

By: Carona

S.B. No. 1079

A BILL TO BE ENTITLED

AN ACT

relating to requiring the disclosure of certain records and other information in a criminal investigation.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 4(d), Article 18.21, Code of Criminal Procedure, is amended to read as follows:

(d) An authorized peace officer may require a provider of electronic communications service or remote computing service to disclose records or other information pertaining to a subscriber or customer of the service, other than the contents of a communication as [communications] described in Subsection (a), (b), or (c) ~~[of this section]~~, without giving the subscriber or customer notice:

(1) by obtaining an administrative subpoena authorized by statute;

(2) by obtaining a grand jury subpoena;

(3) by obtaining a warrant;

(4) by obtaining the consent of the subscriber or customer to the disclosure of the records or information;

(5) by obtaining a court order under Section 5 ~~[of this article]~~; or

(6) as otherwise permitted by applicable federal law.

SECTION 2. Section 15, Article 18.21, Code of Criminal Procedure, is amended by amending Subsection (a) and adding Subsections (d) and (e) to read as follows:

1 (a) The director of the department, the director's  
2 designee, or the sheriff or chief of a designated law enforcement  
3 agency, or the sheriff's or chief's designee, may issue an  
4 administrative subpoena to a communication [~~communications~~] common  
5 carrier or to a provider of [~~an~~] electronic communications service  
6 or remote computing service to compel the production of the  
7 carrier's or provider's [~~service's~~] business records that:

8 (1) disclose information about:

9 (A) the carrier's or provider's subscribers or  
10 [~~service's~~] customers; or

11 (B) users of the services offered by the carrier  
12 or provider [~~service~~]; and

13 (2) are material to a criminal investigation.

14 (d) The department may refer to the attorney general for  
15 enforcement in state district court any failure to comply with a  
16 subpoena issued by the department under this section. In an action  
17 to enforce the subpoena, the attorney general may recover  
18 administrative costs incurred by the department in relation to the  
19 department's issuance of the subpoena and to the department's  
20 referral of the failure to comply and shall deposit the money to the  
21 credit of the state highway fund. The attorney general may recover  
22 fees and costs, including attorney's fees, related to the attorney  
23 general's enforcement of the subpoena under this section.

24 (e) In this section, "business records" includes:

25 (1) the name and address of the subscriber or  
26 customer;

27 (2) if applicable, the local and long-distance

1 connection records of a telephonic communications service provider  
2 and the provider's records of the connection times and durations;

3 (3) the length of the service provided, including the  
4 date the service began and any date the service ended, and the type  
5 of service provided;

6 (4) the telephone or instrument number of the  
7 subscriber or customer and any other identifying information issued  
8 for the subscriber or customer, including any temporarily assigned  
9 network address; and

10 (5) the means and source of payment for the service,  
11 including any credit card or bank account number.

12 SECTION 3. Subchapter A, Chapter 411, Government Code, is  
13 amended by adding Section 411.0203 to read as follows:

14 Sec. 411.0203. ADMINISTRATIVE SUBPOENA. (a) In this  
15 section, "immediate life-threatening situation" has the meaning  
16 assigned by Section 1, Article 18.20, Code of Criminal Procedure.

17 (b) If a division chief of the department determines that an  
18 immediate life-threatening situation exists during the  
19 investigation of an offense under Section 19.02, 19.03, 20.03,  
20 20.04, or 22.07 or Chapter 20A, Penal Code, or an attempt,  
21 conspiracy, or solicitation to commit one of those offenses, the  
22 director may issue and cause to be served an administrative  
23 subpoena requiring the production of records relevant to that  
24 investigation.

25 (c) A subpoena under this section must describe the records  
26 required to be produced and must prescribe a reasonable period  
27 within which the records are to be compiled and made available to

1 the department. The subpoena may require the records to be produced  
2 as soon as practicable, but may not require the records to be  
3 produced earlier than 24 hours after the subpoena is served.

4 (d) The department may refer to the attorney general for  
5 enforcement in state district court any failure to comply with a  
6 subpoena issued by the department under this section. In an action  
7 to enforce the subpoena, the attorney general may recover  
8 administrative costs incurred by the department in relation to the  
9 department's issuance of the subpoena and to the department's  
10 referral of the failure to comply and shall deposit the money to the  
11 credit of the state highway fund. The attorney general may recover  
12 fees and costs, including attorney's fees, related to the attorney  
13 general's enforcement of the subpoena under this section.

14 (e) An administrative subpoena issued under this section is  
15 confidential. The recipient may not:

- 16 (1) disclose that a subpoena has been issued;  
17 (2) identify or describe any records requested in the  
18 subpoena; or  
19 (3) disclose whether any records have been provided in  
20 response to the subpoena.

21 SECTION 4. This Act takes effect September 1, 2009.