

House Bill 2268
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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

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

- (1) property acquired by theft or in any other manner which makes its acquisition a penal offense;
- (2) property specially designed, made, or adapted for or commonly used in the commission of an offense;
- (3) arms and munitions kept or prepared for the purposes of insurrection or riot;
- (4) weapons prohibited by the Penal Code;
- (5) gambling devices or equipment, altered gambling equipment, or gambling paraphernalia;
- (6) obscene materials kept or prepared for commercial distribution or exhibition, subject to the additional rules set forth by law;
- (7) a drug, controlled substance, immediate precursor, chemical precursor, or other controlled substance property, including an apparatus or paraphernalia kept, prepared, or manufactured in violation of the laws of this state;
- (8) any property the possession of which is prohibited by law;
- (9) implements or instruments used in the commission of a crime;
- (10) property or items, except the personal writings by the accused, constituting evidence of an offense or constituting evidence tending to show that a particular person committed an offense;
- (11) persons; ~~or~~
- (12) contraband subject to forfeiture under Chapter 59 of this code; or
- (13) electronic customer data held in electronic storage, including the contents of and records and other information

SENATE VERSION (IE)

SECTION 1. Same as House version.

CONFERENCE

House Bill 2268
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

related to a wire communication or electronic communication held in electronic storage.

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

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

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

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

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

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

(2) 10 whole days if the warrant is issued under Section 5A,

SECTION 2. Same as House version.

SECTION 3. Same as House version.

House Bill 2268
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

Article 18.21; or

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

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

(20) "Electronic storage" means any storage of electronic customer data in a computer, computer network, or computer system, regardless of whether the data is subject to recall, further manipulation, deletion, or transmission, and includes any:

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

~~[(B) storage of a wire or electronic communication by an electronic communications service or a remote computing service [for purposes of backup protection of the communication].~~

SECTION 5. Section 1, Article 18.21, Code of Criminal Procedure, is amended by adding Subdivisions (3-b) and (3-c) 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 acquired by or stored with the provider of an electronic communications service or a remote computing service; and

(B) contain:

(i) information revealing the identity of customers of the

SECTION 4. Same as House version.

SECTION 5. 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

House Bill 2268
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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.

SECTION 6. 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 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 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~~

SENATE VERSION (IE)

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. [FA1(5)]

SECTION 6. 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~~

CONFERENCE

House Bill 2268
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

~~[(C) a court order issued under Section 5 of this article; or
(3) as otherwise permitted by applicable federal law.
(e)(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 remote computing service to disclose~~

SENATE VERSION (IE)

~~[(C) a court order issued under Section 5 of this article; or
(3) as otherwise permitted by applicable federal law.
(e)(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.
(e) 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;~~

CONFERENCE

House Bill 2268
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

~~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;~~

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

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

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

~~[(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.~~

~~[(c)] [(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.~~

SENATE VERSION (IE)

(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.

CONFERENCE

House Bill 2268
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

[FA1(1)]

SECTION 7. Article 18.21, Code of Criminal Procedure, is amended by adding Sections 5A and 5B 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

SECTION 7. 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

House Bill 2268
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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 officer, director, or 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

SENATE VERSION (IE)

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

CONFERENCE

House Bill 2268
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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;

SENATE VERSION (IE)

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;

CONFERENCE

House Bill 2268
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

(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

SENATE VERSION (IE)

(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

CONFERENCE

House Bill 2268
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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).

No equivalent provision.

SENATE VERSION (IE)

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). [FA1(4)]

SECTION 8. 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(e) 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]~~

CONFERENCE

House Bill 2268
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

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

House Bill 2268
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

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

House Bill 2268
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

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

House Bill 2268
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

section is not a final order and no interlocutory appeal may be taken from the denial. [FA1(2)]

No equivalent provision.

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. [FA1(3)]

No equivalent provision.

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

House Bill 2268
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

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.
[FA1(3)]

No equivalent provision.

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[~~;~~] or against other specified persons for providing information, facilities, or assistance as required by a

House Bill 2268
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

court order, warrant, subpoena, or certification under this article. [FA1(3)]

No equivalent provision.

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. [FA1(3)]

No equivalent provision.

SECTION __. Section 7, Article 18.21, Code of Criminal Procedure, is repealed. [FA1(3)]

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

SECTION 9. Same as House version.