

116TH CONGRESS
2D SESSION

S. 3402

To amend chapter 37 of title 18, United States Code, to authorize appropriate disclosure of classified information, to appropriately limit the scope of the offense of disclosing classified information, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 5, 2020

Mr. WYDEN introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend chapter 37 of title 18, United States Code, to authorize appropriate disclosure of classified information, to appropriately limit the scope of the offense of disclosing classified information, 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.**

4 This Act may be cited as the “Espionage Act Reform
5 Act of 2020”.

1 **SEC. 2. DISCLOSURE OF CLASSIFIED INFORMATION RE-**
2 **LATED TO SIGNALS INTELLIGENCE.**

3 (a) **AUTHORITY TO DISCLOSE INFORMATION.**—Sec-
4 tion 798(c) of title 18, United States Code, is amended
5 by striking “furnishing,” and all that follows and inserting
6 the following: “furnishing of information to—

7 “(1) any Member of the Senate or the House
8 of Representatives;

9 “(2) a Federal court, in accordance with such
10 procedures as the court may establish;

11 “(3) the inspector general of an element of the
12 intelligence community (as defined in section 3 of
13 the National Security Act of 1947 (50 U.S.C.
14 3003)), including the Inspector General of the Intel-
15 ligence Community;

16 “(4) the Chairman or a member of the Privacy
17 and Civil Liberties Oversight Board or any employee
18 of the Board designated by the Board, in accordance
19 with such procedures as the Board may establish;

20 “(5) the Chairman or a commissioner of the
21 Federal Trade Commission or any employee of the
22 Commission designated by the Commission, in ac-
23 cordance with such procedures as the Commission
24 may establish;

25 “(6) the Chairman or a commissioner of the
26 Federal Communications Commission or any em-

1 ployee of the Commission designated by the Com-
2 mission, in accordance with such procedures as the
3 Commission may establish; or

4 “(7) any other person or entity authorized to
5 receive disclosures containing classified information
6 pursuant to any applicable law, regulation, or execu-
7 tive order regarding the protection of whistle-
8 blowers.”.

9 (b) AUTHORIZED PERSONS.—Section 798(b) of title
10 18, United States Code, is amended—

11 (1) in the matter preceding the first undesig-
12 nated paragraph, by striking “this section—” and
13 inserting “this section:”

14 (2) by striking “The term ‘classified informa-
15 tion’ means information which, at the time of a vio-
16 lation of this section, is,” and inserting the fol-
17 lowing:

18 “(1) The term ‘classified information’—

19 “(A) means information which, at the time
20 of a violation of this section, is known to the
21 person violating this section to be,”;

22 (3) in paragraph (1), as so designated—

23 (A) by inserting “and” after “distribu-
24 tion;”; and

25 (B) by adding at the end the following:

1 “(B) does not include any information that
2 is specifically designated as ‘Unclassified’ under
3 any Executive Order, Act of Congress, or action
4 by a committee of Congress in accordance with
5 the rules of its House of Congress.”;

6 (4) by striking “The terms ‘code,’ ‘cipher,’ and
7 ‘cryptographic system’ include” and inserting the
8 following:

9 “(2) The terms ‘code’, ‘cipher’, and ‘cryptographic system’ include”;

11 (5) in paragraph (2), as so designated, by striking
12 “communications;” and inserting “communications.”;

14 (6) by striking “The term ‘foreign’” and inserting
15 the following:

16 “(5) The term ‘foreign’”;

17 (7) in paragraph (5), as so designated, by striking
18 “United States;” and inserting “United States.”;

19 (8) by striking “The term ‘communication’” and
20 inserting the following:

21 “(3) The term ‘communication’”;

22 (9) in paragraph (3), as so designated, by striking
23 “recipients;” and inserting “recipients.”;

1 (10) by transferring paragraph (3), as so des-
2 ignated, to appear after paragraph (2), as so des-
3 ignated; and

4 (11) by striking “The term ‘unauthorized’ and
5 all that follows through “for the United States.” and
6 inserting the following:

7 “(6) The term ‘unauthorized person’ means any
8 person who, or agency which, is not authorized to re-
9 ceive information of the categories set forth in sub-
10 section (a) of this section by—

11 “(A) the President;

12 “(B) the head of a department or agency
13 of the United States Government which is ex-
14 pressly designated by the President to engage
15 in communication intelligence activities for the
16 United States; or

17 “(C) an Act of Congress.”.

18 (c) SCOPE OF PROHIBITION.—Section 798 of title 18,
19 United States Code, is amended—

20 (1) in subsection (a), in the matter preceding
21 paragraph (1)—

22 (A) by striking “Whoever” and inserting
23 “Any individual who”; and

24 (B) by inserting “obtained by the indi-
25 vidual while the individual was a covered person

1 and acting within the scope of his or her activi-
2 ties as a covered person” after “any classified
3 information”; and

4 (2) in subsection (b), by inserting after para-
5 graph (3), as so designated and transferred by sub-
6 section (b) of this section, the following:

7 “(4) The term ‘covered person’ means an indi-
8 vidual who—

9 “(A) receives official access to classified in-
10 formation granted by the United States Govern-
11 ment;

12 “(B) signs a nondisclosure agreement with
13 regard to such classified information; and

14 “(C) is authorized to receive information of
15 the categories set forth in subsection (a) of this
16 section—

17 “(i) by the President; or

18 “(ii) the head of a department or
19 agency of the United States Government
20 which is expressly designated by the Presi-
21 dent to engage in communication intel-
22 ligence activities for the United States.”.

23 (d) LIMITATION ON SCOPE.—Section 798 of title 18,
24 United States Code, is amended—

1 (1) by redesignating subsection (d) as sub-
2 section (e); and

3 (2) by inserting after subsection (c) the fol-
4 lowing:

5 “(d)(1) In this subsection, the term ‘foreign agent’—

6 “(A) has the meaning given the term ‘agent of
7 a foreign power’ under section 101 of the Foreign
8 Intelligence Surveillance Act of 1978 (50 U.S.C.
9 1801); and

10 “(B) does not include a person who is an agent
11 of a foreign power (as so defined) with respect to a
12 foreign power described in section 101(a)(5) of the
13 Foreign Intelligence Surveillance Act of 1978 (50
14 U.S.C. 1801(a)(5)).

15 “(2) A foreign agent who—

16 “(A) aids, abets, counsels, commands, induces,
17 or procures the commission of an offense under this
18 section shall be subject to prosecution under this
19 section by virtue of section 2 of this title;

20 “(B) knowing that an offense under this section
21 has been committed by another person, receives, re-
22 lieves, comforts, or assists such other person in
23 order to hinder or prevent the apprehension, trial, or
24 punishment of such other person shall be subject to
25 prosecution under section 3 of this title;

1 “(C) having knowledge of the actual commis-
2 sion of an offense under this section, conceals and
3 does not as soon as possible make known the same
4 to some judge or other person in civil or military au-
5 thority under the United States shall be subject to
6 prosecution under section 4 of this title; or

7 “(D) conspires to commit an offense under this
8 section shall be subject to prosecution under section
9 371 of this title.

10 “(3) Any person who is not a foreign agent shall not
11 be subject to prosecution under this section by virtue of
12 section 2 of this title or under section 3, 4, or 371 of this
13 title, unless the person—

14 “(A) commits a felony under Federal law in the
15 course of committing an offense under this section
16 (by virtue of section 2 of this title) or under section
17 3, 4, or 371 of this title;

18 “(B) was a covered person at the time of the
19 offense; or

20 “(C) subject to paragraph (4), directly and ma-
21 terially aids, or procures in exchange for anything of
22 monetary value, the commission of an offense under
23 this section with the specific intent to—

24 “(i) harm the national security of the
25 United States; or

1 “(ii) benefit any foreign government to the
2 detriment of the United States.

3 “(4) Paragraph (3)(C) shall not apply to direct and
4 material aid that consists of—

5 “(A) counseling, education, or other speech ac-
6 tivity; or

7 “(B) providing an electronic communication
8 service to the public or a remote computing service
9 (as such terms are defined in section 2510 and
10 2711, respectively).”.

11 **SEC. 3. GATHERING, TRANSMITTING, OR LOSING DEFENSE**
12 **INFORMATION.**

13 (a) DEFINITIONS.—Section 793 of title 18, United
14 States Code, is amended by adding at the end the fol-
15 lowing:

16 “(i) In this section—

17 “(1) the term ‘covered person’ means an indi-
18 vidual who—

19 “(A) receives official access to classified in-
20 formation granted by the United States Govern-
21 ment;

22 “(B) signs a nondisclosure agreement with
23 regard to such classified information; and

24 “(C) is authorized to receive documents,
25 writings, code books, signal books, sketches,

1 photographs, photographic negatives, blue-
2 prints, plans, maps, models, instruments, appli-
3 ances, or notes of anything connected with the
4 national defense by—

5 “(i) the President; or

6 “(ii) the head of a department or
7 agency of the United States Government
8 which is expressly designated by the Presi-
9 dent to engage in activities relating to the
10 national defense; and

11 “(2) the term ‘foreign agent’—

12 “(A) has the meaning given the term
13 ‘agent of a foreign power’ under section 101 of
14 the Foreign Intelligence Surveillance Act of
15 1978 (50 U.S.C. 1801); and

16 “(B) does not include a person who is an
17 agent of a foreign power (as so defined) with
18 respect to a foreign power described in section
19 101(a)(5) of the Foreign Intelligence Surveil-
20 lance Act of 1978 (50 U.S.C. 1801(a)(5)).”.

21 (b) OBTAINING OR RECEIVING DEFENSE INFORMA-
22 TION.—Section 793(c) of title 18, United States Code, is
23 amended—

24 (1) by striking “Whoever” and inserting “A
25 foreign agent who”;

1 (2) by inserting “and with like intent or reason
2 to believe,” after “aforesaid,”; and

3 (3) by striking “he” and inserting “the foreign
4 agent”.

5 (c) TRANSMISSION OF LAWFULLY POSSESSED DE-
6 FENSE INFORMATION TO UNAUTHORIZED PERSONS.—
7 Section 793(d) of title 18, United States Code, is amended
8 by striking “or note relating to the national defense, or
9 information relating to the national defense which infor-
10 mation” and inserting “note, or information relating to
11 the national defense, which document, writing, code book,
12 signal book, sketch, photograph, photographic negative,
13 blueprint, plan, map, model, instrument, appliance, note,
14 or information”.

15 (d) TRANSMISSION OF UNLAWFULLY POSSESSED
16 DEFENSE INFORMATION TO UNAUTHORIZED PERSONS.—
17 Section 793(e) of title 18, United States Code, is amended
18 to read as follows:

19 “(e) An individual who—

20 “(1) while a covered person, gains unauthorized
21 possession of, access to, or control over any non-
22 public document, writing, code book, signal book,
23 sketch, photograph, photographic negative, blue-
24 print, plan, map, model, instrument, appliance, or

1 note of anything connected with the national de-
2 fense; and

3 “(2)(A) with reason to believe such information
4 could be used to the injury of the United States or
5 to the advantage of any foreign nation, willfully com-
6 municates, delivers, transmits, or causes to be com-
7 municated, delivered, or transmitted, or attempts to
8 communicate, deliver, transmit, or cause to be com-
9 municated, delivered, or transmitted, the same to
10 any person not entitled to receive it; or

11 “(B) willfully—

12 “(i) retains the same at an unauthorized
13 location; and

14 “(ii) fails to deliver the same to the officer
15 or employee of the United States entitled to re-
16 ceive it; or”.

17 (e) OBTAINING INFORMATION FROM PLACES CON-
18 NECTED WITH THE NATIONAL DEFENSE.—Section
19 793(a) of title 18, United States Code, is amended by
20 striking “otherwise obtains information concerning” and
21 inserting “otherwise unlawfully obtains nonpublic infor-
22 mation concerning”.

23 (f) COPYING AND TAKING DEFENSE INFORMA-
24 TION.—Section 793(b) of title 18, United States Code, is
25 amended—

1 (1) by striking “Whoever,” and inserting “An
2 individual who, while a covered person,”; and

3 (2) by inserting “nonpublic” before “sketch,”.

4 (g) LIMITATION ON SCOPE.—Section 793 of title 18,
5 United States Code, is amended by striking subsection (g)
6 and inserting the following:

7 “(g)(1) A foreign agent who—

8 “(A) aids, abets, counsels, commands, induces,
9 or procures the commission of an offense under this
10 section shall be subject to prosecution under this
11 section by virtue of section 2 of this title;

12 “(B) knowing that an offense under this section
13 has been committed by another person, receives, re-
14 lieves, comforts, or assists such other person in
15 order to hinder or prevent the apprehension, trial, or
16 punishment of such other person shall be subject to
17 prosecution under section 3 of this title;

18 “(C) having knowledge of the actual commis-
19 sion of an offense under this section, conceals and
20 does not as soon as possible make known the same
21 to some judge or other person in civil or military au-
22 thority under the United States shall be subject to
23 prosecution under section 4 of this title; or

1 “(D) conspires to commit an offense under this
2 section shall be subject to prosecution under section
3 371 of this title.

4 “(2) Any person who is not a foreign agent shall not
5 be subject to prosecution under this section by virtue of
6 section 2 of this title or under section 3, 4, or 371 of this
7 title, unless the person—

8 “(A) commits a felony under Federal law in the
9 course of committing an offense under this section
10 (by virtue of section 2 of this title) or under section
11 3, 4, or 371 of this title;

12 “(B) was a covered person at the time of the
13 offense; or

14 “(C) subject to paragraph (3), directly and ma-
15 terially aids, or procures in exchange for anything of
16 monetary value, the commission of an offense under
17 this section with the specific intent to—

18 “(i) harm the national security of the
19 United States; or

20 “(ii) benefit any foreign government to the
21 detriment of the United States.

22 “(3) Paragraph (2)(C) shall not apply to direct and
23 material aid that consists of—

24 “(A) counseling, education, or other speech ac-
25 tivity; or

1 “(B) providing an electronic communication
2 service to the public or a remote computing service
3 (as such terms are defined in section 2510 and
4 2711, respectively).”.

5 **SEC. 4. PUBLIC MONEY, PROPERTY, OR RECORDS.**

6 Section 641 of title 18, United States Code, is
7 amended in the first undesignated paragraph by inserting
8 “tangible” before “thing of value”.

9 **SEC. 5. RULE OF CONSTRUCTION.**

10 Nothing in section 793 or 798 of title 18, United
11 States Code, shall be construed to supersede or limit the
12 protections under the speech or debate clause of the Con-
13 stitution of the United States.

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