

113TH CONGRESS
1ST SESSION

H. R. 1852

To amend title 18, United States Code, to update the privacy protections for electronic communications information that is stored by third-party service providers in order to protect consumer privacy interests while meeting law enforcement needs, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 7, 2013

Mr. YODER (for himself and Mr. GRAVES of Georgia) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, to update the privacy protections for electronic communications information that is stored by third-party service providers in order to protect consumer privacy interests while meeting law enforcement needs, and for other purposes.

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 “Email Privacy Act”.

1 **SEC. 2. CONFIDENTIALITY OF ELECTRONIC COMMUNICA-**
2 **TIONS.**

3 Section 2702(a)(3) of title 18, United States Code,
4 is amended to read as follows:

5 “(3) a provider of remote computing service or
6 electronic communication service to the public shall
7 not knowingly divulge to any governmental entity
8 the contents of any communication described in sec-
9 tion 2703(a), or any record or other information
10 pertaining to a subscriber or customer of such serv-
11 ice.”.

12 **SEC. 3. ELIMINATION OF 180-DAY RULE; SEARCH WARRANT**
13 **REQUIREMENT; REQUIRED DISCLOSURE OF**
14 **CUSTOMER RECORDS.**

15 (a) IN GENERAL.—Section 2703 of title 18, United
16 States Code, is amended—

17 (1) by striking subsections (a), (b), and (c) and
18 inserting the following:

19 “(a) CONTENTS OF WIRE OR ELECTRONIC COMMU-
20 NICATIONS.—A governmental entity may require the dis-
21 closure by a provider of electronic communication service
22 or remote computing service of the contents of a wire or
23 electronic communication that is in electronic storage with
24 or otherwise stored, held, or maintained by the provider
25 only if the governmental entity obtains a warrant issued
26 using the procedures described in the Federal Rules of

1 Criminal Procedure (or, in the case of a State court,
2 issued using State warrant procedures) that is issued by
3 a court of competent jurisdiction directing the disclosure.

4 “(b) NOTICE.—Except as provided in section 2705,
5 not later than 10 business days in the case of a law en-
6 forcement agency, or not later than 3 business days in
7 the case of any other governmental entity, after a govern-
8 mental entity receives the contents of a wire or electronic
9 communication of a subscriber or customer from a pro-
10 vider of electronic communication service or remote com-
11 puting service under subsection (a), the governmental en-
12 tity shall serve upon, or deliver to by registered or first-
13 class mail, electronic mail, or other means reasonably cal-
14 culated to be effective, as specified by the court issuing
15 the warrant, the subscriber or customer—

16 “(1) a copy of the warrant; and

17 “(2) a notice that includes the information re-
18 ferred to in clauses (i) and (ii) of section
19 2705(a)(4)(B).

20 “(c) RECORDS CONCERNING ELECTRONIC COMMU-
21 NICATION SERVICE OR REMOTE COMPUTING SERVICE.—

22 “(1) IN GENERAL.—Subject to paragraph (2), a
23 governmental entity may require a provider of elec-
24 tronic communication service or remote computing
25 service to disclose a record or other information per-

1 taining to a subscriber or customer of the provider
2 or service (not including the contents of communica-
3 tions), only if the governmental entity—

4 “(A) obtains a warrant issued using the
5 procedures described in the Federal Rules of
6 Criminal Procedure (or, in the case of a State
7 court, issued using State warrant procedures)
8 that is issued by a court of competent jurisdic-
9 tion directing the disclosure;

10 “(B) obtains a court order directing the
11 disclosure under subsection (d);

12 “(C) has the consent of the subscriber or
13 customer to the disclosure; or

14 “(D) submits a formal written request rel-
15 evant to a law enforcement investigation con-
16 cerning telemarketing fraud for the name, ad-
17 dress, and place of business of a subscriber or
18 customer of the provider or service that is en-
19 gaged in telemarketing (as defined in section
20 2325).

21 “(2) INFORMATION TO BE DISCLOSED.—A pro-
22 vider of electronic communication service or remote
23 computing service shall, in response to an adminis-
24 trative subpoena authorized by Federal or State
25 statute, a grand jury, trial, or civil discovery sub-

1 poena, or any means authorized under paragraph
2 (1), disclose to a governmental entity the—

3 “(A) name;

4 “(B) address;

5 “(C) local and long distance telephone con-
6 nection records, or records of session times and
7 durations;

8 “(D) length of service (including start
9 date) and types of service used;

10 “(E) telephone or instrument number or
11 other subscriber number or identity, including
12 any temporarily assigned network address; and

13 “(F) means and source of payment for
14 such service (including any credit card or bank
15 account number), of a subscriber or customer of
16 such service.

17 “(3) NOTICE NOT REQUIRED.—A governmental
18 entity that receives records or information under
19 this subsection is not required to provide notice to
20 a subscriber or customer.”; and

21 (2) by adding at the end the following:

22 “(h) RULE OF CONSTRUCTION.—Nothing in this sec-
23 tion or in section 2702 shall be construed to limit the au-
24 thority of a governmental entity to use an administrative
25 subpoena authorized under a Federal or State statute or

1 to use a Federal or State grand jury, trial, or civil dis-
2 covery subpoena to—

3 “(1) require an originator, addressee, or in-
4 tended recipient of an electronic communication to
5 disclose the contents of the electronic communication
6 to the governmental entity; or

7 “(2) require an entity that provides electronic
8 communication services to the officers, directors, em-
9 ployees, or agents of the entity (for the purpose of
10 carrying out their duties) to disclose the contents of
11 an electronic communication to or from an officer,
12 director, employee, or agent of the entity to a gov-
13 ernmental entity, if the electronic communication is
14 held, stored, or maintained on an electronic commu-
15 nications system owned or operated by the entity.”.

16 (b) TECHNICAL AND CONFORMING AMENDMENTS.—
17 Section 2703(d) of title 18, United States Code, is amend-
18 ed—

19 (1) by striking “A court order for disclosure
20 under subsection (b) or (c)” and inserting “A court
21 order for disclosure under subsection (c)”; and

22 (2) by striking “the contents of a wire or elec-
23 tronic communication, or”.

1 **SEC. 4. DELAYED NOTICE.**

2 Section 2705 of title 18, United States Code, is
3 amended to read as follows:

4 **“SEC. 2705. DELAYED NOTICE.**

5 “(a) DELAY OF NOTIFICATION.—

6 “(1) IN GENERAL.—A governmental entity that
7 is seeking a warrant under section 2703(a) may in-
8 clude in the application for the warrant a request for
9 an order delaying the notification required under
10 section 2703(b) for a period of not more than 180
11 days in the case of a law enforcement agency, or not
12 more than 90 days in the case of any other govern-
13 mental entity.

14 “(2) DETERMINATION.—A court shall grant a
15 request for delayed notification made under para-
16 graph (1) if the court determines that there is rea-
17 son to believe that notification of the existence of the
18 warrant may result in—

19 “(A) endangering the life or physical safety
20 of an individual;

21 “(B) flight from prosecution;

22 “(C) destruction of or tampering with evi-
23 dence;

24 “(D) intimidation of potential witnesses; or

25 “(E) otherwise seriously jeopardizing an
26 investigation or unduly delaying a trial.

1 “(3) EXTENSION.—Upon request by a govern-
2 mental entity, a court may grant one or more exten-
3 sions of the delay of notification granted under para-
4 graph (2) of not more than 180 days in the case of
5 a law enforcement agency, or not more than 90 days
6 in the case of any other governmental entity.

7 “(4) EXPIRATION OF THE DELAY OF NOTIFICA-
8 TION.—Upon expiration of the period of delay of no-
9 tification under paragraph (2) or (3), the govern-
10 mental entity shall serve upon, or deliver to by reg-
11 istered or first-class mail, electronic mail, or other
12 means reasonably calculated to be effective as speci-
13 fied by the court approving the search warrant, the
14 customer or subscriber—

15 “(A) a copy of the warrant; and

16 “(B) notice that informs the customer or
17 subscriber—

18 “(i) of the nature of the law enforce-
19 ment inquiry with reasonable specificity;

20 “(ii) that information maintained for
21 the customer or subscriber by the provider
22 of electronic communication service or re-
23 mote computing service named in the proc-
24 ess or request was supplied to, or re-
25 quested by, the governmental entity;

1 “(iii) of the date on which the warrant
2 was served on the provider and the date on
3 which the information was provided by the
4 provider to the governmental entity;

5 “(iv) that notification of the customer
6 or subscriber was delayed;

7 “(v) the identity of the court author-
8 izing the delay; and

9 “(vi) of the provision of this chapter
10 under which the delay was authorized.

11 “(b) PRECLUSION OF NOTICE TO SUBJECT OF GOV-
12 ERNMENTAL ACCESS.—

13 “(1) IN GENERAL.—A governmental entity that
14 is obtaining the contents of a communication or in-
15 formation or records under section 2703 may apply
16 to a court for an order directing a provider of elec-
17 tronic communication service or remote computing
18 service to which a warrant, order, subpoena, or other
19 directive under section 2703 is directed not to notify
20 any other person of the existence of the warrant,
21 order, subpoena, or other directive for a period of
22 not more than 180 days in the case of a law enforce-
23 ment agency, or not more than 90 days in the case
24 of any other governmental entity.

1 “(2) DETERMINATION.—A court shall grant a
2 request for an order made under paragraph (1) if
3 the court determines that there is reason to believe
4 that notification of the existence of the warrant,
5 order, subpoena, or other directive may result in—

6 “(A) endangering the life or physical safety
7 of an individual;

8 “(B) flight from prosecution;

9 “(C) destruction of or tampering with evi-
10 dence;

11 “(D) intimidation of potential witnesses; or

12 “(E) otherwise seriously jeopardizing an
13 investigation or unduly delaying a trial.

14 “(3) EXTENSION.—Upon request by a govern-
15 mental entity, a court may grant one or more exten-
16 sions of an order granted under paragraph (2) of
17 not more than 180 days in the case of a law enforce-
18 ment agency, or not more than 90 days in the case
19 of any other governmental entity.

20 “(4) PRIOR NOTICE TO LAW ENFORCEMENT.—
21 Upon expiration of the period of delay of notice
22 under this section, and not later than 3 business
23 days before providing notice to a customer or sub-
24 scriber, a provider of electronic communication serv-
25 ice or remote computing service shall notify the gov-

1 ernmental entity that obtained the contents of a
 2 communication or information or records under sec-
 3 tion 2703 of the intent of the provider of electronic
 4 communication service or remote computing service
 5 to notify the customer or subscriber of the existence
 6 of the warrant, order, or subpoena seeking that in-
 7 formation.

8 “(c) DEFINITION.—In this section and section 2703,
 9 the term ‘law enforcement agency’ means an agency of the
 10 United States, a State, or a political subdivision of a
 11 State, authorized by law or by a government agency to
 12 engage in or supervise the prevention, detection, investiga-
 13 tion, or prosecution of any violation of criminal law, or
 14 any other Federal or State agency conducting a criminal
 15 investigation.”.

16 **SEC. 5. EVALUATION BY THE GOVERNMENT ACCOUNT-**
 17 **ABILITY OFFICE.**

18 Not later than September 30, 2015, the Comptroller
 19 General of the United States shall submit to Congress a
 20 report regarding the disclosure of customer communica-
 21 tions and records under section 2703 of title 18, United
 22 States Code, which shall include—

23 (1) an analysis and evaluation of such disclo-
 24 sure under section 2703 of title 18, United States

1 Code, as in effect before the date of enactment of
2 this Act, including—

3 (A) a comprehensive analysis and evalua-
4 tion regarding the number of individual in-
5 stances, in each of the 5 years before the year
6 in which this Act is enacted, in which Federal,
7 State, or local law enforcement officers used
8 section 2703 of title 18, United States Code, to
9 obtain information relevant to an ongoing
10 criminal investigation;

11 (B) an analysis of the average length of
12 time taken by a provider of an electronic com-
13 munication service or a remote computing serv-
14 ice to comply with requests by law enforcement
15 officers for information under section 2703 of
16 title 18, United States Code;

17 (C) the number of individual instances, in
18 each of the 5 years before the year in which
19 this Act is enacted, in which information was
20 requested by law enforcement officers from a
21 provider of an electronic communication service
22 or a remote computing service under a warrant
23 as authorized under section 2703(a) of title 18,
24 United States Code;

1 (D) the number of individual instances and
2 type of request, in each of the 5 years before
3 the year in which this Act is enacted, in which
4 information was requested by law enforcement
5 officers from a provider of an electronic com-
6 munication service or a remote computing serv-
7 ice under the other information request provi-
8 sions in section 2703 of title 18, United States
9 Code; and

10 (E) the number of individual instances, in
11 each of the 5 years before the year in which
12 this Act is enacted, in which law enforcement
13 officers requested delayed notification to the
14 subscriber or customer under section 2705 of
15 title 18, United States Code; and

16 (2) an analysis and evaluation of such disclo-
17 sure under section 2703 of title 18, United States
18 Code, as amended by this Act, including—

19 (A) an evaluation of the effects of the
20 amendments to the warrant requirements on
21 judges, court dockets, or any other court oper-
22 ations;

23 (B) a survey of Federal, State, and local
24 judges and law enforcement officers to deter-
25 mine the average length of time required for

1 providers of an electronic communication serv-
2 ice or a remote computing service to provide the
3 contents of communications requested under a
4 search warrant, which shall include identifying
5 the number of instances in which a judge was
6 required to order a provider of an electronic
7 communication service or a remote computing
8 service to appear to show cause for failing to
9 comply with a warrant or to issue an order of
10 contempt against a provider of an electronic
11 communication service or a remote computing
12 service for such a failure; and

13 (C) determining whether the amendments
14 to the warrant requirements resulted in an in-
15 crease in the use of the emergency exception
16 under section 2702(b)(8) of title 18, United
17 States Code.

18 **SEC. 6. RULE OF CONSTRUCTION.**

19 Nothing in this Act or an amendment made by this
20 Act shall be construed to preclude the acquisition by the
21 United States Government of—

22 (1) the contents of a wire or electronic commu-
23 nication pursuant to other lawful authorities, includ-
24 ing the authorities under chapter 119 of title 18
25 (commonly known as the “Wiretap Act”), the For-

1 eign Intelligence Surveillance Act of 1978 (50
2 U.S.C. 1801 et seq.), or any other provision of Fed-
3 eral law not specifically amended by this Act; or
4 (2) records or other information relating to a
5 subscriber or customer of any electronic communica-
6 tions service or remote computing service (not in-
7 cluding the content of such communications) pursu-
8 ant to the Foreign Intelligence Surveillance Act of
9 1978 (50 U.S.C. 1801 et seq.), chapter 119 of title
10 18 (commonly known as the “Wiretap Act”), or any
11 other provision of Federal law not specifically
12 amended by this Act.

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