

By: Frullo, Thompson of Harris, Fletcher

H.B. No. 2268

Substitute the following for H.B. No. 2268:

By: Herrero

C.S.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. Sections 4(a), (b), (c), and (d), Article 18.21,  
2 Code of Criminal Procedure, are amended to read as follows:

3 (a) An authorized peace officer may require a provider of  
4 electronic communications service to disclose the contents of a  
5 wire communication or an electronic communication that has been in  
6 electronic storage for not longer than 180 days by obtaining a  
7 warrant under Section 5A.

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

12 (1) if notice is not being given to the subscriber or  
13 customer, by obtaining a warrant under Section 5A;

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

16 (A) an administrative subpoena authorized by  
17 statute;

18 (B) a grand jury subpoena; or

19 (C) a court order issued under Section 5 [~~of this~~  
20 ~~article~~]; or

21 (3) as otherwise permitted by applicable federal law.

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

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

1 Section 5A [~~this code~~];

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

4 (i) an administrative subpoena authorized  
5 by statute;

6 (ii) a grand jury subpoena; or

7 (iii) a court order issued under Section 5  
8 [~~of this article~~]; or

9 (C) as otherwise permitted by applicable federal  
10 law.

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

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

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

24 (d) An authorized peace officer may require a provider of  
25 electronic communications service or a provider of a remote  
26 computing service to disclose electronic customer data not  
27 otherwise described by [~~records or other information pertaining to~~

1 ~~a subscriber or customer of the service, other than communications~~  
2 ~~described in Subsection (c) of]~~ this section~~[,]~~ without giving the  
3 ~~[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 under Section 5A;

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

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

13 (6) as otherwise permitted by applicable federal law.

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

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

21 (b) On the filing of an application by an authorized peace  
22 officer, a district judge may issue a search warrant under this  
23 section for electronic customer data held in electronic storage,  
24 including the contents of and records and other information related  
25 to a wire communication or electronic communication held in  
26 electronic storage, by a provider of an electronic communications  
27 service or a provider of a remote computing service described by

1 Subsection (h), regardless of whether the customer data is held at a  
2 location in this state or at a location in another state. An  
3 application made under this subsection must demonstrate probable  
4 cause for the issuance of the warrant and must be supported by the  
5 oath or affirmation of the authorized peace officer.

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

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

10 (2) the electronic customer data sought:

11 (A) constitutes evidence of that offense or  
12 evidence that a particular person committed that offense; and

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

15 (d) Only the electronic customer data described in the sworn  
16 affidavit required by Article 18.01(b) may be seized under the  
17 warrant.

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

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

24 (g) The peace officer shall execute the warrant not later  
25 than the 11th day after the date of issuance, except that the  
26 officer shall execute the warrant within a shorter period if so  
27 directed in the warrant by the district judge. For purposes of this



1 subsection, a warrant is executed when the warrant is served in the  
2 manner described by Subsection (i).

3 (h) A warrant under this section may be served only on a  
4 service provider that is a domestic entity or a company or entity  
5 otherwise doing business in this state under a contract or a terms  
6 of service agreement with a resident of this state, if any part of  
7 that contract or agreement is to be performed in this state. The  
8 service provider shall produce all electronic customer data,  
9 contents of communications, and other information sought,  
10 regardless of where the information is held and within the period  
11 allowed for compliance with the warrant, as provided by Subsection  
12 (j). A court may find any officer, director, or owner of a company  
13 or entity in contempt of court if the person by act or omission is  
14 responsible for the failure of the company or entity to comply with  
15 the warrant within the period allowed for compliance. The failure  
16 of a company or entity to timely deliver the information sought in  
17 the warrant does not affect the admissibility of that evidence in a  
18 criminal proceeding.

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

23 (1) a person specified by Section 5.255, Business  
24 Organizations Code;

25 (2) the secretary of state in the case of a company or  
26 entity to which Section 5.251, Business Organizations Code,  
27 applies; or

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

3           (j) The district judge shall indicate in the warrant that  
4 the deadline for compliance by the provider of an electronic  
5 communications service or the provider of a remote computing  
6 service is the 15th business day after the date the warrant is  
7 served if the warrant is to be served on a domestic entity or a  
8 company or entity otherwise doing business in this state, except  
9 that the deadline for compliance with a warrant served in  
10 accordance with Section 5.251, Business Organizations Code, may be  
11 extended to a date that is not later than the 30th day after the date  
12 the warrant is served. The judge may indicate in a warrant that the  
13 deadline for compliance is earlier than the 15th business day after  
14 the date the warrant is served if the officer makes a showing and  
15 the judge finds that failure to comply with the warrant by the  
16 earlier deadline would cause serious jeopardy to an investigation,  
17 cause undue delay of a trial, or create a risk of:

18           (1) danger to the life or physical safety of any  
19 person;

20           (2) flight from prosecution;

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

22           (4) intimidation of potential witnesses.

23           (k) The provider of an electronic communications service or  
24 a provider of a remote computing service responding to a warrant  
25 issued under this section shall verify the authenticity of the  
26 customer data, contents of communications, and other information  
27 produced in compliance with the warrant by including with the

1 information an affidavit that is given by a person who is a  
2 custodian of the information or a person otherwise qualified to  
3 attest to its authenticity and that states that the information was  
4 stored in the course of regularly conducted business of the  
5 provider and specifies whether it is the regular practice of the  
6 provider to store that information.

7 (l) On a service provider's compliance with a warrant under  
8 this section, an authorized peace officer shall file a return of the  
9 warrant and a copy of the inventory of the seized property as  
10 required under Article 18.10.

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

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

22 SECTION 8. This Act takes effect immediately if it receives  
23 a vote of two-thirds of all the members elected to each house, as  
24 provided by Section 39, Article III, Texas Constitution. If this  
25 Act does not receive the vote necessary for immediate effect, this  
26 Act takes effect September 1, 2013.