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(Original Signature of Member)

109TH CONGRESS
2D SESSION

H. R.

To update the Foreign Intelligence Surveillance Act of 1978.

IN THE HOUSE OF REPRESENTATIVES

Mrs. WILSON of New Mexico (for herself and Mr. SENSENBRENNER) introduced the following bill; which was referred to the Committee on

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".

1 **SEC. 2. FISA DEFINITIONS.**

2 (a) **AGENT OF A FOREIGN POWER.**—Subsection

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

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

7 (2) by adding at the end the following new sub-
8 paragraph:

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

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

14 “(f) ‘Electronic surveillance’ means—

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

22 “(2) the intentional acquisition of the contents
23 of any communication, without the consent of a
24 party to the communication, under circumstances in
25 which a person has a reasonable expectation of pri-
26 vacy and a warrant would be required for law en-

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1 enforcement purposes, if both the sender and all in-
2 tended recipients are located within the United
3 States.”.

4 (c) MINIMIZATION PROCEDURES.—Subsection (h) of
5 such section is amended—

6 (1) in paragraph (2), by striking “importance;”
7 and inserting “importance; and”;

8 (2) in paragraph (3), by striking “; and” and
9 inserting “.”; and

10 (3) by striking paragraph (4).

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

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

19 (e) PHYSICAL SEARCH.—Section 301(5) of the For-
20 eign Intelligence Surveillance Act of 1978 (50 U.S.C.
21 1821(5)) is amended by striking “Act, or (B)” and insert-
22 ing “Act, (B) activities described in section 102(b) of this
23 Act, or (C)”.

1 SEC. 8. AUTHORIZATION FOR ELECTRONIC SURVEILLANCE
2 FOR FOREIGN INTELLIGENCE PURPOSES.

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

5 (1) in subsection (a)(1)—

6 (A) in subparagraph (A)—

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

13 (ii) in clause (ii), by striking “or (3);”
14 and inserting “or (3); and”;

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

16 (C) by redesignating subparagraph (C) as
17 subparagraph (B);

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

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

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

25 “(A) necessary to accomplish electronic
26 surveillance authorized under subsection (a); or

1 “(B) to an official designated by the Presi-
2 dent for a period of up to one year, provided
3 the Attorney General certifies in writing, under
4 oath, that the provision of the information, fa-
5 cilities, or technical assistance does not con-
6 stitute electronic surveillance.

7 “(2) The Attorney General may require a per-
8 son providing information, facilities, or technical as-
9 sistance under paragraph (1) to—

10 “(A) provide the information, facilities, or
11 technical assistance in such a manner as will
12 protect the secrecy of the provision of such in-
13 formation, facilities, or technical assistance and
14 produce a minimum of interference with the
15 services that such person is providing the cus-
16 tomers of such person; and

17 “(B) maintain under security procedures
18 approved by the Attorney General and the Di-
19 rector of National Intelligence any records con-
20 cerning such electronic surveillance or the infor-
21 mation, facilities, or technical assistance pro-
22 vided which such person wishes to retain.

23 “(3) The Government shall compensate, at the
24 prevailing rate, a person for providing information,

1 facilities, or technical assistance pursuant to para-
2 graph (1).”; and

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

5 “(c) Notwithstanding any other provision of law, the
6 President may designate an official who may authorize
7 electronic surveillance of international radio communica-
8 tions of a diplomat or diplomatic mission or post of the
9 government of a foreign country in the United States in
10 accordance with procedures approved by the Attorney
11 General.”.

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

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

15 (1) in subsection (a)—

16 (A) by striking paragraphs (6), (9), and
17 (11);

18 (B) by redesignating paragraphs (7), (8),
19 and (10) as paragraphs (6), (7), and (8), re-
20 spectively;

21 (C) in paragraph (6), as redesignated by
22 subparagraph (B)—

23 (i) in the matter preceding subpara-
24 graph (A), by striking “or officials des-
25 ignated” and all that follows through “con-

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- 1 sent of the Senate” and inserting “des-
- 2 igned by the President to authorize elec-
- 3 tronic surveillance for foreign intelligence
- 4 purposes”;
- 5 (ii) in subparagraph (C), by striking
- 6 “techniques;” and inserting “techniques;
- 7 and”;
- 8 (iii) by striking subparagraphs (D)
- 9 and (E) and inserting the following:
- 10 “(D) including a statement of the basis for
- 11 the certification that the information sought is
- 12 the type of foreign intelligence information des-
- 13 igned;”;
- 14 (D) in paragraph (7), as redesignated by
- 15 subparagraph (B)—
- 16 (i) by striking “a statement of the
- 17 means by which the surveillance will be ef-
- 18 fected and”; and
- 19 (ii) by adding “and” at the end; and
- 20 (E) in paragraph (8), as redesignated by
- 21 subparagraph (B), by striking “; and” and in-
- 22 serting a period.
- 23 (2) by striking subsection (b); and
- 24 (3) by redesignating subsections (c), (d), and
- 25 (e) as subsections (b), (c), and (d), respectively.

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

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

4 (1) in subsection (a)—

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

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

9 (2) in subsection (c)(1)—

10 (A) in subparagraph (B), by striking
11 “known;” and inserting “known; and”

12 (B) by striking subparagraphs (C), (D),
13 and (F);

14 (C) by redesignating subparagraph (E) as
15 subparagraph (C); and

16 (D) in subparagraph (C), as redesignated
17 by subparagraph (C), by striking “approved;
18 and” and inserting “approved.”;

19 (3) by striking subsection (d);

20 (4) by redesignating subsections (e), (f), (g),
21 (h), and (i) as subsections (d), (e), (f), (g), and (h),
22 respectively

23 (5) in subsection (d), as redesignated by para-
24 graph (4)—

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

4 (B) in paragraph (2), by striking “original
5 order, except that” and all that follows and in-
6 serting “original order for a period not to ex-
7 ceed one year.”;

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

10 “(e) Notwithstanding any other provision of this title,
11 the Attorney General may authorize the emergency em-
12 ployment of electronic surveillance if the Attorney Gen-
13 eral—

14 “(1) determines that an emergency situation ex-
15 ists with respect to the employment of electronic
16 surveillance to obtain foreign intelligence informa-
17 tion before an order authorizing such surveillance
18 can with due diligence be obtained;

19 “(2) determines that the factual basis for
20 issuance of an order under this title to approve such
21 surveillance exists;

22 “(3) informs a judge having jurisdiction under
23 section 103 at the time of such authorization that
24 the decision has been made to employ emergency
25 electronic surveillance; and

1 “(4) makes an application in accordance with
2 this title to a judge having jurisdiction under section
3 103 as soon as practicable, but not more than 120
4 hours after the official authorizes such surveillance.
5 If the Attorney General authorizes such emergency em-
6 ployment of electronic surveillance, the Attorney General
7 shall require that the minimization procedures required by
8 this title for the issuance of a judicial order be followed.
9 In the absence of a judicial order approving such electronic
10 surveillance, the surveillance shall terminate when the in-
11 formation sought is obtained, when the application for the
12 order is denied, or after the expiration of 120 hours from
13 the time of authorization by the Attorney General, which-
14 ever is earliest. In the event that such application for ap-
15 proval is denied, or in any other case where the electronic
16 surveillance is terminated and no order is issued approving
17 the surveillance, no information obtained or evidence de-
18 rived from such surveillance shall be received in evidence
19 or otherwise disclosed in any trial, hearing, or other pro-
20 ceeding in or before any court, grand jury, department,
21 office, agency, regulatory body, legislative committee, or
22 other authority of the United States, a State, or political
23 subdivision thereof, and no information concerning any
24 United States person acquired from such surveillance shall
25 subsequently be used or disclosed in any other manner by

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1 Federal officers or employees without the consent of such
2 person, except with the approval of the Attorney General
3 if the information indicates a threat of death or serious
4 bodily harm to any person. A denial of the application
5 made under this subsection may be reviewed as provided
6 in section 103.”; and

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

9 (A) by striking “in accordance with a court
10 order” and all that follows and inserting “—”;
11 and

12 (B) by adding at the end the following new
13 paragraphs:

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

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

22 **SEC. 6. USE OF INFORMATION.**

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

1 (1) by striking "radio communication" and in-
2 sserting "communication"; and

3 (2) by striking "contents indicates" and insert-
4 ing "contents contain significant foreign intelligence
5 information or indicate".

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

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

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

1 **SEC. 8. AUTHORIZATION OF ELECTRONIC SURVEILLANCE**
2 **AFTER A TERRORIST ATTACK.**

3 The Foreign Intelligence Surveillance Act of 1978
4 (50 U.S.C. 1801 et seq.) is further amended—

5 (1) by adding at the end of title I the following
6 new section:

7 **“AUTHORIZATION FOLLOWING A TERRORIST ATTACK**
8 **UPON THE UNITED STATES**

9 **“SEC. 112. (a) IN GENERAL.**—Notwithstanding any
10 other provision of law, but subject to subsection (d), the
11 President, acting through the Attorney General, may au-
12 thorize electronic surveillance without an order under this
13 title to acquire foreign intelligence information for a pe-
14 riod not to exceed 45 days following a terrorist attack
15 against the United States if the President submits a noti-
16 fication to each member of the congressional intelligence
17 committees and a judge having jurisdiction under section
18 103 that—

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

21 **“(2)** identifies the terrorist organizations or af-
22 filiates of terrorist organizations believed to be re-
23 sponsible for the terrorist attack.

24 **“(b) SUBSEQUENT CERTIFICATIONS.**—Subject to
25 subsection (d), at the end of the 45-day period described
26 in subsection (a), and every 45 days thereafter, the Presi-

1 dent may submit a subsequent certification to each mem-
2 ber of the congressional intelligence committees and a
3 judge having jurisdiction under section 103 that the cir-
4 cumstances of the terrorist attack for which the President
5 submitted a certification under subsection (a) require the
6 President to continue the authorization of electronic sur-
7 veillance under this section for an additional 45 days. The
8 President shall be authorized to conduct electronic surveil-
9 lance under this section for an additional 45 days after
10 each such subsequent certification.

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

17 “(1) there is a reasonable belief that such per-
18 son is communicating with a terrorist organization
19 or an affiliate of a terrorist organization that is rea-
20 sonably believed to be responsible for the terrorist
21 attack; and

22 “(2) the information obtained from the elec-
23 tronic surveillance may be foreign intelligence infor-
24 mation; and

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

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

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

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

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

1 “(4) describes the foreign intelligence informa-
2 tion derived from the electronic surveillance con-
3 ducted 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
7 electronic surveillance under this title.

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

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

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

21 “(h) CONGRESSIONAL INTELLIGENCE COMMITTEES
22 DEFINED.—In this section, the term ‘congressional intel-
23 ligence committees’ means the Permanent Select Com-
24 mittee on Intelligence of the House of Representatives and
25 the Select 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
3 the following new item:

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

4 **SEC. 9. CONGRESSIONAL OVERSIGHT.**

5 (a) **ELECTRONIC SURVEILLANCE UNDER FISA.—**

6 Section 108 of the Foreign Intelligence Surveillance Act
7 of 1978 (50 U.S.C. 1808) is amended—

8 (1) in subsection (a)(1), by inserting "each
9 member of" before "the House Permanent Select
10 Committee on Intelligence"; and

11 (2) in subsection (a)(2)—

12 (A) in subparagraph (B), by striking
13 "and" at the end;

14 (B) in subparagraph (C), by striking the
15 final period and inserting "; and"; and

16 (C) by adding at the end the following new
17 subparagraph:

18 "(D) the authority under which the elec-
19 tronic surveillance is conducted."; and

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

22 "(3) Each report submitted under this sub-
23 section shall include reports on electronic surveil-
24 lance conducted without a court order."

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

4 (1) in subsection (a)(1), by inserting “each
5 member of” before “the congressional intelligence
6 committees”; and

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

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

11 The Foreign Intelligence Surveillance Act of 1978
12 (50 U.S.C. 1801 et seq.) is further amended—

13 (1) in section 102(a)(3)(A), by striking
14 “101(h)(4) and”;

15 (2) in section 105(a)(5)—

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

18 (B) by striking “104(d)” and inserting
19 “104(e)”;

20 (3) in section 106—

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

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1 (B) in subsection (k)(2), by striking
2 "104(a)(7)(B)" and inserting "104(a)(6)(B)";
3 and
4 (4) in section 108(a)(2)(C), by striking
5 "105(f)" and inserting "105(e)".