

114TH CONGRESS  
1ST SESSION

# S. 1828

To strengthen the ability of the Secretary of Homeland Security to detect and prevent intrusions against, and to use countermeasures to protect, Government agency information systems, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JULY 22, 2015

Ms. COLLINS (for herself, Mr. WARNER, Ms. MIKULSKI, Mr. COATS, Ms. AYOTTE, and Mrs. MCCASKILL) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

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## A BILL

To strengthen the ability of the Secretary of Homeland Security to detect and prevent intrusions against, and to use countermeasures to protect, Government agency information systems, 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 “Federal Information  
5       Security Management Reform Act of 2015”.

1 **SEC. 2. DUTIES OF THE SECRETARY OF HOMELAND SECUR-**  
2 **RITY RELATED TO INFORMATION SECURITY.**

3 Section 3553(b)(6) of title 44, United States Code,  
4 is amended by striking subparagraphs (B), (C), and (D)  
5 and inserting the following:

6 “(B) operating consolidated intrusion de-  
7 tection, prevention, or other protective capabili-  
8 ties and use of associated countermeasures for  
9 the purpose of protecting agency information  
10 and information systems from information secu-  
11 rity threats;

12 “(C) providing incident detection, analysis,  
13 mitigation, and response information and re-  
14 mote or onsite technical assistance to the head  
15 of an agency;

16 “(D) compiling and analyzing data on  
17 agency information security;

18 “(E) developing and conducting targeted  
19 risk assessments and operational evaluations for  
20 agency information and information systems in  
21 consultation with the heads of other agencies or  
22 governmental and private entities that own and  
23 operate such systems, that may include threat,  
24 vulnerability, and impact assessments;

25 “(F) in conjunction with other agencies  
26 and the private sector, assessing and fostering

1 the development of information security tech-  
 2 nologies and capabilities for use across multiple  
 3 agencies; and

4 “(G) coordinating with appropriate agen-  
 5 cies and officials to ensure, to the maximum ex-  
 6 tent feasible, that policies and directives issued  
 7 under paragraph (2) are complementary with—

8 “(i) standards and guidelines devel-  
 9 oped for national security systems; and

10 “(ii) policies and directives issued by  
 11 the Secretary of Defense and the Director  
 12 of National Intelligence under subsection  
 13 (e)(1); and”.

14 **SEC. 3. COMMUNICATIONS AND SYSTEM TRAFFIC AND DI-**  
 15 **RECTION TO AGENCIES.**

16 Section 3553 of title 44, United States Code, is  
 17 amended by adding at the end the following:

18 “(h) COMMUNICATIONS AND SYSTEMS TRAFFIC.—

19 “(1) IN GENERAL.—

20 “(A) ACQUISITION BY THE SECRETARY.—

21 Notwithstanding any other provision of law and  
 22 subject to subparagraph (B), in carrying out  
 23 the responsibilities under subparagraphs (B),  
 24 (C), and (E) of subsection (b)(6), if the Sec-  
 25 retary makes a certification described in para-

1 graph (2), the Secretary may acquire, intercept,  
2 retain, use, and disclose communications and  
3 other system traffic that are transiting to or  
4 from or stored on agency information systems  
5 and deploy countermeasures with regard to the  
6 communications and system traffic.

7 “(B) EXCEPTION.—The authorities of the  
8 Secretary under this subsection shall not apply  
9 to a communication or other system traffic that  
10 is transiting to or from or stored on a system  
11 described in paragraph (2) or (3) of subsection  
12 (e).

13 “(C) DISCLOSURE BY FEDERAL AGENCY  
14 HEADS.—The head of a Federal agency or de-  
15 partment is authorized to disclose to the Sec-  
16 retary or a private entity providing assistance  
17 to the Secretary under paragraph (A), informa-  
18 tion traveling to or from or stored on an agency  
19 information system, notwithstanding any other  
20 law that would otherwise restrict or prevent  
21 agency heads from disclosing such information  
22 to the Secretary.

23 “(2) CERTIFICATION.—A certification described  
24 in this paragraph is a certification by the Secretary  
25 that—

1           “(A) the acquisitions, interceptions, and  
2 other countermeasures are reasonably necessary  
3 for the purpose of protecting agency informa-  
4 tion systems from information security threats;

5           “(B) the content of communications will be  
6 retained only if the communication is associated  
7 with a known or reasonably suspected informa-  
8 tion security threat, and communications and  
9 system traffic will not be subject to the oper-  
10 ation of a countermeasure unless associated  
11 with the threats;

12           “(C) information obtained under activities  
13 authorized under this subsection will only be re-  
14 tained, used, or disclosed to protect agency in-  
15 formation systems from information security  
16 threats, mitigate against such threats, or, with  
17 the approval of the Attorney General, for law  
18 enforcement purposes when the information is  
19 evidence of a crime which has been, is being, or  
20 is about to be committed;

21           “(D) notice has been provided to users of  
22 agency information systems concerning the po-  
23 tential for acquisition, interception, retention,  
24 use, and disclosure of communications and  
25 other system traffic; and

1           “(E) the activities are implemented pursu-  
2           ant to policies and procedures governing the ac-  
3           quisition, interception, retention, use, and dis-  
4           closure of communications and other system  
5           traffic that have been reviewed and approved by  
6           the Attorney General.

7           “(3) PRIVATE ENTITIES.—The Secretary may  
8           enter into contracts or other agreements, or other-  
9           wise request and obtain the assistance of, private en-  
10          tities that provide electronic communication or infor-  
11          mation security services to acquire, intercept, retain,  
12          use, and disclose communications and other system  
13          traffic in accordance with this subsection.

14          “(4) NO CAUSE OF ACTION.—No cause of ac-  
15          tion shall exist against a private entity for assistance  
16          provided to the Secretary in accordance with para-  
17          graph (3).

18          “(i) DIRECTION TO AGENCIES.—

19                 “(1) AUTHORITY.—

20                         “(A) IN GENERAL.—Notwithstanding sec-  
21                         tion 3554, and subject to subparagraph (B), in  
22                         response to a known or reasonably suspected in-  
23                         formation security threat, vulnerability, or inci-  
24                         dent that represents a substantial threat to the  
25                         information security of an agency, the Secretary

1           may issue a directive to the head of an agency  
2           to take any lawful action with respect to the op-  
3           eration of the information system, including  
4           such systems owned or operated by another en-  
5           tity on behalf of an agency, that collects, proc-  
6           esses, stores, transmits, disseminates, or other-  
7           wise maintains agency information, for the pur-  
8           pose of protecting the information system from,  
9           or mitigating, an information security threat.

10           “(B) EXCEPTION.—The authorities of the  
11           Secretary under this subsection shall not apply  
12           to a system described in paragraph (2) or (3)  
13           of subsection (e).

14           “(2) PROCEDURES FOR USE OF AUTHORITY.—  
15           The Secretary shall—

16           “(A) in coordination with the Director and  
17           in consultation with Federal contractors, as ap-  
18           propriate, establish procedures governing the  
19           circumstances under which a directive may be  
20           issued under this subsection, which shall in-  
21           clude—

22                   “(i) thresholds and other criteria;

23                   “(ii) privacy and civil liberties protec-  
24                   tions; and

1                   “(iii) providing notice to potentially  
2                   affected third parties;

3                   “(B) specify the reasons for the required  
4                   action and the duration of the directive;

5                   “(C) minimize the impact of a directive  
6                   under this subsection by—

7                   “(i) adopting the least intrusive  
8                   means possible under the circumstances to  
9                   secure the agency information systems;  
10                  and

11                  “(ii) limiting directives to the shortest  
12                  period practicable; and

13                  “(D) notify the Director and the head of  
14                  any affected agency immediately upon the  
15                  issuance of a directive under this subsection.

16                  “(3) IMMINENT THREATS.—

17                  “(A) IN GENERAL.—If the Secretary deter-  
18                  mines that there is an imminent threat to agen-  
19                  cy information systems and a directive under  
20                  this subsection is not reasonably likely to result  
21                  in a timely response to the threat, the Secretary  
22                  may authorize the use of protective capabilities  
23                  under the control of the Secretary for commu-  
24                  nications or other system traffic transiting to or  
25                  from or stored on an agency information system



1 without prior consultation with the affected  
2 agency for the purpose of ensuring the security  
3 of the information or information system or  
4 other agency information systems.

5 “(B) LIMITATION ON DELEGATION.—The  
6 authority under this paragraph may not be del-  
7 egated to an official in a position lower than an  
8 Assistant Secretary of the Department of  
9 Homeland Security.

10 “(C) NOTICE.—The Secretary shall imme-  
11 diately notify the Director and the head and  
12 chief information officer (or equivalent official)  
13 of each affected agency of—

14 “(i) any action taken under this sub-  
15 section; and

16 “(ii) the reasons for and duration and  
17 nature of the action.

18 “(D) OTHER LAW.—Any action of the Sec-  
19 retary under this paragraph shall be consistent  
20 with applicable law.

21 “(4) LIMITATION.—The Secretary may direct  
22 or authorize lawful action or protective capability  
23 under this subsection only to—

1           “(A) protect agency information from un-  
2 authorized access, use, disclosure, disruption,  
3 modification, or destruction; or

4           “(B) require the remediation of or protect  
5 against identified information security risks  
6 with respect to—

7                   “(i) information collected or main-  
8 tained by or on behalf of an agency; or

9                   “(ii) that portion of an information  
10 system used or operated by an agency or  
11 by a contractor of an agency or other orga-  
12 nization on behalf of an agency.”.

13 **SEC. 4. REPORT TO CONGRESS REGARDING OFFICE OF**  
14 **MANAGEMENT AND BUDGET ENFORCEMENT**  
15 **ACTION.**

16       Section 3553 of title 44, United States Code, as  
17 amended by section 3, is further amended by inserting at  
18 the end the following new subsection:

19       “(j) ANNUAL REPORT TO CONGRESS.—

20           “(1) REQUIREMENT.—Not later than February  
21 1 of every year, the Director shall report to the ap-  
22 propriate congressional committee regarding the spe-  
23 cific actions the Director has taken pursuant to sub-  
24 section (a)(5), including any actions taken pursuant  
25 to paragraph (5) of title 40 of section 11303(b).

1           “(2) APPROPRIATE CONGRESSIONAL COM-  
2           MITTEE.—In this subsection, the term ‘appropriate  
3           congressional committee’ means—

4                   “(A) the Committee on Appropriations and  
5                   the Committee on Homeland Security and Gov-  
6                   ernmental Affairs of the Senate; and

7                   “(B) the Committee on Appropriations and  
8                   the Committee on Homeland Security of the  
9                   House of Representatives.”.

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