

Union Calendar No.

114TH CONGRESS
2^D SESSION

H. R. 699

[Report No. 114-]

To amend title 18, United States Code, to update the privacy protections for electronic communications information that is stored by third-party service providers in order to protect consumer privacy interests while meeting law enforcement needs, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 4, 2015

Mr. YODER (for himself, Mr. POLIS, Mr. ADERHOLT, Mr. ALLEN, Mr. AMASH, Mr. AMODEI, Mr. BABIN, Mr. BARLETTA, Mr. BARR, Mr. BARTON, Mr. BENISHEK, Mr. BEYER, Mr. BILIRAKIS, Mr. BISHOP of Utah, Mrs. BLACK, Mrs. BLACKBURN, Mr. BLUM, Ms. BONAMICI, Mr. BOUSTANY, Mr. BRADY of Texas, Mr. BROOKS of Alabama, Ms. BROWN of Florida, Ms. BROWNLEY of California, Mr. BUCHANAN, Mr. BUCSHON, Mr. BURGESS, Mr. BYRNE, Mr. CALVERT, Mrs. CAPPS, Mr. CAPUANO, Mr. CÁRDENAS, Mr. CARTER of Georgia, Mr. CARTWRIGHT, Mr. CHABOT, Mr. CHAFFETZ, Ms. CHU of California, Mr. CICILLINE, Ms. CLARK of Massachusetts, Ms. CLARKE of New York, Mr. CLAWSON of Florida, Mr. CLEAVER, Mr. COHEN, Mr. COLE, Mr. COLLINS of New York, Mr. CONNOLLY, Mr. CONYERS, Mr. CRAMER, Mr. CRENSHAW, Mr. CULBERSON, Mr. CUMMINGS, Mr. CURBELO of Florida, Mr. RODNEY DAVIS of Illinois, Mr. DANNY K. DAVIS of Illinois, Mr. DEFazio, Ms. DEGETTE, Ms. DELBENE, Mr. DENHAM, Mr. DENT, Mr. DESAULNIER, Mr. DESJARLAIS, Mr. DEUTCH, Mr. DIAZ-BALART, Mr. DOLD, Mr. MICHAEL F. DOYLE of Pennsylvania, Ms. DUCKWORTH, Mr. DUFFY, Mr. DUNCAN of South Carolina, Mr. DUNCAN of Tennessee, Ms. EDWARDS, Mr. ELLISON, Mrs. ELLMERS, Mr. EMMER, Ms. ESHOO, Ms. ESTY, Mr. FARENTHOLD, Mr. FARR, Mr. FITZPATRICK, Mr. FLEISCHMANN, Mr. FLORES, Mr. FORTENBERRY, Mr. FRANKS of Arizona, Mr. FRELINGHUYSEN, Ms. FUDGE, Ms. GABBARD, Mr. GARAMENDI, Mr. GARRETT, Mr. GIBBS, Mr. GIBSON, Mr. GOSAR, Mr. GOWDY, Mr. GRAVES of Georgia, Mr. GRIJALVA, Mr. GROTHMAN, Mr. GUINTA, Mr. GUTHRIE, Mr. HANNA, Mr. HARRIS, Mrs. HARTZLER, Mr. HASTINGS, Ms. HERRERA BEUTLER, Mr. HILL, Mr. HIMES, Mr. HONDA, Mr. HUDSON, Mr.

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APRIL --, 2016

Additional sponsors:

APRIL --, 2016

Reported with an amendment, committed to the Committee of the Whole
House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on February 4, 2015]

A BILL

To amend title 18, United States Code, to update the privacy protections for electronic communications information that is stored by third-party service providers in order to protect consumer privacy interests while meeting law enforcement needs, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Email Privacy Act”.*

5 **SEC. 2. VOLUNTARY DISCLOSURE CORRECTIONS.**

6 *(a) IN GENERAL.—Section 2702 of title 18, United*
7 *States Code, is amended—*

8 *(1) in subsection (a)—*

9 *(A) in paragraph (1)—*

10 *(i) by striking “divulge” and inserting*
11 *“disclose”;*

12 *(ii) by striking “while in electronic*
13 *storage by that service” and inserting “that*
14 *is in electronic storage with or otherwise*
15 *stored, held, or maintained by that service”;*

16 *(B) in paragraph (2)—*

17 *(i) by striking “to the public”;*

18 *(ii) by striking “divulge” and insert-*
19 *ing “disclose”; and*

20 *(iii) by striking “which is carried or*
21 *maintained on that service” and inserting*
22 *“that is stored, held, or maintained by that*
23 *service”; and*

24 *(C) in paragraph (3)—*

1 (i) by striking “divulge” and inserting
2 “disclose”; and

3 (ii) by striking “a provider of” and in-
4 serting “a person or entity providing”

5 (2) in subsection (b)—

6 (A) in the matter preceding paragraph (1),
7 by inserting “wire or electronic” before “commu-
8 nication”;

9 (B) by amending paragraph (1) to read as
10 follows:

11 “(1) to an originator, addressee, or intended re-
12 cipient of such communication, to the subscriber or
13 customer on whose behalf the provider stores, holds, or
14 maintains such communication, or to an agent of
15 such addressee, intended recipient, subscriber, or cus-
16 tomer;”; and

17 (C) by amending paragraph (3) to read as
18 follows:

19 “(3) with the lawful consent of the originator,
20 addressee, or intended recipient of such communica-
21 tion, or of the subscriber or customer on whose behalf
22 the provider stores, holds, or maintains such commu-
23 nication;”;

24 (3) in subsection (c) by inserting “wire or elec-
25 tronic” before “communications”;

1 (4) in each of subsections (b) and (c), by striking
2 “divulge” and inserting “disclose”; and

3 (5) in subsection (c), by amending paragraph
4 (2) to read as follows:

5 “(2) with the lawful consent of the subscriber or
6 customer;”.

7 **SEC. 3. AMENDMENTS TO REQUIRED DISCLOSURE SECTION.**

8 Section 2703 of title 18, United States Code, is amend-
9 ed—

10 (1) by striking subsections (a) through (c) and
11 inserting the following:

12 “(a) *CONTENTS OF WIRE OR ELECTRONIC COMMU-*
13 *NICATIONS IN ELECTRONIC STORAGE.—Except as provided*
14 *in subsections (i) and (j), a governmental entity may re-*
15 *quire the disclosure by a provider of electronic communica-*
16 *tion service of the contents of a wire or electronic commu-*
17 *nication that is in electronic storage with or otherwise*
18 *stored, held, or maintained by that service only if the gov-*
19 *ernmental entity obtains a warrant issued using the proce-*
20 *dures described in the Federal Rules of Criminal Procedure*
21 *(or, in the case of a State court, issued using State warrant*
22 *procedures) that—*

23 “(1) is issued by a court of competent jurisdic-
24 tion; and

1 “(2) may indicate the date by which the provider
2 must make the disclosure to the governmental entity.
3 In the absence of a date on the warrant indicating the date
4 by which the provider must make disclosure to the govern-
5 mental entity, the provider shall promptly respond to the
6 warrant.

7 “(b) CONTENTS OF WIRE OR ELECTRONIC COMMU-
8 NICATIONS IN A REMOTE COMPUTING SERVICE.—

9 “(1) IN GENERAL.—Except as provided in sub-
10 sections (i) and (j), a governmental entity may re-
11 quire the disclosure by a provider of remote com-
12 puting service of the contents of a wire or electronic
13 communication that is stored, held, or maintained by
14 that service only if the governmental entity obtains a
15 warrant issued using the procedures described in the
16 Federal Rules of Criminal Procedure (or, in the case
17 of a State court, issued using State warrant proce-
18 dures) that—

19 “(A) is issued by a court of competent juris-
20 diction; and

21 “(B) may indicate the date by which the
22 provider must make the disclosure to the govern-
23 mental entity.

24 In the absence of a date on the warrant indicating the
25 date by which the provider must make disclosure to

1 *the governmental entity, the provider shall promptly*
2 *respond to the warrant.*

3 “(2) *APPLICABILITY.*—*Paragraph (1) is applica-*
4 *ble with respect to any wire or electronic communica-*
5 *tion that is stored, held, or maintained by the pro-*
6 *vider—*

7 “(A) *on behalf of, and received by means of*
8 *electronic transmission from (or created by*
9 *means of computer processing of communication*
10 *received by means of electronic transmission*
11 *from), a subscriber or customer of such remote*
12 *computing service; and*

13 “(B) *solely for the purpose of providing*
14 *storage or computer processing services to such*
15 *subscriber or customer, if the provider is not au-*
16 *thorized to access the contents of any such com-*
17 *munications for purposes of providing any serv-*
18 *ices other than storage or computer processing.*

19 “(c) *RECORDS CONCERNING ELECTRONIC COMMUNICA-*
20 *TION SERVICE OR REMOTE COMPUTING SERVICE.*—

21 “(1) *IN GENERAL.*—*Except as provided in sub-*
22 *sections (i) and (j), a governmental entity may re-*
23 *quire the disclosure by a provider of electronic com-*
24 *munication service or remote computing service of a*
25 *record or other information pertaining to a subscriber*

1 to or customer of such service (not including the con-
2 tents of wire or electronic communications), only—

3 “(A) if a governmental entity obtains a
4 warrant issued using the procedures described in
5 the Federal Rules of Criminal Procedure (or, in
6 the case of a State court, issued using State war-
7 rant procedures) that—

8 “(i) is issued by a court of competent
9 jurisdiction directing the disclosure; and

10 “(ii) may indicate the date by which
11 the provider must make the disclosure to the
12 governmental entity;

13 “(B) if a governmental entity obtains a
14 court order directing the disclosure under sub-
15 section (d);

16 “(C) with the lawful consent of the sub-
17 scriber or customer; or

18 “(D) as otherwise authorized in paragraph
19 (2).

20 “(2) *SUBSCRIBER OR CUSTOMER INFORMA-*
21 *TION.—A provider of electronic communication serv-*
22 *ice or remote computing service shall, in response to*
23 *an administrative subpoena authorized by Federal or*
24 *State statute, a grand jury, trial, or civil discovery*

1 *subpoena, or any means available under paragraph*
2 *(1), disclose to a governmental entity the—*

3 “(A) name;

4 “(B) address;

5 “(C) local and long distance telephone con-
6 *nection records, or records of session times and*
7 *durations;*

8 “(D) length of service (including start date)
9 *and types of service used;*

10 “(E) telephone or instrument number or
11 *other subscriber or customer number or identity,*
12 *including any temporarily assigned network ad-*
13 *dress; and*

14 “(F) means and source of payment for such
15 *service (including any credit card or bank ac-*
16 *count number);*

17 *of a subscriber or customer of such service.*

18 “(3) NOTICE NOT REQUIRED.—A governmental
19 *entity that receives records or information under this*
20 *subsection is not required to provide notice to a sub-*
21 *scriber or customer.”;*

22 (2) in subsection (d)—

23 (A) by striking “(b) or”;

24 (B) by striking “the contents of a wire or
25 *electronic communication, or”;*

1 (C) by striking “sought,” and inserting
2 “sought”; and

3 (D) by striking “section” and inserting
4 “subsection”; and

5 (3) by adding at the end the following:

6 “(h) NOTICE.—Except as provided in section 2705, a
7 provider of electronic communication service or remote com-
8 puting service may notify a subscriber or customer of a re-
9 ceipt of a warrant, court order, subpoena, or request under
10 subsection (a), (b), (c), or (d) of this section.

11 “(i) RULE OF CONSTRUCTION RELATED TO LEGAL
12 PROCESS.—Nothing in this section or in section 2702 shall
13 limit the authority of a governmental entity to use an ad-
14 ministrative subpoena authorized by Federal or State stat-
15 ute, a grand jury, trial, or civil discovery subpoena, or a
16 warrant issued using the procedures described in the Fed-
17 eral Rules of Criminal Procedure (or, in the case of a State
18 court, issued using State warrant procedures) by a court
19 of competent jurisdiction to—

20 “(1) require an originator, addressee, or in-
21 tended recipient of a wire or electronic communica-
22 tion to disclose a wire or electronic communication
23 (including the contents of that communication) to the
24 governmental entity;

1 “(2) *require a person or entity that provides an*
2 *electronic communication service to the officers, direc-*
3 *tors, employees, or agents of the person or entity (for*
4 *the purpose of carrying out their duties) to disclose a*
5 *wire or electronic communication (including the con-*
6 *tents of that communication) to or from the person or*
7 *entity itself or to or from an officer, director, em-*
8 *ployee, or agent of the entity to a governmental enti-*
9 *ty, if the wire or electronic communication is stored,*
10 *held, or maintained on an electronic communications*
11 *system owned, operated, or controlled by the person or*
12 *entity; or*

13 “(3) *require a person or entity that provides a*
14 *remote computing service or electronic communication*
15 *service to disclose a wire or electronic communication*
16 *(including the contents of that communication) that*
17 *advertises or promotes a product or service and that*
18 *has been made readily accessible to the general public.*

19 “(j) *RULE OF CONSTRUCTION RELATED TO CONGRES-*
20 *SIONAL SUBPOENAS.—Nothing in this section or in section*
21 *2702 shall limit the power of inquiry vested in the Congress*
22 *by Article I of the Constitution of the United States, includ-*
23 *ing the authority to compel the production of a wire or elec-*
24 *tronic communication (including the contents of a wire or*
25 *electronic communication) that is stored, held, or main-*

1 *tained by a person or entity that provides remote com-*
2 *puting service or electronic communication service.”.*

3 **SEC. 4. DELAYED NOTICE.**

4 *Section 2705 of title 18, United States Code, is amend-*
5 *ed to read as follows:*

6 **“§2705. Delayed notice**

7 *“(a) IN GENERAL.—A governmental entity acting*
8 *under section 2703 may apply to a court for an order di-*
9 *recting a provider of electronic communication service or*
10 *remote computing service to which a warrant, order, sub-*
11 *poena, or other directive under section 2703 is directed not*
12 *to notify any other person of the existence of the warrant,*
13 *order, subpoena, or other directive.*

14 *“(b) DETERMINATION.—A court shall grant a request*
15 *for an order made under subsection (a) for delayed notifica-*
16 *tion of up to 180 days if the court determines that there*
17 *is reason to believe that notification of the existence of the*
18 *warrant, order, subpoena, or other directive will likely re-*
19 *sult in—*

20 *“(1) endangering the life or physical safety of an*
21 *individual;*

22 *“(2) flight from prosecution;*

23 *“(3) destruction of or tampering with evidence;*

24 *“(4) intimidation of potential witnesses; or*

1 “(5) otherwise seriously jeopardizing an inves-
2 tigation or unduly delaying a trial.

3 “(c) *EXTENSION*.—Upon request by a governmental
4 entity, a court may grant one or more extensions, for peri-
5 ods of up to 180 days each, of an order granted in accord-
6 ance with subsection (b).”.

7 **SEC. 5. RULE OF CONSTRUCTION.**

8 *Nothing in this Act or an amendment made by this*
9 *Act shall be construed to preclude the acquisition by the*
10 *United States Government of—*

11 (1) *the contents of a wire or electronic commu-*
12 *nication pursuant to other lawful authorities, includ-*
13 *ing the authorities under chapter 119 of title 18 (com-*
14 *monly known as the “Wiretap Act”), the Foreign In-*
15 *telligence Surveillance Act of 1978 (50 U.S.C. 1801 et*
16 *seq.), or any other provision of Federal law not spe-*
17 *cifically amended by this Act; or*

18 (2) *records or other information relating to a*
19 *subscriber or customer of any electronic commu-*
20 *nication service or remote computing service (not includ-*
21 *ing the content of such communications) pursuant to*
22 *the Foreign Intelligence Surveillance Act of 1978 (50*
23 *U.S.C. 1801 et seq.), chapter 119 of title 18 (com-*
24 *monly known as the “Wiretap Act”), or any other*

1 *provision of Federal law not specifically amended by*
2 *this Act.*