

115TH CONGRESS  
2D SESSION

# S. 2462

To place restrictions on searches and seizures of electronic devices at the border.

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 27, 2018

Mr. LEAHY (for himself and Mr. DAINES) 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 place restrictions on searches and seizures of electronic devices at the border.

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. DEFINITIONS.**

4 In this Act:

5 (1) FORENSIC SEARCH.—The term “forensic  
6 search” means any examination of an electronic de-  
7 vice that—

8 (A) is conducted for longer than 4 hours;

9 (B) is conducted with the assistance of any  
10 other electronic device, electronic equipment, or

1 software, including software enabling the  
2 searching, scanning, or indexing of the contents  
3 of the device;

4 (C) involves the copying or documentation  
5 of data stored on the device; or

6 (D) is conducted in any other manner that  
7 would not fall within the definition of a manual  
8 search or a search described in section 4(1).

9 (2) **MANUAL SEARCH.**—The term “manual  
10 search” means the examination of an electronic de-  
11 vice that is conducted manually without—

12 (A) the assistance of any other electronic  
13 device, electronic equipment, or software, in-  
14 cluding the use of special search programs; or

15 (B) the entry of any password, passcode,  
16 fingerprint, account information, or other bio-  
17 metric identifier that permits access to data  
18 otherwise protected by technological means.

19 **SEC. 2. SEARCHES AND SEIZURES OF ELECTRONIC DE-**  
20 **VICES AT THE BORDER.**

21 (a) **IN GENERAL.**—Except as otherwise provided in  
22 this section, an official of the Department of Homeland  
23 Security may not search or seize an electronic device  
24 transported by a United States person at the international  
25 border.

1 (b) MANUAL SEARCHES.—An electronic device trans-  
2 ported by an individual at the border may be subject to  
3 a manual search by an official of the Department of  
4 Homeland Security, in accordance with the procedures de-  
5 scribed in subsection (f) if the official has a reasonable  
6 suspicion that—

7 (1) the individual transporting the device—

8 (A) is carrying contraband or is otherwise  
9 transporting goods or persons in violation of the  
10 laws enforced by the Department of Homeland  
11 Security; or

12 (B) is inadmissible or otherwise not enti-  
13 tled to enter the United States under such laws;  
14 and

15 (2) the device contains information or evidence  
16 relevant to a violation referred to in paragraph (1).

17 (c) SEIZURES.—An electronic device transported by  
18 an individual at the border may be seized by an official  
19 of the Department of Homeland Security, in accordance  
20 with the procedures described in subsection (f) if the offi-  
21 cial has probable cause to believe that—

22 (1) the individual—

23 (A) is carrying contraband or is otherwise  
24 transporting goods or persons in violation of the

1 laws enforced by the Department of Homeland  
2 Security;

3 (B) is inadmissible or otherwise not enti-  
4 tled to enter the United States under such laws;  
5 or

6 (C) is in violation of any Federal or State  
7 law punishable by more than 1 year; and

8 (2) the electronic device contains information or  
9 evidence relevant to a violation referred to in para-  
10 graph (1).

11 (d) FORENSIC SEARCHES.—An electronic device  
12 transported by an individual at the border may be subject  
13 to forensic search only pursuant to a warrant issued using  
14 the procedures described in the Federal Rules of Criminal  
15 Procedure (or, in the case of a State court, issued using  
16 State warrant procedures) by a court of competent juris-  
17 diction.

18 (e) ADMISSIBILITY OF EVIDENCE.—Information ob-  
19 tained or derived pursuant to a violation of this section—

20 (1) may not be used as the basis for dem-  
21 onstrating the inadmissibility or removability of an  
22 individual; and

23 (2) may not be received in evidence or disclosed  
24 in any trial, hearing, or other proceeding in or be-  
25 fore any court, grand jury, department, officer,

1 agency, regulatory body, legislative committee, or  
2 other authority of the United States, a State, or a  
3 political subdivision of a State.

4 (f) PROCEDURES FOR SEARCHES AND SEIZURES OF  
5 ELECTRONIC DEVICES AT THE BORDER.—

6 (1) INITIATING A SEARCH OR SEIZURE.—Prior  
7 to initiating any search or seizure of an electronic  
8 device transported by an individual at the border  
9 pursuant to the authority under this section, the of-  
10 ficial of the Department of Homeland Security initi-  
11 ating the search or seizure shall—

12 (A) obtain supervisory approval to engage  
13 in the search or seizure; and

14 (B) record—

15 (i) the nature of the reasonable sus-  
16 picion or probable cause and the specific  
17 facts or bases for that determination; and

18 (ii) the age, sex, country of origin,  
19 citizenship or immigration status, eth-  
20 nicity, and race of the individual trans-  
21 porting the electronic device.

22 (2) CONDITIONS FOR A MANUAL SEARCH.—

23 (A) PRESENCE OF THE INDIVIDUAL.—The  
24 individual transporting the electronic device  
25 subject to a manual search shall be permitted

1 to remain present during the search of the elec-  
2 tronic device.

3 (B) SCOPE OF MANUAL SEARCH.—A man-  
4 ual search—

5 (i) shall be conducted by an official of  
6 the Department of Homeland Security  
7 manually, without the assistance of any  
8 electronic device or electronic equipment;

9 (ii) shall be tailored to the reasonable  
10 suspicion recorded by the official of the  
11 Department of Homeland Security before  
12 the manual search began;

13 (iii) shall be confined to documents,  
14 files, or other electronic information stored  
15 on the electronic device that could reason-  
16 ably contain information or evidence rel-  
17 evant to a violation described in paragraph  
18 (3) and are accessible without the entry of  
19 any password, passcode, fingerprint, or  
20 other biometric identifier; and

21 (iv) may not exceed a total of 4 hours.

22 (C) DESTRUCTION OF INADVERTENTLY  
23 COLLECTED INFORMATION.—Unless an official  
24 of the Department of Homeland Security deter-  
25 mines, not later than 5 days after a manual

1 search, that information obtained from the elec-  
2 tronic device is evidence of a violation described  
3 in paragraph (3), an official of the Department  
4 shall delete any information collected from or  
5 about the device from Department records not  
6 later than 10 days after the date on which the  
7 search was conducted.

8 (3) CONDITIONS FOR A SEIZURE OF AN ELEC-  
9 TRONIC DEVICE.—

10 (A) REQUIREMENT FOR WARRANT OR  
11 COURT ORDER APPROVING SEIZURE.—

12 (i) IN GENERAL.—Not later than 48  
13 hours after an official of the Department  
14 of Homeland Security seizes an electronic  
15 device pursuant to the authority under this  
16 section, an official of the Department shall  
17 seek a warrant or order approving the sei-  
18 zure under the procedures described in the  
19 Federal Rules of Criminal Procedure (or,  
20 in the case of a State court, issued using  
21 State warrant procedures).

22 (ii) NO WARRANT OR ORDER.—If a  
23 warrant or order is denied or fails to be  
24 issued after the seizure, an official of the  
25 Department of Homeland Security shall

1           immediately return the electronic device to  
2           the individual from whom it was seized.

3           (B) **SUSPENSION AND PROHIBITION OF**  
4           **SEARCH.**—An electronic device seized at the  
5           border pursuant to the authority under this sec-  
6           tion may not be accessed or searched by any  
7           governmental entity before the issuance of a  
8           warrant or court order authorizing the access-  
9           ing or search of the device.

10 **SEC. 3. REPORTING.**

11         The Secretary of Homeland Security shall submit an  
12         annual report to the Committee on the Judiciary of the  
13         Senate, the Committee on the Judiciary of the House of  
14         Representatives, the Committee on Homeland Security  
15         and Governmental Affairs of the Senate, and the Com-  
16         mittee on Homeland Security of the House of Representa-  
17         tives that details—

18           (1) the number of electronic devices subject to  
19           a manual search pursuant to the authority under  
20           section 2;

21           (2) the number of electronic devices subject to  
22           a forensic search pursuant to the authority under  
23           section 2;

24           (3) the number of electronic devices seized pur-  
25           suant to the authority under section 2;

1           (4) statistics regarding the age, sex, country of  
2           origin, citizenship or immigration status, ethnicity,  
3           and race of the individuals transporting electronic  
4           devices that were subject to a manual search, a fo-  
5           rensic search, or seizure; and

6           (5) the number of individuals whose electronic  
7           devices were searched or seized pursuant to the au-  
8           thority under section 2 and were later charged with  
9           a criminal offense based on information obtained  
10          from such search or seizure.

11 **SEC. 4. SAVINGS PROVISIONS.**

12          Nothing in this Act may be construed—

13           (1) to affect the authority of any law enforce-  
14           ment official to conduct any other lawful search  
15           predicated on an established exception, other than  
16           the exception for border searches, to the warrant re-  
17           quirement of the Fourth Amendment to the Con-  
18           stitution of the United States; or

19           (2) to require the individual subject to a search  
20           of his or her electronic device to provide any pass-  
21           word, passcode, fingerprint, faceprint, or other bio-  
22           metric identifier without his or her consent, in viola-  
23           tion of the Fifth Amendment to the Constitution of  
24           the United States.

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