

By: Fletcher

H.B. No. 3790

Substitute the following for H.B. No. 3790:

By: Koop

C.S.H.B. No. 3790

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the electronic customer data that certain peace  
3 officers may obtain by warrant, order, or other legal process from a  
4 provider of a wire or electronic communications service or remote  
5 computing service or from a communication common carrier.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

7 SECTION 1. Section 1, Article 18.21, Code of Criminal  
8 Procedure, is amended by adding Subdivisions (2-a), (8-a), (9-a),  
9 and (9-b) and amending Subdivisions (3-c), (4), and (6) to read as  
10 follows:

11 (2-a) "Call detail record" means information produced  
12 by a telephone exchange or other telecommunications device or  
13 equipment that documents the transactional details of a wire or  
14 electronic communication that passes through the exchange, device,  
15 or equipment. The term includes information such as the time,  
16 duration, completion status, source number, and destination number  
17 of a wire or electronic communication, but does not include the  
18 content of the communication.

19 (3-c) "Electronic customer data" means data or records  
20 that:

21 (A) are in the possession, care, custody, or  
22 control of a provider of a wire or [an] electronic communications  
23 service or a remote computing service; and

24 (B) contain:

1 (i) information revealing the identity of  
2 customers or subscribers of the applicable service;

3 (ii) information about a customer's or  
4 subscriber's use of the applicable service, including:

5 (a) call detail records;

6 (b) telephone call toll billing  
7 records;

8 (c) wireless Internet access point  
9 transactional records;

10 (d) records relating to a short  
11 message service or text message service that do not include the  
12 contents of the messages; and

13 (e) telecommunication identifying  
14 information;

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

18 (iv) the content of a wire communication or  
19 electronic communication sent to or by the customer or subscriber;  
20 or [and]

21 (v) any data stored with the applicable  
22 service provider by or on behalf of the customer or subscriber [~~with~~  
23 ~~the applicable service provider~~].

24 (4) "ESN reader" means a device that records  
25 telecommunication identifying information [~~the electronic serial~~  
26 ~~number~~] from the data track of a [~~wireless telephone,~~] cellular  
27 telephone[~~7~~] or other wireless communications [~~similar~~

1 ~~communication]~~ device that transmits its operational status to a  
2 base site, if the telephone or device does not intercept the  
3 contents of a communication.

4 (6) "Pen register" means a device or process that  
5 records or decodes dialing, routing, addressing, or signaling  
6 information or telecommunication identifying information that is  
7 transmitted by an instrument or facility from which a wire or  
8 electronic communication is transmitted, if the information does  
9 not include the contents of the communication. The term does not  
10 include a device used by a provider or customer of a wire or  
11 electronic communication service in the ordinary course of the  
12 provider's or customer's business for purposes of:

13 (A) billing or recording as an incident to  
14 billing for communications services; or

15 (B) cost accounting, security control, or other  
16 ordinary business purposes.

17 (8-a) "Subscriber or customer bulk records" means the  
18 records of a provider of a wire or electronic communications  
19 service or a remote computing service that contain  
20 telecommunication identifying information for all of the service's  
21 subscribers or customers in a specific geographic area. The term  
22 does not include the contents of a wire communication or electronic  
23 communication.

24 (9-a) "Telecommunication identifying information"  
25 means an electronic serial number or other number or signal that is  
26 not part of the content of any wire communication or electronic  
27 communication and that is associated with a specific:

1           (A) cellular telephone or other wireless  
2 communications device;

3           (B) customer or subscriber account; or

4           (C) data track of an electronic communication.

5           (9-b) "Telephone call toll billing record" means a  
6 record retained by a wire or electronic communications service or a  
7 remote computing service that identifies, for a telephone toll  
8 call, the following billing information:

9           (A) the name, address, and telephone number of  
10 the caller;

11           (B) the telephone number called; and

12           (C) the date, time, and length of the call.

13           SECTION 2. Section 4, Article 18.21, Code of Criminal  
14 Procedure, is amended by amending Subsections (a) and (b) and  
15 adding Subsections (b-1), (b-2), and (b-3) to read as follows:

16           (a) An authorized peace officer may require a provider of a  
17 wire or [an] electronic communications service or a provider of a  
18 remote computing service to disclose electronic customer data that  
19 is in electronic storage by obtaining a warrant under Section 5A.

20           (b) An authorized peace officer may require a provider of a  
21 wire or [an] electronic communications service or a provider of a  
22 remote computing service to disclose information described by  
23 Subsection (b-1) or (b-2) [only electronic customer data that is  
24 information revealing the identity of customers of the applicable  
25 service or information about a customer's use of the applicable  
26 service,] without giving the subscriber or customer notice:

27           (1) by obtaining an administrative subpoena

1 authorized by statute;

2 (2) by obtaining a grand jury subpoena;

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

4 (4) by obtaining the consent of the subscriber, ~~or~~  
5 customer, or user of the applicable service to the disclosure of the  
6 data;

7 (5) by obtaining a court order under Section 5; or

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

9 (b-1) Under Subsection (b), an authorized peace officer may  
10 obtain the following electronic customer data:

11 (1) call detail records;

12 (2) records relating to the Internet Protocol address  
13 used by a computer or wireless communications device;

14 (3) telephone call toll billing records;

15 (4) records relating to a short message service or  
16 text message service that do not include the contents of the  
17 messages;

18 (5) wireless Internet access point transactional  
19 records;

20 (6) telecommunication identifying information; or

21 (7) any other electronic customer data that:

22 (A) reveals the identity of customers or  
23 subscribers of the applicable service; or

24 (B) provides information about a customer's or  
25 subscriber's use of the applicable service.

26 (b-2) In an ongoing criminal investigation, an authorized  
27 peace officer may obtain subscriber or customer bulk records under

1 Subsection (b) for the purpose of locating a suspect or wireless  
2 communications device or identifying an unknown suspect or wireless  
3 communications device by means of a pen register or trap and trace  
4 device.

5 (b-3) This section does not authorize a peace officer,  
6 whether under the authority of a subpoena or otherwise, to obtain,  
7 or to require a provider of a wire or electronic communications  
8 service or a provider of a remote computing service to disclose,  
9 electronic customer data in electronic storage that is the content  
10 of a wire communication or electronic communication, including any  
11 images or videos contained in the information.

12 SECTION 3. The change in law made by this Act applies to the  
13 disclosure of certain information by a provider of a wire or  
14 electronic communications service or remote computing service or by  
15 a communication common carrier under a warrant, order, or other  
16 legal process on or after the effective date of this Act.

17 SECTION 4. This Act takes effect September 1, 2015.