

117TH CONGRESS
2D SESSION

H. R. 7072

To amend title 18, United States Code, to modify delayed notice requirements,
and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 15, 2022

Mr. NADLER (for himself and Mr. FITZGERALD) introduced the following bill;
which was referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, to modify delayed
notice requirements, 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 “NDO Fairness Act”.

5 **SEC. 2. DELAY OF NOTIFICATION.**

6 Section 2705(a) of title 18, United States Code, is
7 amended to read as follows:

8 “(a) DELAY OF NOTIFICATION.—

9 “(1) APPLICATION.—A governmental entity
10 that is seeking a warrant, order, or subpoena under

1 section 2703 may include in the application (or mo-
2 tion in the case of an administrative subpoena au-
3 thorized by a Federal or State statute or a Federal
4 or State grand jury or trial subpoena) a request to
5 a court of competent jurisdiction for an order delay-
6 ing the notification under section 2703(b) for a pe-
7 riod of not more than 30 days.

8 “(2) DETERMINATION.—The court may not
9 grant a request for delayed notification to a cus-
10 tomer or subscriber made under paragraph (1), or
11 an extension of such delayed notification requested
12 by the governmental entity pursuant to paragraph
13 (3), unless the court issues a written determination,
14 based on specific and articulable facts, and including
15 written findings of fact and conclusions of law, that
16 it is substantially likely that the notification of the
17 customer or subscriber of the existence of the war-
18 rant, order, or subpoena will result in—

19 “(A) endangering the life or physical safety
20 of an individual;

21 “(B) flight from prosecution;

22 “(C) destruction of or tampering with evi-
23 dence;

24 “(D) intimidation of potential witnesses; or

1 “(E) otherwise seriously jeopardizing an
2 investigation or unduly delaying a trial.

3 “(3) EXTENSION.—

4 “(A) IN GENERAL.—The governmental en-
5 tity may request one or more extensions of the
6 delay of notification granted under paragraph
7 (2) for a period of not more than 30 days for
8 each such extension.

9 “(B) AUTHORIZATION.—An extension of
10 the delay of notification granted under para-
11 graph (2), may be authorized by a court of
12 competent jurisdiction.

13 “(4) EXPIRATION OF DELAY OF NOTIFICA-
14 TION.—Upon expiration of the period of delay of no-
15 tification and all extensions thereof under para-
16 graphs (2) and (3) of this subsection, the govern-
17 mental entity shall deliver to the customer or sub-
18 scriber by personal service, registered or first-class
19 mail, electronic mail, or other means approved by
20 the court, as reasonably calculated to reach the cus-
21 tomer or subscriber within 72 hours of the expira-
22 tion of the delay—

23 “(A) a copy of the warrant, order, or sub-
24 poena; and

1 “(B) notice that informs such customer or
2 subscriber—

3 “(i) of the nature of the inquiry made
4 by the governmental entity, with reason-
5 able specificity;

6 “(ii) that information maintained for
7 such customer or subscriber by the service
8 provider named in such process or request
9 was supplied to or requested by the gov-
10 ernmental entity;

11 “(iii) that notification of such cus-
12 tomer or subscriber was delayed by court
13 order;

14 “(iv) the identity of the court that
15 issued such order;

16 “(v) the provision of law under which
17 the order delaying notification was author-
18 ized; and

19 “(vi) that the governmental entity
20 will, upon request by the customer or sub-
21 scriber, provide the customer or subscriber
22 with a copy of the information that was
23 disclosed in response to the warrant, order,
24 or subpoena, or in the event that no infor-

1 mation was disclosed, a written certifi-
2 cation that no information was disclosed.

3 “(5) COPY OF INFORMATION DISCLOSED.—

4 Upon expiration of the period of delay of notification
5 under paragraph (2) or (3) of this subsection, and
6 at the request of the customer or subscriber made
7 within 180 days of receiving notification under para-
8 graph (4), the governmental entity shall promptly
9 provide the customer or subscriber—

10 “(A) with a description of the information
11 disclosed and a copy of the information that
12 was disclosed in response to the warrant, order,
13 or subpoena; or

14 “(B) in the event that no information was
15 disclosed, with a written certification that no in-
16 formation was disclosed.”.

17 **SEC. 3. PRECLUSION OF NOTICE TO SUBJECT OF GOVERN-**
18 **MENTAL ACCESS.**

19 Section 2705(b) of title 18, United States Code, is
20 amended to read as follows:

21 “(b) PRECLUSION OF NOTICE TO SUBJECT OF GOV-
22 ERNMENTAL ACCESS.—

23 “(1) APPLICATION.—A governmental entity
24 that is seeking a warrant, order, or subpoena under
25 section 2703, when it is not required to notify the

1 customer or subscriber, or to the extent that it may
2 delay such notice pursuant to subsection (a), may
3 apply to a court for an order, subject to paragraph
4 (6), directing a provider of electronic communica-
5 tions service or remote computing service to which a
6 warrant, order, or subpoena under section 2703 is
7 directed not to notify any other person of the exist-
8 ence of the warrant, order, or subpoena for a period
9 of not more than either 30 days or the period of
10 delay of notice provided under subsection (a), if any.

11 “(2) DETERMINATION.—The court may not
12 grant a request for an order made under paragraph
13 (1), or an extension of such order requested by the
14 governmental entity pursuant to paragraph (3), un-
15 less—

16 “(A) the court issues a written determina-
17 tion, based on specific and articulable facts, and
18 including written findings of fact and conclu-
19 sions of law, that it is substantially likely that
20 not granting the request will result in—

21 “(i) endangering the life or physical
22 safety of an individual;

23 “(ii) flight from prosecution;

24 “(iii) destruction of or tampering with
25 evidence;

1 “(iv) intimidation of potential wit-
2 nesses; or

3 “(v) otherwise seriously jeopardizing
4 an investigation or unduly delaying a trial;
5 and

6 “(B) the order is narrowly tailored and
7 there is no less restrictive alternative, including
8 notification to an individual or organization
9 within or providing legal representation to the
10 customer or subscriber, to avoid an adverse re-
11 sult as described in clause (i) through (v) of
12 subparagraph (A).

13 “(3) EXTENSION.—A governmental entity may
14 request one or more extensions of an order granted
15 under paragraph (2) of not more than 30 days for
16 each such extension. The court may only grant such
17 an extension if the court makes a written determina-
18 tion required under paragraph (2)(A) and the exten-
19 sion is in accordance with the requirements of
20 (2)(B).

21 “(4) NOTIFICATION OF CHANGED CIR-
22 CUMSTANCES.—If the need for the order issued
23 under paragraph (2) changes materially, the govern-
24 mental entity that requested the order shall notify
25 the court within 72 hours of the changed cir-

1 cumstances, and the court shall reassess the order
2 and modify or vacate as appropriate.

3 “(5) OPPORTUNITY TO BE HEARD.—

4 “(A) IN GENERAL.—Upon an application,
5 petition, or motion by a provider of electronic
6 communications service or remote computing
7 service or person acting on behalf of the pro-
8 vider to which an order under paragraph (2)
9 applies, the court may modify or vacate the
10 order if—

11 “(i) the order does not meet require-
12 ments provided in paragraph (2); or

13 “(ii) compliance with the order is un-
14 reasonable or otherwise unlawful.

15 “(B) STAY OF DISCLOSURE.—A provider’s
16 obligation to disclose the information requested
17 in the warrant, order, or subpoena to which the
18 order in paragraph (1) applies is stayed upon
19 the filing of the application, petition, or motion
20 under this paragraph pending resolution of the
21 application, petition, or motion, unless the court
22 with jurisdiction over the challenge determines
23 based on a showing by the governmental entity
24 that the stay should be lifted in whole or in
25 part prior to resolution.

1 “(C) FINALITY OF ORDER.—The decision
2 of the court resolving an application, petition,
3 or motion under this paragraph shall constitute
4 a final, appealable order.

5 “(6) EXCEPTION.—A provider of electronic
6 communications service or remote computing service
7 to which an order under paragraph (2) applies, or
8 an officer, employee, or agent thereof, may disclose
9 information otherwise subject to any applicable non-
10 disclosure requirement to—

11 “(A) those persons to whom disclosure is
12 necessary in order to comply with the warrant,
13 order, or subpoena;

14 “(B) an attorney in order to obtain legal
15 advice or assistance regarding the warrant,
16 order, or subpoena; and

17 “(C) any person the court determines can
18 be notified of the warrant, order, or subpoena.

19 “(7) SCOPE OF NONDISCLOSURE.—Any person
20 to whom disclosure is made under this subsection
21 (other than the governmental entity) shall be subject
22 to the nondisclosure requirements applicable to the
23 person to whom the order is issued. Any recipient
24 authorized under this subsection to disclose to a per-
25 son information otherwise subject to a nondisclosure

1 requirement shall notify the person of the applicable
2 nondisclosure requirement.

3 “(8) SUPPORTING DOCUMENTATION.—Upon
4 serving a provider of electronic communications serv-
5 ice or remote computing service with an order grant-
6 ed under paragraph (2), or an extension of such
7 order granted under paragraph (3), the govern-
8 mental entity shall include a copy of the warrant,
9 order, or subpoena to which the nondisclosure order
10 applies.

11 “(9) EXPIRATION OF DELAY OF NOTIFICA-
12 TION.—Upon expiration of an order issued under
13 paragraph (2) or, if an extension has been granted
14 under paragraph (3), expiration of the extension, the
15 governmental entity shall deliver to the customer or
16 subscriber, by personal service, registered or first-
17 class mail, electronic mail, or other means approved
18 by the court as reasonably calculated to reach the
19 customer or subscriber within 72 hours of the expi-
20 ration of the order—

21 “(A) a copy of the warrant, order, or sub-
22 poena; and

23 “(B) notice that informs the customer or
24 subscriber—

1 “(i) of the nature of the law enforce-
2 ment inquiry with reasonable specificity;

3 “(ii) that information maintained for
4 such customer or subscriber by the service
5 provider named in such process or request
6 was supplied to or requested by the gov-
7 ernment entity;

8 “(iii) that notification of such cus-
9 tomer or subscriber was delayed by court
10 order;

11 “(iv) of the identity of the court au-
12 thORIZING the delay;

13 “(v) of the provision of this chapter
14 under which the delay was authorized; and

15 “(vi) that the government will, upon
16 request by the customer or subscriber, pro-
17 vide the customer or subscriber with a
18 copy of the information that was disclosed
19 in response to the warrant, order or sub-
20 poena, or in the event that no information
21 was disclosed, a written certification that
22 no information was disclosed.

23 “(10) COPY OF INFORMATION DISCLOSED.—
24 Upon expiration of the period of delay of notification
25 under paragraph (2) or (3) of this subsection, and

1 at the request of the customer or subscriber made
2 within 180 days of receiving notification under para-
3 graph (9), the governmental entity shall promptly
4 provide the customer or subscriber—

5 “(A) with a copy of the information that
6 was disclosed in response to the warrant, order
7 or subpoena; or

8 “(B) in the event that no information was
9 disclosed, a written certification that no infor-
10 mation was disclosed.”.

11 **SEC. 4. ADDITIONAL PROVISIONS REGARDING DELAYED**
12 **NOTICE.**

13 Section 2705 of title 18, United States Code, is
14 amended by adding at the end the following:

15 “(c) **AGGRIEVED PERSON.**—For the purpose of this
16 section, a subscriber or customer aggrieved by any viola-
17 tion of this section may seek remedy pursuant to section
18 2707.

19 “(d) **ANNUAL REPORT.**—On an annual basis, the At-
20 torney General shall provide to the Committees on the Ju-
21 diciary of the House of Representatives and the Senate,
22 in a manner consistent with protection of national secu-
23 rity, a report setting forth with respect to the preceding
24 calendar year—

1 “(1) the number of customers or subscribers
2 with respect to whom, in that calendar year, a war-
3 rant, subpoena, or court order was issued pursuant
4 to section 2703;

5 “(2) the aggregate number of applications re-
6 questing delay of notification pursuant to section
7 2705;

8 “(3) the aggregate number of such orders ei-
9 ther granted, extended, or denied;

10 “(4) the aggregate number of such orders tar-
11 geting a member of the news media, including any
12 conduct related to activities protected under the
13 First Amendment; and

14 “(5) the aggregate number of arrests, trials,
15 and convictions resulting from such orders and the
16 offenses for which they were obtained.”.

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