

HOUSE No. 1612

By Mr. Naughton of Clinton, petition of Harold P. Naughton, Jr.,
relative to computer crimes. The Judiciary.

The Commonwealth of Massachusetts

In the Year Two Thousand and Seven.

AN ACT RELATIVE TO 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 amended
2 by striking out Section 17B, as appearing in the 2000 Official Edi-
3 tion, and inserting in place thereof following section:—
4 Section 17B. Except as otherwise prohibited under Section 2703
5 of Title 18 of the United States Code, whenever the attorney general
6 or a district attorney has reasonable grounds to believe that records
7 in the possession of (i) a common carrier subject to the jurisdiction
8 of the department of telecommunications and energy, as defined in
9 paragraph (d) of Section 12 of Chapter 159; or (ii) a provider of
10 electronic communication service as defined in subparagraph (15) of
11 Section 2510 of Title 18 of the United States Code; or (iii) a provider
12 of remote computing service as defined in Section 2711 of Title 18
13 of the United States Code, are relevant and material to an ongoing
14 criminal investigation, the attorney general or district attorney may
15 issue an administrative subpoena demanding all such records in the
16 possession of such common carrier or service, and such records
17 forthwith shall be delivered to the attorney general or district
18 attorney. No such common carrier or service, or employee thereof
19 shall be civilly or criminally responsible for furnishing any records
20 or information in compliance with such demand. Nothing in this
21 section shall limit the right of the attorney general or a district
22 attorney otherwise to obtain records from such a common carrier or
23 service pursuant to a search warrant, a court order or a grand jury or
24 trial subpoena.

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

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

4 SECTION 1B. (a) As used in this section, the following terms
5 shall have the following meanings:

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

8 danger to the life or physical safety of an individual;

9 a flight from prosecution;

10 the destruction of or tampering with evidence;

11 the intimidation of a potential witness or witnesses; or

12 serious jeopardy to an investigation or undue delay of a trial.

13 “Electronic communication services”, shall be construed in accor-
14 dance with Title 18, Sections 2701 to 2711 of the United States
15 Code. This definition shall not apply to corporations that do not pro-
16 vide those services to the general public.

17 “Foreign corporation”, any corporation or other entity that makes
18 a contract or engages in a terms of service agreement with a resident
19 of the Commonwealth to be performed in whole or in part by either
20 party in the Commonwealth. The making of the contract or terms of
21 service agreement is considered to be the agreement of the foreign
22 corporation that a search warrant or subpoena properly served on it
23 has the same legal force and effect as if served personally within the
24 Commonwealth.

25 “Massachusetts corporation”, any corporation or other entity that
26 is subject to Chapter 155 or Chapter 156B.

27 “Properly served”, that a search warrant or subpoena has been
28 delivered by hand, by United States mail, by commercial delivery
29 service, by facsimile or by any other manner to any officer of the
30 corporation or its general manager in the Commonwealth, to any

31 natural person designated by it as agent for the service of process, or
32 if the corporation has designated a corporate agent, to any person
33 named in the latest certificate filed pursuant to Section 4 of Chapter
34 181.

35 “Remote computing services”, shall be construed in accordance
36 with Title 18, Sections 2701 to 2711, inclusive, of the United States
37 Code. This definition shall not apply to corporations that do not pro-
38 vide those services to the general public.

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

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

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

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

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

55 (4) records of the source of communications sent to or the recip-
56 ient or destination of communications sent from a customer; or

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

59 (c) The following provisions shall apply to any search warrant
60 issued pursuant to this section and to any subpoena issued in the
61 course of a criminal investigation or proceeding directed to a foreign
62 corporation that provides electronic communication services or
63 remote computing services:—

64 (1) When properly served with a search warrant issued by a
65 Massachusetts court or justice pursuant to this section or a subpoena,
66 a foreign corporation subject to this section shall provide all records
67 sought pursuant to that warrant or subpoena within 5 business days
68 of receipt, including those records maintained or located outside the
69 Commonwealth.

70 (2) If an the applicant makes a showing and the court or justice
71 finds that failure to produce records within less than 5 business days
72 would cause an adverse result, a warrant may require production of
73 records within less than 5 business days;

74 (3) A court or justice may reasonably extend the time required for
75 production of the records upon finding that the foreign corporation
76 has shown good cause for that extension and that an extension of
77 time would not cause an adverse result;

78 (4) A foreign corporation seeking to quash a warrant or subpoena
79 served on it pursuant to this section must seek relief from the court
80 that issued the warrant or the court which has jurisdiction over the
81 subpoena within the time required for production of records pursuant
82 to this section.

83 The court shall hear and decide that motion no later than 5 court
84 days after the motion is filed;

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

90 (6) The foreign corporation shall verify the authenticity of records
91 that it produces by providing an affidavit from the person in custody
92 of those records certifying that they are true and complete.

93 (d) A Massachusetts corporation that provides electronic commu-
94 nication services or remote computing services, when served with a
95 warrant or subpoena issued by another state to produce records that
96 would reveal the identity of the customers using those services, data
97 stored by, or on behalf of the customer, the customer's usage of
98 those services, the recipient or destination of communications sent to
99 or from those customers, or the content of those communications,
100 shall produce those records as if that warrant or subpoena had been
101 issued under Massachusetts law.

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