116TH CONGRESS
2D SESSION

H. R. _____

To amend the Foreign Intelligence Surveillance Act of 1978 to prohibit the production of certain business records, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

M. introduced the following bill; which was referred to the Committee on

A BILL

To amend the Foreign Intelligence Surveillance Act of 1978 to prohibit the production of certain business records, 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; TABLE OF CONTENTS.

4 (a) Short Title.—This Act may be cited as the “USA FREEDOM Reauthorization Act of 2020”.

5 (b) Table of Contents.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Amendments to the Foreign Intelligence Surveillance Act of 1978.
TITLE I—FISA BUSINESS RECORDS

Sec. 101. Repeal of authority to access on an ongoing basis call detail records.
Sec. 102. Protection of information otherwise requiring warrant.
Sec. 103. Use of information.
Sec. 104. Effective date.

TITLE II—FOREIGN INTELLIGENCE SURVEILLANCE COURT

Sec. 201. Declassification of significant decisions, orders, and opinions.
Sec. 202. Appointment of amici curiae and access to information.
Sec. 203. Information provided in annual reports.

TITLE III—OTHER MATTERS

Sec. 301. Mandatory reporting on certain orders.
Sec. 302. Improvements to Privacy and Civil Liberties Oversight Board.
Sec. 303. Report on use of FISA authorities regarding protected activities and protected classes.
Sec. 304. Sunsets.
Sec. 305. Technical amendments.

SEC. 2. AMENDMENTS TO THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.).

TITLE I—FISA BUSINESS RECORDS

SEC. 101. REPEAL OF AUTHORITY TO ACCESS ON AN ONGOING BASIS CALL DETAIL RECORDS.

(a) CALL DETAIL RECORDS.—

(1) REPEAL.—Subsection (b)(2) of section 501 (50 U.S.C. 1861) is amended—

(A) by striking subparagraph (C);
(B) in subparagraph (B)—

(i) in the matter preceding clause (i),

by striking “in the case of” and all that
follows through “in subparagraph (C));”;

and

(ii) in clause (iii), by striking the
semicolon at the end and inserting “;
and”; and

(C) by redesignating subparagraph (D) as

subparagraph (C).

(2) PROHIBITION.—Section 501(a) (50 U.S.C.

1861) is amended by adding at the end the following

new paragraph:

“(4) An application under paragraph (1) may not
seek an order authorizing or requiring the production on
an ongoing basis of call detail records.”.

(b) CONFORMING AMENDMENTS.—

(1) ORDERS.—Subsection (e) of section 501 (50
U.S.C. 1861) is amended—

(A) in paragraph (1), by striking “with
subsection (b)(2)(D)” and inserting “with sub-
section (b)(2)(C)”; and

(B) in paragraph (2), by striking subpara-
graph (F) and inserting the following:
“(F) in the case of an application for call detail records, shall direct the Government—

“(i) to adopt minimization procedures that require the prompt destruction of all call detail records produced under the order that the Government determines are not foreign intelligence information; and

“(ii) to destroy all call detail records produced under the order as prescribed by such procedures.”;

(2) COMPENSATION.—Subsection (j) of section 501 (50 U.S.C. 1861) is amended to read as follows:

“(j) COMPENSATION.—The Government shall compensate a person for reasonable expenses incurred for providing technical assistance to the Government under this section.”.

(3) DEFINITIONS.—Subsection (k)(4)(B) of section 501 (50 U.S.C. 1861) is amended by striking “For purposes of an application submitted under subsection (b)(2)(C)” and inserting “In the case of an application for a call detail record”.

(4) OVERSIGHT.—Section 502(b) (50 U.S.C. 1862(b)) is amended—

(A) by striking paragraph (4); and
(B) by redesignating paragraphs (5) through (8) as paragraphs (4) through (7), respectively;

(5) ANNUAL REPORTS.—Section 603 (50 U.S.C. 1873) is amended—

(A) in subsection (b)—

(i) by transferring subparagraph (C) of paragraph (6) to the end of paragraph (5);

(ii) in paragraph (5)—

(I) in subparagraph (A), by striking “; and” and inserting a semicolon;

(II) in subparagraph (B), by striking the semicolon and inserting “; and”;

(III) in subparagraph (C), as transferred by clause (i) of this subparagraph, by striking “any database of”;

(iii) by striking paragraph (6) (as amended by clause (iii) of this subparagraph); and

(iv) by redesignating paragraph (7) as paragraph (6); and

(B) in subsection (d)—
(i) in paragraph (1), by striking “any
of paragraphs (3), (5), or (6)” and insert-
ing “either of paragraph (3) or (5)”; and
(ii) in paragraph (2)(A), by striking
“Paragraphs (2)(B), (2)(C), and (6)(C)”
and inserting “Paragraphs (2)(B) and
(2)(C)”.

(6) PUBLIC REPORTING.—Section 604(a)(1)(F)
(50 U.S.C. 1874(a)(1)(F)) is amended—
(A) in clause (i), by striking the semicolon
and inserting “; and”;
(B) in clause (ii), by striking “; and” and
inserting a period; and
(C) by striking clause (iii).

SEC. 102. PROTECTION OF INFORMATION OTHERWISE RE-
QUIRING WARRANT.
Section 501(a) (50 U.S.C. 1861(a)), as amended by
section 101, is further amended by adding at the end the
following new paragraph:
“(5) An application under paragraph (1) may not
seek an order authorizing or requiring the production of
a tangible thing if the compelled production of such thing
would require a warrant for law enforcement purposes.”.

SEC. 103. USE OF INFORMATION.
Section 501(h) (50 U.S.C. 1861(h)) is amended—
(1) by striking “Information acquired” and inserting the following:

“(1) IN GENERAL.—Information acquired”; and

(2) by adding at the end the following new paragraphs:

“(2) USE IN TRIALS, HEARINGS, OR OTHER PROCEEDINGS.—For purposes of subsections (b) through (h) of section 106—

“(A) information obtained or derived from the production of tangible things pursuant to an investigation conducted under this section shall be deemed to be information acquired from an electronic surveillance pursuant to title I; and

“(B) in carrying out subparagraph (A), a person shall be deemed to be an aggrieved person if—

“(i) the person is the target of such an investigation; or

“(ii) the activities or communications of the person are described in any tangible thing collected pursuant to such an investigation.”.
SEC. 104. EFFECTIVE DATE.

The amendments made by this title shall take effect on the date of the enactment of this Act and shall apply with respect to applications made under section 501 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861) on or after such date.

TITLE II—FOREIGN INTELLIGENCE SURVEILLANCE COURT

SEC. 201. DECLASSIFICATION OF SIGNIFICANT DECISIONS, ORDERS, AND OPINIONS.

(a) Timing of declassification.—Subsection (a) of section 602 (50 U.S.C. 1872) is amended by adding at the end the following new sentence: “The Director shall complete the declassification review and public release of each such decision, order, or opinion by not later than 180 days after the date on which the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review issues such decision, order, or opinion.”.

(b) Matters covered.—Such subsection is further amended—

(1) by striking “Subject to subsection (b)” and inserting “(1) Subject to subsection (b)”;

(2) by striking “includes a significant” and all that follows through “, and,” and inserting “is described in paragraph (2) and,”; and
(3) by adding at the end the following new paragraph:

“(2) The decisions, orders, or opinions issued by the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review described in this paragraph are such decisions, orders, or opinions that—

“(A) include a significant construction or interpretation of any provision of law, including any novel or significant construction or interpretation of—

“(i) the term ‘specific selection term’; or

“(ii) section 501(a)(5); or

“(B) result from a proceeding in which an amicus curiae has been appointed pursuant to section 103(i).”.

(e) Application of Requirement.—Section 602 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1872) shall apply with respect to each decision, order, or opinion issued by the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review before, on, or after the date of the enactment of such section. With respect to such decisions, orders, or opinions issued before or on such date, the Director of National Intelligence shall complete the declassification review and public release of each such decision, order,
or opinion pursuant to such section by not later than one
year after the date of the enactment of this Act.

SEC. 202. APPOINTMENT OF AMICI CURIAE AND ACCESS TO
INFORMATION.

(a) Expansion of Appointment Authority.—Subparagraph (A) of section 103(i)(2) (50 U.S.C. 1803(i)(2)) is amended to read as follows:

“(A) shall appoint an individual who has been designated under paragraph (1) to serve as amicus curiae to assist such court in the consideration of any application for an order or review that, in the opinion of the court—

“(i) presents a novel or significant interpretation of the law, unless the court issues a finding that such appointment is not appropriate; or

“(ii) presents significant concerns with respect to the activities of a United States person that are protected by the first amendment to the Constitution, unless the court issues a finding that such appointment is not appropriate; and”.

(b) Authority to Seek Review.—Subsection (i) of section 103 (50 U.S.C. 1803) is amended—
(1) by redesignating paragraphs (7) through (11) as paragraphs (8) through (12), respectively; and

(2) by inserting after paragraph (6) the following new paragraph:

“(7) Authority to seek review of decisions.—

“(A) FISA court decisions.—Following issuance of an order under this Act by the Foreign Intelligence Surveillance Court, an amicus curiae appointed under paragraph (2) may petition the Foreign Intelligence Surveillance Court of Review to review a question of law pursuant to the standard set forth in subsection (j). If the Court of Review grants such petition, the question of law shall be treated as certified for review and the Court of Review shall appoint the amicus curiae to assist the Court of Review in any consideration of the question, unless the Court of Review issues a finding that such appointment is not appropriate.

“(B) FISA court of review decisions.—An amicus curiae appointed under paragraph (2) may petition the Foreign Intelligence Surveillance Court of Review to certify
for review to the Supreme Court of the United States any question of law pursuant to section 1254(2) of title 28, United States Code.”.

(c) Access to Information.—

(1) Application and materials.—Subparagraph (A) of section 103(i)(6) (50 U.S.C. 1803(i)(6)) is amended by striking clauses (i) and (ii) and inserting the following new clauses:

“(i) shall have access to—

“(I) the application, certification, petition, motion, and other information and supporting materials, submitted to the Foreign Intelligence Surveillance Court in connection with the matter in which the amicus curiae has been appointed, including access to any relevant legal precedent; and

“(II) any other information or materials that the court determines is relevant to the duties of the amicus curiae; and

“(ii) may make a submission to the court requesting access to any particular materials or information (or category of materials or information) that the amicus
amicus believes to be relevant to the duties of the amicus curiae.”.

(2) Clarification of Access to Certain Information.—Subparagraph (C) of such section is amended by striking “and to the extent consistent with the national security of the United States”.

(3) Consultation Among Amici Curiae.—Such section is further amended—

(A) by redesignating subparagraphs (B), (C), and (D) as subparagraphs (C), (D), and (E), respectively; and

(B) by inserting after subparagraph (A) the following new subparagraph:

“(B) Consultation.—If the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review determines that it is relevant to the duties of an amicus curiae appointed by the court under paragraph (2), the amicus curiae may consult with one or more of the other individuals designated by the court to serve as amicus curiae pursuant to paragraph (1) regarding any of the information relevant to any assigned proceeding.”.
SEC. 203. INFORMATION PROVIDED IN ANNUAL REPORTS.

(a) Reports by Director of the Administrative Office of the United States Courts.—Subsection (a)(1) of section 603 (50 U.S.C. 1873) is amended—

   (1) in subparagraph (E), by striking ‘‘; and’’ and inserting a semicolon;

   (2) in subparagraph (F), by striking the period at the end and inserting a semicolon; and

   (3) by adding at the end the following new subparagraphs:

   ‘‘(G) the number of certifications by the Foreign Intelligence Surveillance Court of Review pursuant to section 103(j); and

   ‘‘(H) the number of requests to certify a question made by an amicus curiae to the Court of Review pursuant to section 103(i)(7).’’.

(b) Reports by Director of National Intelligence.—Subsection (b)(5)(B) of such section, as amended by section 101, is amended by inserting before the semicolon at the end the following: ‘‘, including information received electronically and through hardcopy and portable media’’. 
TITLE III—OTHER MATTERS

SEC. 301. MANDATORY REPORTING ON CERTAIN ORDERS.

(a) Reporting on United States Person Queries.—Subsection (b)(2) of section 603 (50 U.S.C. 1873), as amended by section 101, is amended—

(1) in subparagraph (B), by striking “the number of search terms concerning a known United States person” and inserting “the number of search terms that concern a known United States person or are reasonably likely to identify a United States person”; and

(2) in subparagraph (C), by striking “the number of queries concerning a known United States person” and inserting “the number of queries that concern a known United States person or are reasonably likely to identify a United States person”.

(b) Modification to Exceptions.—Subsection (d)(2) of such section, as amended by section 101, is amended by striking “(A) Federal” and all that follows through “(B) Electronic mail address and telephone numbers.”.
Paragraph (4) of section 1061(h) of the Intelligence Reform and Terrorism Prevention Act of 2004 (42 U.S.C. 2000ee(h)) is amended to read as follows:

“(4) TERM.—

“(A) COMMENCEMENT.—Each member of the Board shall serve a term of 6 years, commencing on the date of the appointment of the member to the Board.

“(B) REAPPOINTMENT.—A member may be reappointed to one or more additional terms.

“(C) VACANCY.—A vacancy in the Board shall be filled in the manner in which the original appointment was made.

“(D) EXTENSION.—Upon the expiration of the term of office of a member, the member may continue to serve, at the election of the member—

“(i) during the period preceding the reappointment of the member pursuant to subparagraph (B); or

“(ii) until the member’s successor has been appointed and qualified.”.
SEC. 303. REPORT ON USE OF FISA AUTHORITIES REGARDING PROTECTED ACTIVITIES AND PROTECTED CLASSES.

(a) REPORT.—Not later than one year after the date of the enactment of this Act, the Privacy and Civil Liberties Oversight Board shall make publicly available, to the extent practicable, a report on—

(1) the extent to which the activities and protected classes described in subsection (b) are used to support targeting decisions in the use of authorities pursuant to the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.); and

(2) the impact of the use of such authorities on such activities and protected classes.

(b) ACTIVITIES AND PROTECTED CLASSES DESCRIBED.—The activities and protected classes described in this subsection are the following:

(1) Activities and expression protected by the First Amendment to the Constitution of the United States.

(2) Race, ethnicity, national origin, religious affiliation, sex, and any other protected characteristic determined appropriate by the Board.

(e) FORM.—In addition to the report made publicly available under subsection (a), the Board may submit to
the appropriate congressional committees a classified annex.

(d) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term “appropriate congressional committees” means—

(1) the Committee on the Judiciary and the Permanent Select Committee on Intelligence of the House of Representatives; and

(2) the Committee on the Judiciary and the Select Committee on Intelligence of the Senate.

SEC. 304. SUNSETS.

(a) USA PATRIOT IMPROVEMENT AND REAUTHORIZATION ACT OF 2005.—Section 102(b)(1) of the USA PATRIOT Improvement and Reauthorization Act of 2005 (50 U.S.C. 1805 note) is amended by striking “March 15, 2020” and inserting “December 1, 2023”.

(b) INTELLIGENCE REFORM AND TERRORISM PREVENTION ACT OF 2004.—Section 6001(b)(1) of the Intelligence Reform and Terrorism Prevention Act of 2004 (50 U.S.C. 1801 note) is amended by striking “March 15, 2020” and inserting “December 1, 2023”.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the earlier of the date of the enactment of this Act or March 15, 2020.
SEC. 305. TECHNICAL AMENDMENTS.

(a) In General.—The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended as follows:

(1) In section 103(e) (50 U.S.C. 1803(e)), by striking “702(h)(4)” both places it appears and inserting “702(i)(4)”.

(2) In section 105(a)(4) (50 U.S.C. 1805(a)(4))—

(A) by striking “section 104(a)(7)(E)” and inserting “section 104(a)(6)(E)”; and

(B) by striking “section 104(d)” and inserting “section 104(c)”.

(3) In section 501(a) (50 U.S.C. 1861(a)), by indenting paragraph (3) 2 ems to the left.

(4) In section 603(b)(2)(C) (50 U.S.C. 1873(b)(2)(C)), by inserting “and” after the semicolon.

(5) In section 702 (50 U.S.C. 1881a)—

(A) in subsection (h)(3), by striking “subsection (i)” and inserting “subsection (j)”;

(B) in subsection (j)(1), by striking “subsection (g)” each place it appears and inserting “subsection (h)”; and
(C) in the subsection heading of subsection (m), by inserting a comma after “Assess-
ments”.

(6) In section 801(8)(B)(iii) (50 U.S.C. 1885(8)(B)(iii)), by striking “702(h)” and inserting “702(i)”.

(7) In section 802(a)(3) (50 U.S.C. 1885a(a)(3)), by striking “702(h)” and inserting “702(i)”.

(b) References to Foreign Intelligence Sur-
veillance Court and Foreign Intelligence Sur-
veillance Court of Review.—

(1) Definitions.—Section 101 (50 U.S.C. 1801) is amended by adding at the end the following new subsections:

“(q) The term ‘Foreign Intelligence Surveillance Court’ means the court established under section 103(a).

“(r) The terms ‘Foreign Intelligence Surveillance Court of Review’ and ‘Court of Review’ mean the court established under section 103(b).”.

(2) Conforming Amendments.—The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended—

(A) in section 102 (50 U.S.C. 1802), by striking “the court established under section
103(a)” and inserting “the Foreign Intelligence 
Surveillance Court”;

(B) in section 103 (50 U.S.C. 1803)—

(i) in subsection (a)—

(I) in paragraph (2)(A), by strik-
ing “The court established under this 
subsection” and inserting “The For-

eign Intelligence Surveillance Court”; 
and

(II) by striking “the court estab-
lished under this subsection” each 
place it appears and inserting “the 
Foreign Intelligence Surveillance 
Court”;

(ii) in subsection (g)—

(I) by striking “the court estab-
lished pursuant to subsection (a)” and 
inserting “the Foreign Intelligence 
Surveillance Court”; 

(II) by striking “the court of re-
view established pursuant to sub-
section (b)” and inserting “the For-

eign Intelligence Surveillance Court of 
Review”; and
(III) by striking “The courts est-
established pursuant to subsections (a)
and (b)” and inserting “The Foreign
Intelligence Surveillance Court and
the Foreign Intelligence Surveillance
Court of Review”;

(iii) in subsection (h), by striking “a
court established under this section” and
inserting “the Foreign Intelligence Surveil-
ance Court or the Foreign Intelligence
Surveillance Court of Review”;

(iv) in subsection (i)—

(I) in paragraph (1), by striking
“the courts established under sub-
sections (a) and (b)” and inserting
“the Foreign Intelligence Surveillance
Court and the Foreign Intelligence
Surveillance Court of Review”;

(II) in paragraph (3)(B), by
striking “the courts” and inserting
“the Foreign Intelligence Surveillance
Court and the Foreign Intelligence
Surveillance Court of Review”;

(III) in paragraph (5), by strik-
ing “the court” and inserting “the
Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review, as the case may be,”;

(IV) in paragraph (6), by striking “the court” each place it appears and inserting “the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review”;

(V) by striking “a court established under subsection (a) or (b)” each place it appears and inserting “the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review”;

(VI) by striking “A court established under subsection (a) or (b)” each place it appears and inserting “The Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review”;

(v) in subsection (j)—

(I) by striking “a court established under subsection (a)” and in-
serting “the Foreign Intelligence Surveillance Court”; and

(II) by striking “the court determines” and inserting “the Foreign Intelligence Surveillance Court determines”;

(vi) by striking “the court established under subsection (a)” each place it appears and inserting “the Foreign Intelligence Surveillance Court”; and

(vii) by striking “the court established under subsection (b)” each place it appears and inserting “the Foreign Intelligence Surveillance Court of Review”;

(C) in section 105(c) (50 U.S.C. 1805(c))—

(i) in paragraph (2)(B), by striking “the Court” and inserting “the Foreign Intelligence Surveillance Court”; and

(ii) in paragraph (3), by striking “the court” each place it appears and inserting “the Foreign Intelligence Surveillance Court”;

(D) in section 401 (50 U.S.C. 1841), by striking “, and ‘State’” and inserting “‘State’,

"
‘Foreign Intelligence Surveillance Court’, and
‘Foreign Intelligence Surveillance Court of Re-
view’’;

(E) in section 402 (50 U.S.C. 1842)—

(i) in subsection (b)(1), by striking
“the court established by section 103(a) of
this Act” and inserting “the Foreign Intel-
ligence Surveillance Court”; and

(ii) in subsection (h)(2), by striking
“the court established under section
103(a)” and inserting “the Foreign Intel-
ligence Surveillance Court”; and

(F) in section 501 (50 U.S.C. 1861)—

(i) in subsection (b)(1), by striking
“the court established by section 103(a)”
and inserting “the Foreign Intelligence
Surveillance Court”; and

(ii) in subsection (g)(3), by striking
“the court established under section
103(a)” and inserting “the Foreign Intelli-
gence Surveillance Court”; and

(iii) in subsection (k)(1), by striking
“, and ‘State’” and inserting “‘State’, and
‘Foreign Intelligence Surveillance Court’’;
(G) in section 502(c)(1)(E), by striking “the court established under section 103” and inserting “the Foreign Intelligence Surveillance Court (as defined by section 101);”

(H) in section 801 (50 U.S.C. 1885)—

(i) in paragraph (8)(B)(i), by striking “the court established under section 103(a)” and inserting “the Foreign Intelligence Surveillance Court”; and

(ii) by adding at the end the following new paragraph:

“(10) FOREIGN INTELLIGENCE SURVEILLANCE COURT.—The term ‘Foreign Intelligence Surveillance Court’ means the court established under section 103(a).”; and

(I) in section 802(a)(1) (50 U.S.C. 1885a(a)(1)), by striking “the court established under section 103(a)” and inserting “the Foreign Intelligence Surveillance Court”.

(c) COORDINATION WITH OTHER AMENDMENTS MADE BY THIS ACT.—For purposes of applying amendments made by provisions of this Act other than this section, the amendments made by this section shall be treated as having been enacted immediately before any such amendments by other provisions of this Act.