

112TH CONGRESS
1ST SESSION

S. 406

To modify the Foreign Intelligence Surveillance Act of 1978 to require specific evidence for access to business records and other tangible things, and provide appropriate transition procedures, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 17, 2011

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

A BILL

To modify the Foreign Intelligence Surveillance Act of 1978 to require specific evidence for access to business records and other tangible things, and provide appropriate transition procedures, 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,*

3 **SECTION 1. SPECIFIC EVIDENCE FOR COURT ORDERS TO**
4 **PRODUCE RECORDS AND OTHER ITEMS IN IN-**
5 **TELLIGENCE INVESTIGATIONS.**

6 (a) **FACTUAL BASIS FOR REQUESTED ORDER.**—Sec-
7 tion 501(b)(2) of the Foreign Intelligence Surveillance Act

1 of 1978 (50 U.S.C. 1861(b)(2)) is amended to read as
2 follows:

3 “(2) shall include—

4 “(A) a statement of facts showing that
5 there are reasonable grounds to believe that the
6 records or other things sought—

7 “(i) are relevant to an authorized in-
8 vestigation (other than a threat assess-
9 ment) conducted in accordance with sub-
10 section (a)(2) to obtain foreign intelligence
11 information not concerning a United
12 States person or to protect against inter-
13 national terrorism or clandestine intel-
14 ligence activities; and

15 “(ii)(I) pertain to a foreign power or
16 an agent of a foreign power;

17 “(II) are relevant to the activities of
18 a suspected agent of a foreign power who
19 is the subject of such authorized investiga-
20 tion; or

21 “(III) pertain to an individual in con-
22 tact with, or known to, a suspected agent
23 of a foreign power; and

24 “(B) an enumeration of the minimization
25 procedures adopted by the Attorney General

1 under subsection (g) that are applicable to the
2 retention and dissemination by the Federal Bu-
3 reau of Investigation of any tangible things to
4 be made available to the Federal Bureau of In-
5 vestigation based on the order requested in such
6 application.”.

7 (b) EXCEPTION.—Notwithstanding the amendment
8 made by subsection (a), an order issued by a court estab-
9 lished under section 103(a) of the Foreign Intelligence
10 Surveillance Act of 1978 (50 U.S.C. 1803) for access to
11 business records under title V of such Act (50 U.S.C.
12 1861 et seq.) in effect on, and issued prior to, September
13 30, 2011, shall remain in effect under the provisions of
14 such title V in effect on September 29, 2011, until the
15 date of expiration of such order. Any renewal or extension
16 of such order shall be subject to the provisions of such
17 title V in effect on September 30, 2011.

18 (c) EFFECTIVE DATE.—The amendment made by
19 subsection (a) shall take effect on September 30, 2011.

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