

HR 3773

FISA Amendments Act of 2008

Congress: 110 (2007–2009, Ended)

Chamber: House

Policy Area: Armed Forces and National Security

Introduced: Oct 9, 2007

Current Status: Message on House action received in Senate and at desk: House amendment to Senate amendment.

Latest Action: Message on House action received in Senate and at desk: House amendment to Senate amendment.  
(Mar 31, 2008)

Official Text: <https://www.congress.gov/bill/110th-congress/house-bill/3773>

Sponsor

Name: Rep. Conyers, John, Jr. [D-MI-14]

Party: Democratic • State: MI • Chamber: House

Cosponsors (7 total)

Cosponsor	Party / State	Role	Date Joined
Del. Christensen, Donna M. [D-VI-At Large]	D · VI		Oct 9, 2007
Rep. Hooley, Darlene [D-OR-5]	D · OR		Oct 9, 2007
Rep. Jackson-Lee, Sheila [D-TX-18]	D · TX		Oct 9, 2007
Rep. Nadler, Jerrold [D-NY-8]	D · NY		Oct 9, 2007
Rep. Reyes, Silvestre [D-TX-16]	D · TX		Oct 9, 2007
Rep. Rodriguez, Ciro D. [D-TX-23]	D · TX		Oct 9, 2007
Rep. Scott, Robert C. "Bobby" [D-VA-3]	D · VA		Oct 9, 2007

Committee Activity

Committee	Chamber	Activity	Date
Intelligence (Permanent Select) Committee	House	Reported By	Oct 13, 2007
Judiciary Committee	House	Reported By	Oct 13, 2007
Judiciary Committee	Senate	Hearings By (full committee)	Oct 31, 2007

Subjects & Policy Tags

Policy Area:

Armed Forces and National Security

## Related Bills

Bill	Relationship	Last Action
<a href="#">110 HR 5440</a>	Related bill	<b>Apr 23, 2008:</b> Motion to Discharge Committee filed by Mr. Fossella. Petition No: 110-7. (<a href="http://clerk.house.gov/110/lrc/pd/Petitions/Dis7.htm">Discharge petition</a> text with signatures.)
<a href="#">110 HRES 1041</a>	Procedurally related	<b>Mar 14, 2008:</b> Motion to reconsider laid on the table Agreed to without objection.
<a href="#">110 S 2248</a>	Related document	<b>Feb 12, 2008:</b> See also H.R.3773.
<a href="#">110 HRES 824</a>	Procedurally related	<b>Nov 15, 2007:</b> Motion to reconsider laid on the table Agreed to without objection.
<a href="#">110 HRES 746</a>	Procedurally related	<b>Oct 17, 2007:</b> Motion to reconsider laid on the table Agreed to without objection.

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; (2) the AG to adopt guidelines to ensure that such limitations and procedures are followed, including criteria for determining whether a significant targeting purpose is to acquire the communications of a person located in the United States; (3) the DNI to establish a training program for intelligence community (IC) personnel carrying out the guidelines adopted by the AG; (4) the AG to submit such guidelines to the congressional intelligence committees and the Foreign Intelligence Surveillance Court (Court) for review; and (5) prior to such targeting, a certification by the AG and DNI as to the necessity of such targeting and that appropriate procedures and limitations will be followed. Allows the AG and DNI, if immediate targeting is determined to be required due to an emergency situation, to commence such targeting, but to submit the certification within seven days of such determination. Requires all certifications to be submitted to the 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). Outlines conditions under which the AG and DNI may, through the Court: (1) replace a targeting acquisition already in effect before the enactment of this Act with an acquisition authorized under this Act; or (2) reauthorize a current acquisition under the procedures and guidelines of this Act. Requires Court 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 intelligence and judiciary committees. Authorizes inspectors general of the Department of Justice (DOJ) and elements of the IC authorized to acquire foreign intelligence information to review their agency or element's compliance with such procedures and guidelines and provide review results to the Court, the AG, the DNI, and the intelligence and judiciary 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 and judiciary committees.

Provides Court jurisdiction for approving 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, other than by express statutory authorization, 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) Directs the inspectors general of DOJ, the Office of the DNI, the National Security Agency (NSA), and any other IC element that participated in the President's Surveillance Program (a program authorized by the President during the period beginning on September 11, 2001, and ending on January 17, 2007, and including the program commonly known as the Terrorist Surveillance Program) to: (1) conduct a review of, among other things, the establishment, implementation, product, and use of the product of the Program; and (2) provide an interim and final review report to the intelligence and judiciary committees. Allows for, in conjunction with such reviews, expedited security clearances and the hiring of necessary additional personnel.

(Sec. 111) Authorizes the acquisition of foreign intelligence information from an entity not substantially composed of U.S. persons that is engaged in the international proliferation of weapons of mass destruction.

(Sec. 112) Provides a ten-year statute of limitations with respect to offenses under FISA.

**Title II: Protection of Persons Assisting the Government** - (Sec. 201) Directs the court concerned to permit the government to intervene in a federal or state civil suit against any person (including an electronic communication service provider or a landlord or custodian) providing surveillance assistance requested by an IC element. Allows any party (including the intervening party) to submit evidence with respect to which a privilege based on state secrets or other classified information is asserted. Requires such court to review, and act appropriately on, such evidence. Requires that, in any action alleging that a person provided such assistance during the period between September 11, 2001, and January 17, 2007, the AG provide to such court any assistance request or directive related to the allegations.

**Title III: Commission on Warrantless Electronic Surveillance Activities** - (Sec. 301) Establishes in the legislative branch the Commission on Warrantless Electronic Surveillance Activities to examine, and report to the President and Congress on, all intelligence collection programs and activities inside the United States or regarding U.S. persons in effect as of and since September 11, 2001. Requires the protection of national security in the carrying out of Commission duties. Authorizes the Commission to submit interim reports. Terminates the Commission 60 days after its final report. Authorizes appropriations.

**Title IV: Other Provisions** - (Sec. 401) Provides severability protections for this Act and its amendments.

(Sec. 403) Repeals FISA provisions made inconsistent by provisions of this Act.

(Sec. 404) Outlines transition procedures.

(Sec. 405) States that this Act and its amendments shall not be construed to prohibit surveillance of, or grant any rights to, an alien not permitted to be or remain in the United States.

(Sec. 406) States that this Act and its amendments shall not be construed to prohibit the IC from conducting lawful surveillance necessary to: (1) prevent Osama bin Laden, al Qaeda, or any other terrorist or terrorist organization from attacking the United States, any U.S. person, or any U.S. ally; (2) ensure the safety and security of U.S. Armed Forces, or any other officer or employee of the government involved in protecting U.S. national security; or (3) protect the United States, any U.S. person, or any U.S. ally from threats posed by weapons of mass destruction or other threats to national security.

## Actions Timeline

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- **Mar 31, 2008:** Message on House action received in Senate and at desk: House amendment to Senate amendment.
- **Mar 14, 2008:** Rule H. Res. 1041 passed House.
- **Mar 14, 2008:** Pursuant to the provisions of H. Res. 1041, the House moved to agree with an amendment to the Senate amendment. (consideration: CR H1720-1742)
- **Mar 14, 2008:** DEBATE - Pursuant to the provisions of H. Res. 1041, the House proceeded with one hour of debate on the motion to agree to the Senate amendment to H.R. 3773 with an amendment.
- **Mar 14, 2008:** The previous question was ordered pursuant to the rule. (consideration: CR H1760)
- **Mar 14, 2008:** Resolving differences -- House actions: On motion that the House agree with an amendment to the Senate amendment Agreed to by the Yeas and Nays: 213 - 197, 1 Present (Roll no. 145).(text as House agreed to Senate amendment: CR H1729-1742)
- **Mar 14, 2008:** On motion that the House agree with an amendment to the Senate amendment Agreed to by the Yeas and Nays: 213 - 197, 1 Present (Roll no. 145). (text as House agreed to Senate amendment: CR H1729-1742)
- **Mar 14, 2008:** Motion to reconsider laid on the table Agreed to without objection.
- **Mar 12, 2008:** Rules Committee Resolution H. Res. 1041 Reported to House. Rule provides for consideration of H.R. 3773 with 1 hour and 40 minutes of general debate. Previous question shall be considered as ordered without intervening motions. The resolution waives all points of order against the motion except those arising under clause 10 of rule XXI. Upon the adoption of the resolution it shall be in order to move that the House agree to the Senate amendment to H.R. 3773 with an amendment.
- **Feb 13, 2008:** Message on Senate action sent to the House.
- **Feb 12, 2008:** Measure laid before Senate by unanimous consent. (consideration: CR S904-913)
- **Feb 12, 2008:** Senate struck all after the Enacting Clause and substituted the language of S.2248 amended.
- **Feb 12, 2008:** Passed/agreed to in Senate: Passed Senate with an amendment by Unanimous Consent.(text: CR S904-913)
- **Feb 12, 2008:** Passed Senate with an amendment by Unanimous Consent. (text: CR S904-913)
- **Feb 12, 2008:** See also S.2248.
- **Dec 3, 2007:** Received in the Senate. Read twice. Placed on Senate Legislative Calendar under General Orders. Calendar No. 517.
- **Nov 15, 2007:** Rule H. Res. 824 passed House.
- **Nov 15, 2007:** Considered as unfinished business. (consideration: CR H14037-14062; text of measure as introduced: CR H14037-14040)
- **Nov 15, 2007:** DEBATE - Pursuant to H.Res. 824, the House proceeded with one hour and thirty minutes of further debate on H.R. 3773.
- **Nov 15, 2007:** DEBATE - The House resumed debate on H.R. 3773.
- **Nov 15, 2007:** WORDS TAKEN DOWN - During the course of debate, exception was taken to certain words used and a demand was made to have words taken down. Mr. Patrick Murphy of Pennsylvania asked unanimous consent to withdraw the words. Without objection the words were withdrawn. The House resumed debate on H.R. 3773.
- **Nov 15, 2007:** The previous question was ordered pursuant to the rule. (consideration: CR H14059)
- **Nov 15, 2007:** Mr. Smith (TX) moved to recommit with instructions to Judiciary. (consideration: CR H14059-14061; text: CR H14059)
- **Nov 15, 2007:** DEBATE - The House proceeded with 10 minutes of debate on the Smith (TX) motion to recommit with instructions. The instructions contained in the motion seek to require the bill to be reported back to the House with sundry amendments related to making clarifying changes to the scope of the bill.
- **Nov 15, 2007:** The previous question on the motion to recommit with instructions was ordered without objection. (consideration: CR H14061)
- **Nov 15, 2007:** On motion to recommit with instructions Failed by the Yeas and Nays: 194 - 222 (Roll no. 1119). (consideration: CR H14061)
- **Nov 15, 2007:** Passed/agreed to in House: On passage Passed by recorded vote: 227 - 189 (Roll no. 1120).(text: CR H14040-14045)
- **Nov 15, 2007:** On passage Passed by recorded vote: 227 - 189 (Roll no. 1120). (text: CR H14040-14045)
- **Nov 15, 2007:** Motion to reconsider laid on the table Agreed to without objection.
- **Nov 14, 2007:** Rules Committee Resolution H. Res. 824 Reported to House. Rule provides for consideration of H.R. 3773 with 1 hour and 30 minutes of general debate. Previous question shall be considered as ordered without

intervening motions except motion to recommit with or without instructions. Measure will be considered read. Bill is closed to amendments. The rule provides that the further amendment printed in the report of the Committee on Rules accompanying this resolution shall be considered as adopted.

- **Oct 31, 2007:** Committee on the Judiciary. Hearings held.
- **Oct 17, 2007:** Rule H. Res. 746 passed House.
- **Oct 17, 2007:** Considered under the provisions of rule H. Res. 746. (consideration: CR H11656-11666; text of measure as introduced: CR H11656-11659; text of measure as reported in House: CR H11659-11663)
- **Oct 17, 2007:** Rule provides for consideration of H.R. 3773 with 1 hour and 30 minutes of general debate. Previous question shall be considered as ordered without intervening motions except motion to recommit with or without instructions. Measure will be considered read. Bill is closed to amendments. All points of order against consideration of the bill except those arising under clause 9 or 10 of rule XXI. In lieu of the amendments recommended by the Committee on the Judiciary and the Permanent Select Committee on Intelligence, the resolution considers as adopted the amendment in the nature of a substitute printed in part A of this report, modified by the amendment printed in part B of this report, and considers the bill, as amended, as read.
- **Oct 17, 2007:** DEBATE - The House proceeded with one hour and thirty minutes of debate on H.R. 3773.
- **Oct 16, 2007:** Rules Committee Resolution H. Res. 746 Reported to House. Rule provides for consideration of H.R. 3773 with 1 hour and 30 minutes of general debate. Previous question shall be considered as ordered without intervening motions except motion to recommit with or without instructions. Measure will be considered read. Bill is closed to amendments. All points of order against consideration of the bill except those arising under clause 9 or 10 of rule XXI. In lieu of the amendments recommended by the Committee on the Judiciary and the Permanent Select Committee on Intelligence, the resolution considers as adopted the amendment in the nature of a substitute printed in part A of this report, modified by the amendment printed in part B of this report, and considers the bill, as amended, as read.
- **Oct 12, 2007:** Reported (Amended) by the Committee on Judiciary. H. Rept. 110-373, Part I.
- **Oct 12, 2007:** Reported (Amended) by the Committee on Intelligence (Permanent). H. Rept. 110-373, Part II.
- **Oct 12, 2007:** Placed on the Union Calendar, Calendar No. 231.
- **Oct 10, 2007:** Committee Consideration and Mark-up Session Held.
- **Oct 10, 2007:** Ordered to be Reported (Amended) by the Yeas and Nays: 20 - 14.
- **Oct 9, 2007:** Introduced in House
- **Oct 9, 2007:** Sponsor introductory remarks on measure. (CR E2088)
- **Oct 9, 2007:** Referred to the Committee on the Judiciary, and in addition to the 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.