

109TH CONGRESS
2^D SESSION

H. R. 5825

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

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
8 (b)(1) of section 101 of the Foreign Intelligence Surveil-
9 lance Act of 1978 (50 U.S.C. 1801) is amended—

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

3 (2) by adding at the end the following new sub-
4 paragraph:

5 “(D) possesses or is reasonably expected to
6 transmit or receive foreign intelligence informa-
7 tion while in the United States; or”.

8 (b) ELECTRONIC SURVEILLANCE.—Subsection (f) of
9 such section is amended to read as follows:

10 “(f) ‘Electronic surveillance’ means—

11 “(1) the installation or use of a surveillance de-
12 vice for the intentional collection of information re-
13 lating to a person who is reasonably believed to be
14 in the United States by intentionally targeting that
15 person, under circumstances in which the person has
16 a reasonable expectation of privacy and a warrant
17 would be required for law enforcement purposes; or

18 “(2) the intentional acquisition of the contents
19 of any communication, without the consent of a
20 party to the communication, under circumstances in
21 which a person has a reasonable expectation of pri-
22 vacy and a warrant would be required for law en-
23 forcement purposes, if both the sender and all in-
24 tended recipients are located within the United
25 States.”.

1 (c) MINIMIZATION PROCEDURES.—Subsection (h) of
2 such section is amended—

3 (1) in paragraph (2), by striking “importance;”
4 and inserting “importance; and”;

5 (2) in paragraph (3), by striking “; and” and
6 inserting “.”; and

7 (3) by striking paragraph (4).

8 (d) WIRE COMMUNICATION AND SURVEILLANCE DE-
9 VICE.—Subsection (l) of such section is amended to read
10 as follows:

11 “(l) ‘Surveillance device’ is a device that allows sur-
12 veillance by the Federal Government, but excludes any de-
13 vice that extracts or analyzes information from data that
14 has already been acquired by the Federal Government by
15 lawful means.”.

16 (e) PHYSICAL SEARCH.—Section 301(5) of the For-
17 eign Intelligence Surveillance Act of 1978 (50 U.S.C.
18 1821(5)) is amended by striking “Act, or (B)” and insert-
19 ing “Act, (B) activities described in section 102(b) of this
20 Act, or (C)”.

21 **SEC. 3. AUTHORIZATION FOR ELECTRONIC SURVEILLANCE**
22 **FOR FOREIGN INTELLIGENCE PURPOSES.**

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

25 (1) in subsection (a)(1)—

1 (A) in subparagraph (A)—

2 (i) in clause (i), by striking “trans-
3 mitted by means of” and all that follows
4 and inserting “of a foreign power, as de-
5 fined in paragraph (1), (2), or (3) of sec-
6 tion 101(a), or an agent of a foreign
7 power, as defined in section 101(b)(1); or”;
8 and

9 (ii) in clause (ii), by striking “or (3);”
10 and inserting “or (3); and”;

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

12 (C) by redesignating subparagraph (C) as
13 subparagraph (B);

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

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

16 “(b)(1) The Attorney General may require, by writ-
17 ten certification, any person with authorized access to
18 electronic communications or equipment used to transmit
19 or store electronic communications to provide information,
20 facilities, or technical assistance—

21 “(A) necessary to accomplish electronic surveil-
22 lance authorized under subsection (a); or

23 “(B) to an official designated by the President
24 for a period of up to one year, provided the Attorney
25 General certifies in writing, under oath, that the

1 provision of the information, facilities, or technical
2 assistance does not constitute electronic surveillance.

3 “(2) The Attorney General may require a person pro-
4 viding information, facilities, or technical assistance under
5 paragraph (1) to—

6 “(A) provide the information, facilities, or tech-
7 nical assistance in such a manner as will protect the
8 secrecy of the provision of such information, facili-
9 ties, or technical assistance and produce a minimum
10 of interference with the services that such person is
11 providing the customers of such person; and

12 “(B) maintain under security procedures ap-
13 proved by the Attorney General and the Director of
14 National Intelligence any records concerning such
15 electronic surveillance or the information, facilities,
16 or technical assistance provided which such person
17 wishes to retain.

18 “(3) The Government shall compensate, at the pre-
19 vailing rate, a person for providing information, facilities,
20 or technical assistance pursuant to paragraph (1).”; and

21 (4) by adding at the end the following new sub-
22 section:

23 “(c) Notwithstanding any other provision of law, the
24 President may designate an official who may authorize
25 electronic surveillance of international radio communica-

1 tions of a diplomat or diplomatic mission or post of the
2 government of a foreign country in the United States in
3 accordance with procedures approved by the Attorney
4 General.”.

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

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

8 (1) in subsection (a)—

9 (A) by striking paragraphs (6), (9), and
10 (11);

11 (B) by redesignating paragraphs (7), (8),
12 and (10) as paragraphs (6), (7), and (8), re-
13 spectively;

14 (C) in paragraph (6), as redesignated by
15 subparagraph (B)—

16 (i) in the matter preceding subpara-
17 graph (A), by striking “or officials des-
18 ignated” and all that follows through “con-
19 sent of the Senate” and inserting “des-
20 ignated by the President to authorize elec-
21 tronic surveillance for foreign intelligence
22 purposes”;

23 (ii) in subparagraph (C), by striking
24 “techniques;” and inserting “techniques;
25 and”;

1 (iii) by striking subparagraphs (D)
2 and (E) and inserting the following:

3 “(D) including a statement of the basis for
4 the certification that the information sought is
5 the type of foreign intelligence information des-
6 ignated;”;

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

9 (i) by striking “a statement of the
10 means by which the surveillance will be ef-
11 fected and”; and

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

13 (E) in paragraph (8), as redesignated by
14 subparagraph (B), by striking “; and” and in-
15 serting a period;

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

17 (3) by redesignating subsections (c), (d), and
18 (e) as subsections (b), (c), and (d), respectively.

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

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

22 (1) in subsection (a)—

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

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

4 (2) in subsection (c)(1)—

5 (A) in subparagraph (B), by striking
6 “known;” and inserting “known; and”;

7 (B) by striking subparagraphs (C), (D),
8 and (F);

9 (C) by redesignating subparagraph (E) as
10 subparagraph (C); and

11 (D) in subparagraph (C), as redesignated
12 by subparagraph (C), by striking “approved;
13 and” and inserting “approved.”;

14 (3) by striking subsection (d);

15 (4) by redesignating subsections (e), (f), (g),
16 (h), and (i) as subsections (d), (e), (f), (g), and (h),
17 respectively;

18 (5) in subsection (d), as redesignated by para-
19 graph (4)—

20 (A) in paragraph (1), by striking “for the
21 period necessary” and all that follows and in-
22 sert “for a period not to exceed one year.”; and

23 (B) in paragraph (2), by striking “original
24 order, except that” and all that follows and in-

1 serting “original order for a period not to ex-
2 ceed one year.”;

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

5 “(e) Notwithstanding any other provision of this title,
6 the Attorney General may authorize the emergency em-
7 ployment of electronic surveillance if the Attorney Gen-
8 eral—

9 “(1) determines that an emergency situation ex-
10 ists with respect to the employment of electronic
11 surveillance to obtain foreign intelligence informa-
12 tion before an order authorizing such surveillance
13 can with due diligence be obtained;

14 “(2) determines that the factual basis for
15 issuance of an order under this title to approve such
16 surveillance exists;

17 “(3) informs a judge having jurisdiction under
18 section 103 at the time of such authorization that
19 the decision has been made to employ emergency
20 electronic surveillance; and

21 “(4) makes an application in accordance with
22 this title to a judge having jurisdiction under section
23 103 as soon as practicable, but not more than 120
24 hours after the official authorizes such surveillance.

1 If the Attorney General authorizes such emergency em-
2 ployment of electronic surveillance, the Attorney General
3 shall require that the minimization procedures required by
4 this title for the issuance of a judicial order be followed.
5 In the absence of a judicial order approving such electronic
6 surveillance, the surveillance shall terminate when the in-
7 formation sought is obtained, when the application for the
8 order is denied, or after the expiration of 120 hours from
9 the time of authorization by the Attorney General, which-
10 ever is earliest. In the event that such application for ap-
11 proval is denied, or in any other case where the electronic
12 surveillance is terminated and no order is issued approving
13 the surveillance, no information obtained or evidence de-
14 rived from such surveillance shall be received in evidence
15 or otherwise disclosed in any trial, hearing, or other pro-
16 ceeding in or before any court, grand jury, department,
17 office, agency, regulatory body, legislative committee, or
18 other authority of the United States, a State, or political
19 subdivision thereof, and no information concerning any
20 United States person acquired from such surveillance shall
21 subsequently be used or disclosed in any other manner by
22 Federal officers or employees without the consent of such
23 person, except with the approval of the Attorney General
24 if the information indicates a threat of death or serious
25 bodily harm to any person. A denial of the application

1 made under this subsection may be reviewed as provided
2 in section 103.”; and

3 (7) in subsection (h), as redesignated by para-
4 graph (4)—

5 (A) by striking “in accordance with a court
6 order” and all that follows and inserting “—”;
7 and

8 (B) by adding at the end the following new
9 paragraphs:

10 “(1) in accordance with a court order or re-
11 quest for emergency assistance under this Act for
12 electronic surveillance or physical search; or

13 “(2) in response to a certification by the Attor-
14 ney General or a designee of the Attorney General
15 seeking information, facilities, or technical assistance
16 from such person that does not constitute electronic
17 surveillance.”.

18 **SEC. 6. USE OF INFORMATION.**

19 Section 106(i) of the Foreign Intelligence Surveil-
20 lance Act of 1978 (50 U.S.C. 1806(i)) is amended—

21 (1) by striking “radio communication” and in-
22 serting “communication”; and

23 (2) by striking “contents indicates” and insert-
24 ing “contents contain significant foreign intelligence
25 information or indicate”.

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

2 (a) **ELECTRONIC SURVEILLANCE.**—Section 111 of
3 the Foreign Intelligence Surveillance Act of 1978 (50
4 U.S.C. 1811) is amended by striking “for a period not
5 to exceed” and all that follows and inserting the following:
6 “for a period not to exceed 60 days following an armed
7 attack against the territory of the United States if the
8 President submits to each member of the congressional in-
9 telligence committee notification of the authorization
10 under this section.”.

11 (b) **PHYSICAL SEARCH.**—Section 309 of such Act (50
12 U.S.C. 1829) is amended by striking “for a period not
13 to exceed” and all that follows and inserting the following:
14 “for a period not to exceed 60 days following an armed
15 attack against the territory of the United States if the
16 President submits to each member of the congressional in-
17 telligence committee notification of the authorization
18 under this section.”.

19 **SEC. 8. AUTHORIZATION OF ELECTRONIC SURVEILLANCE**
20 **AFTER A TERRORIST ATTACK.**

21 The Foreign Intelligence Surveillance Act of 1978
22 (50 U.S.C. 1801 et seq.) is further amended—

23 (1) by adding at the end of title I the following
24 new section:

1 “AUTHORIZATION FOLLOWING A TERRORIST ATTACK
 2 UPON THE UNITED STATES

3 “SEC. 112. (a) IN GENERAL.—Notwithstanding any
 4 other provision of law, but subject to subsection (d), the
 5 President, acting through the Attorney General, may au-
 6 thorize electronic surveillance without an order under this
 7 title to acquire foreign intelligence information for a pe-
 8 riod not to exceed 45 days following a terrorist attack
 9 against the United States if the President submits a noti-
 10 fication to each member of the congressional intelligence
 11 committees and a judge having jurisdiction under section
 12 103 that—

13 “(1) the United States has been the subject of
 14 a terrorist attack; and

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

18 “(b) SUBSEQUENT CERTIFICATIONS.—Subject to
 19 subsection (d), at the end of the 45-day period described
 20 in subsection (a), and every 45 days thereafter, the Presi-
 21 dent may submit a subsequent certification to each mem-
 22 ber of the congressional intelligence committees and a
 23 judge having jurisdiction under section 103 that the cir-
 24 cumstances of the terrorist attack for which the President
 25 submitted a certification under subsection (a) require the

1 President to continue the authorization of electronic sur-
2 veillance under this section for an additional 45 days. The
3 President shall be authorized to conduct electronic surveil-
4 lance under this section for an additional 45 days after
5 each such subsequent certification.

6 “(c) ELECTRONIC SURVEILLANCE OF INDIVID-
7 UALS.—The President, or an official designated by the
8 President to authorize electronic surveillance, may only
9 conduct electronic surveillance of a person under this sub-
10 section when the President or such official determines
11 that—

12 “(1) there is a reasonable belief that such per-
13 son is communicating with a terrorist organization
14 or an affiliate of a terrorist organization that is rea-
15 sonably believed to be responsible for the terrorist
16 attack; and

17 “(2) the information obtained from the elec-
18 tronic surveillance may be foreign intelligence infor-
19 mation.

20 “(d) MINIMIZATION PROCEDURES.—The President
21 may not authorize electronic surveillance under this sec-
22 tion until the Attorney General approves minimization
23 procedures for electronic surveillance conducted under this
24 section.

1 “(e) UNITED STATES PERSONS.—Notwithstanding
2 subsection (b), the President may not authorize electronic
3 surveillance of a United States person under this section
4 without an order under this title for a period of more than
5 90 days unless the President, acting through the Attorney
6 General, submits a certification to each member of the
7 congressional intelligence committees that—

8 “(1) the continued electronic surveillance of the
9 United States person is vital to the national security
10 of the United States;

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

14 “(3) describes the reasons for believing the
15 United States person is affiliated with or in commu-
16 nication with a terrorist organization or affiliate of
17 a terrorist organization that is reasonably believed to
18 be responsible for the terrorist attack; and

19 “(4) describes the foreign intelligence informa-
20 tion derived from the electronic surveillance con-
21 ducted under this section.

22 “(f) USE OF INFORMATION.—Information obtained
23 pursuant to electronic surveillance under this subsection
24 may be used to obtain an order authorizing subsequent
25 electronic surveillance under this title.

1 “(g) REPORTS.—Not later than 14 days after the
 2 date on which the President submits a certification under
 3 subsection (a), and every 30 days thereafter until the
 4 President ceases to authorize electronic surveillance under
 5 subsection (a) or (b), the President shall submit to each
 6 member of the congressional intelligence committees a re-
 7 port on the electronic surveillance conducted under this
 8 section, including—

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

11 “(2) the basis for believing that each target is
 12 in communication with a terrorist organization or an
 13 affiliate of a terrorist organization.

14 “(h) CONGRESSIONAL INTELLIGENCE COMMITTEES
 15 DEFINED.—In this section, the term ‘congressional intel-
 16 ligence committees’ means the Permanent Select Com-
 17 mittee on Intelligence of the House of Representatives and
 18 the Select Committee on Intelligence of the Senate.”; and

19 (2) in the table of contents in the first section,
 20 by inserting after the item relating to section 111
 21 the following new item:

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

22 **SEC. 9. CONGRESSIONAL OVERSIGHT.**

23 (a) ELECTRONIC SURVEILLANCE UNDER FISA.—
 24 Section 108 of the Foreign Intelligence Surveillance Act
 25 of 1978 (50 U.S.C. 1808) is amended—

1 (1) in subsection (a)(1), by inserting “each
2 member of” before “the House Permanent Select
3 Committee on Intelligence”; and

4 (2) in subsection (a)(2)—

5 (A) in subparagraph (B), by striking
6 “and” at the end;

7 (B) in subparagraph (C), by striking the
8 final period and inserting “; and”; and

9 (C) by adding at the end the following new
10 subparagraph:

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

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

15 “(3) Each report submitted under this sub-
16 section shall include reports on electronic surveil-
17 lance conducted without a court order.”.

18 (b) INTELLIGENCE ACTIVITIES.—Section 501 of the
19 National Security Act of 1947 (50 U.S.C. 413) is amend-
20 ed—

21 (1) in subsection (a)(1), by inserting “each
22 member of” before “the congressional intelligence
23 committees”; and

1 (2) in subsection (b), by inserting “each mem-
2 ber of” before “the congressional intelligence com-
3 mittees”.

4 **SEC. 10. TECHNICAL AND CONFORMING AMENDMENTS.**

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

7 (1) in section 102(a)(3)(A), by striking
8 “101(h)(4) and”;

9 (2) in section 105(a)(5)—

10 (A) by striking “104(a)(7)(E)” and insert-
11 ing “104(a)(6)(D)”; and

12 (B) by striking “104(d)” and inserting
13 “104(c)”;

14 (3) in section 106—

15 (A) in subsection (j) in the matter pre-
16 ceding paragraph (1), by striking “105(e)” and
17 inserting “105(d)”; and

18 (B) in subsection (k)(2), by striking
19 “104(a)(7)(B)” and inserting “104(a)(6)(B)”;
20 and

21 (4) in section 108(a)(2)(C), by striking
22 “105(f)” and inserting “105(e)”.

○