

**HOUSE . . . . . No. 1828**

By Mr. Naughton of Clinton, petition of Harold P. Naughton, Jr. and others relative to investigations involving computer crime. The Judiciary.

**The Commonwealth of Massachusetts**

PETITION OF:

Harold P. Naughton, Jr.            David P. Linsky  
Thomas F. Reilly

In the Year Two Thousand and Five.

AN ACT TO PROTECT VICTIMS OF COMPUTER CRIMES.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1     SECTION 1. Chapter 271 of the General Laws is hereby  
2 amended by striking out section 17B, as appearing in the 2000  
3 Official Edition, and inserting in place thereof following section:  
4     Section 17B. Except as otherwise prohibited under section  
5 2703 of Title 18 of the United States Code, whenever the attorney  
6 general or a district attorney has reasonable grounds to believe  
7 that records in the possession of (i) a common carrier subject to  
8 the jurisdiction of the department of telecommunications and  
9 energy, as defined in paragraph (d) of section 12 of chapter 159;  
10 or (ii) a provider of electronic communication service as defined  
11 in subparagraph (15) of section 2510 of Title 18 of the United  
12 States Code; or (iii) a provider of remote computing service as  
13 defined in section 2711 of Title 18 of the United States Code, are  
14 relevant and material to an ongoing criminal investigation, the  
15 attorney general or district attorney may issue an administrative  
16 subpoena demanding all such records in the possession of such  
17 common carrier or service, and such records shall be delivered to  
18 the attorney general or district attorney within fourteen (14) days  
19 of receipt of the subpoena. No such common carrier or service, or

20 employee thereof shall be civilly or criminally responsible for fur-  
21 nishing any records or information in compliance with such  
22 demand. Nothing in this section shall limit the right of the  
23 attorney general or a district attorney otherwise to obtain records  
24 from such a common carrier or service pursuant to a search war-  
25 rant, a court order or a grand jury or trial subpoena.

26 Notwithstanding the provisions of this section, a subpoena  
27 issued pursuant to this section shall not be used to obtain records  
28 disclosing the content of electronic communications, or subscriber  
29 account records disclosing Internet locations which have been  
30 accessed including, but not limited to, websites, chat channels and  
31 newsgroups, but excluding servers used to initially access the  
32 Internet. Nor shall the recipient of such a subpoena provide any  
33 such records accessed, in response to such a subpoena.

1 SECTION 2. Chapter 276 of the General Laws is hereby  
2 amended by inserting after section 1A, as so appearing, the  
3 following section:

4 Section 1B.

5 (a) As used in this section, the following terms shall have the  
6 following meanings:

7 “Adverse result”, occurs when notification of the existence of a  
8 search warrant results in:

9 (1) danger to the life or physical safety of an individual;

10 (2) a flight from prosecution;

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

12 (4) the intimidation of a potential witness or witnesses; or

13 (5) serious jeopardy to an investigation or undue delay of a  
14 trial.

15 “Electronic communication services”, shall be construed in  
16 accordance with Title 18, sections 2701 to 2711 of the United  
17 States Code. This definition shall not apply to corporations that do  
18 not provide those services to the general public.

19 “Foreign corporation”, any corporation or other entity that  
20 makes a contract or engages in a terms of service agreement with  
21 a resident of the commonwealth to be performed in whole or in  
22 part by either party in the commonwealth. The making of the con-  
23 tract or terms of service agreement is considered to be the agree-  
24 ment of the foreign corporation that a search warrant or subpoena

25 properly served on it has the same legal force and effect as if  
26 served personally within the commonwealth.

27 “Massachusetts corporation”, any corporation or other entity  
28 that is subject to chapter 155 or chapter 156B.

29 “Properly served”, that a search warrant or subpoena has been  
30 delivered by hand, by United States mail, by commercial delivery  
31 service, by facsimile or by any other manner to any officer of the  
32 corporation or its general manager in the commonwealth, to any  
33 natural person designated by it as agent for the service of process,  
34 or if the corporation has designated a corporate agent, to any  
35 person named in the latest certificate filed pursuant to section 4 of  
36 chapter 181.

37 “Remote computing services”, shall be construed in accordance  
38 with Title 18, sections 2701 to 2711, inclusive, of the United  
39 States Code. This definition shall not apply to corporations that do  
40 not provide those services to the general public.

41 “Subpoena”, a grand jury or trial subpoena issued in the course  
42 of a criminal proceeding or an administrative subpoena issued  
43 pursuant to Chapter 271, section 17B.

44 (b) A court or justice authorized to issue warrants in criminal  
45 cases may, upon complaint on oath that the complainant believes  
46 that any of the records hereinafter named are actually or construc-  
47 tively possessed by a foreign corporation that provides electronic  
48 communication services or remote computing services, if satisfied  
49 that probable cause has been established for such belief, issue a  
50 warrant identifying those records to be searched for and com-  
51 manding the person seeking such warrant to properly serve the  
52 warrant upon the foreign corporation:

53 (1) those records which would reveal the identity of a customer  
54 using those services;

55 (2) data stored by or on behalf of a customer;

56 (3) records of a customer’s usage of those services;

57 (4) records of the source of communications sent to or the  
58 recipient or destination of communications sent from a customer;  
59 or

60 (5) the content of those communications stored by an electronic  
61 communication or remote commuting service.

62 (c) The following provisions shall apply to any search warrant  
63 issued pursuant to this section and to any subpoena issued in the  
64 course of a criminal investigation or proceeding directed to a for-  
65 eign corporation that provides electronic communication services  
66 or remote computing services:

67 (1) When properly served with a search warrant issued by a  
68 Massachusetts court or justice pursuant to this section or a sub-  
69 poena, a foreign corporation subject to this section shall provide  
70 all records sought pursuant to that warrant or subpoena within 14  
71 days of receipt, including those records maintained or located out-  
72 side the commonwealth;

73 (2) If an the applicant makes a showing and the court or justice  
74 finds that failure to produce records within less than 14 days  
75 would cause an adverse result, a warrant may require production  
76 of records within less than 14 days;

77 (3) A court or justice may reasonably extend the time required  
78 for production of the records upon finding that the foreign corpo-  
79 ration has shown good cause for that extension and that an exten-  
80 sion of time would not cause an adverse result;

81 (4) A foreign corporation seeking to quash a warrant or sub-  
82 poena served on it pursuant to this section must seek relief from  
83 the court that issued the warrant or the court which has jurisdic-  
84 tion over the subpoena within the time required for production of  
85 records pursuant to this section. The court shall hear and decide  
86 that motion no later than 14 days after the motion is filed;

87 (5) In the case of an administrative subpoena issued by the  
88 attorney general, the superior court of Suffolk county shall have  
89 jurisdiction; in the case of an administrative subpoena issued by a  
90 district attorney, the superior court in any county in which the dis-  
91 trict attorney maintains an office shall have jurisdiction; and

92 (6) The foreign corporation shall verify the authenticity of  
93 records that it produces by providing an affidavit from the person  
94 in custody of those records certifying that they are true and com-  
95 plete.

96 (d) A Massachusetts corporation that provides electronic com-  
97 munication services or remote computing services, when served  
98 with a warrant or subpoena issued by another state to produce  
99 records that would reveal the identity of the customers using those  
100 services, data stored by, or on behalf of the customer, the cus-

101 tomer's usage of those services, the recipient or destination of  
102 communications sent to or from those customers, or the content of  
103 those communications, shall produce those records as if that war-  
104 rant or subpoena had been issued under Massachusetts law.

105 (e) No cause of action shall lie against any foreign or Massa-  
106 chusetts corporation subject to this section, its officers,  
107 employees, agents or other specified persons for providing  
108 records, information, facilities or assistance in accordance with  
109 the terms of a warrant or subpoena issued pursuant to this section.