

Amend CSSB 1052 (house committee printing) as follows:

(1) Strike SECTION 6 of the bill (page 5, line 1, through page 7, line 14) and substitute the following appropriately numbered SECTION:

SECTION _____. Section 4, Article 18.21, Code of Criminal Procedure, is amended to read as follows:

Sec. 4. REQUIREMENTS FOR GOVERNMENT ACCESS TO STORED COMMUNICATIONS. (a) An authorized peace officer may require a provider of an electronic communications service or a provider of a remote computing service to disclose the contents of a wire communication or an electronic communication that is ~~[has been]~~ in electronic storage ~~[for not longer than 180 days]~~ by obtaining a warrant under Section 5A.

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

~~[(1) if notice is not being given to the subscriber or customer, by obtaining a warrant,~~

~~[(2) if notice is being given to the subscriber or customer, by obtaining:~~

~~[(A) an administrative subpoena authorized by statute,~~

~~[(B) a grand jury subpoena, or~~

~~[(C) a court order issued under Section 5 of this article, or~~

~~[(3) as otherwise permitted by applicable federal law.~~

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

~~[(A) if notice is not being given to the subscriber or customer, by obtaining a warrant issued under this code,~~

~~[(B) if notice is being given to the subscriber or customer, by:~~

~~[(i) an administrative subpoena authorized~~

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.~~

~~[(d)]~~ An authorized peace officer may require a provider of an electronic communications service or a provider of a remote computing service to disclose electronic customer data not otherwise described by ~~[records or other information pertaining to a subscriber or customer of the service, other than communications described in Subsection (c) of]~~ this section~~[7]~~ 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 under Section 5A;

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

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

(6) as otherwise permitted by applicable federal law.

(c) ~~[(e)]~~ A provider of telephonic communications service shall disclose to an authorized peace officer, without any form of

legal process, subscriber listing information, including name, address, and telephone number or similar access code that:

(1) the service provides to others in the course of providing publicly available directory or similar assistance; or

(2) is solely for use in the dispatch of emergency vehicles and personnel responding to a distress call directed to an emergency dispatch system or when the information is reasonably necessary to aid in the dispatching of emergency vehicles and personnel for the immediate prevention of death, personal injury, or destruction of property.

(d) [~~(f)~~] A provider of telephonic communications service shall provide an authorized peace officer with the name of the subscriber of record whose published telephone number is provided to the service by an authorized peace officer.

(2) Add the following appropriately numbered SECTIONS to the bill and renumber subsequent SECTIONS of the bill accordingly:

SECTION _____. Section 6, Article 18.21, Code of Criminal Procedure, is amended to read as follows:

Sec. 6. BACKUP PRESERVATION. (a) A subpoena or court order for disclosure of certain electronic customer data held [~~the contents of an electronic communication~~] in electronic storage by a provider of an electronic communications service or a provider of a remote computing service under Section 4(b) [~~4(c) of this article~~] may require that [~~the service~~] provider to [~~whom the request is directed~~] create a copy of the customer data [~~contents of the electronic communications~~] sought by the subpoena or court order for the purpose of preserving that data [~~those contents~~]. The [~~service~~] provider may not inform the subscriber or customer whose data is [~~communications are~~] being sought that the subpoena or court order has been issued. The [~~service~~] provider shall create the copy not later than two business days after the date of the receipt by the [~~service~~] provider of the subpoena or court order.

(b) The provider of an electronic communications service or the provider of a remote computing service shall immediately notify the authorized peace officer who presented the subpoena or court order requesting the copy when the copy has been created.

(c) The [~~Except as provided by Section 7 of this article,~~

~~the~~] authorized peace officer shall notify the subscriber or customer whose electronic customer data is ~~[communications are]~~ the subject of the subpoena or court order of the creation of the copy not later than three days after the date of the receipt of the notification from the applicable ~~[service]~~ provider that the copy was created.

(d) The provider of an electronic communications service or the provider of a remote computing service shall release the copy to the requesting authorized peace officer not earlier than the 14th day after the date of the peace officer's notice to the subscriber or customer if the ~~[service]~~ provider has not:

(1) initiated proceedings to challenge the request of the peace officer for the copy; or

(2) received notice from the subscriber or customer that the subscriber or customer has initiated proceedings to challenge the request.

(e) The provider of an electronic communications service or the provider of a remote computing service may not destroy or permit the destruction of the copy until the electronic customer data ~~[information]~~ has been delivered to the applicable ~~[designated]~~ law enforcement ~~[office or]~~ agency or until the resolution of any court proceedings, including appeals of any proceedings, relating to the subpoena or court order requesting the creation of the copy, whichever occurs last.

(f) An authorized peace officer who reasonably believes that notification to the subscriber or customer of the subpoena or court order would result in the destruction of or tampering with electronic customer data ~~[information]~~ sought may request the creation of a copy of the data ~~[information]~~. The peace officer's belief is not subject to challenge by the subscriber or customer or by a ~~[service]~~ provider of an electronic communications service or a provider of a remote computing service.

(g)(1) A subscriber or customer who receives notification as described in Subsection (c) ~~[of this section]~~ may file a written motion to quash the subpoena or vacate the court order in the court that issued the subpoena or court order not later than the 14th day after the date of the receipt of the notice. The motion must

contain an affidavit or sworn statement stating ~~[that]~~:

(A) that the applicant is a subscriber or customer of the provider of an electronic communications service or the provider of a remote computing service from which the electronic customer data held in ~~[contents of]~~ electronic storage ~~[communications stored]~~ for the subscriber or customer has ~~[have]~~ been sought; and

(B) the applicant's reasons for believing that the customer data ~~[information]~~ sought is not relevant to a legitimate law enforcement inquiry or that there has not been substantial compliance with the provisions of this article in some other respect.

(2) The subscriber or customer shall give written notice to the provider of an electronic communications service or the provider of a remote computing service of the challenge to the subpoena or court order. The authorized peace officer ~~[or designated law enforcement office or agency]~~ requesting the subpoena or court order must ~~[shall]~~ be served a copy of the papers filed by personal delivery or by registered or certified mail.

(h)(1) The court shall order the authorized peace officer to file a sworn response to the motion filed by the subscriber or customer if the court determines that the subscriber or customer has complied with the requirements of Subsection (g) ~~[of this section]~~. On request of the peace officer, the court may permit the response to be filed in camera. The court may conduct any additional proceedings the court considers appropriate if the court is unable to make a determination on the motion on the basis of the parties' initial allegations and response.

(2) The court shall rule on the motion as soon after the filing of the officer's response as practicable. The court shall deny the motion if the court finds that the applicant is not the subscriber or customer whose electronic customer data held in electronic storage is ~~[stored communications are]~~ the subject of the subpoena or court order or that there is reason to believe that the peace officer's inquiry is legitimate and that the customer data ~~[communications]~~ sought is ~~[are]~~ relevant to that inquiry. The court shall quash the subpoena or vacate the order if the court

finds that the applicant is the subscriber or customer whose data is ~~[stored communications are]~~ the subject of the subpoena or court order and that there is not a reason to believe that the data is ~~[communications sought are]~~ relevant to a legitimate law enforcement inquiry or that there has not been substantial compliance with the provisions of this article.

(3) A court order denying a motion or application under this section is not a final order and no interlocutory appeal may be taken from the denial.

SECTION _____. Section 8, Article 18.21, Code of Criminal Procedure, is amended to read as follows:

Sec. 8. PRECLUSION OF NOTIFICATION. (a) An ~~[When an]~~ authorized peace officer seeking electronic customer data ~~[information]~~ under Section 4 ~~[of this article is not required to give notice to the subscriber or customer or is delaying notification under Section 7 of this article, the peace officer]~~ may apply to the court for an order commanding the service provider to whom a warrant, subpoena, or court order is directed not to disclose to any ~~[other]~~ person the existence of the warrant, subpoena, or court order. The order is effective for the period the court considers appropriate. The court shall enter the order if the court determines that there is reason to believe that notification of the existence of the warrant, subpoena, or court order will have an adverse result ~~[as described in Section 7(c) of this article]~~.

(b) In this section, an "adverse result" means:

- (1) endangering the life or physical safety of an individual;
- (2) flight from prosecution;
- (3) destruction of or tampering with evidence;
- (4) intimidation of a potential witness; or
- (5) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

SECTION _____. Subsections (a) and (b), Section 9, Article 18.21, Code of Criminal Procedure, are amended to read as follows:

(a) Except as provided by Subsection (c) of this section, an authorized peace officer who obtains electronic customer data under Section 4 or other information under this article shall reimburse

the person assembling or providing the data or information for all costs that are reasonably necessary and that have been directly incurred in searching for, assembling, reproducing, or otherwise providing the data or information. These costs include costs arising from necessary disruption of normal operations of a provider of an electronic communications service or a provider of a remote computing service in which the electronic customer data may be held in electronic storage or in which the other information may be stored.

(b) The authorized peace officer and the person providing the electronic customer data or other information may agree on the amount of reimbursement. If there is no agreement, the court that issued the order for production of the data or information shall determine the amount. If no court order was issued for production of the data or information, the court before which the criminal prosecution relating to the data or information would be brought shall determine the amount.

SECTION _____. Section 10, Article 18.21, Code of Criminal Procedure, is amended to read as follows:

Sec. 10. NO CAUSE OF ACTION. A subscriber or customer of a provider of an [~~wire or~~] electronic communications service or a provider of a remote computing service does not have a cause of action against a provider or [~~wire or electronic communications or remote computing service,~~] its officers, employees, or agents[~~7~~] or against other specified persons for providing information, facilities, or assistance as required by a court order, warrant, subpoena, or certification under this article.

SECTION _____. Subsection (a), Section 12, Article 18.21, Code of Criminal Procedure, is amended to read as follows:

(a) Except as provided by Section 10 of this article, a provider of an electronic communications service or a provider of a remote computing service, or a subscriber or customer of that provider, that is [~~an electronic communications service~~] aggrieved by a violation of this article has a civil cause of action if the conduct constituting the violation was committed knowingly or intentionally and is entitled to:

- (1) injunctive relief;

(2) a reasonable attorney's fee and other litigation costs reasonably incurred; and

(3) the sum of the actual damages suffered and any profits made by the violator as a result of the violation or \$1,000, whichever is more.

SECTION _____. Section 7, Article 18.21, Code of Criminal Procedure, is repealed.