

1-1 By: Carona S.B. No. 1052  
 1-2 (In the Senate - Filed March 4, 2013; March 12, 2013, read  
 1-3 first time and referred to Committee on Criminal Justice;  
 1-4 April 11, 2013, reported adversely, with favorable Committee  
 1-5 Substitute by the following vote: Yeas 5, Nays 0; April 11, 2013,  
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11			X	
1-12	X			
1-13			X	
1-14	X			
1-15	X			

1-16 COMMITTEE SUBSTITUTE FOR S.B. No. 1052 By: Huffman

1-17 A BILL TO BE ENTITLED  
 1-18 AN ACT

1-19 relating to search warrants issued in this state and other states  
 1-20 for certain customer data, communications, and other information  
 1-21 held in electronic storage in this state and other states by  
 1-22 providers of electronic communications services and remote  
 1-23 computing services.

1-24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-25 SECTION 1. Article 18.02, Code of Criminal Procedure, is  
 1-26 amended to read as follows:

1-27 Art. 18.02. GROUNDS FOR ISSUANCE. (a) A search warrant  
 1-28 may be issued to search for and seize:

1-29 (1) property acquired by theft or in any other manner  
 1-30 which makes its acquisition a penal offense;

1-31 (2) property specially designed, made, or adapted for  
 1-32 or commonly used in the commission of an offense;

1-33 (3) arms and munitions kept or prepared for the  
 1-34 purposes of insurrection or riot;

1-35 (4) weapons prohibited by the Penal Code;

1-36 (5) gambling devices or equipment, altered gambling  
 1-37 equipment, or gambling paraphernalia;

1-38 (6) obscene materials kept or prepared for commercial  
 1-39 distribution or exhibition, subject to the additional rules set  
 1-40 forth by law;

1-41 (7) a drug, controlled substance, immediate  
 1-42 precursor, chemical precursor, or other controlled substance  
 1-43 property, including an apparatus or paraphernalia kept, prepared,  
 1-44 or manufactured in violation of the laws of this state;

1-45 (8) any property the possession of which is prohibited  
 1-46 by law;

1-47 (9) implements or instruments used in the commission  
 1-48 of a crime;

1-49 (10) property or items, except the personal writings  
 1-50 by the accused, constituting evidence of an offense or constituting  
 1-51 evidence tending to show that a particular person committed an  
 1-52 offense;

1-53 (11) persons; ~~or~~

1-54 (12) contraband subject to forfeiture under Chapter 59  
 1-55 of this code; or

1-56 (13) electronic customer data held in electronic  
 1-57 storage or the contents of and records and other information  
 1-58 related to a wire communication or electronic communication held in  
 1-59 electronic storage.

1-60 (b) For purposes of Subsection (a)(13), "electronic

2-1 communication," "electronic storage," and "wire communication"  
2-2 have the meanings assigned by Article 18.20, and "electronic  
2-3 customer data" has the meaning assigned by Article 18.21.

2-4 SECTION 2. Subsection (a), Article 18.06, Code of Criminal  
2-5 Procedure, is amended to read as follows:

2-6 (a) A peace officer to whom a search warrant is delivered  
2-7 shall execute the warrant [it] without delay and forthwith return  
2-8 the warrant [it] to the proper magistrate. A search warrant issued  
2-9 under Section 5A, Article 18.21, must be executed in the manner  
2-10 provided by that section not later than the 11th day after the date  
2-11 of issuance. In all other cases, a search warrant [It] must be  
2-12 executed within three days from the time of its issuance. A warrant  
2-13 issued under this chapter [~~and~~] shall be executed within a shorter  
2-14 period if so directed in the warrant by the magistrate.

2-15 SECTION 3. Subsection (a), Article 18.07, Code of Criminal  
2-16 Procedure, is amended to read as follows:

2-17 (a) The period [time] allowed for the execution of a search  
2-18 warrant, exclusive of the day of its issuance and of the day of its  
2-19 execution, is:

2-20 (1) 15 whole days if the warrant is issued solely to  
2-21 search for and seize specimens from a specific person for DNA  
2-22 analysis and comparison, including blood and saliva samples;

2-23 (2) 10 whole days if the warrant is issued under  
2-24 Section 5A, Article 18.21; or

2-25 (3) [~~2~~] three whole days if the warrant is issued  
2-26 for a purpose other than that described by Subdivision (1) or (2).

2-27 SECTION 4. Subdivision (20), Section 1, Article 18.20, Code  
2-28 of Criminal Procedure, is amended to read as follows:

2-29 (20) "Electronic storage" means:

2-30 (A) any storage of electronic customer data in a  
2-31 computer, computer network, or computer system, regardless of  
2-32 whether the data is subject to recall, further manipulation,  
2-33 deletion, or transmission [a temporary, intermediate storage of a  
2-34 wire or electronic communication that is incidental to the  
2-35 electronic transmission of the communication]; or

2-36 (B) any storage of a wire or electronic  
2-37 communication by an electronic communications service [~~for~~  
2-38 purposes of backup protection of the communication].

2-39 SECTION 5. Section 1, Article 18.21, Code of Criminal  
2-40 Procedure, is amended by adding Subdivisions (3-b) and (3-c) to  
2-41 read as follows:

2-42 (3-b) "Domestic entity" has the meaning assigned by  
2-43 Section 1.002, Business Organizations Code.

2-44 (3-c) "Electronic customer data" means data or records  
2-45 that:

2-46 (A) are acquired by or stored with the provider  
2-47 of an electronic communications service or a remote computing  
2-48 service; and

2-49 (B) contain:

2-50 (i) information revealing the identity of  
2-51 customers of the applicable service;

2-52 (ii) information about a customer's use of  
2-53 the applicable service;

2-54 (iii) information that identifies the  
2-55 recipient or destination of a wire communication or electronic  
2-56 communication sent to or by the customer;

2-57 (iv) the content of a wire communication or  
2-58 electronic communication sent to or by the customer; and

2-59 (v) any data stored by or on behalf of the  
2-60 customer with the applicable service provider.

2-61 SECTION 6. Subsections (a), (b), (c), and (d), Section 4,  
2-62 Article 18.21, Code of Criminal Procedure, are amended to read as  
2-63 follows:

2-64 (a) An authorized peace officer may require a provider of  
2-65 electronic communications service to disclose the contents of a  
2-66 wire communication or an electronic communication that has been in  
2-67 electronic storage for not longer than 180 days by obtaining a  
2-68 warrant under Section 5A.

2-69 (b) An authorized peace officer may require a provider of

3-1 electronic communications service to disclose the contents of a  
3-2 wire communication or an electronic communication that has been in  
3-3 electronic storage for longer than 180 days:

3-4 (1) if notice is not being given to the subscriber or  
3-5 customer, by obtaining a warrant under Section 5A;

3-6 (2) if notice is being given to the subscriber or  
3-7 customer, by obtaining:

3-8 (A) an administrative subpoena authorized by  
3-9 statute;

3-10 (B) a grand jury subpoena; or

3-11 (C) a court order issued under Section 5 of this  
3-12 article; or

3-13 (3) as otherwise permitted by applicable federal law.

3-14 (c)(1) An authorized peace officer may require a provider of  
3-15 a remote computing service to disclose the contents of a wire  
3-16 communication or an electronic communication as described in  
3-17 Subdivision (2) of this subsection:

3-18 (A) if notice is not being given to the  
3-19 subscriber or customer, by obtaining a warrant [~~issued~~]  
3-20 Section 5A [~~this code~~];

3-21 (B) if notice is being given to the subscriber or  
3-22 customer, by:

3-23 (i) an administrative subpoena authorized  
3-24 by statute;

3-25 (ii) a grand jury subpoena; or

3-26 (iii) a court order issued under Section 5  
3-27 of this article; or

3-28 (C) as otherwise permitted by applicable federal  
3-29 law.

3-30 (2) Subdivision (1) of this subsection applies only to  
3-31 a wire communication or an electronic communication that is in  
3-32 electronic storage:

3-33 (A) on behalf of a subscriber or customer of the  
3-34 service and is received by means of electronic transmission from or  
3-35 created by means of computer processing of communications received  
3-36 by means of electronic transmission from the subscriber or  
3-37 customer; and

3-38 (B) solely for the purpose of providing storage  
3-39 or computer processing services to the subscriber or customer if  
3-40 the provider of the service is not authorized to obtain access to  
3-41 the contents of those communications for purposes of providing any  
3-42 service other than storage or computer processing.

3-43 (d) An authorized peace officer may require a provider of  
3-44 remote computing service to disclose records or other information  
3-45 pertaining to a subscriber or customer of the service, other than  
3-46 communications described in Subsection (c) of this section, without  
3-47 giving the subscriber or customer notice:

3-48 (1) by obtaining an administrative subpoena  
3-49 authorized by statute;

3-50 (2) by obtaining a grand jury subpoena;

3-51 (3) by obtaining a warrant under Section 5A;

3-52 (4) by obtaining the consent of the subscriber or  
3-53 customer to the disclosure of the records or information;

3-54 (5) by obtaining a court order under Section 5 of this  
3-55 article; or

3-56 (6) as otherwise permitted by applicable federal law.

3-57 SECTION 7. Article 18.21, Code of Criminal Procedure, is  
3-58 amended by adding Sections 5A and 5B to read as follows:

3-59 Sec. 5A. WARRANT ISSUED IN THIS STATE FOR STORED CUSTOMER  
3-60 DATA OR COMMUNICATIONS. (a) On the filing of an application by an  
3-61 authorized peace officer, a district judge may issue a search  
3-62 warrant under this section for electronic customer data held in  
3-63 electronic storage or the contents of and records and other  
3-64 information related to a wire communication or electronic  
3-65 communication held in electronic storage by a provider of an  
3-66 electronic communications service or a provider of a remote  
3-67 computing service described by Subsection (c), regardless of  
3-68 whether the customer data, contents of communications, or other  
3-69 information is held at a location in this state or at a location in

4-1 another state. An application made under this subsection must  
 4-2 demonstrate probable cause for the issuance of the warrant and must  
 4-3 be supported by the oath or affirmation of the authorized peace  
 4-4 officer.

4-5 (b) The peace officer shall execute the warrant not later  
 4-6 than the 11th day after the date of issuance, except that the  
 4-7 officer shall execute the warrant within a shorter period if so  
 4-8 directed in the warrant by the district judge. For purposes of this  
 4-9 subsection, a warrant is executed when the warrant is served in the  
 4-10 manner described by Subsection (d).

4-11 (c) A warrant under this section may be served only on a  
 4-12 service provider that is a domestic entity or a company or entity  
 4-13 otherwise doing business in this state under a contract or a terms  
 4-14 of service agreement with a resident of this state, if any part of  
 4-15 that contract or agreement is to be performed in this state. The  
 4-16 service provider shall produce all electronic customer data,  
 4-17 contents of communications, and other information sought,  
 4-18 regardless of where the information is held and within the period  
 4-19 allowed for compliance with the warrant, as provided by Subsection  
 4-20 (e). A court may find any officer, director, or owner of a company  
 4-21 or entity in contempt of court if the person by act or omission is  
 4-22 responsible for the failure of the company or entity to comply with  
 4-23 the warrant within the period allowed for compliance. The failure  
 4-24 of a company or entity to timely deliver the information sought in  
 4-25 the warrant does not affect the admissibility of that evidence in a  
 4-26 criminal proceeding.

4-27 (d) A search warrant issued under this section is served  
 4-28 when the authorized peace officer delivers the warrant by hand, by  
 4-29 facsimile transmission, or, in a manner allowing proof of delivery,  
 4-30 by means of the United States mail or a private delivery service to:

4-31 (1) a person specified by Section 5.255, Business  
 4-32 Organizations Code;

4-33 (2) the secretary of state in the case of a company or  
 4-34 entity to which Section 5.251, Business Organizations Code,  
 4-35 applies; or

4-36 (3) any other person or entity designated to receive  
 4-37 the service of process.

4-38 (e) The district judge shall indicate in the warrant the  
 4-39 deadline for compliance by the provider of an electronic  
 4-40 communications service or the provider of a remote computing  
 4-41 service, which may not be later than the 15th business day after the  
 4-42 date the warrant is served if the warrant is to be served on a  
 4-43 domestic entity or a company or entity otherwise doing business in  
 4-44 this state, except that the deadline for compliance with a warrant  
 4-45 served in accordance with Section 5.251, Business Organizations  
 4-46 Code, may be extended to a date that is not later than the 30th day  
 4-47 after the date the warrant is served. The judge may indicate in a  
 4-48 warrant that the period allowed for compliance is four business  
 4-49 days or less after the date the warrant is served if the officer  
 4-50 makes a showing and the judge finds that failure to comply with the  
 4-51 warrant in four business days or less would cause serious jeopardy  
 4-52 to an investigation, cause undue delay of a trial, or create a risk  
 4-53 of:

4-54 (1) danger to the life or physical safety of any  
 4-55 person;

4-56 (2) flight from prosecution;

4-57 (3) the tampering with or destruction of evidence; or

4-58 (4) intimidation of potential witnesses.

4-59 (f) The provider of an electronic communications service or  
 4-60 a provider of a remote computing service responding to a warrant  
 4-61 issued under this section shall verify the authenticity of the  
 4-62 customer data, contents of communications, and other information  
 4-63 produced in compliance with the warrant by including with the  
 4-64 information an affidavit that is given by a person who is a  
 4-65 custodian of the information or a person otherwise qualified to  
 4-66 attest to its authenticity and that states that the information was  
 4-67 stored in the course of regularly conducted business of the  
 4-68 provider and specifies whether it is the regular practice of the  
 4-69 provider to store that information.

5-1 (g) On a service provider's compliance with a warrant under  
5-2 this section, an authorized peace officer shall file a return of the  
5-3 warrant and a copy of the inventory of the seized property as  
5-4 required under Article 18.10.

5-5 (h) The district judge shall hear and decide any motion to  
5-6 quash the warrant not later than the fifth business day after the  
5-7 date the service provider files the motion. The judge may allow the  
5-8 service provider to appear at the hearing by teleconference.

5-9 Sec. 5B. WARRANT ISSUED IN ANOTHER STATE FOR STORED  
5-10 CUSTOMER DATA OR COMMUNICATIONS. Any domestic entity that provides  
5-11 electronic communications services or remote computing services to  
5-12 the public shall comply with a warrant issued in another state and  
5-13 seeking information described by Section 5A(a), if the warrant is  
5-14 served on the entity in a manner equivalent to the service of  
5-15 process requirements provided in Section 5A(c).

5-16 SECTION 8. This Act takes effect immediately if it receives  
5-17 a vote of two-thirds of all the members elected to each house, as  
5-18 provided by Section 39, Article III, Texas Constitution. If this  
5-19 Act does not receive the vote necessary for immediate effect, this  
5-20 Act takes effect September 1, 2013.

5-21

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