

1-1 By: Williams S.B. No. 2047
1-2 (In the Senate - Filed March 12, 2009; March 31, 2009, read
1-3 first time and referred to Committee on Criminal Justice;
1-4 April 20, 2009, reported favorably by the following vote: Yeas 7,
1-5 Nays 0; April 20, 2009, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the interception or the collection of information from
1-9 certain communications in an investigation of criminal conduct.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Subdivision (1), Section 1, Article 18.20, Code
1-12 of Criminal Procedure, is amended to read as follows:

1-13 (1) "Wire communication" means an aural transfer made
1-14 in whole or in part through the use of facilities for the
1-15 transmission of communications by the aid of wire, cable, or other
1-16 like connection between the point of origin and the point of
1-17 reception, including the use of such a connection in a switching
1-18 station, furnished or operated by a person authorized to engage in
1-19 providing or operating the facilities for the transmission of
1-20 communications as a communications common carrier. ~~[The term~~
1-21 ~~includes the electronic storage of a wire communication.]~~

1-22 SECTION 2. Subdivision (5), Section 1, Article 18.21, Code
1-23 of Criminal Procedure, is amended to read as follows:

1-24 (5) "Mobile tracking device" means an electronic or
1-25 mechanical device that permits tracking the movement of a person,
1-26 vehicle, container, item, or object. ~~[The term does not include a~~
1-27 ~~device designed, made, adapted, or capable of:~~

1-28 ~~[(A) intercepting the content of a~~
1-29 ~~communication; or~~

1-30 ~~[(B) functioning as a pen register, ESN reader,~~
1-31 ~~trap and trace device, or similar equipment.]~~

1-32 SECTION 3. Subsections (a), (b), and (c), Section 4,
1-33 Article 18.21, Code of Criminal Procedure, are amended to read as
1-34 follows:

1-35 (a) An authorized peace officer may require a provider of
1-36 electronic communications service to disclose the contents of a
1-37 wire communication or an electronic communication that has been in
1-38 electronic storage for not longer than 180 days by obtaining a
1-39 warrant.

1-40 (b) An authorized peace officer may require a provider of
1-41 electronic communications service to disclose the contents of a
1-42 wire communication or an electronic communication that has been in
1-43 electronic storage for longer than 180 days:

1-44 (1) if notice is not being given to the subscriber or
1-45 customer, by obtaining a warrant;

1-46 (2) if notice is being given to the subscriber or
1-47 customer, by obtaining:

1-48 (A) an administrative subpoena authorized by
1-49 statute;

1-50 (B) a grand jury subpoena; or

1-51 (C) a court order issued under Section 5 of this
1-52 article; or

1-53 (3) as otherwise permitted by applicable federal law.

1-54 (c)(1) An authorized peace officer may require a provider of
1-55 a remote computing service to disclose the contents of a wire
1-56 communication or an electronic communication as described in
1-57 Subdivision (2) of this subsection:

1-58 (A) if notice is not being given to the
1-59 subscriber or customer, by obtaining a warrant issued under this
1-60 code;

1-61 (B) if notice is being given to the subscriber or
1-62 customer, by:

1-63 (i) an administrative subpoena authorized
1-64 by statute;

(ii) a grand jury subpoena; or
 (iii) a court order issued under Section 5 of this article; or
 (C) as otherwise permitted by applicable federal law.

(2) Subdivision (1) of this subsection applies only to a wire communication or an electronic communication that is in electronic storage:

(A) on behalf of a subscriber or customer of the service and is received by means of electronic transmission from or created by means of computer processing of communications received by means of electronic transmission from the subscriber or customer; and

(B) solely for the purpose of providing storage or computer processing services to the subscriber or customer if the provider of the service is not authorized to obtain access to the contents of those communications for purposes of providing any service other than storage or computer processing.

SECTION 4. Subsections (a) and (b), Section 7, Article 18.21, Code of Criminal Procedure, are amended to read as follows:

(a) An authorized peace officer seeking a court order to obtain information under Section 4 ~~[4(e)]~~ of this article may include a request for an order delaying the notification required under Section 4 ~~[4(e)]~~ of this article for a period not to exceed 90 days. The court shall grant the request if the court determines that there is reason to believe that notification of the existence of the court order may have an adverse result, as described in Subsection (c) of this section.

(b) An authorized peace officer who has obtained a subpoena authorized by statute or a grand jury subpoena to seek information under Section 4 ~~[4(e)]~~ of this article may delay the notification required under that section for a period not to exceed 90 days on the execution of a written certification of a supervisory official that there is reason to believe that notification of the existence of the subpoena may have an adverse result as described in Subsection (c) of this section. The peace officer shall maintain a true copy of the certification.

SECTION 5. Subsection (a), Section 14, Article 18.21, Code of Criminal Procedure, is amended to read as follows:

(a) A district judge may issue an order for the installation and use ~~[within the judge's judicial district]~~ of a mobile tracking device in the same judicial district as any of the following:

(1) the site of:

(A) the investigation; or

(B) the person, vehicle, container, item, or object the movement of which will be tracked by the mobile tracking device; or

(2) the headquarters of the law enforcement agency that applies for or executes an order authorizing a device to be installed.

SECTION 6. (a) The changes in law made by this Act in amending Sections 4 and 7, Article 18.21, Code of Criminal Procedure, apply only to a warrant, subpoena, or court order regarding disclosure of a wire communication or electronic communication obtained or issued on or after the effective date of this Act. A warrant, subpoena, or court order obtained or issued before the effective date of this Act is governed by the law in effect on the date the warrant, subpoena, or court order was obtained or issued, and the former law is continued in effect for that purpose.

(b) The changes in law made by this Act in amending Section 14, Article 18.21, Code of Criminal Procedure, apply only to a court order issued on or after the effective date of this Act. A court order issued before the effective date of this Act is governed by the law in effect on the date the court order was issued, and the former law is continued in effect for that purpose.

SECTION 7. This Act takes effect September 1, 2009.

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