

114TH CONGRESS
2D SESSION

S. 2604

To establish in the legislative branch the National Commission on Security and Technology Challenges.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 29, 2016

Mr. WARNER (for himself, Mr. GARDNER, Mr. SCHATZ, Ms. COLLINS, Mr. KING, Mrs. CAPITO, Mr. BENNET, and Mr. HELLER) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To establish in the legislative branch the National Commission on Security and Technology Challenges.

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Digital Security Commission Act of 2016”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Findings.

Sec. 3. Establishment of the National Commission on Security and Technology Challenges.

Sec. 4. Composition of Commission.

Sec. 5. Reports to Congress.
 Sec. 6. Powers of Commission.
 Sec. 7. Nonapplicability of Federal Advisory Committee Act.
 Sec. 8. Staff.
 Sec. 9. Meeting and hearings.
 Sec. 10. Termination.
 Sec. 11. Funding.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) Today, more than ever before, digital secu-
 4 rity and communications technology, national secu-
 5 rity, public safety, and counterterrorism are inex-
 6 tricably linked; indeed, digital security and commu-
 7 nications technology plays a critically important role
 8 in efforts to keep the United States and its citizens
 9 safe.

10 (2) Technological innovation and development is
 11 critical to the United States economy and the com-
 12 petitiveness of United States businesses in the global
 13 marketplace.

14 (3) Technology companies represent some of
 15 the largest employers in the United States and con-
 16 tribute significantly to the gross domestic product of
 17 the United States.

18 (4) The digital security and communications
 19 technology that the people of the United States use
 20 every day to protect communications and data, in-
 21 cluding encryption, is essential to the present and
 22 future of the United States.

1 (5) Digital security and communications tech-
2 nology helps to protect critical infrastructure, finan-
3 cial and banking systems, health records, online se-
4 curity, commercial transactions, proprietary enter-
5 prise and governmental information, and privacy and
6 civil liberties.

7 (6) The same technology that benefits the peo-
8 ple of the United States in so many ways also pre-
9 sents new challenges; in the wrong hands, digital se-
10 curity and communications technology can be used
11 to facilitate crime and terrorism and is used by mali-
12 cious actors, including drug traffickers, child preda-
13 tors, and cybercriminals, to carry out criminal activi-
14 ties.

15 (7) Terrorist and criminal organizations use
16 digital security and communications technology to
17 evade law enforcement and national security entities
18 when plotting attacks and recruiting supporters in
19 the United States and abroad, and law enforcement
20 and national security authorities have indicated that
21 the use of this technology presents unique challenges
22 to their ability to protect the public.

23 (8) Rapidly evolving technological advancements
24 drive the modern economy in many ways, but can

1 also create challenges for the law enforcement and
2 national security communities.

3 (9) Ensuring that analysts, law enforcement of-
4 ficers, and policymakers fully understand the dy-
5 namic digital landscape will become increasingly im-
6 portant in the coming decades.

7 (10) The United States currently faces the dif-
8 ficult question of how best to take advantage of the
9 security and privacy benefits digital security and
10 communications technology provides, while at the
11 same time ensuring that the dangers posed by the
12 use of digital security and communications tech-
13 nology by terrorists and criminals is mitigated; in-
14 deed, the challenge is to reconcile equally important
15 security interests.

16 (11) Despite years of dialogue between the
17 technology sector, law enforcement, national security
18 professionals, and others, no clear path forward has
19 been developed that would benefit each of the critical
20 security interests simultaneously; rather, there seems
21 to be a consensus among stakeholders, lawmakers,
22 and experts that the question of reconciling com-
23 peting security interests is one without an easy or
24 obvious answer.

1 (12) Leading experts and practitioners from the
 2 technology sector, cryptography, law enforcement,
 3 intelligence, the privacy and civil liberties commu-
 4 nity, global commerce and economics, and the na-
 5 tional security community must be brought together
 6 to examine these issues in a systematic, holistic way
 7 and determine the implications for national security,
 8 public safety, data security, privacy, innovation, and
 9 American competitiveness in the global marketplace.

10 (13) It is important to approach these issues
 11 with recognition that the communications market-
 12 place is increasingly global and marked by competi-
 13 tion from foreign firms and the growing prominence
 14 of international technical standards.

15 (14) With respect to competing security inter-
 16 ests, it is incumbent upon the United States to be
 17 forward thinking and to assess how it can and
 18 should adapt to the emerging challenges of the dig-
 19 ital world.

20 **SEC. 3. ESTABLISHMENT OF THE NATIONAL COMMISSION**
 21 **ON SECURITY AND TECHNOLOGY CHAL-**
 22 **LENGES.**

23 (a) IN GENERAL.—There is established in the legisla-
 24 tive branch a commission to be known as the “National

1 Commission on Security and Technology Challenges” (in
2 this Act referred to as the “Commission”).

3 (b) PURPOSES.—The purposes of the Commission are
4 the following:

5 (1) To bring together leading experts and prac-
6 titioners from the technology sector, cryptography,
7 law enforcement, intelligence, the privacy and civil
8 liberties community, global commerce and econom-
9 ics, and the national security community to examine
10 the intersection of security and digital security and
11 communications technology in a systematic, holistic
12 way, and determine the implications for national se-
13 curity, public safety, data security, privacy, innova-
14 tion, and American competitiveness in the global
15 marketplace.

16 (2) To submit to Congress a report, which shall
17 include, at a minimum, each of the following:

18 (A) An assessment of the issue of multiple
19 security interests in the digital world, including
20 public safety, privacy, national security, and
21 communications and data protection, both now
22 and throughout the next 10 years.

23 (B) A qualitative and quantitative assess-
24 ment of—

1 (i) the economic and commercial value
2 of cryptography and digital security and
3 communications technology to the economy
4 of the United States;

5 (ii) the benefits of cryptography and
6 digital security and communications tech-
7 nology to national security and crime pre-
8 vention;

9 (iii) the role of cryptography and dig-
10 ital security and communications tech-
11 nology in protecting the privacy and civil
12 liberties of the people of the United States;

13 (iv) the effects of the use of cryptog-
14 raphy and other digital security and com-
15 munications technology on Federal, State,
16 and local criminal investigations and
17 counterterrorism enterprises;

18 (v) the costs of weakening cryptog-
19 raphy and digital security and communica-
20 tions technology standards; and

21 (vi) international laws, standards, and
22 practices regarding legal access to commu-
23 nications and data protected by cryptog-
24 raphy and digital security and communica-
25 tions technology, and the potential effect

1 the development of disparate, and poten-
2 tially conflicting, laws, standards, and
3 practices might have.

4 (C) Recommendations for policy and prac-
5 tice, including, if the Commission determines
6 appropriate, recommendations for legislative
7 changes, regarding—

8 (i) methods to be used to allow the
9 United States Government and civil society
10 to take advantage of the benefits of digital
11 security and communications technology
12 while at the same time ensuring that the
13 danger posed by the abuse of digital secu-
14 rity and communications technology by ter-
15 rorists and criminals is sufficiently miti-
16 gated;

17 (ii) the tools, training, and resources
18 that could be used by law enforcement and
19 national security agencies to adapt to the
20 new realities of the digital landscape;

21 (iii) approaches to cooperation be-
22 tween the Government and the private sec-
23 tor to make it difficult for terrorists to use
24 digital security and communications tech-

nology to mobilize, facilitate, and operationalize attacks;

(iv) any revisions to the law applicable to wiretaps and warrants for digital data content necessary to better correspond with present and future innovations in communications and data security, while preserving privacy and market competitiveness;

(v) proposed changes to the procedures for obtaining and executing warrants to make such procedures more efficient and cost-effective for the Government, technology companies, and telecommunications and broadband service providers; and

(vi) any steps the United States could take to lead the development of international standards for requesting and obtaining digital evidence for criminal investigations and prosecutions from a foreign, sovereign State, including reforming the mutual legal assistance treaty process, while protecting civil liberties and due process.

1 **SEC. 4. COMPOSITION OF COMMISSION.**

2 (a) MEMBERS.—The Commission shall be composed
3 of 16 members, as follows:

4 (1) Eight members who shall be appointed by
5 the Speaker of the House and Senate majority lead-
6 er, one from each of the fields specified in subsection
7 (b). One such member shall serve as the chairman
8 of the Commission.

9 (2) Eight members who shall be appointed by
10 the minority leader in the House and the minority
11 leader in the Senate, one from each of the fields
12 specified in subsection (b). One such member shall
13 serve as the vice chairman of the Commission.

14 (3) One additional individual who shall be ap-
15 pointed by the President and who shall serve in an
16 ex officio capacity as a nonvoting member.

17 (b) QUALIFICATIONS.—In accordance with subsection
18 (a), individuals appointed to the Commission shall be
19 United States citizens with significant knowledge and pri-
20 mary experience relevant to the mission of the Commission
21 in one of the following fields:

22 (1) Cryptography.

23 (2) Global commerce and economics.

24 (3) Federal law enforcement.

25 (4) State and local law enforcement.

26 (5) Consumer-facing technology sector.

1 (6) Enterprise technology sector.

2 (7) The intelligence community (as such term is
3 defined in section 3(4) of the National Security Act
4 of 1947 (50 U.S.C. 3003(4))).

5 (8) The privacy and civil liberties community.

6 (c) DEADLINE FOR APPOINTMENT.—All members of
7 the Commission, with the exception of those serving in an
8 ex officio capacity, shall be appointed by not later than
9 30 days after the date of the enactment of this Act.

10 (d) VACANCIES.—Any vacancy in the Commission
11 shall not affect its powers, but shall be filled in the same
12 manner in which the original appointment was made.

13 (e) COMPENSATION.—While away from their homes
14 or regular places of business in the performance of services
15 for the Commission, members of the Commission shall be
16 allowed travel expenses, including per diem in lieu of sub-
17 sistence, in the same manner as persons employed inter-
18 mittently in the Government service are allowed expenses
19 under section 5703 of title 5, United States Code.

20 (f) MEETINGS; RULES OF PROCEDURE; QUORUM.—

21 (1) MEETINGS.—The Commission shall hold its
22 initial meeting and begin the operations of the Com-
23 mission by not later than 60 days after the date of
24 the enactment of this Act. After such initial meeting,

1 the Commission shall meet upon the call of the
2 chairman or a majority of its members.

3 (2) QUORUM.—A simple majority of members
4 of the Commission shall constitute a quorum.

5 (3) VOTING.—No proxy voting shall be allowed
6 on behalf of a member of the Commission.

7 (4) RULES OF PROCEDURE.—The Commission
8 may establish rules for the conduct of the Commis-
9 sion's business, if such rules are not inconsistent
10 with this Act or other applicable laws.

11 (5) NOTICE.—The chairman of the Commission
12 shall provide 5 business days advance notice for any
13 meeting or hearing of the Commission.

14 (g) SECURITY CLEARANCES.—The appropriate Fed-
15 eral agencies or departments shall cooperate with the
16 Commission in expeditiously providing appropriate secu-
17 rity clearances to Commission members, as may be re-
18 quested, to the extent possible pursuant to existing proce-
19 dures and requirements, except that no person shall be
20 provided with access to classified information without the
21 appropriate security clearances.

22 **SEC. 5. REPORTS TO CONGRESS.**

23 (a) INTERIM REPORTS.—Not later than six months
24 after its initial meeting, the Commission shall submit to
25 the Speaker of the House of Representatives, the Senate

1 majority leader, the House of Representatives minority
2 leader, the Senate minority leader, the Committee on
3 Homeland Security of the House of Representatives, the
4 Committee on Homeland Security and Governmental Af-
5 fairs of the Senate, the Committee on the Judiciary of the
6 House of Representatives, the Committee on the Judiciary
7 of the Senate, the Permanent Select Committee on Intel-
8 ligence of the House of Representatives, the Select Com-
9 mittee on Intelligence of the Senate, the Committee on
10 Energy and Commerce of the House of Representatives,
11 and the Committee on Commerce, Science, and Transpor-
12 tation of the Senate a report outlining the activities of the
13 Commission to date, a plan of action moving forward, and
14 any initial findings, that have been agreed to by at least
15 12 of the 16 voting members. Thereafter, the Commission
16 may submit to the congressional entities named above any
17 additional interim reports that have been agreed to by at
18 least 12 of the 16 members of the Commission.

19 (b) FINAL REPORT.—Not later than 12 months after
20 the date of the initial meeting of the Commission, the
21 Commission shall submit to the congressional entities list-
22 ed in subsection (a) a final report containing such find-
23 ings, conclusions, and recommendations as have been
24 agreed to by at least 12 of the 16 voting members of the
25 Commission.

1 (c) DISSENTING VIEWS.—The Rules of Procedure es-
 2 tablished in section 4(f)(4) of this Act shall include proce-
 3 dures by which any minority of commissioners may issue
 4 dissenting views, including dissenting findings and rec-
 5 ommendations.

6 (d) FORM.—Reports required under this paragraph
 7 shall be submitted in unclassified form but may include
 8 a classified annex.

9 **SEC. 6. POWERS OF COMMISSION.**

10 (a) HEARINGS AND INFORMATION.—The Commission
 11 may, for the purpose of carrying out this Act—

12 (1) hold such hearings and sit and act at such
 13 times and places, take such testimony, receive such
 14 information, and administer such oaths as the Com-
 15 mission or such designated subcommittee or des-
 16 ignated member may determine advisable; and

17 (2) subject to paragraph (1), require, by sub-
 18 poena or otherwise, the attendance and testimony of
 19 such witnesses and the production of such books,
 20 records, correspondence, memoranda, papers, and
 21 documents, as the Commission or such designated
 22 subcommittee or designated member may determine
 23 advisable.

24 (b) SUBPOENAS.—

25 (1) ISSUANCE.—

1 (A) IN GENERAL.—A subpoena for infor-
2 mation that is materially relevant to the duties
3 of the Commission may be issued under this
4 subsection only by the affirmative vote of at
5 least 12 of the 16 voting members of the Com-
6 mission.

7 (B) SIGNATURE.—Subject to subparagraph
8 (A), subpoenas issued under this subsection
9 may be issued under the signature of the chair-
10 man, and may be served by any person des-
11 ignated by the chairman or by a member des-
12 ignated by a majority of the Commission.

13 (2) ENFORCEMENT.—In the case of contumacy
14 or failure to obey a subpoena issued under para-
15 graph (1), the United States district court for the
16 judicial district in which the subpoenaed person re-
17 sides, is served, or may be found, or where the sub-
18 poena is returnable, may issue an order requiring
19 such person to appear at any designated place to
20 testify or to produce documentary or other evidence.
21 Any failure to obey the order of the court may be
22 punished by the court as contempt of that court.

23 (c) CONTRACTING.—The Commission may, to such
24 extent and in such amounts as are provided in appropria-

tion Acts, enter into contracts to enable the Commission to discharge its duties under this Act.

(d) INFORMATION FROM FEDERAL AGENCIES.—The Commission is authorized to secure directly from any executive department, bureau, agency, board, commission, office, independent establishment, or instrumentality of the Government, information, suggestions, estimates, and statistics for the purposes of this Act. The head of each such department, bureau, agency, board, commission, office, independent establishment, or instrumentality shall, to the extent authorized by law, furnish such information, suggestions, estimates, and statistics directly to the Commission, upon request made by the chairman and vice chairman, the chairman of any subcommittee created by a majority of the Commission, or any member designated by a majority of the Commission.

(e) RECEIPT, HANDLING, AND STORAGE OF INFORMATION.—Sensitive or proprietary information shall only be received, handled, and stored by members of the Commission and its staff consistent with all applicable statutes, regulations, and Executive orders.

(f) DISSEMINATION OF INFORMATION.—Information obtained by members and staff of the Commission may not be revealed or disseminated outside of the Commission absent approval from a majority of the members of the

1 Commission. In addition, any dissemination of information
2 must be consistent with all applicable statutes, regula-
3 tions, and Executive orders.

4 (g) ASSISTANCE FROM FEDERAL AGENCIES.—

5 (1) GENERAL SERVICES ADMINISTRATION.—

6 Upon request by the executive director of the Com-
7 mission, the Administrator of General Services shall
8 provide to the Commission on a reimbursable basis
9 administrative support and other services for the
10 performance of the Commission's functions under
11 this Act.

12 (2) OTHER DEPARTMENTS AND AGENCIES.—In
13 addition to the assistance prescribed in paragraph
14 (1), the heads of Federal departments and agencies
15 may provide to the Commission such services, funds,
16 facilities, staff, and other support services as such
17 heads may determine advisable and as may be au-
18 thorized by law.

19 (h) POSTAL SERVICES.—The Commission may use
20 the United States mail in the same manner and under the
21 same conditions as departments and agencies of the
22 United States.

1 **SEC. 7. NONAPPLICABILITY OF FEDERAL ADVISORY COM-**
2 **MITTEE ACT.**

3 The Federal Advisory Committee Act (5 U.S.C. App.)
4 shall not apply to the Commission.

5 **SEC. 8. STAFF.**

6 (a) APPOINTMENT.—The chairman and vice chair-
7 man shall jointly appoint and fix the compensation of an
8 executive director and of and such other personnel as may
9 be necessary to enable the Commission to carry out its
10 functions under this Act.

11 (b) SECURITY CLEARANCES.—The appropriate Fed-
12 eral agencies or departments shall cooperate with the
13 Commission in expeditiously providing appropriate secu-
14 rity clearances to Commission staff, as may be requested,
15 to the extent possible pursuant to existing procedures and
16 requirements, except that no person shall be provided with
17 access to classified information without the appropriate se-
18 curity clearances.

19 (c) DETAILEES.—Any Federal Government employee
20 may be detailed to the Commission on a reimbursable
21 basis, and such detailee shall retain without interruption
22 the rights, status, and privileges of his or her regular em-
23 ployment.

24 (d) EXPERT AND CONSULTANT SERVICES.—The
25 Commission is authorized to procure the services of ex-
26 perts and consultants in accordance with section 3109 of

1 title 5, United States Code, but at rates not to exceed the
 2 daily rate paid a person occupying a position level IV of
 3 the Executive Schedule under section 5315 of title 5,
 4 United States Code.

5 (e) VOLUNTEER SERVICES.—Notwithstanding sec-
 6 tion 1342 of title 31, United States Code, the Commission
 7 may accept and use voluntary and uncompensated services
 8 as the Commission determines necessary.

9 **SEC. 9. MEETING AND HEARINGS.**

10 (a) PUBLIC MEETINGS AND RELEASE OF PUBLIC
 11 VERSIONS OF REPORTS.—The Commission shall—

12 (1) hold public hearings and meetings to the ex-
 13 tent appropriate; and

14 (2) release public versions of the reports re-
 15 quired under section 5.

16 (b) PUBLIC HEARINGS.—Any public hearings of the
 17 Commission shall be conducted in a manner consistent
 18 with the protection of information provided to, or devel-
 19 oped for or by the Commission, as required by any applica-
 20 ble statute, regulation, or Executive order.

21 (c) PRIVATE HEARINGS.—Any private hearings of
 22 the Commission shall be conducted in a manner consistent
 23 with the protection of information provided to, or devel-
 24 oped for or by the Commission, as required by any applica-
 25 ble statute, regulation, or Executive order. To the extent

1 practicable, the Commission shall release summaries of
2 any official private hearings.

3 **SEC. 10. TERMINATION.**

4 (a) IN GENERAL.—The Commission, and all the au-
5 thorities of this Act, shall terminate on the date that is
6 60 days after the date on which the final report is sub-
7 mitted under section 5(b).

8 (b) ADMINISTRATIVE ACTIVITIES BEFORE TERMI-
9 NATION.—The Commission may use the 60-day period re-
10 ferred to in subsection (a) for the purpose of concluding
11 its activities, including providing testimony to committees
12 of Congress concerning its reports and disseminating the
13 final report under section 5(b).

14 **SEC. 11. FUNDING.**

15 (a) AUTHORIZATION OF APPROPRIATION.—No addi-
16 tional funds are authorized to be appropriated to carry
17 out this Act.

18 (b) DURATION OF AVAILABILITY.—Amounts made
19 available to the Commission under subsection (a) are au-
20 thorized to remain available until the termination of the
21 Commission in accordance with section 10.

22 (c) REMAINING FUNDS.—Any funds remaining upon
23 termination of the Commission under section 10 shall be

- 1 returned to the general fund of the Treasury for the pur-
- 2 pose of deficit reduction.

