

# SENATE AMENDMENTS

## 2<sup>nd</sup> Printing

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

H.B. No. 2268

1 Act does not receive the vote necessary for immediate effect, this

2 Act takes effect September 1, 2013.

# ADOPTED

MAY 22 2013

*Atty Gen*  
Secretary of the Senate

By: 7 CARONA

H.B. No. 2268

Substitute the following for \_\_\_B. No. \_\_\_\_\_:

By: Carona

C.S. H.B. No. 2268

*e. [Signature]*

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 an  
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 an  
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 an  
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[7] without giving the  
3 applicable 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 material 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) If the authorized peace officer serving the warrant  
24 under this section also delivers an affidavit form to the provider  
25 of an electronic communications service or the provider of a remote  
26 computing service responding to the warrant, and the peace officer  
27 also notifies the provider in writing that an executed affidavit is

1 required, then the provider shall verify the authenticity of the  
2 customer data, contents of communications, and other information  
3 produced in compliance with the warrant by including with the  
4 information the affidavit form completed and sworn to by a person  
5 who is a custodian of the information or a person otherwise  
6 qualified to attest to its authenticity that states that the  
7 information was stored in the course of regularly conducted  
8 business of the provider and specifies whether it is the regular  
9 practice of the provider to store that information.

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

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

18 (n) A provider of an electronic communications service or a  
19 provider of a remote computing service responding to a warrant  
20 issued under this section may request an extension of the period for  
21 compliance with the warrant if extenuating circumstances exist to  
22 justify the extension. The district judge shall grant a request for  
23 an extension based on those circumstances if:

24 (1) the authorized peace officer who applied for the  
25 warrant or another appropriate authorized peace officer agrees to  
26 the extension; or

27 (2) the district judge finds that the need for the

1 extension outweighs the likelihood that the extension will cause an  
2 adverse circumstance described by Subsection (j).

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

10 SECTION 8. Sections 6(a), (b), (d), (e), (f), and (g),  
11 Article 18.21, Code of Criminal Procedure, are amended to read as  
12 follows:

13 (a) A subpoena or court order for disclosure of the contents  
14 of an electronic communication held in electronic storage by a  
15 provider of an electronic communications service under Section 4(b)  
16 or by a provider of a remote computing service under Section 4(c)  
17 ~~[of this article]~~ may require that ~~[the service]~~ provider to ~~[whom~~  
18 ~~the request is directed]~~ create a copy of the contents of the  
19 electronic communications sought by the subpoena or court order for  
20 the purpose of preserving those contents. The ~~[service]~~ provider  
21 may not inform the subscriber or customer whose communications are  
22 being sought that the subpoena or court order has been issued. The  
23 ~~[service]~~ provider shall create the copy not later than two  
24 business days after the date of the receipt by the ~~[service]~~  
25 provider of the subpoena or court order.

26 (b) The provider of an electronic communications service or  
27 the provider of a remote computing service shall immediately notify

1 the authorized peace officer who presented the subpoena or court  
2 order requesting the copy when the copy has been created.

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

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

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

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

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

1 computing service.

2 (g)(1) A subscriber or customer who receives notification  
3 as described in Subsection (c) [~~of this section~~] may file a written  
4 motion to quash the subpoena or vacate the court order in the court  
5 that issued the subpoena or court order not later than the 14th day  
6 after the date of the receipt of the notice. The motion must  
7 contain an affidavit or sworn statement stating [~~that~~]:

8 (A) that the applicant is a subscriber or  
9 customer of the provider of an electronic communications service or  
10 the provider of a remote computing service from which the contents  
11 of electronic communications stored for the subscriber or customer  
12 have been sought; and

13 (B) the applicant's reasons for believing that  
14 the information sought is not relevant to a legitimate law  
15 enforcement inquiry or that there has not been substantial  
16 compliance with the provisions of this article in some other  
17 respect.

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

25 SECTION 9. 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

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

# ADOPTED

MAY 22 2013

*Atty. Gen.*  
Secretary of the Senate

FLOOR AMENDMENT NO. 1

BY: Carma

Amend C.S.H.B. No. 2268 (Senate Committee Printing) as follows:

(1) Strike SECTION 6 of the bill (page 2, line 64, through page 3, line 61) 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 electronic customer data ~~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 only the following electronic customer data:

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

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

~~[records or other information pertaining to a subscriber or customer of the service, other than communications described in Subsection (c) of] this section[,]~~ 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) Strike SECTION 8 of the bill (page 5, line 55, through page 6, line 54) and substitute the following appropriately numbered SECTION:

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 within a reasonable time as determined by the court issuing ~~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.

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

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 \_\_\_\_\_. Sections 9(a) and (b), 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 \_\_\_\_\_. Section 12(a), 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.

(3) Strike SECTION 7 of the bill (page 3, line 62, through page 5, line 54) and substitute the following appropriately numbered SECTION:

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

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

(b) On the filing of an application by an authorized peace officer, a district judge may issue a search warrant under this

section for electronic customer data held in electronic storage, including the contents of and records and other information related to a wire communication or electronic communication held in electronic storage, by a provider of an electronic communications service or a provider of a remote computing service described by Subsection (h), regardless of whether the customer data is held at a location in this state or at a location in another state. An application made under this subsection must demonstrate probable cause for the issuance of the warrant and must be supported by the oath or affirmation of the authorized peace officer.

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

(1) a specific offense has been committed; and

(2) the electronic customer data sought:

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

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

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

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

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

(g) The peace officer shall execute the warrant not later

than the 11th day after the date of issuance, except that the officer shall execute the warrant within a shorter period if so directed in the warrant by the district judge. For purposes of this subsection, a warrant is executed when the warrant is served in the manner described by Subsection (i).

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

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

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

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

to which Section 5.251, Business Organizations Code, applies; or

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

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

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

(2) flight from prosecution;

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

(4) intimidation of potential witnesses.

(k) If the authorized peace officer serving the warrant under this section also delivers an affidavit form to the provider of an electronic communications service or the provider of a remote computing service responding to the warrant, and the peace officer

also notifies the provider in writing that an executed affidavit is required, then the provider shall verify the authenticity of the customer data, contents of communications, and other information produced in compliance with the warrant by including with the information the affidavit form completed and sworn to by a person who is a custodian of the information or a person otherwise qualified to attest to its authenticity that states that the information was stored in the course of regularly conducted business of the provider and specifies whether it is the regular practice of the provider to store that information.

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

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

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

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

(2) the district judge finds that the need for the extension outweighs the likelihood that the extension will cause an adverse

circumstance described by Subsection (j).

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

(3) Strike SECTION 5 of the bill (page 2, line 42, through  
page 2, line 63) and substitute the following appropriately  
numbered SECTION:

SECTION \_\_\_\_ . Section 1, Article 18.21, Code of Criminal  
Procedure, is amended to read as follows:

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

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

(A) are in the possession, care, custody or control of a  
provider of an electronic communications service or a remote  
computing service; and

(B) contain:

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

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

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

(iv) the content of a wire communication or electronic

communication sent to or by the customer; and

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

**LEGISLATIVE BUDGET BOARD  
Austin, Texas**

**FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION**

**May 23, 2013**

**TO:** Honorable Joe Straus, Speaker of the House, House of Representatives

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB2268** by Frullo (Relating to search warrants issued in this state and other states for certain customer data, communications, and other related information held in electronic storage in this state and other states by providers of electronic communications services and remote computing services. ), **As Passed 2nd House**

<p><b>No significant fiscal implication to the State is anticipated.</b></p>
--

The bill would amend the Code of Criminal Procedure to provide procedures for issuing search warrants issued in this state and other states for certain customer data, communications, and other related information held in electronic storage in this state and other states by providers of electronic communications services and remote computing services. A search warrant is considered served when the authorized peace officer delivers the warrant by hand, facsimile transmission, mail, or a private delivery service to specified persons, or the Secretary of State (SOS) in the case of a company or entity under Section 5.251 of the Business Organizations Code which specifies that the SOS is an agent of an entity for purposes of service of process, notice, or demand on the entity.

The Office of Court Administration indicates no significant fiscal impact to state courts is anticipated. The SOS indicated no significant fiscal impact is anticipated.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council, 307 Secretary of State, 405 Department of Public Safety

**LBB Staff:** UP, ESi, KKR, JP, TP

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION**

**May 15, 2013**

**TO:** Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB2268** by Frullo (Relating to search warrants issued in this state and other states for certain customer data, communications, and other related information held in electronic storage in this state and other states by providers of electronic communications services and remote computing services.), **Committee Report 2nd House, Substituted**

**No significant fiscal implication to the State is anticipated.**

The bill would amend the Code of Criminal Procedure to provide procedures for issuing search warrants issued in this state and other states for certain customer data, communications, and other information held in electronic storage in this state and other states by providers of electronic communications services and remote computing services. A search warrant is considered served when the authorized peace officer delivers the warrant by hand, facsimile transmission, mail, or a private delivery service to specified persons, or the Secretary of State (SOS) in the case of a company or entity under Section 5.251 of the Business Organizations Code which specifies that the SOS is an agent of an entity for purposes of service of process, notice, or demand on the entity.

The Office of Court Administration indicates no significant fiscal impact to state courts is anticipated. The SOS indicated no significant fiscal impact is anticipated.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council, 307 Secretary of State, 405 Department of Public Safety

**LBB Staff:** UP, ESi, KKR, JP, TP

LEGISLATIVE BUDGET BOARD  
Austin, Texas

FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION

May 13, 2013

**TO:** Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB2268** by Frullo (Relating to search warrants issued in this state and other states for certain customer data, communications, and other related information held in electronic storage in this state and other states by providers of electronic communications services and remote computing services.), **As Engrossed**

**No significant fiscal implication to the State is anticipated.**

The bill would amend the Code of Criminal Procedure to provide procedures for issuing search warrants issued in this state and other states for certain customer data, communications, and other related information held in electronic storage in this state and other states by providers of electronic communications services and remote computing services. A search warrant is considered served when the authorized peace officer delivers the warrant by hand, facsimile transmission, mail, or a private delivery service to certain persons, or the Secretary of State (SOS) in the case of a company or entity under Section 5.251 of the Business Organizations Code which specifies that the SOS is an agent of an entity for purposes of service of process, notice, or demand on the entity.

The Office of Court Administration indicates no significant fiscal impact to state courts is anticipated. The SOS indicated no significant fiscal impact is anticipated.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 307 Secretary of State, 405 Department of Public Safety

**LBB Staff:** UP, ESi, KKR

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION**  
**Revision 1**

**April 30, 2013**

**TO:** Honorable Abel Herrero, Chair, House Committee on Criminal Jurisprudence

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB2268** by Frullo (Relating to search warrants issued in this state and other states for certain customer data, communications, and other related information held in electronic storage in this state and other states by providers of electronic communications services and remote computing services.), **Committee Report 1st House, Substituted**

**No significant fiscal implication to the State is anticipated.**

The bill would amend the Code of Criminal Procedure to provide procedures for issuing search warrants issued in this state and other states for certain customer data, communications, and other related information held in electronic storage in this state and other states by providers of electronic communications services and remote computing services. A search warrant is considered served when the authorized peace officer delivers the warrant by hand, facsimile transmission, mail, or a private delivery service to certain persons, or the Secretary of State (SOS) in the case of a company or entity under Section 5.251 of the Business Organizations Code which specifies that the SOS is an agent of an entity for purposes of service of process, notice, or demand on the entity.

The Office of Court Administration indicates no significant fiscal impact to state courts is anticipated. The SOS indicated no significant fiscal impact is anticipated.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 307 Secretary of State, 405 Department of Public Safety

**LBB Staff:** UP, ESi, KKR

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION**

**April 22, 2013**

**TO:** Honorable Abel Herrero, Chair, House Committee on Criminal Jurisprudence

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB2268** by Frullo (Relating to search warrants issued in this state and other states for certain customer data, communications, and other information held in electronic storage in this state and other states by providers of electronic communications services and remote computing services. ), **Committee Report 1st House, Substituted**

<p><b>No significant fiscal implication to the State is anticipated.</b></p>
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The bill would amend the Code of Criminal Procedure to provide procedures for issuing search warrants issued in this state and other states for certain customer data, communications, and other information held in electronic storage in this state and other states by providers of electronic communications services and remote computing services. A search warrant is considered served when the authorized peace officer delivers the warrant by hand, facsimile transmission, mail, or a private delivery service to certain specified persons, or the Secretary of State (SOS) in the case of a company or entity under Section 5.251 of the Business Organizations Code which specifies that the SOS is an agent of an entity for purposes of service of process, notice, or demand on the entity.

The Office of Court Administration indicates no significant fiscal impact to state courts is anticipated. The SOS indicated no significant fiscal impact is anticipated.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 307 Secretary of State, 405 Department of Public Safety

**LBB Staff:** UP, ESi, KKR

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION**

**April 8, 2013**

**TO:** Honorable Abel Herrero, Chair, House Committee on Criminal Jurisprudence

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB2268** by Frullo (Relating to search warrants issued in this state and other states for certain customer data, communications, and other information held in electronic storage in this state and other states by providers of electronic communications services and remote computing services.), **As Introduced**

<b>No significant fiscal implication to the State is anticipated.</b>
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The bill would amend the Code of Criminal Procedure to provide procedures for issuing search warrants issued in this state and other states for certain customer data, communications, and other information held in electronic storage in this state and other states by providers of electronic communications services and remote computing services. A search warrant is considered served when the authorized peace officer delivers the warrant by hand, facsimile transmission, mail, or a private delivery service to specified persons, or the Secretary of State (SOS) in the case of a company or entity under Section 5.251 of the Business Organizations Code which specifies that the SOS is an agent of an entity for purposes of service of process, notice, or demand on the entity.

The Office of Court Administration indicates no significant fiscal impact to state courts is anticipated. The SOS indicated no significant fiscal impact is anticipated.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 307 Secretary of State, 405 Department of Public Safety

**LBB Staff:** UP, ESi, KKR