

S 2248

FISA Amendments Act of 2008

Congress: 110 (2007–2009, Ended)

Chamber: Senate

Policy Area: Armed Forces and National Security

Introduced: Oct 26, 2007

Current Status: See also H.R.3773.

Latest Action: See also H.R.3773. (Feb 12, 2008)

Official Text: <https://www.congress.gov/bill/110th-congress/senate-bill/2248>

Sponsor

Name: Sen. Rockefeller, John D., IV [D-WV]

Party: Democratic • **State:** WV • **Chamber:** Senate

Cosponsors

No cosponsors are listed for this bill.

Committee Activity

| Committee | Chamber | Activity | Date |
|---------------------------------|---------|---------------------------|--------------|
| Intelligence (Select) Committee | Senate | Reported Original Measure | Oct 26, 2007 |
| Judiciary Committee | Senate | Reported By | Nov 16, 2007 |

Subjects & Policy Tags

Policy Area:

Armed Forces and National Security

Related Bills

| Bill | Relationship | Last Action |
|-------------|------------------|---|
| 110 HR 5440 | Related bill | Apr 23, 2008: Motion to Discharge Committee filed by Mr. Fossella. Petition No: 110-7. (Discharge petition text with signatures.) |
| 110 HR 3773 | Related document | Mar 31, 2008: Message on House action received in Senate and at desk: House amendment to Senate amendment. |
| 110 S 2440 | Related bill | Dec 11, 2007: Read the second time. Placed on Senate Legislative Calendar under General Orders. Calendar No. 529. |
| 110 S 2441 | Related bill | Dec 11, 2007: Read the second time. Placed on Senate Legislative Calendar under General Orders. Calendar No. 530. |

Foreign Intelligence Surveillance Act of 1978 Amendments Act of 2008 or FISA Amendments Act of 2008 - **Title I: Foreign Intelligence Surveillance** - (Sec. 101) Amends the Foreign Intelligence Surveillance Act of 1978 (FISA) to add a new title concerning additional procedures for acquiring the communications of certain persons outside the United States.

Authorizes the Attorney General (AG) and Director of National Intelligence (DNI) to jointly authorize, for periods up to one year, the targeting (electronic surveillance) of persons located outside the United States in order to acquire foreign intelligence information, under specified limitations, including: (1) prohibiting an acquisition intentionally targeting a person reasonably believed to be outside the United States in order to acquire the communications of a specific person reasonably believed to be located in the United States, unless done in accordance with titles I or III of FISA; and (2) requiring the targeting to be conducted in a manner consistent with the fourth amendment to the Constitution. Requires: (1) certain targeting and minimization procedures to be followed; and (2) prior to such targeting, a certification by the AG and DNI as to the necessity of such targeting and that appropriate procedures will be followed. Allows the AG and DNI, if immediate targeting is determined to be required, to commence such targeting, but to submit the certification within seven days of such determination. Requires all certifications to be submitted to the Foreign Intelligence Surveillance Court (Court) for review.

Authorizes the AG and DNI to direct an electronic communication service provider to: (1) immediately provide the government with all information, facilities, and assistance necessary to accomplish an acquisition; and (2) maintain under security procedures any records concerning such acquisition. Outlines legal procedures with respect to directive challenges, standards for review, enforcement, and appeals. Provides for: (1) judicial review of certifications and targeting and minimization procedures; and (2) review of Court rulings by the Foreign Intelligence Surveillance Court of Review (with certiorari to the Supreme Court). Requires the maintenance and security of records and proceedings with respect to acquisition applications, orders, and determinations.

Requires the AG and DNI, at least every six months, to: (1) assess compliance with required targeting and minimization procedures; and (2) submit assessment results to the Court and the congressional intelligence committees. Authorizes inspectors general of the Department of Justice (DOJ) and elements of the intelligence community (IC) authorized to acquire foreign intelligence information to review their agency or element's compliance with such procedures and provide review results to the AG, DNI, and intelligence committees. Requires the head of any IC element conducting an acquisition of foreign intelligence information to annually review such acquisitions and report review results to the Court, the AG, the DNI, and the intelligence committees.

Provides Court jurisdiction for the targeting of a U.S. person located outside the United States when the acquisition of information is conducted within the United States. Requires an application for such acquisition to be made by a federal officer (and approved by the AG), and to contain certain requirements, including that the target is believed to be a foreign power or agent, officer, or employee of a foreign power. Provides for judicial review of a Court order approving such an acquisition. Makes approval orders effective for 90 days, with authorized 90-day renewals. Allows the AG to authorize an emergency acquisition of such a target under certain circumstances, including: (1) determining that an emergency exists; (2) informing a Court judge of such determination; and (3) applying within seven days for a Court order authorizing such surveillance. Provides similar Court jurisdiction and outlines similar procedures for the acquisition (and emergency acquisition) of a physical search.

Authorizes the: (1) joint applications and concurrent approvals of requests for acquisitions proposed to be conducted both

inside and outside the United States; and (2) concurrent authorizations of electronic surveillance and physical searches.

Directs the AG to report semiannually to the intelligence and judiciary committees concerning the implementation of acquisition requirements.

(Sec. 102) States that FISA and the procedures of chapters 119 (Wire and Electronic Communications Interception and Interception of Oral Communications), 121 (Stored Wire and Electronic Communications and Transactional Records Access), and 206 (Pen Registers and Trap and Trace Devices) of the federal criminal code shall be the exclusive means by which electronic surveillance and the interception of domestic wire, oral, or electronic communications may be conducted.

(Sec. 103) Requires the AG to submit semiannually to the intelligence committees copies of any orders of the Court or the Foreign Intelligence Surveillance Court of Review that include significant construction or interpretation of FISA, including any such orders issued during the five-year period before the enactment of this Act. Allows for the redaction of submitted materials for the protection of national security.

(Sec. 104) Revises provisions concerning the application for, and issuance of, Court orders, including provisions concerning paperwork requirements and government officials who may authorize FISA actions.

(Sec. 105) Allows the AG to authorize the emergency employment of electronic surveillance if the AG, among other things: (1) determines that an emergency exists; (2) informs a Court judge of such determination; and (3) applies for a Court order authorizing such surveillance.

(Sec. 107) Provides similar revisions and outlines similar procedures as in sections 104 and 105 above for the emergency employment of physical searches.

(Sec. 108) Requires the AG, after authorizing the installation and use of a pen register or trap and trace device on an emergency basis, to apply to the Court for an authorization order within seven days (current law requires 48 hours) after the emergency installation and use.

(Sec. 109) Authorizes the Court to sit en banc when: (1) necessary to secure or maintain uniformity of Court decisions; or (2) the proceeding involves a question of exceptional importance.

(Sec. 110) Authorizes the acquisition of foreign intelligence information in order to prevent the international proliferation of weapons of mass destruction.

Title II: Protections for Electronic Communication Service Providers - (Sec. 202) Prohibits an action against an electronic communication service provider (provider) if the AG certifies to the court involved that the assistance was: (1) in connection with an intelligence activity authorized by the President during the period beginning on September 11, 2001, and ending on January 17, 2007, and designed to prevent a terrorist attack or related activities against the United States; and (2) described in a written request or directive from the AG or head of an IC element to the provider indicating that the activity was authorized by the President and determined to be lawful. Subjects AG certifications to review for abuse of discretion. Requires the court involved to review in camera and ex parte a declaration by the AG that disclosure of a certification would harm national security.

(Sec. 203) Provides a similar prohibition and certification requirements as above in the case of actions against individuals other than providers furnishing requested assistance to an IC element.

(Sec. 204) Prohibits a state from conducting investigations, imposing sanctions, or commencing or maintaining a civil action or other proceeding against a provider furnishing requested assistance.

Title III: Other Provisions - (Sec. 301) Provides severability protections for this Act and its amendments.

(Sec. 302) Repeals FISA provisions made inconsistent by provisions of this Act. Outlines transition procedures.

Actions Timeline

- **Feb 12, 2008:** Considered by Senate. (consideration: CR S880-891, S891-904)
- **Feb 12, 2008:** The bill was read the third time.
- **Feb 12, 2008:** Cloture on the measure invoked in Senate by Yea-Nay Vote. 69 - 29. Record Vote Number: 19. (consideration: CR S890)
- **Feb 12, 2008:** Passed/agreed to in Senate: Passed Senate with an amendment by Yea-Nay Vote. 68 - 29. Record Vote Number: 20.
- **Feb 12, 2008:** Passed Senate with an amendment by Yea-Nay Vote. 68 - 29. Record Vote Number: 20.
- **Feb 12, 2008:** Senate incorporated this measure in H.R.3773 as an amendment.
- **Feb 12, 2008:** Senate vitiated previous passage.
- **Feb 12, 2008:** Returned to the Calendar. Calendar No. 512.
- **Feb 12, 2008:** See also H.R.3773.
- **Feb 11, 2008:** Considered by Senate. (consideration: CR S827-844, S845)
- **Feb 8, 2008:** Considered by Senate. (consideration: CR S805-807)
- **Feb 8, 2008:** Cloture motion on the bill presented in Senate. (consideration: CR S813; text: CR S813)
- **Feb 7, 2008:** Considered by Senate. (consideration: CR S775-778)
- **Feb 6, 2008:** Considered by Senate. (consideration: CR S686-688, S688-692, S697-700, S703, S704-710, S712-714)
- **Feb 5, 2008:** Considered by Senate. (consideration: CR S639-648, S650-655)
- **Feb 4, 2008:** Considered by Senate. (CR S564-575, S575-580)
- **Jan 31, 2008:** Considered by Senate. (consideration: CR S535-537)
- **Jan 28, 2008:** Considered by Senate. (consideration: CR S375-388)
- **Jan 25, 2008:** Considered by Senate. (consideration: CR S305-306, S307-310, S310-315, S317-320, S320-322)
- **Jan 24, 2008:** Considered by Senate. (consideration: CR S227-265, S266-270, S270-271, S302)
- **Jan 24, 2008:** Motion to table the committee substitute, as modified, agreed to in Senate by Yea-Nay Vote. 60 - 36. Record Vote Number: 2. (consideration: CR S227-256)
- **Jan 23, 2008:** Considered by Senate. (consideration: CR S179-193; text as reported in Senate: CR S179-184)
- **Jan 23, 2008:** The committee substitute was modified by Unanimous Consent. (text as modified: CR S184-191)
- **Jan 22, 2008:** By Senator Leahy from Committee on the Judiciary filed written report. Report No. 110-258. Additional and Minority views filed.
- **Dec 17, 2007:** Motion to proceed to measure considered in Senate. (consideration: CR S15710-15726)
- **Dec 17, 2007:** Cloture on the motion to proceed invoked in Senate by Yea-Nay Vote. 76 - 10. Record Vote Number: 435. (consideration: CR S15726; text: CR S15726)
- **Dec 17, 2007:** Measure laid before Senate by motion. (consideration: CR S15726-15767)
- **Dec 14, 2007:** Motion to proceed to consideration of measure made in Senate. (consideration: CR S15644-15647)
- **Dec 14, 2007:** Cloture motion on the motion to proceed to the measure presented in Senate. (consideration: CR S15647; text: CR S15647)
- **Dec 14, 2007:** Motion to proceed to consideration of measure withdrawn in Senate.
- **Nov 16, 2007:** Committee on the Judiciary. Ordered to be reported with an amendment in the nature of a substitute favorably.
- **Nov 16, 2007:** Committee on the Judiciary. Reported by Senator Leahy with an amendment in the nature of a substitute. Without written report.
- **Nov 16, 2007:** Placed on Senate Legislative Calendar under General Orders. Calendar No. 512.
- **Nov 15, 2007:** Committee on the Judiciary. Ordered to be reported with an amendment in the nature of a substitute favorably.
- **Nov 1, 2007:** Referred to the Committee on the Judiciary pursuant to section 3(b) of S.Res. 400, 94th Congress, as amended by S.Res. 445, 108th Congress, for a period not to exceed 10 days of session.
- **Oct 31, 2007:** Committee on the Judiciary. Hearings held.
- **Oct 26, 2007:** Introduced in Senate
- **Oct 26, 2007:** Select Committee on Intelligence. Original measure reported to Senate by Senator Rockefeller. With written report No. 110-209. Additional and Minority views filed.
- **Oct 26, 2007:** Placed on Senate Legislative Calendar under General Orders. Calendar No. 453.