

111<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 3214

To prohibit any person from engaging in certain video surveillance except under the same conditions authorized under chapter 119 of title 18, United States Code, or as authorized by the Foreign Intelligence Surveillance Act of 1978.

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## IN THE SENATE OF THE UNITED STATES

APRIL 15, 2010

Mr. SPECTER (for himself, Mr. FEINGOLD, and Mr. KAUFMAN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To prohibit any person from engaging in certain video surveillance except under the same conditions authorized under chapter 119 of title 18, United States Code, or as authorized by the Foreign Intelligence Surveillance Act of 1978.

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 “Surreptitious Video  
5       Surveillance Act of 2010”.

1 **SEC. 2. PROHIBITION ON USE OF VIDEO SURVEILLANCE.**

2 (a) IN GENERAL.—Chapter 119 of title 18, United  
3 States Code, is amended by adding at the end the fol-  
4 lowing:

5 **“§ 2523. Prohibition on use of video surveillance**

6 “(a) DEFINITION.—In this section, the term ‘video  
7 surveillance’ means the intentional acquisition, capture, or  
8 recording of a visual image or images of any individual  
9 if—

10 “(1) the individual is in an area of a temporary  
11 or permanent residence that is not readily observable  
12 from a public location;

13 “(2) the individual has a reasonable expectation  
14 of privacy in the area; and

15 “(3) the visual image or images—

16 “(A) are made without the consent of—

17 “(i) an individual present in the area;  
18 or

19 “(ii) a resident of the temporary or  
20 permanent residence; and

21 “(B) are—

22 “(i) produced using a device, appa-  
23 ratus, or other item that was mailed,  
24 shipped, or transported in or affecting  
25 interstate or foreign commerce by any  
26 means; or

1                   “(ii) transported or transmitted, in or  
2                   affecting, or using any means or facility of,  
3                   interstate or foreign commerce, including  
4                   by computer.

5           “(b) PROHIBITION ON VIDEO SURVEILLANCE.—It  
6 shall be unlawful for any person to engage in any video  
7 surveillance, except—

8                   “(1) as provided in this section; or

9                   “(2) as authorized under the Foreign Intel-  
10                   ligence Surveillance Act of 1978 (50 U.S.C. 1801 et  
11                   seq.).

12           “(c) TREATMENT AS ELECTRONIC SURVEILLANCE.—

13                   “(1) IN GENERAL.—Subject to paragraph (2)—

14                           “(A) video surveillance shall be considered  
15                           to be an interception of an electronic commu-  
16                           nication for the purposes of this chapter; and

17                           “(B) it shall not be unlawful for a person  
18                           to engage in video surveillance if the video sur-  
19                           veillance is conducted in a manner or is of a  
20                           type authorized under this chapter for the  
21                           interception of an electronic communication.

22                   “(2) EXCEPTION.—Sections 2511(2)(c),  
23                   2511(2)(d), 2512, 2513, and 2518(10)(c) shall not  
24                   apply to video surveillance.

1           “(3) PROHIBITION OF USE AS EVIDENCE OF  
2 VIDEO SURVEILLANCE.—

3           “(A) IN GENERAL.—No part of the con-  
4 tents of video surveillance and no evidence de-  
5 rived from video surveillance may be received in  
6 evidence in any trial, hearing, or other pro-  
7 ceeding in or before any court, grand jury, de-  
8 partment, officer, agency, regulatory body, leg-  
9 islative committee, or other authority of the  
10 United States, a State, or political subdivision  
11 thereof if the disclosure of the video surveillance  
12 would be in violation of this chapter.

13           “(B) MOTION TO SUPPRESS.—

14           “(i) IN GENERAL.—Any aggrieved  
15 person in any trial, hearing, or proceeding  
16 described in subparagraph (A) may move  
17 to suppress the contents of any video sur-  
18 veillance conducted under this chapter, or  
19 any evidence derived from the video sur-  
20 veillance, on the grounds that—

21           “(I) the video surveillance was  
22 unlawfully conducted;

23           “(II) the order of authorization  
24 or approval under which the video

1 surveillance was conducted was insuf-  
2 ficient on its face; or

3 “(III) the video surveillance was  
4 not conducted in conformity with the  
5 order of authorization or approval.

6 “(ii) TIMING OF MOTION.—A motion  
7 made under clause (i) shall be made before  
8 the trial, hearing, or proceeding unless—

9 “(I) there was no opportunity to  
10 make such motion; or

11 “(II) the aggrieved person de-  
12 scribed in clause (i) was not aware of  
13 the grounds of the motion.

14 “(iii) REMEDY.—If the motion made  
15 under clause (i) is granted, the contents of  
16 the video surveillance, or evidence derived  
17 from the video surveillance, shall be treat-  
18 ed as having been obtained in violation of  
19 this chapter.

20 “(iv) INSPECTION OF EVIDENCE.—  
21 The judge, upon filing of a motion under  
22 clause (i), may, in the discretion of the  
23 judge, make available to the aggrieved per-  
24 son or counsel for the aggrieved person for  
25 inspection such portions of the video sur-

1           veillance or evidence derived from the video  
2           surveillance as the judge determines to be  
3           in the interests of justice.

4           “(v) RIGHT TO APPEAL.—

5                   “(I) IN GENERAL.—In addition  
6           to any other right to appeal, the  
7           United States shall have the right to  
8           appeal from an order granting a mo-  
9           tion made under clause (i), or the de-  
10          nial of an application for an order of  
11          approval, if the United States attor-  
12          ney certifies to the judge or other offi-  
13          cial granting the motion or denying  
14          the application that the appeal is not  
15          taken for purposes of delay.

16                   “(II) FILING DEADLINE.—An ap-  
17          peal under subclause (I) shall—

18                           “(aa) be taken within 30  
19                           days after the date the order was  
20                           entered; and

21                           “(bb) be diligently pros-  
22                           ecuted.”.

1           (b) CHAPTER ANALYSIS.—The table of sections for  
2 chapter 119 of title 18, United States Code, is amended  
3 by adding at the end the following:

“2523. Prohibition on use of video surveillance.”.

