

109TH CONGRESS
1ST SESSION

H. R. 3199

To extend and modify authorities needed to combat terrorism, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 11, 2005

Mr. SENSENBRENNER 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 extend and modify authorities needed to combat terrorism, 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. SHORT TITLE.**

4 This Act may be cited as the “USA PATRIOT and
5 Terrorism Prevention Reauthorization Act of 2005”.

6 **SEC. 2. REFERENCES TO USA PATRIOT ACT.**

7 A reference in this Act to the USA PATRIOT ACT
8 shall be deemed a reference to the Uniting and Strength-
9 ening America by Providing Appropriate Tools Required

1 to Intercept and Obstruct Terrorism (USA PATRIOT
2 ACT) Act of 2001.

3 **SEC. 3. REPEAL OF USA PATRIOT ACT SUNSET PROVISION.**

4 Section 224 of the USA PATRIOT ACT is repealed.

5 **SEC. 4. REPEAL OF SUNSET PROVISION RELATING TO INDI-**

6 **VIDUAL TERRORISTS AS AGENTS OF FOR-**

7 **EIGN POWERS.**

8 Section 6001 of the Intelligence Reform and Ter-
9 rorism Prevention Act of 2004 (Public Law 108–458; 118
10 Stat. 3742) is amended by—

11 (1) striking subsection (b); and

12 (2) striking “(a)” and all that follows through
13 “Section” and inserting “Section”.

14 **SEC. 5. REPEAL OF SUNSET PROVISION RELATING TO SEC-**

15 **TION 2332B AND THE MATERIAL SUPPORT**

16 **SECTIONS OF TITLE 18, UNITED STATES**

17 **CODE.**

18 Section 6603 of the Intelligence Reform and Ter-
19 rorism Prevention Act of 2004 (Public Law 108–458; 118
20 Stat. 3762) is amended by striking subsection (g).

21 **SEC. 6. SHARING OF ELECTRONIC, WIRE, AND ORAL INTER-**

22 **CEPTION INFORMATION UNDER SECTION**

23 **203(B) OF THE USA PATRIOT ACT.**

24 Section 2517(6) of title 18, United States Code, is
25 amended by adding at the end the following: “Within a

1 reasonable time after a disclosure of the contents of a
2 communication under this subsection, an attorney for the
3 Government shall file, under seal, a notice with a judge
4 whose order authorized or approved the interception of
5 that communication, stating the fact that such contents
6 were disclosed and the departments, agencies, or entities
7 to which the disclosure was made.”.

8 **SEC. 7. DURATION OF FISA SURVEILLANCE OF NON-UNITED**
9 **STATES PERSONS UNDER SECTION 207 OF**
10 **THE USA PATRIOT ACT.**

11 (a) **ELECTRONIC SURVEILLANCE.**—Section 105(e) of
12 the Foreign Intelligence Surveillance Act (50 U.S.C.
13 1805(e)), is amended—

14 (1) in paragraph (1)(B), by striking “, as de-
15 fined in section 101(b)(1)(A)” and inserting “who is
16 not a United States person”; and

17 (2) in subsection (2)(B), by striking “as defined
18 in section 101(b)(1)(A)” and inserting “who is not
19 a United States person”.

20 (b) **PHYSICAL SEARCH.**—Section 304(d) of such Act
21 (50 U.S.C. 1824(d)) is amended—

22 (1) in paragraph (1)(B), by striking “as defined
23 in section 101(b)(1)(A)” and inserting “who is not
24 a United States person”; and

1 (2) in paragraph (2), by striking “as defined in
2 section 101(b)(1)(A)” and inserting “who is not a
3 United States person”.

4 (c) PEN REGISTERS, TRAP AND TRACE DEVICES.—
5 Section 402(e) of such Act (50 U.S.C. 1842(e)) is amend-
6 ed—

7 (1) by striking “(e) An” and inserting “(e)(1)
8 Except as provided in paragraph (2), an”; and

9 (2) by adding at the end the following new
10 paragraph:

11 “(2) In the case of an application under subsection
12 (c) where the applicant has certified that the information
13 likely to be obtained is foreign intelligence information not
14 concerning a United States person, an order, or an exten-
15 sion of an order, under this section may be for a period
16 not to exceed one year.”.

17 **SEC. 8. ACCESS TO CERTAIN BUSINESS RECORDS UNDER**
18 **SECTION 501 OF FISA UNDER SECTION 215 OF**
19 **THE USA PATRIOT ACT.**

20 (a) ESTABLISHMENT OF RELEVANCE STANDARD.—
21 Subsection (b)(2) of section 501 of the Foreign Intel-
22 ligence Surveillance Act of 1978 (50 U.S.C. 1861), is
23 amended by striking “to obtain” and all that follows and
24 inserting “and that the information likely to be obtained
25 from the tangible things is reasonably expected to be (A)

1 foreign intelligence information not concerning a United
2 States person, or (B) relevant to an ongoing investigation
3 to protect against international terrorism or clandestine
4 intelligence activities.”.

5 (b) CLARIFICATION OF JUDICIAL DISCRETION.—
6 Subsection (c)(1) of such section is amended to read as
7 follows:

8 “(c)(1) Upon an application made pursuant to this
9 section, if the judge finds that the application meets the
10 requirements of subsections (a) and (b), the judge shall
11 enter an ex parte order as requested, or as modified, ap-
12 proving the release of records.”.

13 (c) AUTHORITY TO DISCLOSE TO ATTORNEY.—Sub-
14 section (d) of such section is amended to read as follows:

15 “(d)(1) No person shall disclose to any person (other
16 than a qualified person) that the United States has sought
17 or obtained tangible things under this section.

18 “(2) An order under this section shall notify the per-
19 son to whom the order is directed of the nondisclosure re-
20 quirement under paragraph (1).

21 “(3) Any person to whom an order is directed under
22 this section who discloses that the United States has
23 sought to obtain tangible things under this section to a
24 qualified person in response to the order shall inform such
25 qualified person of the nondisclosure requirement under

1 paragraph (1) and that such qualified person is also sub-
2 ject to such nondisclosure requirement.

3 “(4) A qualified person shall be subject to any non-
4 disclosure requirement applicable to a person to whom an
5 order is directed under this section in the same manner
6 as such person.

7 “(5) In this subsection, the term ‘qualified person’
8 means—

9 “(A) any person necessary to produce the tan-
10 gible things pursuant to an order under this section;
11 or

12 “(B) an attorney to obtain legal advice in re-
13 sponse to an order under this section.”.

14 (d) JUDICIAL REVIEW.—

15 (1) PETITION REVIEW PANEL.—Section 103 of
16 the Foreign Intelligence Surveillance Act of 1978
17 (50 U.S.C. 1803) is amended by adding at the end
18 the following new subsection:

19 “(e)(1) Three judges designated under subsection (a)
20 who reside within 20 miles of the District of Columbia,
21 or if all of such judges are unavailable, other judges of
22 the court established under subsection (a) as may be des-
23 igned by the Presiding Judge of such court (who is des-
24 igned by the Chief Justice of the United States from
25 among the judges of the court), shall comprise a petition

1 review panel which shall have jurisdiction to review peti-
2 tions filed pursuant to section 501(f)(1).

3 “(2) Not later than 60 days after the date of the en-
4 actment of the USA PATRIOT and Terrorism Prevention
5 Reauthorization Act of 2005, the court established under
6 subsection (a) shall develop and issue procedures for the
7 review of petitions filed pursuant to section 501(f)(1) by
8 the panel established under paragraph (1). Such proce-
9 dures shall provide that review of a petition shall be con-
10 ducted ex parte and in camera and shall also provide for
11 the designation of an Acting Presiding Judge.”

12 (2) PROCEEDINGS.—Section 501 of the Foreign
13 Intelligence Surveillance Act of 1978 (50 U.S.C.
14 1861) is further amended by adding at the end the
15 following new subsection:

16 “(f)(1) A person receiving an order to produce any
17 tangible thing under this section may challenge the legal-
18 ity of that order by filing a petition in the panel estab-
19 lished by section 103(e)(1). The Presiding Judge shall
20 conduct an initial review of the petition. If the Presiding
21 Judge determines that the petition is frivolous, the Pre-
22 siding Judge shall immediately deny the petition and
23 promptly provide a written statement of the reasons for
24 the determination for the record. If the Presiding Judge
25 determines that the petition is not frivolous, the Presiding

1 Judge shall immediately assign the petition to one of the
2 judges serving on such panel. The assigned judge shall
3 promptly consider the petition in accordance with proce-
4 dures developed and issued pursuant to section 103(e)(2).
5 The judge considering the petition may modify or set aside
6 the order only if the judge finds that the order does not
7 meet the requirements of this section or is otherwise un-
8 lawful. If the judge does not modify or set aside the order,
9 the judge shall immediately affirm the order and order the
10 recipient to comply therewith. A petition for review of a
11 decision to affirm, modify, or set aside an order by the
12 United States or any person receiving such order shall be
13 to the court of review established under section 103(b),
14 which shall have jurisdiction to consider such petitions.
15 The court of review shall immediately provide for the
16 record a written statement of the reasons for its decision
17 and, on petition of the United States or any person receiv-
18 ing such order for writ of certiorari, the record shall be
19 transmitted under seal to the Supreme Court, which shall
20 have jurisdiction to review such decision.

21 “(2) Judicial proceedings under this subsection shall
22 be concluded as expeditiously as possible. The judge con-
23 sidering a petition filed under this subsection shall provide
24 for the record a written statement of the reasons for the
25 decision. The record of proceedings, including petitions

1 filed, orders granted, and statements of reasons for deci-
2 sion, shall be maintained under security measures estab-
3 lished by the Chief Justice of the United States in con-
4 sultation with the Attorney General and the Director of
5 National Intelligence.

6 “(3) All petitions under this subsection shall be filed
7 under seal, and the court, upon the government’s request,
8 shall review any government submission, which may in-
9 clude classified information, as well as the government’s
10 application and related materials, ex parte and in cam-
11 era.”.

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