To amend chapter 37 of title 18, United States Code, to authorize appropriate disclosure of classified information, to appropriately limit the scope of the offense of disclosing classified information, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. WYDEN introduced the following bill; which was read twice and referred to the Committee on _______

A BILL

To amend chapter 37 of title 18, United States Code, to authorize appropriate disclosure of classified information, to appropriately limit the scope of the offense of disclosing classified information, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Espionage Act Reform Act of 2022”.
SEC. 2. DISCLOSURE OF CLASSIFIED INFORMATION RELATED TO SIGNALS INTELLIGENCE.

(a) Authority to Disclose Information.—Section 798(c) of title 18, United States Code, is amended by striking “furnishing,” and all that follows and inserting the following: “furnishing of information to—

“(1) any Member of the Senate or the House of Representatives;

“(2) a Federal court, in accordance with such procedures as the court may establish;

“(3) the inspector general of an element of the intelligence community (as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 3003)), including the Inspector General of the Intelligence Community;

“(4) the Chairman or a member of the Privacy and Civil Liberties Oversight Board or any employee of the Board designated by the Board, in accordance with such procedures as the Board may establish;

“(5) the Chairman or a commissioner of the Federal Trade Commission or any employee of the Commission designated by the Commission, in accordance with such procedures as the Commission may establish;

“(6) the Chairman or a commissioner of the Federal Communications Commission or any em-
ployee of the Commission designated by the Commission, in accordance with such procedures as the Commission may establish; or

“(7) any other person or entity authorized to receive disclosures containing classified information pursuant to any applicable law, regulation, or executive order regarding the protection of whistleblowers.”.

(b) AUTHORIZED PERSONS.—Section 798(b) of title 18, United States Code, is amended—

(1) in the matter preceding the first undesignated paragraph, by striking “this section—” and inserting “this section:”

(2) by striking “The term ‘classified information’ means information which, at the time of a violation of this section, is,” and inserting the following:

“(1) The term ‘classified information’—

“(A) means information which, at the time of a violation of this section, is known to the person violating this section to be,”;

(3) in paragraph (1), as so designated—

(A) by inserting “and” after “distribution;”; and

(B) by adding at the end the following:
“(B) does not include any information that is specifically designated as ‘Unclassified’ under any Executive Order, Act of Congress, or action by a committee of Congress in accordance with the rules of its House of Congress.”;

(4) by striking “The terms ‘code,’ ‘cipher,’ and ‘cryptographic system’ include” and inserting the following:

“(2) The terms ‘code’, ‘cipher’, and ‘cryptographic system’ include”;

(5) in paragraph (2), as so designated, by striking “communications;” and inserting “communications.”;

(6) by striking “The term ‘foreign’” and inserting the following:

“(5) The term ‘foreign’;

(7) in paragraph (5), as so designated, by striking “United States;” and inserting “United States.”;

(8) by striking “The term ‘communication’” and inserting the following:

“(3) The term ‘communication’;

(9) in paragraph (3), as so designated, by striking “recipients;” and inserting “recipients.”;
(10) by transferring paragraph (3), as so designated, to appear after paragraph (2), as so designated; and

(11) by striking “The term ‘unauthorized’” and all that follows through “for the United States.” and inserting the following:

“(6) The term ‘unauthorized person’ means any person who, or agency which, is not authorized to receive information of the categories set forth in subsection (a) of this section by—

“(A) the President;

“(B) the head of a department or agency of the United States Government which is expressly designated by the President to engage in communication intelligence activities for the United States; or

“(C) an Act of Congress.”.

(c) SCOPE OF PROHIBITION.—Section 798 of title 18, United States Code, is amended—

(1) in subsection (a), in the matter preceding paragraph (1)—

(A) by striking “Whoever” and inserting “Any individual who”; and

(B) by inserting “obtained by the individual while the individual was a covered person
and acting within the scope of his or her activities as a covered person” after “any classified information”; and

(2) in subsection (b), by inserting after paragraph (3), as so designated and transferred by subsection (b) of this section, the following:

“(4) The term ‘covered person’ means an individual who—

“(A) receives official access to classified information granted by the United States Government;

“(B) signs a nondisclosure agreement with regard to such classified information; and

“(C) is authorized to receive information of the categories set forth in subsection (a) of this section—

“(i) by the President; or

“(ii) the head of a department or agency of the United States Government which is expressly designated by the President to engage in communication intelligence activities for the United States.”.

(d) LIMITATION ON SCOPE.—Section 798 of title 18, United States Code, is amended—
(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following:

“(d)(1) In this subsection, the term ‘foreign agent’—

“(A) has the meaning given the term ‘agent of a foreign power’ under section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801); and

“(B) does not include a person who is an agent of a foreign power (as so defined) with respect to a foreign power described in section 101(a)(5) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(a)(5)).

“(2) A foreign agent who—

“(A) aids, abets, counsels, commands, induces, or procures the commission of an offense under this section shall be subject to prosecution under this section by virtue of section 2 of this title;

“(B) knowing that an offense under this section has been committed by another person, receives, relieves, comforts, or assists such other person in order to hinder or prevent the apprehension, trial, or punishment of such other person shall be subject to prosecution under section 3 of this title;
“(C) having knowledge of the actual commission of an offense under this section, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States shall be subject to prosecution under section 4 of this title; or

“(D) conspires to commit an offense under this section shall be subject to prosecution under section 371 of this title.

“(3) Any person who is not a foreign agent shall not be subject to prosecution under this section by virtue of section 2 of this title or under section 3, 4, or 371 of this title, unless the person—

“(A) commits a felony under Federal law in the course of committing an offense under this section (by virtue of section 2 of this title) or under section 3, 4, or 371 of this title;

“(B) was a covered person at the time of the offense; or

“(C) subject to paragraph (4), directly and materially aids, or procures in exchange for anything of monetary value, the commission of an offense under this section with the specific intent to—

“(i) harm the national security of the United States; or

“(i) harm the national security of the United States; or

“(i) harm the national security of the United States; or
“(ii) benefit any foreign government to the
detriment of the United States.

“(4) Paragraph (3)(C) shall not apply to direct and
material aid that consists of—

“(A) counseling, education, or other speech ac-
tivity; or

“(B) providing an electronic communication
service to the public or a remote computing service
(as such terms are defined in section 2510 and
2711, respectively).”.

SEC. 3. GATHERING, TRANSMITTING OR LOSING DEFENSE
INFORMATION.

(a) DEFINITIONS.—Section 793 of title 18, United
States Code, is amended by adding at the end the fol-
lowing:

“(i) In this section—

“(1) the term ‘covered person’ means an indi-
vidual who—

“(A) receives official access to classified in-
formation granted by the United States Govern-
ment;

“(B) signs a nondisclosure agreement with
regard to such classified information; and

“(C) is authorized to receive documents,
writing, code books, signal books, sketches,
photographs, photographic negatives, blue-
prints, plans, maps, models, instruments, appli-
cances, or notes of anything connected with the
national defense by—

“(i) by the President; or

“(ii) the head of a department or
agency of the United States Government
which is expressly designated by the Presi-
dent to engage in activities relating to the
national defense; and

“(2) the term ‘foreign agent’—

“(A) has the meaning given the term
‘agent of a foreign power’ under section 101 of
the Foreign Intelligence Surveillance Act of
1978 (50 U.S.C. 1801); and

“(B) does not include a person who is an
agent of a foreign power (as so defined) with
respect to a foreign power described in section
101(a)(5) of the Foreign Intelligence Surveil-
ance Act of 1978 (50 U.S.C. 1801(a)(5)).”.

(b) Obtaining or Receiving Defense Information.—Section 793(c) of title 18, United States Code, is
amended—

(1) by striking “Whoever” and inserting “A
foreign agent who”;
(2) by inserting “and with like intent or reason to believe,” after “aforesaid,”; and
(3) by striking “he” and inserting “the foreign agent”.

(c) TRANSMISSION OF LAWFULLY POSSESSED DEFENSE INFORMATION TO UNAUTHORIZED PERSONS.—
Section 793(d) of title 18, United States Code, is amended by striking “or note relating to the national defense, or information relating to the national defense which information” and inserting “note, or information relating to the national defense, which document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, note, or information”.

(d) TRANSMISSION OF UNLAWFULLY POSSESSED DEFENSE INFORMATION TO UNAUTHORIZED PERSONS.—
Section 793(e) of title 18, United States Code, is amended to read as follows:
“(e) An individual who—
“(1) while a covered person, gains unauthorized possession of, access to, or control over any non-public document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, or
note of anything connected with the national defense; and

“(2)(A) with reason to believe such information could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicates, delivers, transmits, or causes to be communicated, delivered, or transmitted, or attempts to communicate, deliver, transmit, or cause to be communicated, delivered, or transmitted, the same to any person not entitled to receive it; or

“(B) willfully—

“(i) retains the same at an unauthorized location; and

“(ii) fails to deliver the same to the officer or employee of the United States entitled to receive it; or”.

(e) Obtaining Information From Places Connected With the National Defense.—Section 793(a) of title 18, United States Code, is amended by striking “otherwise obtains information concerning” and inserting “otherwise unlawfully obtains nonpublic information concerning”.

(f) Copying and Taking Defense Information.—Section 793(b) of title 18, United States Code, is amended—
(1) by striking “Whoever,” and inserting “An individual who, while a covered person,”; and

(2) by inserting “nonpublic” before “sketch,”.

(g) LIMITATION ON SCOPE.—Section 793 of title 18, United States Code, is amended by striking subsection (g) and inserting the following:

“(g)(1) A foreign agent who—

“(A) aids, abets, counsels, commands, induces, or procures the commission of an offense under this section shall be subject to prosecution under this section by virtue of section 2 of this title;

“(B) knowing that an offense under this section has been committed by another person, receives, relieves, comforts, or assists such other person in order to hinder or prevent the apprehension, trial, or punishment of such other person shall be subject to prosecution under section 3 of this title;

“(C) having knowledge of the actual commission of an offense under this section, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States shall be subject to prosecution under section 4 of this title; or
“(D) conspires to commit an offense under this section shall be subject to prosecution under section 371 of this title.

“(2) Any person who is not a foreign agent shall not be subject to prosecution under this section by virtue of section 2 of this title or under section 3, 4, or 371 of this title, unless the person—

“(A) commits a felony under Federal law in the course of committing an offense under this section (by virtue of section 2 of this title) or under section 3, 4, or 371 of this title;

“(B) was a covered person at the time of the offense; or

“(C) subject to paragraph (3), directly and materially aids, or procures in exchange for anything of monetary value, the commission of an offense under this section with the specific intent to—

“(i) harm the national security of the United States; or

“(ii) benefit any foreign government to the detriment of the United States.

“(3) Paragraph (2)(C) shall not apply to direct and material aid that consists of—

“(A) counseling, education, or other speech activity; or
“(B) providing an electronic communication service to the public or a remote computing service (as such terms are defined in section 2510 and 2711, respectively).”.

SEC. 4. PUBLIC MONEY, PROPERTY OR RECORDS.

Section 641 of title 18, United States Code, is amended in the first undesignated paragraph by inserting “tangible” before “thing of value”.

SEC. 5. RULE OF CONSTRUCTION.

Nothing in section 793 or 798 of title 18, United States Code, shall be construed to supersede or limit the protections under the speech or debate clause of the Constitution of the United States.