

109TH CONGRESS
1ST SESSION

S. 693

To provide for judicial review of national security letters issued to wire and electronic communications service providers.

IN THE SENATE OF THE UNITED STATES

APRIL 4, 2005

Mr. CORNYN introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To provide for judicial review of national security letters issued to wire and electronic communications service providers.

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 Communica-
5 tions Privacy Judicial Review and Improvement Act of
6 2005”.

7 **SEC. 2. JUDICIAL REVIEW.**

8 (a) IN GENERAL.—Section 2709(a) of title 18,
9 United States Code, is amended—

1 (1) by striking “A wire or electronic commu-
2 nication service provider” and inserting the fol-
3 lowing:

4 “(1) IN GENERAL.—A wire or electronic com-
5 munication service provider”; and

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

7 “(2) JUDICIAL REVIEW.—A wire or electronic
8 communication service provider who receives a re-
9 quest under subsection (b) may, at any time, seek a
10 court order from an appropriate United States dis-
11 trict court to modify or set aside the request. Any
12 such motion shall state the grounds for challenging
13 the request with particularity. The court may modify
14 or set aside the request if compliance would be un-
15 reasonable or oppressive.”.

16 (b) NONDISCLOSURE.—Section 2709(c) of title 18,
17 United States Code, is amended—

18 (1) by striking “No wire or electronic commu-
19 nication service provider” and inserting the fol-
20 lowing:

21 “(1) IN GENERAL.—No wire or electronic com-
22 munication service provider”; and

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

24 “(2) JUDICIAL REVIEW.—A wire or electronic
25 communication service provider who receives a re-

1 quest under subsection (b) may, at any time, seek a
2 court order from an appropriate United States dis-
3 trict court challenging the nondisclosure requirement
4 under paragraph (1). Any such motion shall state
5 the grounds for challenging the nondisclosure re-
6 quirement with particularity.

7 “(3) STANDARD OF REVIEW.—The court may
8 modify or set aside such a nondisclosure requirement
9 if there is no reason to believe that disclosure may
10 endanger the national security of the United States,
11 interfere with a criminal, counterterrorism, or coun-
12 terintelligence investigation, interfere with diplo-
13 matic relations, or endanger the life or physical safe-
14 ty of any person. In reviewing a nondisclosure re-
15 quirement, the certification by the Government that
16 the disclosure may endanger the national security of
17 the United States or interfere with diplomatic rela-
18 tions shall be treated as conclusive unless the court
19 finds that the certification was made in bad faith.”.

20 **SEC. 3. ENFORCEMENT OF NATIONAL SECURITY LETTERS.**

21 Section 2709(a) of title 18, United States Code, as
22 amended by section 2(a), is further amended by adding
23 at the end the following:

24 “(3) ENFORCEMENT OF REQUESTS.—The At-
25 torney General may seek enforcement of a request

1 under subsection (b) in an appropriate United
2 States district court if a recipient refuses to comply
3 with the request.”.

4 **SEC. 4. DISCLOSURE OF INFORMATION.**

5 (a) SECURE PROCEEDINGS.—Section 2709 of title
6 18, United States Code, as amended by sections 2 and
7 3, is further amended—

8 (1) in subsection (a), by adding at the end the
9 following:

10 “(4) SECURE PROCEEDINGS.—The disclosure of
11 information in any proceedings under this subsection
12 may be limited consistent with the requirements of
13 the Classified Information Procedures Act (18
14 U.S.C. App).”; and

15 (2) in subsection (c), by adding at the end the
16 following:

17 “(4) SECURE PROCEEDINGS.—The disclosure of
18 information in any proceedings under this subsection
19 may be limited consistent with the requirements of
20 the Classified Information Procedures Act (18
21 U.S.C. App).”.

22 (b) DISCLOSURE TO NECESSARY PERSONS.—Section
23 2709(c)(1) of title 18, United States Code, as amended
24 by section 2(b)(1), is further amended—

1 (1) by inserting after “any person” the fol-
2 lowing: “, except for disclosure to an attorney to ob-
3 tain legal advice regarding the request or to persons
4 to whom disclosure is necessary in order to comply
5 with the request,”; and

6 (2) by adding at the end the following: “Any at-
7 torney or person whose assistance is necessary to
8 comply with the request who is notified of the re-
9 quest also shall not disclose to any person that the
10 Federal Bureau of Investigation has sought or ob-
11 tained access to information or records under this
12 section.”.

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