

114TH CONGRESS
1ST SESSION

S. 356

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

IN THE SENATE OF THE UNITED STATES

FEBRUARY 4, 2015

Mr. LEE (for himself, Mr. LEAHY, Mr. CORNYN, Mr. MORAN, Mr. GARDNER, Mrs. SHAHEEN, Mr. MERKLEY, and Mr. BLUMENTHAL) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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 2015”.

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:

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

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

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

13 (1) by striking subsections (a), (b), and (c) and
 14 inserting the following:

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

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

13 “(1) a copy of the warrant; and

14 “(2) a notice that includes the information re-
 15 ferred to in clauses (i) and (ii) of section
 16 2705(a)(4)(B).

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

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

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

7 “(B) obtains a court order directing the
 8 disclosure under subsection (d);

9 “(C) has the consent of the subscriber or
 10 customer to the disclosure; or

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

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

25 “(A) name;

1 “(B) address;

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

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

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

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

13 of a subscriber or customer of such service.

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

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

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

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

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

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

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

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

22 **SEC. 4. DELAYED NOTICE.**

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

1 **“§ 2705. Delayed notice**

2 “(a) DELAY OF NOTIFICATION.—

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

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

16 “(A) endangering the life or physical safety
 17 of an individual;

18 “(B) flight from prosecution;

19 “(C) destruction of or tampering with evi-
 20 dence;

21 “(D) intimidation of potential witnesses; or

22 “(E) otherwise seriously jeopardizing an
 23 investigation or unduly delaying a trial.

24 “(3) EXTENSION.—Upon request by a govern-
 25 mental entity, a court may grant one or more exten-
 26 sions of the delay of notification granted under para-

graph (2) of not more than 180 days in the case of a law enforcement agency, or not more than 90 days in the case of any other governmental entity.

“(4) EXPIRATION OF THE DELAY OF NOTIFICATION.—Upon expiration of the period of delay of notification under paragraph (2) or (3), the governmental entity shall serve upon, or deliver to by registered or first-class mail, electronic mail, or other means reasonably calculated to be effective as specified by the court approving the search warrant, the customer or subscriber—

“(A) a copy of the warrant; and

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

“(i) of the nature of the law enforcement inquiry with reasonable specificity;

“(ii) that information maintained for the customer or subscriber by the provider of electronic communication service or remote computing service named in the process or request was supplied to, or requested by, the governmental entity;

“(iii) of the date on which the warrant was served on the provider and the date on

1 which the information was provided by the
2 provider to the governmental entity;

3 “(iv) that notification of the customer
4 or subscriber was delayed;

5 “(v) the identity of the court author-
6 izing the delay; and

7 “(vi) of the provision of this chapter
8 under which the delay was authorized.

9 “(b) PRECLUSION OF NOTICE TO SUBJECT OF GOV-
10 ERNMENTAL ACCESS.—

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

23 “(2) DETERMINATION.—A court shall grant a
24 request for an order made under paragraph (1) if
25 the court determines that there is reason to believe

1 that notification of the existence of the warrant,
2 order, subpoena, or other directive may result in—

3 “(A) endangering the life or physical safety
4 of an individual;

5 “(B) flight from prosecution;

6 “(C) destruction of or tampering with evi-
7 dence;

8 “(D) intimidation of potential witnesses; or

9 “(E) otherwise seriously jeopardizing an
10 investigation or unduly delaying a trial.

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

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

1 communication service or remote computing service
 2 to notify the customer or subscriber of the existence
 3 of the warrant, order, or subpoena seeking that in-
 4 formation.

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

13 **SEC. 5. EVALUATION BY THE GOVERNMENT ACCOUNT-**
 14 **ABILITY OFFICE.**

15 Not later than September 30, 2017, the Comptroller
 16 General of the United States shall submit to Congress a
 17 report regarding the disclosure of customer communica-
 18 tions and records under section 2703 of title 18, United
 19 States Code, which shall include—

20 (1) an analysis and evaluation of such disclo-
 21 sure under section 2703 of title 18, United States
 22 Code, as in effect before the date of enactment of
 23 this Act, including—

24 (A) a comprehensive analysis and evalua-
 25 tion regarding the number of individual in-

stances, in each of the 5 years before the year in which this Act is enacted, in which Federal, State, or local law enforcement officers used section 2703 of title 18, United States Code, to obtain information relevant to an ongoing criminal investigation;

(B) an analysis of the average length of time taken by a provider of an electronic communication service or a remote computing service to comply with requests by law enforcement officers for information under section 2703 of title 18, United States Code;

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

(D) the number of individual instances and type of request, in each of the 5 years before the year in which this Act is enacted, in which information was requested by law enforcement officers from a provider of an electronic com-

1 munication service or a remote computing serv-
2 ice under the other information request provi-
3 sions in section 2703 of title 18, United States
4 Code; and

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

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

14 (A) an evaluation of the effects of the
15 amendments to the warrant requirements on
16 judges, court dockets, or any other court oper-
17 ations;

18 (B) a survey of Federal, State, and local
19 judges and law enforcement officers to deter-
20 mine the average length of time required for
21 providers of an electronic communication serv-
22 ice or a remote computing service to provide the
23 contents of communications requested under a
24 search warrant, which shall include identifying
25 the number of instances in which a judge was

1 required to order a provider of an electronic
2 communication service or a remote computing
3 service to appear to show cause for failing to
4 comply with a warrant or to issue an order of
5 contempt against a provider of an electronic
6 communication service or a remote computing
7 service for such a failure; and

8 (C) determining whether the amendments
9 to the warrant requirements resulted in an in-
10 crease in the use of the emergency exception
11 under section 2702(b)(8) of title 18, United
12 States Code.

13 **SEC. 6. RULE OF CONSTRUCTION.**

14 Nothing in this Act or an amendment made by this
15 Act shall be construed to preclude the acquisition by the
16 United States Government of—

17 (1) the contents of a wire or electronic commu-
18 nication pursuant to other lawful authorities, includ-
19 ing the authorities under chapter 119 of title 18
20 (commonly known as the “Wiretap Act”), the For-
21 eign Intelligence Surveillance Act of 1978 (50
22 U.S.C. 1801 et seq.), or any other provision of Fed-
23 eral law not specifically amended by this Act; or

24 (2) records or other information relating to a
25 subscriber or customer of any electronic communica-

1 tions service or remote computing service (not in-
2 cluding the content of such communications) pursu-
3 ant to the Foreign Intelligence Surveillance Act of
4 1978 (50 U.S.C. 1801 et seq.), chapter 119 of title
5 18 (commonly known as the “Wiretap Act”), or any
6 other provision of Federal law not specifically
7 amended by this Act.

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