

EXCERPT FROM SENATE BILL S.1389

SEC. 7. PATRIOT SECTION 215; PROCEDURAL PROTECTIONS FOR COURT ORDERS TO PRODUCE RECORDS AND OTHER ITEMS IN INTELLIGENCE INVESTIGATIONS.

(a) *Factual Basis for Requested Order-*

(1) *APPLICATION-* Section 501(b)(2) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861(b)(2)) is amended to read as follows:

`(2) shall include a statement of facts showing that there are reasonable grounds to believe that the records or other things sought--

`(A) are relevant to an authorized investigation conducted in accordance with subsection (a)(2) to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism or clandestine intelligence activities; and

`(B)(i) pertain to a foreign power or an agent of a foreign power;

`(ii) are relevant to the activities of a suspected agent of a foreign power who is the subject of such authorized investigation; or

`(iii) pertain to an individual in contact with, or known to, a suspected agent of a foreign power.'

(2) *ORDER-* Section 501(c)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861(c)(1)) is amended to read as follows:

`(c)(1) Upon an application made pursuant to this section, the judge shall enter an ex parte order as requested, or as modified, approving the release of records or tangible things if the judge finds that--

`(A) the statement of facts contained in the application establishes reasonable grounds to believe that the records or other things sought are relevant to an authorized investigation conducted in accordance with subsection (a)(2) to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism or clandestine intelligence activities;

`(B) the statement of facts contained in the application establishes reasonable grounds to believe that the records or other things sought--

`(i) pertain to a foreign power or an agent of a foreign power;

`(ii) are relevant to the activities of a suspected agent of a foreign power who is the subject of such authorized investigation; or

`(iii) pertain to an individual in contact with, or known to, a suspected agent of a foreign power; and

`(C) the application meets the other requirements of this section.'

(b) *Additional Protections-* Section 501(c) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861(c)) is amended--

(1) in paragraph (2), by inserting after 'An order under this subsection' the following:

`(A) shall describe the tangible things concerned with sufficient particularity to permit them to be fairly identified;

`(B) shall prescribe a return date which will provide a reasonable period of time within which the tangible things can be assembled and made available;

`(C) shall provide clear and conspicuous notice of the principles and procedures set forth in subsection (d);

`(D) shall not require the production of anything that would be protected from production under the standards applicable to a subpoena duces tecum issued by a court of the United States in aid of a

grand jury investigation; and

`(E)'.

(c) Director Approval for Certain Applications- Section 501(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861(a)) is amended--

(1) in paragraph (1), by striking `The Director' and inserting `Except as provided in paragraph (3), the Director'; and

(2) by adding at the end the following:

`(3) No application shall be made under this section for an order requiring the production of library circulation records, library patron lists, book sales records, book customer lists, firearms sales records, or medical records containing personally identifiable information without the prior written approval of the Director of the Federal Bureau of Investigation. The Director may delegate authority to approve such an application to the Deputy Director of the Federal Bureau of Investigation, but such authority may not be further delegated.'

(d) Prohibition on Disclosure- Section 501(d) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861(d)) is amended to read as follows:

`(d)(1) No person shall disclose to any other person that the Federal Bureau of Investigation has sought or obtained tangible things pursuant to an order under this section other than to

`(A) those persons to whom such disclosure is necessary to comply with such order;

`(B) an attorney to obtain legal advice or assistance with respect to the production of things in response to the order; or

`(C) other persons as permitted by the Director of the Federal Bureau of Investigation or the designee of the Director.

`(2)(A) Any person having received a disclosure under subparagraph (A), (B), or (C) of paragraph (1) shall be subject to the prohibitions on disclosure under that paragraph.

`(B) Any person making a further disclosure authorized by subparagraph (A), (B), or (C) of paragraph (1) shall notify the person to whom the disclosure is made of the prohibitions on disclosure under this subsection.

`(3) An order under this section shall notify, in writing, the person to whom the order is directed of the nondisclosure requirements under this subsection.'

(e) Judicial Review- Section 501 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861) is amended by adding at the end the following:

`(f)(1)(A) Any person receiving an order to produce any tangible thing under this section may challenge the legality of that order, including any prohibition on disclosure, by filing a petition in the court established under section 103(a).

`(B) That petition may be considered by any judge of the court.

`(C) The judge considering the petition may modify or set aside the order if the judge finds that the order does not meet the requirements of this section or is otherwise unlawful.

`(D) Any petition for review of a decision to affirm, modify, or set aside an order or prohibition on disclosure under this paragraph by the United States or any person receiving such order shall be sent to the court of review established under section 103(b), which shall have jurisdiction to consider such petitions.

`(E) The court of review shall immediately provide for the record a written statement of the reasons for its decision and, on petition of the United States or any person receiving such order for a writ of certiorari, the record shall be transmitted under seal to the Supreme Court, which shall have jurisdiction to review such decision.

`(2)(A) Judicial proceedings under this subsection shall be concluded as expeditiously as possible.

`(B) The record of proceedings, including applications made and orders granted, shall be maintained under security measures established by the Chief Justice of the United States in consultation with the Attorney General and the Director of National Intelligence.

`(3) All petitions under this subsection shall be filed under seal, and the court, upon the request of the Government, shall review any Government submission, which may include classified information, as well as the application of the Government and related materials, ex parte and in camera.

`(4) Not later than 60 days after the date of enactment of the USA PATRIOT Improvement and Reauthorization Act of 2005, the court established under section 103(a) shall develop and issue procedures for the review of petitions filed under paragraph (1).'

(f) Enhanced Oversight- Section 502 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1862) is amended

(1) in subsection (a), by inserting ` , and the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate,' after `of the Senate'; and

(2) in subsection (b)--

(A) by striking `On a semiannual basis' through `the preceding 6-month period' and inserting `In April of each year, the Attorney General shall transmit to the Congress a report setting forth with respect to the preceding calendar year';

(B) in paragraph (1), by striking `and' at the end;

(C) in paragraph (2), by striking the period at the end and inserting `; and'; and

(D) by adding at the end the following:

`(3) the total number of applications made for orders approving requests for the production of tangible things under section 501, and the total number of orders either granted, modified, or denied, when the application or order involved any of the following:

`(A) The production of tangible things from a library, as defined in section 213(2) of the Library Services and Technology Act (20 U.S.C. 9122(2)).

`(B) The production of tangible things from a person or entity primarily engaged in the sale, rental, or delivery of books, journals, magazines, or other similar forms of communication whether in print or digitally.

`(C) The production of records related to the purchase of a firearm, as defined in section 921(a)(3) of title 18, United States Code.

`(D) The production of health information, as defined in section 1171(4) of the Social Security Act (42 U.S.C. 1320d(4)).

`(E) The production of taxpayer return information, return, or return information, as defined in section 6103(b) of the Internal Revenue Code of 1986 (26 U.S.C. 6103(b)).

`(c) Each report under subsection (b) shall be submitted in unclassified form, but may include a classified annex.

`(d) In April of each year, the Attorney General shall transmit to the Administrative Office of the United States Courts and to Congress a report setting forth with respect to the preceding calendar year--

`(1) the total number of applications made for orders approving requests for the production of tangible things under section 501; and

`(2) the total number of such orders either granted, modified, or denied.'