECTIVES AND OR-
18 DERS.—A directive made or an order granted
19 under this section shall be retained for a pe-
20 riod of not less than 10 years from the date
21 on which such directive or such order is
22 made.”.

23 “(b) TABLE OF CONTENTS.—The table of con-
24 tents in the first section of the Foreign Intel-
25 ligence Surveillance Act of 1978 (50 U.S.C.

1 1801 et seq.) is amended by inserting after the
2 item relating to section 102 the following:

“102A. Authorization for acquisition of foreign intelligence in-
formation.

“102B. Directives relating to electronic surveillance and other
acquisitions of foreign intelligence information.”.

3 SEC. 5. JURISDICTION OF FISA COURT.

4 Section 103 of the Foreign Intelligence
5 Surveillance Act of 1978 (50 U.S.C. 1803) is
6 amended by adding at the end the following
7 new subsection:

8 “(g) Applications for a court order under
9 this title are authorized if the President has,
10 by written authorization, empowered the At-
11 torney General to approve applications to the
12 court having jurisdiction under this section,
13 and a judge to whom an application is made
14 may, notwithstanding any other law, grant an
15 order, in conformity with section 105, approv-
16 ing electronic surveillance of a foreign power
17 or an agent of a foreign power for the purpose
18 of obtaining foreign intelligence informa-
19 tion.”.

20 SEC. 6. APPLICATIONS FOR COURT ORDERS.

21 Section 104 of the Foreign Intelligence
22 Surveillance Act of 1978 (50 U.S.C. 1804) is
23 amended—

1 **(1) in subsection (a)—**

2 **(A) in paragraph (6), by striking**
3 **“detailed description” and inserting**
4 **“summary description”;**

5 **(B) in paragraph (7)—**

6 **(i) in the matter preceding**
7 **subparagraph (A), by striking “or**
8 **officials designated” and all that**
9 **follows through “consent of the**
10 **Senate” and inserting “designated**
11 **by the President to authorize**
12 **electronic surveillance for foreign**
13 **intelligence purposes”;**

14 **(ii) in subparagraph (C), by**
15 **striking “techniques;” and insert-**
16 **ing “techniques; and”;**

17 **(iii) by striking subparagraph**
18 **(D); and**

19 **(iv) by redesignating subpara-**
20 **graph (E) as subparagraph (D);**

21 **(C) in paragraph (8), by striking**
22 **“a statement of the means” and in-**
23 **serting “a summary statement of the**
24 **means”;**

25 **(D) in paragraph (9)—**

1 (i) by striking “a statement”
2 and inserting “a summary state-
3 ment”; and

4 (ii) by striking “application;”
5 and inserting “application; and”;

6 (E) in paragraph (10), by striking
7 “thereafter; and” and inserting
8 “thereafter.”; and

9 (F) by striking paragraph (11).

10 (2) by striking subsection (b);

11 (3) by redesignating subsections (c)
12 through (e) as subsections (b) through
13 (d), respectively; and

14 (4) in paragraph (1)(A) of subsection
15 (d), as redesignated by paragraph (3), by
16 striking “or the Director of National In-
17 telligence” and inserting “the Director of
18 National Intelligence, or the Director of
19 the Central Intelligence Agency”.

20 SEC. 7. ISSUANCE OF AN ORDER.

21 Section 105 of the Foreign Intelligence
22 Surveillance Act of 1978 (50 U.S.C. 1805) is
23 amended—

24 (1) in subsection (a)—

25 (A) by striking paragraph (1); and

1 **(B) by redesignating paragraphs**
2 **(2) through (5) as paragraphs (1)**
3 **through (4), respectively;**

4 **(2) in subsection (c)(1)—**

5 **(A) in subparagraph (D), by strik-**
6 **ing “surveillance;” and inserting “sur-**
7 **veillance; and”;**

8 **(B) in subparagraph (E), by strik-**
9 **ing “approved; and” and inserting**
10 **“approved.”; and**

11 **(C) by striking subparagraph (F);**
12 **(3) by striking subsection (d);**

13 **(4) by redesignating subsections (e)**
14 **through (i) as subsections (d) through (h),**
15 **respectively;**

16 **(5) in subsection (d), as redesignated**
17 **by paragraph (4), by amending paragraph**
18 **(2) to read as follows:**

19 **“(2) Extensions of an order issued under**
20 **this title may be granted on the same basis as**
21 **an original order upon an application for an**
22 **extension and new findings made in the same**
23 **manner as required for an original order and**
24 **may be for a period not to exceed one year.”.**

1 **(6) in subsection (e), as redesignated**
2 **by paragraph (4), to read as follows:**

3 **“(e) Notwithstanding any other provision**
4 **of this title, an official appointed by the Presi-**
5 **dent with the advice and consent of the Sen-**
6 **ate that is designated by the President to au-**
7 **thorize electronic surveillance may authorize**
8 **the emergency employment of electronic sur-**
9 **veillance if—**

10 **“(1) such official determines that an**
11 **emergency situation exists with respect**
12 **to the employment of electronic surveil-**
13 **lance to obtain foreign intelligence infor-**
14 **mation before an order authorizing such**
15 **surveillance can with due diligence be**
16 **obtained;**

17 **“(2) such official determines that the**
18 **factual basis for issuance of an order**
19 **under this title to approve such elec-**
20 **tronic surveillance exists;**

21 **“(3) such official informs the Attorney**
22 **General of such electronic surveillance;**

23 **“(4) the Attorney General or a des-**
24 **ignee of the Attorney General informs a**
25 **judge having jurisdiction under section**

1 **103 of such electronic surveillance as**
2 **soon as practicable, but in no case more**
3 **than 7 days after the date on which such**
4 **electronic surveillance is authorized;**

5 **“(5) an application in accordance**
6 **with this title is made to such judge or**
7 **another judge having jurisdiction under**
8 **section 103 as soon as practicable, but**
9 **not more than 7 days after such elec-**
10 **tronic surveillance is authorized;**

11 **“(6) such official requires that the**
12 **minimization procedures required by this**
13 **title for the issuance of a judicial order**
14 **be followed.**

15 **In the absence of a judicial order approving**
16 **such electronic surveillance, the surveillance**
17 **shall terminate when the information sought**
18 **is obtained, when the application for the**
19 **order is denied, or after the expiration of 7**
20 **days from the time of authorization by such**
21 **official, whichever is earliest. In the event**
22 **that the application for approval submitted**
23 **pursuant to paragraph (5) is denied, or in any**
24 **other case where the electronic surveillance**
25 **is terminated and no order is issued approv-**

1 **ing the surveillance, no information obtained**
2 **or evidence derived from such surveillance**
3 **shall be received in evidence or otherwise dis-**
4 **closed in any trial, hearing, or other pro-**
5 **ceeding in or before any court, grand jury, de-**
6 **partment, office, agency, regulatory body, leg-**
7 **islative committee, or other authority of the**
8 **United States, a State, or political subdivision**
9 **thereof, and no information concerning any**
10 **United States person acquired from such sur-**
11 **veillance shall subsequently be used or dis-**
12 **closed in any other manner by Federal offi-**
13 **cers or employees without the consent of such**
14 **person, except with the approval of the Attor-**
15 **ney General if the information indicates a**
16 **threat of death or serious bodily harm to any**
17 **person. A denial of the application made pur-**
18 **suant to paragraph (5) may be reviewed as**
19 **provided in section 103.”;**

20 **(7) in subsection (h), as redesignated**
21 **by paragraph (4)—**

22 **(A) by striking “a wire or” and in-**
23 **serting “an”; and**

24 **(B) by striking “physical search”**
25 **and inserting “physical search or in**

1 **response to a certification by the At-**
2 **torney General or a designee of the**
3 **Attorney General seeking informa-**
4 **tion, facilities, or technical assistance**
5 **from such person under section**
6 **102B”; and**

7 **(8) by adding at the end the following**
8 **new subsection:**

9 **“(i) In any case in which the Government**
10 **makes an application to a judge under this**
11 **title to conduct electronic surveillance involv-**
12 **ing communications and the judge grants**
13 **such application, the judge shall also author-**
14 **ize the installation and use of pen registers**
15 **and trap and trace devices to acquire dialing,**
16 **routing, addressing, and signaling informa-**
17 **tion related to such communications and such**
18 **dialing, routing, addressing, and signaling in-**
19 **formation shall not be subject to minimiza-**
20 **tion procedures.”.**

21 **SEC. 8. USE OF INFORMATION.**

22 **Section 106(i) of the Foreign Intelligence**
23 **Surveillance Act of 1978 (50 U.S.C. 1806(i)) is**
24 **amended—**

1 (1) by striking “radio communication”
2 and inserting “communication”; and

3 (2) by striking “contents indicates”
4 and inserting “contents contain signifi-
5 cant foreign intelligence information or
6 indicate”.

7 SEC. 9. CONGRESSIONAL OVERSIGHT.

8 (a) ELECTRONIC SURVEILLANCE UNDER
9 FISA.—Section 108 of the Foreign Intelligence
10 Surveillance Act of 1978 (50 U.S.C. 1808) is
11 amended—

12 (1) in subsection (a)(1), by inserting
13 “each member of” before “the House Per-
14 manent Select Committee on Intel-
15 ligence”; and

16 (2) in subsection (a)(2)—

17 (A) in subparagraph (B), by strik-
18 ing “and” at the end;

19 (B) in subparagraph (C), by strik-
20 ing the period and inserting “; and”;
21 and

22 (C) by adding at the end the fol-
23 lowing new subparagraph:

1 “(D) the authority under which
2 the electronic surveillance is con-
3 ducted.”; and

4 (3) in subsection (a), by adding at the
5 end the following new paragraph:

6 “(3) Each report submitted under this
7 subsection shall include reports on elec-
8 tronic surveillance conducted without a
9 court order.”.

10 (b) INTELLIGENCE ACTIVITIES.—Section 501
11 of the National Security Act of 1947 (50 U.S.C.
12 413) is amended—

13 (1) in subsection (a)(1), by inserting
14 “each member of” before “the congres-
15 sional intelligence committees”; and

16 (2) in subsection (b), by inserting
17 “each member of” before “the congres-
18 sional intelligence committees”.

19 SEC. 10. INTERNATIONAL MOVEMENT OF TARGETS.

20 (a) ELECTRONIC SURVEILLANCE.—Section
21 105(d) of the Foreign Intelligence Surveil-
22 lance Act of 1978 (50 U.S.C. 1805(d)), as reded-
23 igned by section 7(4), is amended by adding
24 at the end the following new paragraph:

1 **“(4) An order issued under this section**
2 **shall remain in force during the authorized**
3 **period of surveillance notwithstanding the**
4 **absence of the target from the United States,**
5 **unless the Government files a motion to extin-**
6 **guish the order and the court grants the mo-**
7 **tion.”.**

8 **(b) PHYSICAL SEARCH.—Section 304(d) of**
9 **the Foreign Intelligence Surveillance Act of**
10 **1978 (50 U.S.C. 1824(d)) is amended by adding**
11 **at the end the following new paragraph:**

12 **“(4) An order issued under this section**
13 **shall remain in force during the authorized**
14 **period of surveillance notwithstanding the**
15 **absence of the target from the United States,**
16 **unless the Government files a motion to extin-**
17 **guish the order and the court grants the mo-**
18 **tion.”.**

19 **SEC. 11. COMPLIANCE WITH COURT ORDERS AND**
20 **ANTITERRORISM PROGRAMS.**

21 **(a) IN GENERAL.—Notwithstanding any**
22 **other provision of law, and in addition to the**
23 **immunities, privileges, and defenses provided**
24 **by any other provision of law, no action shall**
25 **lie or be maintained in any court, and no pen-**

1 alty, sanction, or other form of remedy or re-
2 lief shall be imposed by any court or any
3 other body, against any person for an activity
4 arising from or relating to any alleged intel-
5 ligence program involving electronic surveil-
6 lance that the Attorney General or a designee
7 of the Attorney General certifies, in a manner
8 consistent with the protection of State se-
9 crets, is, was, or would be intended to protect
10 the United States from a terrorist attack. This
11 section shall apply to all actions or pro-
12 ceedings pending on or after the effective
13 date of this Act.

14 (b) JURISDICTION.—Any action or claim de-
15 scribed in subsection (a) that is brought in a
16 State court shall be deemed to arise under the
17 Constitution and laws of the United States
18 and shall be removable pursuant to section
19 1441 of title 28, United States Code.

20 (c) DEFINITIONS.—In this section:

21 (1) The term “electronic surveillance”
22 has the meaning given the term in sec-
23 tion 101(f) of the Foreign Intelligence
24 Surveillance Act of 1978 (50 U.S.C.

1 **1801(f) on the day before the date of the**
2 **enactment of this Act.**

3 **(2) The term “person” has the mean-**
4 **ing given the term in section 2510(6) of**
5 **title 18, United States Code.**

6 **SEC. 12. REPORT ON MINIMIZATION PROCEDURES.**

7 **(a) REPORT.—Not later than two years**
8 **after the date of the enactment of this Act,**
9 **and annually thereafter until December 31,**
10 **2009, the Director of the National Security**
11 **Agency, in consultation with the Director of**
12 **National Intelligence and the Attorney Gen-**
13 **eral, shall submit to the Permanent Select**
14 **Committee on Intelligence of the House of**
15 **Representatives and the Select Committee on**
16 **Intelligence of the Senate a report on the ef-**
17 **fectiveness and use of minimization proce-**
18 **dures applied to information concerning**
19 **United States persons acquired by means that**
20 **were considered electronic surveillance as**
21 **that term was defined by section 101(f) of the**
22 **Foreign Intelligence Surveillance Act of 1978**
23 **(50 U.S.C. 1801(f) on the day before the date**
24 **of the enactment of this Act but no longer con-**

1 **stitutes electronic surveillance as of the effec-**
2 **tive date of this Act.**

3 **(b) REQUIREMENTS.—A report submitted**
4 **under subsection (a) shall include—**

5 **(1) a description of the implementa-**
6 **tion, during the course of communica-**
7 **tions intelligence activities conducted by**
8 **the National Security Agency, of proce-**
9 **dures established to minimize the acqui-**
10 **sition, retention, and dissemination of**
11 **nonpublicly available information con-**
12 **cerning United States persons;**

13 **(2) the number of significant viola-**
14 **tions, if any, of such minimization proce-**
15 **dures during the 18 months following the**
16 **effective date of this Act; and**

17 **(3) summary descriptions of such vio-**
18 **lations.**

19 **(c) RETENTION OF INFORMATION.—Informa-**
20 **tion concerning United States persons shall**
21 **not be retained solely for the purpose of com-**
22 **plying with the reporting requirements of this**
23 **section.**

24 **(d) MINIMIZATION PROCEDURES DEFINED.—**
25 **In this section, the term “minimization proce-**

1 **dures” has the meaning given the term in sec-**
2 **tion 101(h) of the Foreign Intelligence Sur-**
3 **veillance Act of 1978 (50 U.S.C. 1801(h)).**

4 **SEC. 13. TECHNICAL AND CONFORMING AMENDMENTS.**

5 **The Foreign Intelligence Surveillance Act**
6 **of 1978 (50 U.S.C. 1801 et seq.) is further**
7 **amended—**

8 **(1) in section 101(h)(4), by striking**
9 **“approved pursuant to section 102(a),”**
10 **and inserting “authorized pursuant to**
11 **section 102 or any acquisition authorized**
12 **pursuant to section 102A”;**

13 **(2) in section 105(a)(4), as redesign-**
14 **ated by section 7(1)(B)—**

15 **(A) by striking “104(a)(7)(E)” and**
16 **inserting “104(a)(6)(D)”;** and

17 **(B) by striking “104(d)” and in-**
18 **serting “104(c)”;**

19 **(3) in section 106—**

20 **(A) in subsection (j) in the matter**
21 **preceding paragraph (1), by striking**
22 **“105(e)” and inserting “105(d)”;** and

23 **(B) in subsection (k)(2), by strik-**
24 **ing “104(a)(7)(B)” and inserting**
25 **“104(a)(6)(B)”;** and

1 **(4) in section 108(a)(2)(C), by striking**
2 **“105(f)” and inserting “105(e)”.**

Union Calendar No. 410

109TH CONGRESS
2^D SESSION

H. R. 5825

[Report No. 109-680, Parts I and II]

A BILL

To update the Foreign Intelligence Surveillance Act
of 1978.

SEPTEMBER 25, 2006

Reported from the Committee on the Judiciary with an
amendment, committed to the Committee of the Whole
House on the State of the Union, and ordered to be
printed