

HOUSE No. 1545

The Commonwealth of Massachusetts

PRESENTED BY:

Harold P. Naughton, Jr.

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to computer crimes.

PETITION OF:

NAME:

Harold P. Naughton, Jr.

DISTRICT/ADDRESS:

12th Worcester

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1612 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

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 by striking out section 17B, as appearing in the
2 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 Code, whenever the
4 attorney general or a district attorney has reasonable grounds to believe that records in the possession of (i) a
5 common carrier subject to the jurisdiction of the

6 department of telecommunications and energy, as defined in paragraph (d) of section 12 of chapter 159; or (ii) a
7 provider of electronic communication service as defined in subparagraph (15) of section 2510 of Title 18 of the
8 United States Code; or (iii) a provider of remote computing service as defined in section 2711 of Title 18 of the
9 United States Code, are relevant and material to an ongoing criminal investigation, the attorney general or district
10 attorney may issue an administrative subpoena demanding all such records in the possession of such common carrier
11 or service, and such records forthwith shall be delivered to the attorney general or district attorney. No such
12 common carrier or service, or employee thereof shall be civilly or criminally responsible for furnishing any records
13 or information in compliance with such demand. Nothing in this section shall limit the right of the attorney general
14 or a district attorney otherwise to obtain records from such a common carrier or service pursuant to a search warrant,
15 a court order or a grand jury or trial subpoena.

16 Notwithstanding the provisions of this section, a subpoena issued pursuant to this section shall not be used to obtain
17 records disclosing the content of electronic communications, or subscriber account records disclosing Internet
18 locations which have been accessed including, but not limited to, websites, chat channels and newsgroups, but
19 excluding servers used to

20 initially access the Internet. Nor shall the recipient of such a subpoena provide any such records. accessed, in
21 response to such a subpoena."

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

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

25 "Adverse result", occurs when notification of the existence of a search warrant results in:
26 danger to the life or physical safety of an individual;
27 a flight from prosecution;
28 the destruction of or tampering with evidence;
29 the intimidation of a potential witness or witnesses; or
30 serious jeopardy to an investigation or undue delay of a trial.

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

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

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

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

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

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

50 (b) A court or justice authorized to issue warrants in criminal cases may, upon complaint on oath that the
51 complainant believes that any of the records hereinafter named are actually or constructively possessed by a foreign
52 corporation that provides electronic communication services or remote computing services, if satisfied that probable
53 cause has been established for such belief, issue a warrant identifying those records to be searched for and
54 commanding the person seeking such warrant to properly serve the warrant upon the foreign corporation:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

90 (e) No cause of action shall lie against any foreign or Massachusetts corporation subject to this section, its
91 officers, employees, agents or other specified persons for providing records, information, facilities or assistance in
92 accordance with the terms of a warrant or subpoena issued pursuant to this section.