

By: Frullo

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 information
4 held in electronic storage in this state and other states by
5 providers of electronic communications services and remote
6 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 or the contents of and records and other information
17 related to a wire communication or electronic communication held in
18 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 10th 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, Article 18.21, Code of Criminal
20 Procedure, is amended by adding Subdivisions (3-b) and (3-c) to
21 read as follows:

22 (3-b) "Domestic entity" has the meaning assigned by
23 Section 1.002, Business Organizations Code.

24 (3-c) "Electronic customer data" means data or records
25 that:

26 (A) are acquired by or stored with the provider
27 of an electronic communications service or a remote computing

1 service; and

2 (B) contain:

3 (i) information revealing the identity of
4 customers of the applicable service;

5 (ii) information about a customer's use of
6 the applicable service;

7 (iii) information that identifies the
8 recipient or destination of a wire communication or electronic
9 communication sent to or by the customer;

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

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

14 SECTION 5. Sections 4(a), (b), (c), (d), and (e), Article
15 18.21, Code of Criminal Procedure, are amended to read as follows:

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

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

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

27 (2) if notice is being given to the subscriber or

1 customer, by obtaining:

2 (A) an administrative subpoena authorized by
3 statute;

4 (B) a grand jury subpoena; or

5 (C) a court order issued under Section 5 of this
6 article; or

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

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

12 (A) if notice is not being given to the
13 subscriber or customer, by obtaining a warrant [~~issued~~] under
14 Section 5A [~~this code~~];

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

17 (i) an administrative subpoena authorized
18 by statute;

19 (ii) a grand jury subpoena; or

20 (iii) a court order issued under Section 5
21 of this article; or

22 (C) as otherwise permitted by applicable federal
23 law.

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

27 (A) on behalf of a subscriber or customer of the

1 service and is received by means of electronic transmission from or
2 created by means of computer processing of communications received
3 by means of electronic transmission from the subscriber or
4 customer; and

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

10 (d) An authorized peace officer may require a provider of
11 remote computing service to disclose records or other information
12 pertaining to a subscriber or customer of the service, other than
13 communications described in Subsection (c) of this section, without
14 giving the subscriber or customer notice:

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

17 (2) by obtaining a grand jury subpoena;

18 (3) by obtaining a warrant under Section 5A;

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

21 (5) by obtaining a court order under Section 5 of this
22 article; or

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

24 (e) A provider of telephonic communications service shall
25 disclose to an authorized peace officer, without any form of legal
26 process, subscriber listing information, including name, address,
27 and telephone number or similar access code that:

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

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

9 SECTION 6. Article 18.21, Code of Criminal Procedure, is
10 amended by adding Sections 5A and 5B to read as follows:

11 Sec. 5A. WARRANT ISSUED IN THIS STATE FOR STORED CUSTOMER
12 DATA OR COMMUNICATIONS. (a) On the filing of an application by an
13 authorized peace officer, a district judge may issue a search
14 warrant under this section for electronic customer data held in
15 electronic storage or the contents of and records and other
16 information related to a wire communication or electronic
17 communication held in electronic storage by a provider of an
18 electronic communications service or a provider of a remote
19 computing service described by Subsection (c), regardless of
20 whether the customer data, contents of communications, or other
21 information is held at a location in this state or at a location in
22 another state. An application made under this subsection must
23 demonstrate probable cause for the issuance of the warrant and must
24 be supported by the oath or affirmation of the authorized peace
25 officer.

26 (b) The peace officer shall execute the warrant not later
27 than the 10th day after the date of issuance, except that the

1 officer shall execute the warrant within a shorter period if so
2 directed in the warrant by the district judge. For purposes of this
3 subsection, a warrant is executed when the warrant is served in the
4 manner described by Subsection (d).

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

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

25 (1) a person specified by Section 5.255, Business
26 Organizations Code; or

27 (2) the secretary of state in the case of a company or

1 entity to which Section 5.251, Business Organizations Code,
2 applies.

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

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

21 (2) flight from prosecution;

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

23 (4) intimidation of potential witnesses.

24 (f) The provider of an electronic communications service or
25 a provider of a remote computing service responding to a warrant
26 issued under this section shall verify the authenticity of the
27 customer data, contents of communications, and other information

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

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

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

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

23 SECTION 7. This Act takes effect immediately if it receives
24 a vote of two-thirds of all the members elected to each house, as
25 provided by Section 39, Article III, Texas Constitution. If this
26 Act does not receive the vote necessary for immediate effect, this
27 Act takes effect September 1, 2013.