

**AMENDMENT TO H.R. 8035**  
**OFFERED BY MR. DAVIDSON OF OHIO**

Add, at the end of the bill, the following:

1 **SEC. 2. PROTECTION OF RECORDS HELD BY DATA BRO-**  
2 **KERS.**

3 Section 2702 of title 18, United States Code, is  
4 amended by adding at the end the following:

5 “(e) PROHIBITION ON OBTAINING IN EXCHANGE FOR  
6 ANYTHING OF VALUE CERTAIN RECORDS AND INFORMA-  
7 TION BY LAW ENFORCEMENT AND INTELLIGENCE AGEN-  
8 CIES.—

9 “(1) DEFINITIONS.—In this subsection—

10 “(A) the term ‘covered customer or sub-  
11 scriber record’ means a covered record that is—

12 “(i) disclosed to a third party by—

13 “(I) a provider of an electronic  
14 communication service to the public or  
15 a provider of a remote computing  
16 service of which the covered person  
17 with respect to the covered record is a  
18 subscriber or customer; or

19 “(II) an intermediary service pro-  
20 vider that delivers, stores, or proc-

1                   esses communications of such covered  
2                   person;

3                   “(ii) collected by a third party from  
4                   an online account of a covered person; or

5                   “(iii) collected by a third party from  
6                   or about an electronic device of a covered  
7                   person;

8                   “(B) the term ‘covered person’ means a  
9                   United States person, as defined in section 101  
10                  of the Foreign Intelligence Surveillance Act of  
11                  1978 (50 U.S.C. 1801);

12                  “(C) the term ‘covered record’—

13                         “(i) means a record or other informa-  
14                         tion that—

15                                 “(I) pertains to a covered person;

16                                 and

17                                 “(II) is—

18   “(aa) a record or other in-  
19   formation described in the matter  
20   preceding paragraph (1) of sub-  
21   section (c);

22   “(bb) the contents of a com-  
23   munication; or

24   “(cc) location information;  
25   and

1 “(ii) does not include a record or  
2 other information that—

3 “(I) has been voluntarily made  
4 available to the general public by a  
5 covered person on a social media plat  
6 form or similar service;

7 “(II) is lawfully available to the  
8 public as a Federal, State, or local  
9 government record or through other  
10 widely distributed media;

11 “(III) is obtained by a law en-  
12 forcement agency of a governmental  
13 entity or an element of the intelligence  
14 community for the purpose of con-  
15 ducting a background check of a cov-  
16 ered person—

17 “(aa) with the written con-  
18 sent of such person;

19 “(bb) for access or use by  
20 such agency or element for the  
21 purpose of such background  
22 check; and

23 “(cc) that is destroyed after  
24 the date on which it is no longer

1 needed for such background  
2 check; or

3 “(IV) is data generated by a pub-  
4 lic or private ALPR system;

5 “(D) the term ‘electronic device’ has the  
6 meaning given the term ‘computer’ in section  
7 1030(e);

8 “(E) the term ‘Federal law enforcement  
9 agency’ means a law enforcement agency of a  
10 department or agency of the United States;

11 “(F) the term ‘illegitimately obtained in-  
12 formation’ means a covered record that—

13 “(i) was obtained—

14 “(I) from a provider of an elec-  
15 tronic communication service to the  
16 public or a provider of a remote com-  
17 puting service in a manner that—

18 “(aa) violates the service  
19 agreement between the provider  
20 and customers or subscribers of  
21 the provider; or

22 “(bb) is inconsistent with  
23 the privacy policy of the provider;

1                   “(II) by deceiving the covered  
2                   person whose covered record was ob-  
3                   tained; or

4                   “(III) through the unauthorized  
5                   accessing of an electronic device or  
6                   online account; or

7                   “(ii) was—

8                   “(I) obtained from a provider of  
9                   an electronic communication service to  
10                  the public, a provider of a remote  
11                  computing service, or an intermediary  
12                  service provider; and

13                  “(II) collected, processed, or  
14                  shared in violation of a contract relat-  
15                  ing to the covered record;

16                  “(G) the term ‘intelligence community’ has  
17                  the meaning given that term in section 3 of the  
18                  National Security Act of 1947 (50 U.S.C.  
19                  3003);

20                  “(H) the term ‘location information’ means  
21                  information derived or otherwise calculated  
22                  from the transmission or reception of a radio  
23                  signal that reveals the approximate or actual  
24                  geographic location of a customer, subscriber,  
25                  or device;

1           “(I) the term ‘obtain in exchange for any-  
2           thing of value’ means to obtain by purchasing,  
3           to receive in connection with services being pro-  
4           vided for consideration, or to otherwise obtain  
5           in exchange for consideration, including an ac-  
6           cess fee, service fee, maintenance fee, or licens-  
7           ing fee;

8           “(J) the term ‘online account’ means an  
9           online account with an electronic communica-  
10          tion service to the public or remote computing  
11          service;

12          “(K) the term ‘pertain’, with respect to a  
13          person, means—

14                 “(i) information that is linked to the  
15                 identity of a person; or

16                 “(ii) information—

17                         “(I) that has been anonymized to  
18                         remove links to the identity of a per-  
19                         son; and

20                         “(II) that, if combined with other  
21                         information, could be used to identify  
22                         a person;

23          “(L) the term ‘third party’ means a person  
24          who—

25                 “(i) is not a governmental entity; and

1                   “(ii) in connection with the collection,  
2                   disclosure, obtaining, processing, or shar-  
3                   ing of the covered record at issue, was not  
4                   acting as—

5                   “(I) a provider of an electronic  
6                   communication service to the public;  
7                   or

8                   “(II) a provider of a remote com-  
9                   puting service; and

10                  “(M) the term ‘automated license plate  
11                  recognition system’ or ‘ALPR system’ means a  
12                  system of one or more mobile or fixed high-  
13                  speed cameras combined with computer algo-  
14                  rithms to convert images of license plates into  
15                  computer-readable data.

16                  “(2) LIMITATION.—

17                  “(A) IN GENERAL.—A Federal law en-  
18                  forcement agency may not obtain from a third  
19                  party in exchange for anything of value a cov-  
20                  ered customer or subscriber record or any ille-  
21                  gitimately obtained information.

22                  “(B) INDIRECTLY ACQUIRED RECORDS  
23                  AND INFORMATION.—The limitation under sub-  
24                  paragraph (A) shall apply without regard to  
25                  whether the third party possessing the covered

1 customer or subscriber record or illegitimately  
2 obtained information is the third party that ini-  
3 tially obtained or collected, or is the third party  
4 that initially received the disclosure of, the cov-  
5 ered customer or subscriber record or illegit-  
6 imately obtained information.

7 “(3) LIMIT ON SHARING BETWEEN AGEN-  
8 CIES.—An agency of a governmental entity that is  
9 not a law enforcement agency or an element of the  
10 intelligence community may not provide to a Federal  
11 law enforcement agency a covered customer or sub-  
12 scriber record or illegitimately obtained information  
13 that was obtained from a third party in exchange for  
14 anything of value.

15 “(4) PROHIBITION ON USE AS EVIDENCE.—A  
16 covered customer or subscriber record or illegit-  
17 imately obtained information obtained by or pro-  
18 vided to a Federal law enforcement agency in viola-  
19 tion of paragraph (2) or (3), and any evidence de-  
20 rived therefrom, may not be received in evidence in  
21 any trial, hearing, or other proceeding in or before  
22 any court, grand jury, department, officer, agency,  
23 regulatory body, legislative committee, or other au-  
24 thority of the United States, a State, or a political  
25 subdivision thereof.

1 “(5) MINIMIZATION PROCEDURES.—

2 “(A) IN GENERAL.—The Attorney General  
3 shall adopt specific procedures that are reason-  
4 ably designed to minimize the acquisition and  
5 retention, and prohibit the dissemination, of in-  
6 formation pertaining to a covered person that is  
7 acquired in violation of paragraph (2) or (3).

8 “(B) USE BY AGENCIES.—If a Federal law  
9 enforcement agency acquires information per-  
10 taining to a covered person in violation of para-  
11 graph (2) or (3), the Federal law enforcement  
12 agency shall minimize the acquisition and reten-  
13 tion, and prohibit the dissemination, of the in-  
14 formation in accordance with the procedures  
15 adopted under subparagraph (A).”.

16 **SEC. 3. REQUIRED DISCLOSURE.**

17 Section 2703 of title 18, United States Code, is  
18 amended by adding at the end the following:

19 “(i) COVERED CUSTOMER OR SUBSCRIBER RECORDS  
20 AND ILLEGITIMATELY OBTAINED INFORMATION.—

21 “(1) DEFINITIONS.—In this subsection, the  
22 terms ‘covered customer or subscriber record’, ‘ille-  
23 gitimately obtained information’, and ‘third party’  
24 have the meanings given such terms in section  
25 2702(e).

1           “(2) LIMITATION.—Unless a governmental enti-  
2           ty obtains an order in accordance with paragraph  
3           (3), the governmental entity may not require a third  
4           party to disclose a covered customer or subscriber  
5           record or any illegitimately obtained information if a  
6           court order would be required for the governmental  
7           entity to require a provider of remote computing  
8           service or a provider of electronic communication  
9           service to the public to disclose such a covered cus-  
10          tomer or subscriber record or illegitimately obtained  
11          information that is a record of a customer or sub-  
12          scriber of the provider.

13           “(3) ORDERS.—

14           “(A) IN GENERAL.—A court may only  
15           issue an order requiring a third party to dis-  
16           close a covered customer or subscriber record or  
17           any illegitimately obtained information on the  
18           same basis and subject to the same limitations  
19           as would apply to a court order to require dis-  
20           closure by a provider of remote computing serv-  
21           ice or a provider of electronic communication  
22           service to the public of a record of a customer  
23           or subscriber of the provider.

24           “(B) STANDARD.—For purposes of sub-  
25           paragraph (A), a court shall apply the most

1           stringent standard under Federal statute or the  
2           Constitution of the United States that would be  
3           applicable to a request for a court order to re-  
4           quire a comparable disclosure by a provider of  
5           remote computing service or a provider of elec-  
6           tronic communication service to the public of a  
7           record of a customer or subscriber of the pro-  
8           vider.”.

9   **SEC. 4. INTERMEDIARY SERVICE PROVIDERS.**

10       (a) DEFINITION.—Section 2711 of title 18, United  
11 States Code, is amended—

12           (1) in paragraph (3), by striking “and” at the  
13       end;

14           (2) in paragraph (4), by striking the period at  
15       the end and inserting “; and”; and

16           (3) by adding at the end the following:

17           “(5) the term ‘intermediary service provider’  
18       means an entity or facilities owner or operator that  
19       directly or indirectly delivers, stores, or processes  
20       communications for or on behalf of a provider of  
21       electronic communication service to the public or a  
22       provider of remote computing service.”.

23       (b) PROHIBITION.—Section 2702(a) of title 18,  
24 United States Code, is amended—

1           (1) in paragraph (1), by striking “and” at the  
2           end;

3           (2) in paragraph (2), by striking “and” at the  
4           end;

5           (3) in paragraph (3), by striking the period at  
6           the end and inserting “; and”; and

7           (4) by adding at the end the following:

8           “(4) an intermediary service provider shall not  
9           knowingly divulge—

10                   “(A) to any person or entity the contents  
11                   of a communication while in electronic storage  
12                   by that provider; or

13                   “(B) to any governmental entity a record  
14                   or other information pertaining to a subscriber  
15                   to or customer of, a recipient of a communica-  
16                   tion from a subscriber to or customer of, or the  
17                   sender of a communication to a subscriber to or  
18                   customer of, the provider of electronic commu-  
19                   nication service to the public or the provider of  
20                   remote computing service for, or on behalf of,  
21                   which the intermediary service provider directly  
22                   or indirectly delivers, transmits, stores, or proc-  
23                   esses communications.”.

1 **SEC. 5. LIMITS ON SURVEILLANCE CONDUCTED FOR FOR-**  
2 **EIGN INTELLIGENCE PURPOSES OTHER**  
3 **THAN UNDER THE FOREIGN INTELLIGENCE**  
4 **SURVEILLANCE ACT OF 1978.**

5 (a) IN GENERAL.—Section 2511(2)(f) of title 18,  
6 United States Code, is amended to read as follows:

7 “(f)(i)(A) Nothing contained in this chapter, chapter  
8 121 or 206 of this title, or section 705 of the Communica-  
9 tions Act of 1934 (47 U.S.C. 151 et seq.) shall be deemed  
10 to affect an acquisition or activity described in clause (B)  
11 that is carried out utilizing a means other than electronic  
12 surveillance, as defined in section 101 of the Foreign In-  
13 telligence Surveillance Act of 1978 (50 U.S.C. 1801).

14 “(B) An acquisition or activity described in this  
15 clause is—

16 “(I) an acquisition by the United States Gov-  
17 ernment of foreign intelligence information from  
18 international or foreign communications that—

19 “(aa) is acquired pursuant to express stat-  
20 utory authority; or

21 “(bb) only includes information of persons  
22 who are not United States persons and are lo-  
23 cated outside the United States; or

24 “(II) a foreign intelligence activity involving a  
25 foreign electronic communications system that—

1           “(aa) is conducted pursuant to express  
2           statutory authority; or

3           “(bb) only involves the acquisition by the  
4           United States Government of information of  
5           persons who are not United States persons and  
6           are located outside the United States.

7           “(ii) The procedures in this chapter, chapter 121,  
8           and the Foreign Intelligence Surveillance Act of 1978 (50  
9           U.S.C. 1801 et seq.) shall be the exclusive means by which  
10          electronic surveillance, as defined in section 101 of such  
11          Act, and the interception of domestic wire, oral, and elec-  
12          tronic communications may be conducted.”.

13          (b) EXCLUSIVE MEANS RELATED TO COMMUNICA-  
14          TIONS RECORDS.—The Foreign Intelligence Surveillance  
15          Act of 1978 (50 U.S.C. 1801 et seq.) shall be the exclusive  
16          means by which electronic communications transactions  
17          records, call detail records, or other information from com-  
18          munications of United States persons or persons inside the  
19          United States are acquired for foreign intelligence pur-  
20          poses inside the United States or from a person or entity  
21          located in the United States that provides telecommuni-  
22          cations, electronic communication, or remote computing  
23          services.

1 (c) EXCLUSIVE MEANS RELATED TO LOCATION IN-  
2 FORMATION, WEB BROWSING HISTORY, AND INTERNET  
3 SEARCH HISTORY.—

4 (1) DEFINITION.—In this subsection, the term  
5 “location information” has the meaning given that  
6 term in subsection (e) of section 2702 of title 18,  
7 United States Code, as added by section 2 of this  
8 Act.

9 (2) EXCLUSIVE MEANS.—Title I and sections  
10 303, 304, 702, 703, 704, and 705 of the Foreign In-  
11 telligence Surveillance Act of 1978 (50 U.S.C. 1801  
12 et seq., 1823, 1824, 1881a, 1881b, 1881c, 1881d)  
13 shall be the exclusive means by which location infor-  
14 mation, web browsing history, and internet search  
15 history of United States persons or persons inside  
16 the United States are acquired for foreign intel-  
17 ligence purposes inside the United States or from a  
18 person or entity located in the United States.

19 (d) EXCLUSIVE MEANS RELATED TO FOURTH  
20 AMENDMENT-PROTECTED INFORMATION.—Title I and  
21 sections 303, 304, 702, 703, 704, and 705 of the Foreign  
22 Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et  
23 seq., 1823, 1824, 1881a, 1881b, 1881c, 1881d) shall be  
24 the exclusive means by which any information, records,  
25 data, or tangible things are acquired for foreign intel-

1 ligenge purposes from a person or entity located in the  
2 United States if the compelled production of such informa-  
3 tion, records, data, or tangible things would require a war-  
4 rant for law enforcement purposes.

5 (e) DEFINITION.—In this section, the term “United  
6 States person” has the meaning given that term in section  
7 101 of the Foreign Intelligence Surveillance Act of 1978  
8 (50 U.S.C. 1801).

9 **SEC. 6. LIMIT ON CIVIL IMMUNITY FOR PROVIDING INFOR-**  
10 **MATION, FACILITIES, OR TECHNICAL ASSIST-**  
11 **ANCE TO THE GOVERNMENT ABSENT A**  
12 **COURT ORDER.**

13 Section 2511(2)(a) of title 18, United States Code,  
14 is amended—

15 (1) in subparagraph (ii), by striking clause (B)  
16 and inserting the following:

17 “(B) a certification in writing—

18 “(I) by a person specified in section  
19 2518(7) or the Attorney General of the United  
20 States;

21 “(II) that the requirements for an emer-  
22 gency authorization to intercept a wire, oral, or  
23 electronic communication under section 2518(7)  
24 have been met; and

1                   “(III) that the specified assistance is re-  
2                   quired,”; and

3                   (2) by striking subparagraph (iii) and inserting  
4                   the following:

5                   “(iii) For assistance provided pursuant to a certifi-  
6                   cation under subparagraph (ii)(B), the limitation on  
7                   causes of action under the last sentence of the matter fol-  
8                   lowing subparagraph (ii)(B) shall only apply to the extent  
9                   that the assistance ceased at the earliest of the time the  
10                  application for a court order was denied, the time the com-  
11                  munication sought was obtained, or 48 hours after the  
12                  interception began.”.

13 **SEC. 7 .**

