

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 699**

**OFFERED BY MR. GOODLATTE OF VIRGINIA, MR.  
CONYERS OF MICHIGAN, MR. ISSA OF CALI-  
FORNIA, MR. NADLER OF NEW YORK, MR.  
FORBES OF VIRGINIA, MS. JACKSON LEE OF  
TEXAS, MS. DELBENE OF WASHINGTON, AND  
MR. BISHOP OF MICHIGAN**

Strike all after the enacting clause and insert the following:

**1 SECTION 1. SHORT TITLE.**

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

**3 SEC. 2. VOLUNTARY DISCLOSURE CORRECTIONS.**

4 (a) IN GENERAL.—Section 2702 of title 18, United  
5 States Code, is amended—

6 (1) in subsection (a)—

7 (A) in paragraph (1)—

8 (i) by striking “divulge” and inserting  
9 “disclose”;

10 (ii) by striking “while in electronic  
11 storage by that service,” and inserting  
12 “that is in electronic storage with or other-

1 wise stored, held, or maintained by that  
2 service”;

3 (B) in paragraph (2)—

4 (i) by striking “to the public”;

5 (ii) by striking “divulge” and insert-  
6 ing “disclose”; and

7 (iii) by striking “which is carried or  
8 maintained on that service,” and inserting  
9 “that is stored, held, or maintained by that  
10 service”; and

11 (C) in paragraph (3)—

12 (i) by striking “divulge” and inserting  
13 “disclose”; and

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

16 (2) in subsection (b)—

17 (A) in the matter preceding paragraph (1),  
18 by inserting “wire or electronic” before “com-  
19 munication”;

20 (B) so that paragraph (1) reads as follows:

21 “(1) to an originator, addressee, or intended re-  
22 cipient of such communication, to the subscriber or  
23 customer on whose behalf the provider stores, holds,  
24 or maintains such communication, or to an agent of

1 such addressee, intended recipient, subscriber, or  
2 customer;” and

3 (C) so that paragraph (3) reads as follows:

4 “(3) with the lawful consent of the originator,  
5 addressee, or intended recipient of such communica-  
6 tion, or of the subscriber or customer on whose be-  
7 half the provider stores, holds, or maintains such  
8 communication;”;

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

11 (4) in each of subsections (b) and (c), by strik-  
12 ing “divulge” and inserting “disclose”; and

13 (5) in subsection (c) so that paragraph (2)  
14 reads as follows:

15 “(2) with the lawful consent of the subscriber  
16 or customer;”.

17 **SEC. 3. AMENDMENTS TO REQUIRED DISCLOSURE SEC-**  
18 **TION.**

19 Section 2703 of title 18, United States Code, is  
20 amended—

21 (1) by striking subsections (a) through (c) and  
22 inserting the following:

23 “(a) CONTENTS OF WIRE OR ELECTRONIC COMMU-  
24 NICATIONS IN ELECTRONIC STORAGE.—Except as pro-  
25 vided in subsections (i) and (j), a governmental entity may

1 require the disclosure by a provider of electronic commu-  
2 nication service of the contents of a wire or electronic com-  
3 munication that is in electronic storage with or otherwise  
4 stored, held, or maintained by that service only if the gov-  
5 ernmental entity obtains a warrant issued using the proce-  
6 dures described in the Federal Rules of Criminal Proce-  
7 dure (or, in the case of a State court, issued using State  
8 warrant procedures) that—

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

11           “(2) may indicate the date by which the pro-  
12          vider must make the disclosure to the governmental  
13          entity.

14 In the absence of a date on the warrant indicating the  
15 date by which the provider must make disclosure to the  
16 governmental entity, the provider shall promptly respond  
17 to the warrant.

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

20           “(1) IN GENERAL.—Except as provided in sub-  
21          sections (i) and (j), a governmental entity may re-  
22          quire the disclosure by a provider of remote com-  
23          puting service of the contents of a wire or electronic  
24          communication that is stored, held, or maintained by  
25          that service only if the governmental entity obtains

1 a warrant issued using the procedures described in  
2 the Federal Rules of Criminal Procedure (or, in the  
3 case of a State court, issued using State warrant  
4 procedures) that—

5 “(A) is issued by a court of competent ju-  
6 risdiction; and

7 “(B) may indicate the date by which the  
8 provider must make the disclosure to the gov-  
9 ernmental entity.

10 In the absence of a date on the warrant indicating  
11 the date by which the provider must make disclosure  
12 to the governmental entity, the provider shall  
13 promptly respond to the warrant.

14 “(2) APPLICABILITY.—Paragraph (1) is appli-  
15 cable with respect to any wire or electronic commu-  
16 nication that is stored, held, or maintained by the  
17 provider—

18 “(A) on behalf of, and received by means  
19 of electronic transmission from (or created by  
20 means of computer processing of communica-  
21 tion received by means of electronic trans-  
22 mission from), a subscriber or customer of such  
23 remote computing service; and

24 “(B) solely for the purpose of providing  
25 storage or computer processing services to such

1 subscriber or customer, if the provider is not  
2 authorized to access the contents of any such  
3 communications for purposes of providing any  
4 services other than storage or computer proc-  
5 essing.

6 “(c) RECORDS CONCERNING ELECTRONIC COMMU-  
7 NICATION SERVICE OR REMOTE COMPUTING SERVICE.—

8 “(1) IN GENERAL.—Except as provided in sub-  
9 sections (i) and (j), a governmental entity may re-  
10 quire the disclosure by a provider of electronic com-  
11 munication service or remote computing service of a  
12 record or other information pertaining to a sub-  
13 scriber to or customer of such service (not including  
14 the contents of wire or electronic communications),  
15 only—

16 “(A) if a governmental entity obtains a  
17 warrant issued using the procedures described  
18 in the Federal Rules of Criminal Procedure (or,  
19 in the case of a State court, issued using State  
20 warrant procedures) that—

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

23 “(ii) may indicate the date by which  
24 the provider must make the disclosure to  
25 the governmental entity;

1           “(B) if a governmental entity obtains a  
2           court order directing the disclosure under sub-  
3           section (d);

4           “(C) with the lawful consent of the sub-  
5           scriber or customer; or

6           “(D) as otherwise authorized in paragraph  
7           (2).

8           “(2) SUBSCRIBER OR CUSTOMER INFORMA-  
9           TION.—A provider of electronic communication serv-  
10          ice or remote computing service shall, in response to  
11          an administrative subpoena authorized by Federal or  
12          State statute, a grand jury, trial, or civil discovery  
13          subpoena, or any means available under paragraph  
14          (1), disclose to a governmental entity the—

15                 “(A) name;

16                 “(B) address;

17                 “(C) local and long distance telephone con-  
18                 nection records, or records of session times and  
19                 durations;

20                 “(D) length of service (including start  
21                 date) and types of service used;

22                 “(E) telephone or instrument number or  
23                 other subscriber or customer number or iden-  
24                 tity, including any temporarily assigned net-  
25                 work address; and

1           “(F) means and source of payment for  
2           such service (including any credit card or bank  
3           account number);  
4           of a subscriber or customer of such service.

5           “(3) NOTICE NOT REQUIRED.—A governmental  
6           entity that receives records or information under  
7           this subsection is not required to provide notice to  
8           a subscriber or customer.”;

9           (2) in subsection (d)—

10           (A) by striking “(b) or”;

11           (B) by striking “the contents of a wire or  
12           electronic communication, or”;

13           (C) by striking “sought,” and inserting  
14           “sought”; and

15           (D) by striking “section” and inserting  
16           “subsection”; and

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

18           “(h) NOTICE.—Except as provided in section 2705,  
19           a provider of electronic communication service or remote  
20           computing service may notify a subscriber or customer of  
21           a receipt of a warrant, court order, subpoena, or request  
22           under subsection (a), (b), (c), or (d) of this section.

23           “(i) RULE OF CONSTRUCTION RELATED TO LEGAL  
24           PROCESS.—Nothing in this section or in section 2702  
25           shall limit the authority of a governmental entity to use



1 an administrative subpoena authorized by Federal or  
2 State statute, a grand jury, trial, or civil discovery sub-  
3 poena, or a warrant issued using the procedures described  
4 in the Federal Rules of Criminal Procedure (or, in the  
5 case of a State court, issued using State warrant proce-  
6 dures) by a court of competent jurisdiction to—

7           “(1) require an originator, addressee, or in-  
8 tended recipient of a wire or electronic communica-  
9 tion to disclose a wire or electronic communication  
10 (including the contents of that communication) to  
11 the governmental entity;

12           “(2) require a person or entity that provides an  
13 electronic communication service to the officers, di-  
14 rectors, employees, or agents of the person or entity  
15 (for the purpose of carrying out their duties) to dis-  
16 close a wire or electronic communication (including  
17 the contents of that communication) to or from the  
18 person or entity itself or to or from an officer, direc-  
19 tor, employee, or agent of the entity to a govern-  
20 mental entity, if the wire or electronic communica-  
21 tion is stored, held, or maintained on an electronic  
22 communications system owned, operated, or con-  
23 trolled by the person or entity; or

24           “(3) require a person or entity that provides a  
25 remote computing service or electronic communica-

1       tion service to disclose a wire or electronic commu-  
2       nication (including the contents of that communica-  
3       tion) that advertises or promotes a product or serv-  
4       ice and that has been made readily accessible to the  
5       general public.

6       “(j) **RULE OF CONSTRUCTION RELATED TO CON-**  
7 **GRESSIONAL SUBPOENAS.**—Nothing in this section or in  
8 section 2702 shall limit the power of inquiry vested in the  
9 Congress by Article I of the Constitution of the United  
10 States, including the authority to compel the production  
11 of a wire or electronic communication (including the con-  
12 tents of a wire or electronic communication) that is stored,  
13 held, or maintained by a person or entity that provides  
14 remote computing service or electronic communication  
15 service.”.

16 **SEC. 4. DELAYED NOTICE.**

17       Section 2705 of title 18, United States Code, is  
18 amended to read as follows:

19 **“SEC. 2705. DELAYED NOTICE.**

20       “(a) **IN GENERAL.**—A governmental entity acting  
21 under section 2703 may apply to a court for an order di-  
22 recting a provider of electronic communication service or  
23 remote computing service to which a warrant, order, sub-  
24 poena, or other directive under section 2703 is directed

1 not to notify any other person of the existence of the war-  
2 rant, order, subpoena, or other directive.

3 “(b) DETERMINATION.—A court shall grant a re-  
4 quest for an order made under subsection (a) for delayed  
5 notification of up to 180 days if the court determines that  
6 there is reason to believe that notification of the existence  
7 of the warrant, order, subpoena, or other directive will  
8 likely result in—

9 “(1) endangering the life or physical safety of  
10 an individual;

11 “(2) flight from prosecution;

12 “(3) destruction of or tampering with evidence;

13 “(4) intimidation of potential witnesses; or

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

16 “(c) EXTENSION.—Upon request by a governmental  
17 entity, a court may grant one or more extensions, for peri-  
18 ods of not more than 180 days each, of an order granted  
19 in accordance with subsection (b).”.

20 **SEC. 5. RULE OF CONSTRUCTION.**

21 Nothing in this Act or an amendment made by this  
22 Act shall be construed to preclude the acquisition by the  
23 United States Government of—

24 (1) the contents of a wire or electronic commu-  
25 nication pursuant to other lawful authorities, includ-

1       ing the authorities under chapter 119 of title 18  
2       (commonly known as the “Wiretap Act”), the For-  
3       eign Intelligence Surveillance Act of 1978 (50  
4       U.S.C. 1801 et seq.), or any other provision of Fed-  
5       eral law not specifically amended by this Act; or  
6               (2) records or other information relating to a  
7       subscriber or customer of any electronic communica-  
8       tion service or remote computing service (not includ-  
9       ing the content of such communications) pursuant to  
10      the Foreign Intelligence Surveillance Act of 1978  
11      (50 U.S.C. 1801 et seq.), chapter 119 of title 18  
12      (commonly known as the “Wiretap Act”), or any  
13      other provision of Federal law not specifically  
14      amended by this Act.

