

SENATE NO. 793



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 amended by striking out section 17B,
2 as appearing in the 2000 Official Edition, and inserting in place thereof following section:
3 Section 17B. Except as otherwise prohibited under section 2703 of Title 18 of the United States
4 Code, whenever the attorney general or a district attorney has reasonable grounds to believe that
5 records in the possession of (i) a common carrier subject to the jurisdiction of the department of
6 telecommunications and energy, as defined in paragraph (d) of section 12 of chapter 159; or (ii)
7 a provider of electronic communication service as defined in subparagraph (15) of section 2510
8 of Title 18 of the United States Code; or (iii) a provider of remote computing service as defined
9 in section 2711 of Title 18 of the United States Code, are relevant and material to an ongoing
10 criminal investigation, the attorney general or district attorney may issue an administrative
11 subpoena demanding all such records in the possession of such common carrier or service, and

12 such records shall be delivered to the attorney general or district attorney within fourteen (14)
13 days of receipt of the subpoena. No such common carrier or service, or employee thereof shall
14 be civilly or criminally responsible for furnishing any records or information in compliance with
15 such demand. Nothing in this section shall limit the right of the attorney general or a district
16 attorney otherwise to obtain records from such a common carrier or service pursuant to a search
17 warrant, a court order or a grand jury or trial subpoena.

18 Notwithstanding the provisions of this section, a subpoena issued pursuant to this section shall
19 not be used to obtain records disclosing the content of electronic communications, or subscriber
20 account records disclosing Internet locations which have been accessed including, but not
21 limited to, websites, chat channels and newsgroups, but excluding servers used to initially
22 access the Internet. Nor shall the recipient of such a subpoena provide any such records.
23 accessed, in response to such a subpoena.@

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

26 SECTION 1B.

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

28 Adverse result, occurs when notification of the existence of a search
29 warrant results in:

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

31 (2) a flight from prosecution;

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

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

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

35 Electronic communication services, shall be construed in accordance with Title 18, sections
36 2701 to 2711 of the United States Code. This definition shall not apply to corporations that do
37 not provide those services to the general public.

38 Foreign corporation, any corporation or other entity that makes a contract or engages in a terms
39 of service agreement with a resident of the commonwealth to be performed in whole or in part
40 by either party in the commonwealth. The making of the contract or terms of service agreement
41 is considered to be the agreement of the foreign corporation that a search warrant or subpoena
42 properly served on it has the same legal force and effect as if served personally within the
43 commonwealth.

44 Massachusetts corporation, any corporation or other entity that is subject to chapter 155 or
45 chapter 156B.

46 Properly served, that a search warrant or subpoena has been delivered by hand, by United States
47 mail, by commercial delivery service, by facsimile or by any other manner to any officer of the
48 corporation or its general manager in the commonwealth, to any natural person designated by it
49 as agent for the service of process, or if the corporation has designated a corporate agent, to any
50 person named in the latest certificate filed pursuant to section 4 of chapter 181.

51 Remote computing services, shall be construed in accordance with Title 18, sections 2701 to
52 2711, inclusive, of the United States Code. This definition shall not apply to corporations that
53 do not provide those services to the general public.

54 Subpoena, a grand jury or trial subpoena issued in the course of a criminal proceeding or an
55 administrative subpoena issued pursuant to Chapter 271, section 17B.

56 (b) A court or justice authorized to issue warrants in criminal cases may, upon complaint
57 on oath that the complainant believes that any of the records hereinafter named are actually or

58 constructively possessed by a foreign corporation that provides electronic communication
59 services or remote computing services, if satisfied that probable cause has been established for
60 such belief, issue a warrant identifying those records to be searched for and commanding the
61 person seeking such warrant to properly serve the warrant upon the foreign corporation:

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

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

64 (3) records of a customer's usage of those services;

65 (4) records of the source of communications sent to or the recipient or destination of
66 communications sent from a customer; or

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

69 (c) The following provisions shall apply to any search warrant issued pursuant to this section
70 and to any subpoena issued in the course of a criminal investigation or proceeding directed to a
71 foreign corporation that provides electronic communication services or remote computing
72 services:

73 (1) When properly served with a search warrant issued by a Massachusetts court or justice
74 pursuant to this section or a subpoena, a foreign corporation subject to this section shall provide
75 all records sought pursuant to that warrant or subpoena within 14 days of receipt, including
76 those records maintained or located outside the commonwealth.

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

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

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

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

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

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

101 (e) No cause of action shall lie against any foreign or Massachusetts corporation subject to this
102 section, its officers, employees, agents or other specified persons for providing records,

103 information, facilities or assistance in accordance with the terms of a warrant or subpoena

104 issued pursuant to this section.

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