

**Amendment to the  
Amendment in the Nature of a Substitute to HR 3674  
Offered by Michael McCaul of Texas**

Pg 4 In 8 insert the following and renumber:

“(c) Cybersecurity Operational Activity. —

(1) In General.—While carrying out the responsibilities authorized in paragraphs (2) and (3) of subparagraph (b), the Secretary is authorized, notwithstanding any other provision of law, to acquire, intercept, retain, use, and disclose communications and other system traffic that are transiting to or from or stored on Federal systems and to deploy countermeasures with regard to such communications and system traffic for cybersecurity purposes provided that the Secretary certifies that—

“(A) such acquisitions, interceptions, and countermeasures are reasonably necessary for the purpose of protecting Federal systems from cybersecurity threats;

“(B) the content of communications will be collected and retained only when the communication is associated with a known or reasonably suspected cybersecurity threat, and communications and system traffic will not be subject to the operation of a countermeasure unless associated with such threats;

“(C) information obtained pursuant to activities authorized under this subsection will only be retained, used or disclosed to protect Federal systems from cybersecurity threats, mitigate against such threats, or, with the approval of the Attorney General, for law enforcement purposes when the information is evidence of a crime which has been, is being, or is about to be committed;

“(D) notice has been provided to users of Federal systems concerning the potential for acquisition, interception, retention, use, and disclosure of communications and other system traffic; and

“(E) such activities are implemented pursuant to policies and procedures governing the acquisition, interception, retention, use, and disclosure of communications and other system traffic that have been reviewed and approved by the Attorney General.

“(2) The Secretary may enter into contracts or other agreements, or otherwise request and obtain the assistance of, private entities that provide electronic communication or cybersecurity services to acquire, intercept, retain, use, and disclose communications and other system traffic consistent with paragraph (1).

“(3) Agencies are authorized to permit the Secretary, or a private entity providing assistance to the Secretary under paragraph (2), to acquire, intercept, retain, use, or disclose communications, system traffic, records, or other information transiting to or from or stored on a Federal system, notwithstanding any other provision of law, for the purpose of protecting Federal systems from cybersecurity threats or mitigating such threats in connection with activities under this subsection.

“(4) No otherwise privileged communication obtained in accordance with, or in violation of, the provisions of this subtitle shall lose its privileged character.

And on Page 7 line 22 insert the following and renumber accordingly:

“(1) Countermeasure.—The term “countermeasure” means automated actions with defensive intent to modify or block data packets associated with electronic or wire communications, internet traffic, program code, or other system traffic transiting to or from or stored on an

information system for the purpose of protecting the information system from cybersecurity threats.”

And on Pg 12 ln 23 insert

SEC 228 Federal Preemption, Exclusivity and Law Enforcement Activities.—

“(a) This subtitle supersedes any statute of a State or political subdivision of a State that restricts or otherwise expressly regulates the acquisition, interception, retention, use or disclosure of communications, records, or other information by private entities or governmental entities to the extent such statute is inconsistent with this subtitle.

“(b) Section 226 (c) shall constitute an additional exclusive means for the domestic interception of wire or electronic communications, in accordance with section 1812(b) of Title 50.

“(c) This subtitle does not authorize the Secretary to engage in law enforcement or intelligence activities that the Department is not otherwise authorized to conduct under existing law.”