

113<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 607

To improve the provisions relating to the privacy of electronic communications.

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IN THE SENATE OF THE UNITED STATES

MARCH 19, 2013

Mr. LEAHY (for himself and Mr. LEE) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To improve the provisions relating to the privacy of electronic communications.

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 “Electronic Communica-  
5       tions Privacy Act Amendments Act of 2013”.

6       **SEC. 2. CONFIDENTIALITY OF ELECTRONIC COMMUNICA-**  
7       **TIONS.**

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

10               “(3) a provider of remote computing service or  
11       electronic communication service to the public shall

1 not knowingly divulge to any governmental entity  
 2 the contents of any communication described in sec-  
 3 tion 2703(a), or any record or other information  
 4 pertaining to a subscriber or customer of such serv-  
 5 ice.”.

6 **SEC. 3. ELIMINATION OF 180-DAY RULE; SEARCH WARRANT**  
 7 **REQUIREMENT; REQUIRED DISCLOSURE OF**  
 8 **CUSTOMER RECORDS.**

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

11 (1) by striking subsections (a), (b), and (c) and  
 12 inserting the following:

13 “(a) CONTENTS OF WIRE OR ELECTRONIC COMMU-  
 14 NICATIONS.—A governmental entity may require the dis-  
 15 closure by a provider of electronic communication service  
 16 or remote computing service of the contents of a wire or  
 17 electronic communication that is in electronic storage with  
 18 or otherwise stored, held, or maintained by the provider  
 19 only if the governmental entity obtains a warrant issued  
 20 using the procedures described in the Federal Rules of  
 21 Criminal Procedure (or, in the case of a State court,  
 22 issued using State warrant procedures) that is issued by  
 23 a court of competent jurisdiction directing the disclosure.

24 “(b) NOTICE.—Except as provided in section 2705,  
 25 not later than 10 business days in the case of a law en-

1 enforcement agency, or not later than 3 business days in  
 2 the case of any other governmental entity, after a govern-  
 3 mental entity receives the contents of a wire or electronic  
 4 communication of a subscriber or customer from a pro-  
 5 vider of electronic communication service or remote com-  
 6 puting service under subsection (a), the governmental en-  
 7 tity shall serve upon, or deliver to by registered or first-  
 8 class mail, electronic mail, or other means reasonably cal-  
 9 culated to be effective, as specified by the court issuing  
 10 the warrant, the subscriber or customer—

11           “(1) a copy of the warrant; and

12           “(2) a notice that includes the information re-  
 13       ferred to in clauses (i) and (ii) of section  
 14       2705(a)(4)(B).

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

17           “(1) IN GENERAL.—Subject to paragraph (2), a  
 18       governmental entity may require a provider of elec-  
 19       tronic communication service or remote computing  
 20       service to disclose a record or other information per-  
 21       taining to a subscriber or customer of the provider  
 22       or service (not including the contents of communica-  
 23       tions), only if the governmental entity—

24           “(A) obtains a warrant issued using the  
 25       procedures described in the Federal Rules of

1 Criminal Procedure (or, in the case of a State  
2 court, issued using State warrant procedures)  
3 that is issued by a court of competent jurisdic-  
4 tion directing the disclosure;

5 “(B) obtains a court order directing the  
6 disclosure under subsection (d);

7 “(C) has the consent of the subscriber or  
8 customer to the disclosure; or

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

16 “(2) INFORMATION TO BE DISCLOSED.—A pro-  
17 vider of electronic communication service or remote  
18 computing service shall, in response to an adminis-  
19 trative subpoena authorized by Federal or State  
20 statute, a grand jury, trial, or civil discovery sub-  
21 poena, or any means authorized under paragraph  
22 (1), disclose to a governmental entity the—

23 “(A) name;

24 “(B) address;

1           “(C) local and long distance telephone con-  
2           nection records, or records of session times and  
3           durations;

4           “(D) length of service (including start  
5           date) and types of service used;

6           “(E) telephone or instrument number or  
7           other subscriber number or identity, including  
8           any temporarily assigned network address; and

9           “(F) means and source of payment for  
10          such service (including any credit card or bank  
11          account number), of a subscriber or customer of  
12          such service.

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

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

18          “(h) RULE OF CONSTRUCTION.—Nothing in this sec-  
19          tion or in section 2702 shall be construed to limit the au-  
20          thority of a governmental entity to use an administrative  
21          subpoena authorized under a Federal or State statute or  
22          to use a Federal or State grand jury, trial, or civil dis-  
23          covery subpoena to—

24                 “(1) require an originator, addressee, or in-  
25          tended recipient of an electronic communication to

1 disclose the contents of the electronic communication  
 2 to the governmental entity; or

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

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

15 (1) by striking “A court order for disclosure  
 16 under subsection (b) or (c)” and inserting “A court  
 17 order for disclosure under subsection (c)”; and

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

20 **SEC. 4. DELAYED NOTICE.**

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

23 **“SEC. 2705. DELAYED NOTICE.**

24 “(a) DELAY OF NOTIFICATION.—

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

9           “(2) DETERMINATION.—A court shall grant a  
10 request for delayed notification made under para-  
11 graph (1) if the court determines that there is rea-  
12 son to believe that notification of the existence of the  
13 warrant may result in—

14                   “(A) endangering the life or physical safety  
15 of an individual;

16                   “(B) flight from prosecution;

17                   “(C) destruction of or tampering with evi-  
18 dence;

19                   “(D) intimidation of potential witnesses; or

20                   “(E) otherwise seriously jeopardizing an  
21 investigation or unduly delaying a trial.

22           “(3) EXTENSION.—Upon request by a govern-  
23 mental entity, a court may grant one or more exten-  
24 sions of the delay of notification granted under para-  
25 graph (2) of not more than 180 days in the case of

1 a law enforcement agency, or not more than 90 days  
2 in the case of any other governmental entity.

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

11 “(A) a copy of the warrant; and

12 “(B) notice that informs the customer or  
13 subscriber—

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

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

22 “(iii) of the date on which the warrant  
23 was served on the provider and the date on  
24 which the information was provided by the  
25 provider to the governmental entity;



1                   “(iv) that notification of the customer  
2                   or subscriber was delayed;

3                   “(v) the identity of the court author-  
4                   izing the delay; and

5                   “(vi) of the provision of this chapter  
6                   under which the delay was authorized.

7           “(b) PRECLUSION OF NOTICE TO SUBJECT OF GOV-  
8    ERNMENTAL ACCESS.—

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

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

1           “(A) endangering the life or physical safety  
2 of an individual;

3           “(B) flight from prosecution;

4           “(C) destruction of or tampering with evi-  
5 dence;

6           “(D) intimidation of potential witnesses; or

7           “(E) otherwise seriously jeopardizing an  
8 investigation or unduly delaying a trial.

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

15           “(4) PRIOR NOTICE TO LAW ENFORCEMENT.—  
16 Upon expiration of the period of delay of notice  
17 under this section, and not later than 3 business  
18 days before providing notice to a customer or sub-  
19 scriber, a provider of electronic communication serv-  
20 ice or remote computing service shall notify the gov-  
21 ernmental entity that obtained the contents of a  
22 communication or information or records under sec-  
23 tion 2703 of the intent of the provider of electronic  
24 communication service or remote computing service  
25 to notify the customer or subscriber of the existence

1 of the warrant, order, or subpoena seeking that in-  
2 formation.

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

11 **SEC. 5. RULE OF CONSTRUCTION.**

12 Nothing in this Act or an amendment made by this  
13 Act shall be construed to apply the warrant requirement  
14 for contents of a wire or electronic communication author-  
15 ized under this Act or an amendment made by this Act  
16 to any other section of title 18, United States Code (in-  
17 cluding chapter 119 of such title (commonly known as the  
18 “Wiretap Act”)), the Foreign Intelligence Surveillance Act  
19 of 1978 (50 U.S.C. 1801 et seq.), or any other provision  
20 of Federal law.

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