

113TH CONGRESS
1ST SESSION

H. R. 3557

To amend title 18, United States Code, to provide increased protections for consumer or subscriber password information, and to amend the Foreign Intelligence Surveillance Act of 1978 to provide that the Director of the Federal Bureau of Investigation may not access password information pursuant to an order under section 501 of that Act, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 20, 2013

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

A BILL

To amend title 18, United States Code, to provide increased protections for consumer or subscriber password information, and to amend the Foreign Intelligence Surveillance Act of 1978 to provide that the Director of the Federal Bureau of Investigation may not access password information pursuant to an order under section 501 of that Act, and for other purposes.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Reasonable Expecta-
3 tion of American Privacy Act of 2013” or the “REAP Act
4 of 2013”.

5 **SEC. 2. INCREASED PROTECTIONS RELATING TO VOL-**
6 **UNTARY DISCLOSURE OF PASSWORD INFOR-**
7 **MATION.**

8 Section 2702 of title 18, United States Code, is
9 amended—

10 (1) in subsection (a)—

11 (A) in the matter preceding paragraph (1),
12 by striking “subsection (b) or (c)” and insert-
13 ing “subsection (b), (c), or (d)”;

14 (B) in paragraph (2), by striking “and” at
15 the end;

16 (C) in paragraph (3)—

17 (i) by inserting after “(not including
18 the contents of communications covered by
19 paragraph (1) or (2)” the following: “, or
20 the password information covered by para-
21 graph (4)”;

22 (ii) by striking the period at the end
23 and inserting “; and”; and

24 (D) by inserting after paragraph (3) the
25 following:

1 “(4) a person or entity providing an electronic
2 communication service or a remote computing serv-
3 ice to the public shall not knowingly divulge to any
4 person or entity the password information pertaining
5 to a subscriber or customer of such service.”;

6 (2) in subsection (c), by inserting after “(not
7 including the contents of communications covered by
8 subsection (a)(1) or (2)” the following: “, or the
9 password information covered by subsection (a)(4)”;

10 (3) by redesignating subsection (d) as sub-
11 section (e);

12 (4) by inserting after subsection (c) the fol-
13 lowing:

14 “(d) EXCEPTIONS FOR DISCLOSURE OF PASSWORD
15 INFORMATION.—A provider described in subsection (a)
16 may divulge the password information pertaining to a sub-
17 scriber or customer of such service—

18 “(1) as otherwise authorized in 2703 of this
19 title;

20 “(2) with the lawful consent of the subscriber
21 or customer;

22 “(3) as may be necessarily incident to the ren-
23 dition of the service or to the protection of the rights
24 or property of the provider of that service;

1 “(4) to the National Center for Missing and
 2 Exploited Children, in connection with a report sub-
 3 mitted thereto under section 2258A; or

4 “(5) to a governmental entity, if the provider,
 5 in good faith, believes that an emergency involving
 6 danger of death or serious physical injury to any
 7 person requires disclosure without delay of password
 8 information relating to the emergency.”; and

9 (5) in subsection (e), as so redesignated, by in-
 10 serting after “subsection (b)(8)” each place it ap-
 11 pears, the following: “or (d)(5)”.

12 **SEC. 3. INCREASED PROTECTIONS RELATING TO RE-**
 13 **QUIRED DISCLOSURE OF CUSTOMER COMMU-**
 14 **NICATIONS AND PASSWORD INFORMATION.**

15 (a) IN GENERAL.—Section 2703 of title 18, United
 16 States Code, is amended—

17 (1) in subsection (a)—

18 (A) in the first sentence, by inserting after
 19 “A governmental entity may require the disclo-
 20 sure by a provider of electronic communication
 21 service” the following: “or remote computing
 22 service”;

23 (B) by striking “in an electronic commu-
 24 nications system for one hundred and eighty
 25 days or less”; and

1 (C) by striking the second sentence;

2 (2) by amending subsection (b) to read as fol-
3 lows:

4 “(b) PASSWORD INFORMATION.—A governmental en-
5 tity may require a provider of electronic communication
6 service or remote computing service to disclose the pass-
7 word information pertaining to a subscriber or customer
8 of such service only pursuant to a warrant issued using
9 the procedures described in the Federal Rules of Criminal
10 Procedure (or in the case of a State court, issued using
11 State warrant procedures) by a court of competent juris-
12 diction.”;

13 (3) in subsection (c)(1), by inserting after “(not
14 including the contents of communications” the fol-
15 lowing: “or the password information pertaining to
16 a subscriber or customer of such service”; and

17 (4) in subsection (d), by striking “subsection
18 (b) or (c)” and inserting “subsection (c)”.

19 (b) CONFORMING AMENDMENTS.—Chapter 121 of
20 title 18, United States Code, is amended—

21 (1) in section 2701(c)(3), by striking “, 2704,”;

22 (2) by repealing sections 2704 and 2705; and

23 (3) in section 2706, by striking “section 2702,
24 2703, or 2704” and inserting “section 2702 or
25 2703”.

1 **SEC. 4. PASSWORD INFORMATION EXCLUDED FROM TRANS-**
2 **ACTIONAL RECORDS AVAILABLE PURSUANT**
3 **TO A COUNTERINTELLIGENCE REQUEST.**

4 Section 2709 of title 18, United States Code, is
5 amended by inserting after subsection (f), the following:

6 “(g) PASSWORD INFORMATION.—A request made
7 pursuant to subsection (b) for electronic communication
8 transactional records may not include a request for the
9 password information pertaining to a subscriber or cus-
10 tomer of a provider of electronic communication service
11 or remote computing service.”.

12 **SEC. 5. PASSWORD INFORMATION EXCLUDED FROM TAN-**
13 **GIBLE THINGS REQUIRED TO BE PRODUCED**
14 **THROUGH A FISA COURT ORDER.**

15 Section 501(a)(1) of the Foreign Intelligence Surveil-
16 lance Act of 1978 (50 U.S.C. 1861(a)(1)) is amended by
17 inserting after “tangible things (including books, records,
18 papers, documents, and other items” the following: “, but
19 not including password information pertaining to a cus-
20 tomer or subscriber of a provider of electronic communica-
21 tion service or remote computing service (as such terms
22 are defined in section 2510 and 2711 of title 18, United
23 States Code, respectively)”.

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