

By: Frullo, Thompson of Harris, Fletcher

H.B. No. 2268

A BILL TO BE ENTITLED

1 AN ACT
2 relating to search warrants issued in this state and other states
3 for certain customer data, communications, and other related
4 information held in electronic storage in this state and other
5 states by providers of electronic communications services and
6 remote computing services.

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

8 SECTION 1. Article 18.02, Code of Criminal Procedure, is
9 amended to read as follows:

10 Art. 18.02. GROUNDS FOR ISSUANCE. (a) A search warrant may
11 be issued to search for and seize:

12 (1) property acquired by theft or in any other manner
13 which makes its acquisition a penal offense;

14 (2) property specially designed, made, or adapted for
15 or commonly used in the commission of an offense;

16 (3) arms and munitions kept or prepared for the
17 purposes of insurrection or riot;

18 (4) weapons prohibited by the Penal Code;

19 (5) gambling devices or equipment, altered gambling
20 equipment, or gambling paraphernalia;

21 (6) obscene materials kept or prepared for commercial
22 distribution or exhibition, subject to the additional rules set
23 forth by law;

24 (7) a drug, controlled substance, immediate

1 precursor, chemical precursor, or other controlled substance
2 property, including an apparatus or paraphernalia kept, prepared,
3 or manufactured in violation of the laws of this state;

4 (8) any property the possession of which is prohibited
5 by law;

6 (9) implements or instruments used in the commission
7 of a crime;

8 (10) property or items, except the personal writings
9 by the accused, constituting evidence of an offense or constituting
10 evidence tending to show that a particular person committed an
11 offense;

12 (11) persons; ~~[or]~~

13 (12) contraband subject to forfeiture under Chapter 59
14 of this code; or

15 (13) electronic customer data held in electronic
16 storage, including the contents of and records and other
17 information related to a wire communication or electronic
18 communication held in electronic storage.

19 (b) For purposes of Subsection (a)(13), "electronic
20 communication," "electronic storage," and "wire communication"
21 have the meanings assigned by Article 18.20, and "electronic
22 customer data" has the meaning assigned by Article 18.21.

23 SECTION 2. Article 18.06(a), Code of Criminal Procedure, is
24 amended to read as follows:

25 (a) A peace officer to whom a search warrant is delivered
26 shall execute the warrant ~~[it]~~ without delay and forthwith return
27 the warrant ~~[it]~~ to the proper magistrate. A search warrant issued

1 under Section 5A, Article 18.21, must be executed in the manner
2 provided by that section not later than the 11th day after the date
3 of issuance. In all other cases, a search warrant [~~It~~] must be
4 executed within three days from the time of its issuance. A warrant
5 issued under this chapter [~~and~~] shall be executed within a shorter
6 period if so directed in the warrant by the magistrate.

7 SECTION 3. Article 18.07(a), Code of Criminal Procedure, is
8 amended to read as follows:

9 (a) The period [~~time~~] allowed for the execution of a search
10 warrant, exclusive of the day of its issuance and of the day of its
11 execution, is:

12 (1) 15 whole days if the warrant is issued solely to
13 search for and seize specimens from a specific person for DNA
14 analysis and comparison, including blood and saliva samples;

15 (2) 10 whole days if the warrant is issued under
16 Section 5A, Article 18.21; or

17 (3) [~~2~~] three whole days if the warrant is issued
18 for a purpose other than that described by Subdivision (1) or (2).

19 SECTION 4. Section 1(20), Article 18.20, Code of Criminal
20 Procedure, is amended to read as follows:

21 (20) "Electronic storage" means any storage of
22 electronic customer data in a computer, computer network, or
23 computer system, regardless of whether the data is subject to
24 recall, further manipulation, deletion, or transmission, and
25 includes any[+]

26 [~~(A) a temporary, intermediate storage of a wire~~
27 ~~or electronic communication that is incidental to the electronic~~

1 ~~transmission of the communication; or~~
2 [~~(B)~~] storage of a wire or electronic
3 communication by an electronic communications service or a remote
4 computing service [~~for purposes of backup protection of the~~
5 ~~communication~~].

6 SECTION 5. Section 1, Article 18.21, Code of Criminal
7 Procedure, is amended by adding Subdivisions (3-b) and (3-c) to
8 read as follows:

9 (3-b) "Domestic entity" has the meaning assigned by
10 Section 1.002, Business Organizations Code.

11 (3-c) "Electronic customer data" means data or records
12 that:

13 (A) are acquired by or stored with the provider
14 of an electronic communications service or a remote computing
15 service; and

16 (B) contain:

17 (i) information revealing the identity of
18 customers of the applicable service;

19 (ii) information about a customer's use of
20 the applicable service;

21 (iii) information that identifies the
22 recipient or destination of a wire communication or electronic
23 communication sent to or by the customer;

24 (iv) the content of a wire communication or
25 electronic communication sent to or by the customer; and

26 (v) any data stored by or on behalf of the
27 customer with the applicable service provider.

1 SECTION 6. Section 4, Article 18.21, Code of Criminal
2 Procedure, is amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

6 ~~[(i) an administrative subpoena authorized~~
7 ~~by statute;~~

8 ~~[(ii) a grand jury subpoena; or~~

9 ~~[(iii) a court order issued under Section 5~~
10 ~~of this article; or~~

11 ~~[(C) as otherwise permitted by applicable~~
12 ~~federal law.~~

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

16 ~~[(A) on behalf of a subscriber or customer of the~~
17 ~~service and is received by means of electronic transmission from or~~
18 ~~created by means of computer processing of communications received~~
19 ~~by means of electronic transmission from the subscriber or~~
20 ~~customer; and~~

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

26 ~~[(d) An authorized peace officer may require a provider of~~
27 ~~remote computing service to disclose records or other information~~

1 ~~pertaining to a subscriber or customer of the service, other than~~
2 ~~communications described in Subsection (c) of this section, without~~
3 ~~giving the subscriber or customer notice:~~

4 ~~[(1) by obtaining an administrative subpoena~~
5 ~~authorized by statute;~~

6 ~~[(2) by obtaining a grand jury subpoena;~~

7 ~~[(3) by obtaining a warrant;~~

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

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

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

13 ~~[(c)]~~ A provider of telephonic communications service shall
14 disclose to an authorized peace officer, without any form of legal
15 process, subscriber listing information, including name, address,
16 and telephone number or similar access code that:

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

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

25 (c) ~~[(f)]~~ A provider of telephonic communications service
26 shall provide an authorized peace officer with the name of the
27 subscriber of record whose published telephone number is provided

1 to the service by an authorized peace officer.

2 SECTION 7. Article 18.21, Code of Criminal Procedure, is
3 amended by adding Sections 5A and 5B to read as follows:

4 Sec. 5A. WARRANT ISSUED IN THIS STATE FOR STORED CUSTOMER
5 DATA OR COMMUNICATIONS. (a) This section applies to a warrant
6 required under Section 4 to obtain electronic customer data,
7 including the contents of a wire communication or electronic
8 communication.

9 (b) On the filing of an application by an authorized peace
10 officer, a district judge may issue a search warrant under this
11 section for electronic customer data held in electronic storage,
12 including the contents of and records and other information related
13 to a wire communication or electronic communication held in
14 electronic storage, by a provider of an electronic communications
15 service or a provider of a remote computing service described by
16 Subsection (h), regardless of whether the customer data is held at a
17 location in this state or at a location in another state. An
18 application made under this subsection must demonstrate probable
19 cause for the issuance of the warrant and must be supported by the
20 oath or affirmation of the authorized peace officer.

21 (c) A search warrant may not be issued under this section
22 unless the sworn affidavit required by Article 18.01(b) sets forth
23 sufficient and substantial facts to establish probable cause that:

24 (1) a specific offense has been committed; and

25 (2) the electronic customer data sought:

26 (A) constitutes evidence of that offense or
27 evidence that a particular person committed that offense; and

1 (B) is held in electronic storage by the service
2 provider on which the warrant is served under Subsection (i).

3 (d) Only the electronic customer data described in the sworn
4 affidavit required by Article 18.01(b) may be seized under the
5 warrant.

6 (e) A warrant issued under this section shall run in the
7 name of "The State of Texas."

8 (f) Article 18.011 applies to an affidavit presented under
9 Article 18.01(b) for the issuance of a warrant under this section,
10 and the affidavit may be sealed in the manner provided by that
11 article.

12 (g) The peace officer shall execute the warrant not later
13 than the 11th day after the date of issuance, except that the
14 officer shall execute the warrant within a shorter period if so
15 directed in the warrant by the district judge. For purposes of this
16 subsection, a warrant is executed when the warrant is served in the
17 manner described by Subsection (i).

18 (h) A warrant under this section may be served only on a
19 service provider that is a domestic entity or a company or entity
20 otherwise doing business in this state under a contract or a terms
21 of service agreement with a resident of this state, if any part of
22 that contract or agreement is to be performed in this state. The
23 service provider shall produce all electronic customer data,
24 contents of communications, and other information sought,
25 regardless of where the information is held and within the period
26 allowed for compliance with the warrant, as provided by Subsection
27 (j). A court may find any officer, director, or owner of a company

1 or entity in contempt of court if the person by act or omission is
2 responsible for the failure of the company or entity to comply with
3 the warrant within the period allowed for compliance. The failure
4 of a company or entity to timely deliver the information sought in
5 the warrant does not affect the admissibility of that evidence in a
6 criminal proceeding.

7 (i) A search warrant issued under this section is served
8 when the authorized peace officer delivers the warrant by hand, by
9 facsimile transmission, or, in a manner allowing proof of delivery,
10 by means of the United States mail or a private delivery service to:

11 (1) a person specified by Section 5.255, Business
12 Organizations Code;

13 (2) the secretary of state in the case of a company or
14 entity to which Section 5.251, Business Organizations Code,
15 applies; or

16 (3) any other person or entity designated to receive
17 the service of process.

18 (j) The district judge shall indicate in the warrant that
19 the deadline for compliance by the provider of an electronic
20 communications service or the provider of a remote computing
21 service is the 15th business day after the date the warrant is
22 served if the warrant is to be served on a domestic entity or a
23 company or entity otherwise doing business in this state, except
24 that the deadline for compliance with a warrant served in
25 accordance with Section 5.251, Business Organizations Code, may be
26 extended to a date that is not later than the 30th day after the date
27 the warrant is served. The judge may indicate in a warrant that the

1 deadline for compliance is earlier than the 15th business day after
2 the date the warrant is served if the officer makes a showing and
3 the judge finds that failure to comply with the warrant by the
4 earlier deadline would cause serious jeopardy to an investigation,
5 cause undue delay of a trial, or create a material risk of:

6 (1) danger to the life or physical safety of any
7 person;

8 (2) flight from prosecution;

9 (3) the tampering with or destruction of evidence; or

10 (4) intimidation of potential witnesses.

11 (k) If the authorized peace officer serving the warrant
12 under this section also delivers an affidavit form to the provider
13 of an electronic communications service or the provider of a remote
14 computing service responding to the warrant, and the peace officer
15 also notifies the provider in writing that an executed affidavit is
16 required, then the provider shall verify the authenticity of the
17 customer data, contents of communications, and other information
18 produced in compliance with the warrant by including with the
19 information the affidavit form completed and sworn to by a person
20 who is a custodian of the information or a person otherwise
21 qualified to attest to its authenticity that states that the
22 information was stored in the course of regularly conducted
23 business of the provider and specifies whether it is the regular
24 practice of the provider to store that information.

25 (l) On a service provider's compliance with a warrant under
26 this section, an authorized peace officer shall file a return of the
27 warrant and a copy of the inventory of the seized property as

1 required under Article 18.10.

2 (m) The district judge shall hear and decide any motion to
3 quash the warrant not later than the fifth business day after the
4 date the service provider files the motion. The judge may allow the
5 service provider to appear at the hearing by teleconference.

6 (n) A provider of an electronic communications service or a
7 provider of a remote computing service responding to a warrant
8 issued under this section may request an extension of the period for
9 compliance with the warrant if extenuating circumstances exist to
10 justify the extension. The district judge shall grant a request for
11 an extension based on those circumstances if:

12 (1) the authorized peace officer who applied for the
13 warrant or another appropriate authorized peace officer agrees to
14 the extension; or

15 (2) the district judge finds that the need for the
16 extension outweighs the likelihood that the extension will cause an
17 adverse circumstance described by Subsection (j).

18 Sec. 5B. WARRANT ISSUED IN ANOTHER STATE FOR STORED
19 CUSTOMER DATA OR COMMUNICATIONS. Any domestic entity that provides
20 electronic communications services or remote computing services to
21 the public shall comply with a warrant issued in another state and
22 seeking information described by Section 5A(b), if the warrant is
23 served on the entity in a manner equivalent to the service of
24 process requirements provided in Section 5A(h).

25 SECTION 8. This Act takes effect immediately if it receives
26 a vote of two-thirds of all the members elected to each house, as
27 provided by Section 39, Article III, Texas Constitution. If this

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1 Act does not receive the vote necessary for immediate effect, this
2 Act takes effect September 1, 2013.