

S 139

FISA Amendments Reauthorization Act of 2017

Congress: 115 (2017–2019, Ended)

Chamber: Senate

Policy Area: Armed Forces and National Security

Introduced: Jan 12, 2017

Current Status: Became Public Law No: 115-118.

Latest Action: Became Public Law No: 115-118. (Jan 19, 2018)

Law: 115-118 (Enacted Jan 19, 2018)

Official Text: <https://www.congress.gov/bill/115th-congress/senate-bill/139>

Sponsor

Name: Sen. Hatch, Orrin G. [R-UT]

Party: Republican • **State:** UT • **Chamber:** Senate

Cosponsors (12 total)

Cosponsor	Party / State	Role	Date Joined
Sen. Cornyn, John [R-TX]	R · TX		Jan 12, 2017
Sen. Feinstein, Dianne [D-CA]	D · CA		Jan 12, 2017
Sen. Flake, Jeff [R-AZ]	R · AZ		Jan 12, 2017
Sen. Gillibrand, Kirsten E. [D-NY]	D · NY		Jan 12, 2017
Sen. Klobuchar, Amy [D-MN]	D · MN		Jan 12, 2017
Sen. Lee, Mike [R-UT]	R · UT		Jan 23, 2017
Sen. Perdue, David [R-GA]	R · GA		Jan 23, 2017
Sen. Coons, Christopher A. [D-DE]	D · DE		Jan 24, 2017
Sen. Rounds, Mike [R-SD]	R · SD		Feb 8, 2017
Sen. Kennedy, John [R-LA]	R · LA		May 2, 2017
Sen. Durbin, Richard J. [D-IL]	D · IL		May 10, 2017
Sen. Cruz, Ted [R-TX]	R · TX		May 11, 2017

Committee Activity

Committee	Chamber	Activity	Date
Judiciary Committee	Senate	Reported By	May 11, 2017

Subjects & Policy Tags

Policy Area:

Armed Forces and National Security

Related Bills

Bill	Relationship	Last Action
115 HCONRES 98	Procedurally related	Jan 18, 2018: Message on Senate action sent to the House.
115 HRES 682	Procedurally related	Jan 10, 2018: Motion to reconsider laid on the table Agreed to without objection.
115 HR 4478	Related bill	Dec 19, 2017: Reported (Amended) by the Committee on Intelligence. H. Rept. 115-475, Part I.
115 HR 510	Identical bill	Aug 18, 2017: Became Public Law No: 115-50.

FISA Amendments Reauthorization Act of 2017

TITLE I--ENHANCEMENTS TO FOREIGN INTELLIGENCE COLLECTION AND SAFEGUARDS, ACCOUNTABILITY, AND OVERSIGHT

(Sec. 101) This bill directs the Department of Justice (DOJ) to adopt querying procedures consistent with the requirements of the Fourth Amendment to the Constitution for information collected pursuant to an authorization under the Foreign Intelligence Surveillance Act (FISA) provisions for targeting non-U.S. persons outside the United States. Such procedures shall include a technical procedure whereby a record is kept of each U.S. person query term used for a query. The querying procedures shall be subject to judicial review.

A court order is generally required for review by the Federal Bureau of Investigation (FBI) of query results in criminal investigations unrelated to national security, except where the FBI determines there is a reasonable belief that such contents could assist in mitigating or eliminating a threat to life or serious bodily harm.

(Sec. 102) Any information concerning a U.S. person acquired under querying provisions may not be used in evidence against that person in any criminal proceeding unless the FBI obtained an order of the FISA Court to access such information or DOJ determines that the criminal proceeding: (1) affects, involves, or is related to U.S. national security, or (2) involves death, kidnapping, serious bodily injury, conduct that constitutes a criminal offense that is a specified offense against a minor, incapacitation or destruction of critical infrastructure, cybersecurity, transnational crime, or human trafficking. Such determination is not subject to judicial review.

Reporting by the Office of the Director of National Intelligence (ODNI) is expanded.

(Sec. 103) If DOJ and the ODNI intend to implement the authorization of the intentional acquisition of abouts communications, they shall first submit to specified congressional committees a written notice of intent to do so. "Abouts communication" means a communication that contains a reference to, but is not to or from, a target of an acquisition authorized under the FISA.

Such committees shall hold hearings and briefings and otherwise obtain information in order to fully review the written notice. The bill makes an exception for emergency acquisition of abouts communication.

Each element of the intelligence community involved in the acquisition of abouts communications shall fully and currently inform the committees of a material breach.

(Sec. 104) The ODNI shall: (1) conduct a declassification review of any minimization procedures adopted or amended; and (2) consistent with such review, make such minimization procedures publicly available to the greatest extent practicable.

(Sec. 105) If DOJ authorized the emergency employment of electronic surveillance or a physical search, DOJ may authorize, for the effective period of the emergency authorization and subsequent order, without a separate order, the targeting of a U.S. person subject to such emergency employment for the purpose of acquiring foreign intelligence information while such U.S. person is reasonably believed to be located outside the United States.

(Sec. 106) The bill provides for compensation of an amicus curiae (i.e., friend of the court who is not a party to a case and who assists the court by offering information, expertise, or insight that has a bearing on the issues in the case).

(Sec. 107) The bill expands FISA reporting requirements to require reporting of: (1) the total number of persons subject to electronic surveillance conducted under an order or emergency authorization, including the number of such individuals who are U.S. persons; and (2) a good faith estimate of the total number of subjects who were targeted by the installation and use of a pen register or trap and trace device under an order or emergency authorization.

(Sec. 108) The Privacy and Civil Liberties Oversight Board may meet or otherwise communicate in any number to confer or deliberate in a manner that is closed to the public.

If the position of chairman of the board is vacant, the board, at the direction of the unanimous vote of the serving member of the board, may exercise the authority of the chairman.

(Sec. 109) The National Security Agency and the FBI shall each designate at least one senior officer to serve as the principal advisor to carry out specified privacy and civil liberties-related functions.

(Sec. 110) The bill extends whistle-blower protections to contractor employees of the intelligence community and the FBI.

(Sec. 111) DOJ shall brief specified congressional committees on how it interprets FISA requirements to notify an aggrieved person of the use of information obtained or derived from electronic surveillance, physical search, or the use of a pen register or trap and trace device.

(Sec. 112) The Inspector General of DOJ shall report to specified congressional committees on queries conducted by the FBI.

TITLE II--EXTENSION OF AUTHORITIES, INCREASED PENALTIES, REPORTS, AND OTHER MATTERS

(Sec. 201) The bill reauthorizes title VII of the FISA until December 31, 2023.

(Sec. 202) The penalty for the unauthorized removal and retention of classified documents or material is increased from one to five years.

(Sec. 203) DOJ must report to specified congressional committees on current and future challenges to the effectiveness of U.S. foreign intelligence surveillance activities authorized under the FISA.

(Sec. 204) The Government Accountability Office shall study the U.S. classification system and the methods by which the intelligence community protects classified information.

(Sec. 205) The bill makes technical amendments to the FISA and authorizes referral of the denial of certain applications to a court of review.

Actions Timeline

- **Jan 19, 2018:** Presented to President.
- **Jan 19, 2018:** Signed by President.
- **Jan 19, 2018:** Became Public Law No: 115-118.
- **Jan 18, 2018:** Considered by Senate (Message from the House considered). (consideration: CR S268-270)
- **Jan 18, 2018:** Resolving differences -- Senate actions: Senate agreed to the House amendment to S. 139 by Yea-Nay Vote. 65 - 34. Record Vote Number: 12.
- **Jan 18, 2018:** Senate agreed to the House amendment to S. 139 by Yea-Nay Vote. 65 - 34. Record Vote Number: 12.
- **Jan 18, 2018:** Message on Senate action sent to the House.
- **Jan 17, 2018:** Considered by Senate (Message from the House considered). (consideration: CR S215-247; S256-264)
- **Jan 16, 2018:** Considered by Senate (Message from the House considered). (consideration: CR S174-185)
- **Jan 16, 2018:** Cloture on the motion to concur in the House amendment to S. 139 invoked in Senate by Yea-Nay Vote. 60 - 38. Record Vote Number: 11.
- **Jan 16, 2018:** Motion by Senator McConnell to refer to Senate Committee on the Judiciary the House message to accompany S. 139 with instructions to report back forthwith with the following amendment (SA 1872) fell when cloture was invoked on the motion to concur in the House amendment to S. 139 in Senate.
- **Jan 11, 2018:** Considered under the provisions of rule H. Res. 682. (consideration: CR H139-160)
- **Jan 11, 2018:** Previous question shall be considered as ordered without intervening motions except motion to commit with or without instructions. An amendment in the nature of a substitute consisting of the text of Rules Committee Print 115-53 shall be considered as adopted. The further amendment printed in the report accompanying the rule, if offered by the Member designated in the report shall be debatable for the time printed in the report.
- **Jan 11, 2018:** DEBATE - The House proceeded with one hour of debate on S. 139.
- **Jan 11, 2018:** DEBATE - The House resumed with debate on S. 139.
- **Jan 11, 2018:** DEBATE - Pursuant to the provisions of H.Res. 682, the House proceeded with 20 minutes of debate on the Amash substitute amendment No. 1.
- **Jan 11, 2018:** The previous question was ordered without objection.
- **Jan 11, 2018:** Mr. Himes moved to commit with instructions to the Committee on Intelligence (Permanent Select). (consideration: CR H158-159; text: CR H158)
- **Jan 11, 2018:** DEBATE - The House proceeded with 10 minutes of debate on the Himes motion to commit with instructions. The instructions contained in the motion seek to report the bill back to the House with an amendment to strengthen the provisions related to obtaining warrants to query information collected on persons in the United States.
- **Jan 11, 2018:** The previous question on the motion to commit with instructions was ordered without objection.
- **Jan 11, 2018:** On motion to commit with instructions Failed by recorded vote: 189 - 227 (Roll no. 15).
- **Jan 11, 2018:** Passed/agreed to in House: On passage Passed by the Yeas and Nays: 256 - 164 (Roll no. 16).(text: CR H137-142)
- **Jan 11, 2018:** On passage Passed by the Yeas and Nays: 256 - 164 (Roll no. 16). (text: CR H137-142)
- **Jan 11, 2018:** Motion to reconsider laid on the table Agreed to without objection.
- **Jan 11, 2018:** Message on House action received in Senate and at desk: House amendment to Senate bill.
- **Jan 11, 2018:** Motion to proceed to consideration of the House message to accompany S. 139 agreed to in Senate by Yea-Nay Vote. 68 - 27. Record Vote Number: 10.
- **Jan 11, 2018:** Measure laid before Senate by motion. (consideration: CR S153-165)
- **Jan 11, 2018:** Motion by Senator McConnell to concur in the House amendment to S. 139 made in Senate.
- **Jan 11, 2018:** Pursuant to the provisions of H. Con. Res. 98, enrollment corrections on S. 139 have been made.
- **Jan 11, 2018:** Cloture motion on the motion to concur in the House amendment to S. 139 presented in Senate. (CR S153)
- **Jan 11, 2018:** Motion by Senator McConnell to concur in the House amendment to S. 139 with an amendment (SA 1870) made in Senate.
- **Jan 11, 2018:** Motion by Senator McConnell to refer to Senate Committee on the Judiciary the House message to accompany S. 139 with instructions to report back forthwith with the following amendment (SA1872) made in Senate.
- **Jan 10, 2018:** Rule H. Res. 682 passed House.
- **Jan 9, 2018:** Rules Committee Resolution H. Res. 682 Reported to House. Previous question shall be considered as ordered without intervening motions except motion to recommit with or without instructions. An amendment in the

nature of a substitute consisting of the text of Rules Committee Print 115-53 shall be considered as adopted. The further amendment printed in the report accompanying the rule, if offered by the Member designated in the report shall be debatable for the time printed in the report.

- **May 16, 2017:** Passed/agreed to in Senate: Passed Senate without amendment by Unanimous Consent.(consideration: CR S2954-2955; text as passed Senate: CR S2954-2955)
- **May 16, 2017:** Passed Senate without amendment by Unanimous Consent. (consideration: CR S2954-2955; text as passed Senate: CR S2954-2955)
- **May 16, 2017:** Message on Senate action sent to the House.
- **May 16, 2017:** Received in the House.
- **May 16, 2017:** Held at the desk.
- **May 11, 2017:** Committee on the Judiciary. Ordered to be reported without amendment favorably.
- **May 11, 2017:** Committee on the Judiciary. Reported by Senator Grassley without amendment. Without written report.
- **May 11, 2017:** Placed on Senate Legislative Calendar under General Orders. Calendar No. 74.
- **May 3, 2017:** Committee on the Judiciary. Hearings held.
- **Jan 12, 2017:** Introduced in Senate
- **Jan 12, 2017:** Read twice and referred to the Committee on the Judiciary.