

SUMMARY OF LEAHY MANAGER’S AMENDMENT (H.R. 2471 SUBSTITUTE)

Clarifies that the bill does not alter Federal anti-terrorism and other criminal laws

The amendment adds a new provision on rules of construction to make clear that the search warrant requirement for electronic communications content in the bill does not apply to any other Federal criminal or national security laws, including Title III of the Omnibus Crime Control and Safe Streets Act of 1986 (commonly known as the ‘Wiretap Act’) and the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq. (commonly known as ‘FISA’)).

Protects the integrity of ongoing criminal investigations

The amendment makes several changes to the notice provisions in the bill to address the interests of the law enforcement community in protecting the integrity and confidentiality of ongoing investigations:

- First, the amendment revises Section 203 of the bill to extend the time period during which the government must notify an individual of the fact that the government has obtained the individual’s electronic communications content from a third-party provider from three days to ten business days after the government receives the information. The purpose of this change is to accommodate administrative and logistical concerns raised by the law enforcement community about the time and resources needed to provide notice to an individual during an ongoing investigation.
- Second, in Section 204, the amendment extends the time period during which the government may delay notifying an individual of the fact that the government has obtained the individual’s electronic communications content from 90 days to 180 days. The amendment similarly extends the time period during which a court may extend this delay period at the request of the

government from an additional 90 days at a time to an additional 180 days at a time. This change is intended to provide more time and flexibility for the government to conduct and complete its investigation before having to return to court to seek an additional period of delay.

- Third, in Section 204(b), the amendment extends the time period during which the government may request that a third-party provider of electronic communication service or remote computing service not notify any other person of the existence of the warrant, subpoena or other directive, from 90 days to 180 days.

The amendment similar extends the time period during which the government may request that a court extend the delay period from an addition 90 days to an additional 180 days.

- Lastly, the amendment adds a new notice to law enforcement requirement in Section 204 of the bill. This provision requires that service providers notify the government of their intent to inform a customer or subscriber of the fact that the provider has disclosed the individual's electronic communications information to the government, at least three business days before the provider gives such notice to the customer or subscriber.

The purpose of this change is to ensure that the government has an opportunity to protect the integrity of its investigation and, if warranted, to ask a court to delay the notification, before such notice is given.

Civil discovery tools for electronic records (non-content)

At the request of the Department of Justice and the Federal Trade Commission, the amendment adds civil discovery subpoenas to the types of subpoenas that may be used under existing law (administrative subpoena authorized by Federal or State law, Federal or State grand jury subpoena and trial) to obtain routing and other non-content information from a third-party provider.

Makes technical changes

The amendment makes technical changes in Section 203 of the bill for clarity.