

**SENATE . . . . . No. 2299**

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**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Fourteen**  
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SENATE, Wednesday, July 23, 2014

The committee on Ways and Means, to whom was referred the Senate Bill updating privacy protections for personal electronic information,- reports, recommending that the same ought to pass with an amendment substituting a new draft with the same title (Senate, No. 2299).

For the committee,  
Stephen M. Brewer

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## The Commonwealth of Massachusetts

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In the Year Two Thousand Fourteen  
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An Act updating privacy protections for personal electronic information.

*Whereas*, The deferred operation of this act would tend to defeat its purpose, which is to protect forthwith the privacy of personal electronic information, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

*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. Section 1B of chapter 276 of the General Laws, as appearing in the 2012  
2 Official Edition, is hereby amended by inserting after the definition of “Electronic  
3 communication services” the following definition:-

4           “Electronic device”, any device that enables access to or use of an electronic  
5 communication service, remote computing service or location information service.

6           SECTION 2. Said section 1B of said chapter 276, as so appearing, is hereby further  
7 amended by inserting after the definition of “foreign corporation” the following 2 definitions:-

8           “Location information”, any information concerning the location of an electronic device  
9 that, in whole or in part, is generated by or derived from the operation of the device.

10           “Location information service”, a global positioning service or other mapping, locational  
11 or directional information service.

12 SECTION 3. Said section 1B of said chapter 276, as so appearing, is hereby further  
13 amended by striking out subsection (b) and inserting in place thereof the following subsection:-

14 (b) A court or justice authorized to issue warrants in criminal cases may, upon complaint  
15 on oath that the complainant believes that particular identified records or information described  
16 in this subsection are actually or constructively possessed by a Massachusetts or foreign  
17 corporation that provides electronic communication services, remote computing services or  
18 location information services, and such records or information constitute evidence of or the  
19 means or instrumentalities of the commission of a specified criminal offense under the laws of  
20 the commonwealth, if satisfied that there is probable cause for such beliefs, issue a warrant  
21 identifying the records to be searched for and commanding the person making the application for  
22 the warrant to properly serve the warrant upon the corporation and take all other actions  
23 prescribed by this section. In identifying the information to be searched, the following shall, if  
24 relevant, be described in the warrant: (i) records which would reveal the identity of a customer  
25 using the services; (ii) data stored by or on behalf of a customer; (iii) records of a customer's  
26 usage of the services; (iv) records of the source of communications sent to or the recipient or  
27 destination of communications sent from a customer; (v) the content of the communications  
28 stored by an electronic communication or remote computing service; or (vi) location  
29 information.

30 SECTION 4. Said section 1B of said chapter 276, as so appearing, is hereby further  
31 amended by striking out subsection (c) and inserting in place thereof the following subsection:-

32 (c) The following provisions shall apply to any search warrant issued pursuant to this  
33 section and to any subpoena issued in the course of a criminal investigation or proceeding

34 directed to a Massachusetts or foreign corporation that provides electronic communication  
35 services, remote computing services or location information services:

36 (i) when properly served with a search warrant issued by any court of the  
37 commonwealth or justice pursuant to this section or a subpoena, a corporation subject to this  
38 section shall provide all records sought pursuant to the warrant or subpoena within 14 days of  
39 receipt, including the records maintained or located outside of the commonwealth;

40 (ii) if the applicant makes a showing and the court or justice finds that failure to  
41 produce records within less than 14 days would cause an adverse result, a warrant may require  
42 production of records within less than 14 days;

43 (iii) a court or justice may reasonably extend the time required for production of  
44 the records upon a finding that the corporation has shown good cause for the extension and that  
45 an extension of time would not cause an adverse result;

46 (iv) a corporation seeking to quash a warrant or subpoena served on it pursuant to  
47 this section shall seek relief from the court that issued the warrant or the court which has  
48 jurisdiction over the subpoena within the time required for production of records pursuant to this  
49 section. The court shall hear and decide the motion not later than 14 days after the motion is  
50 filed;

51 (v) in the case of an administrative subpoena issued by the attorney general, the  
52 superior court of Suffolk county shall have jurisdiction and, in the case of an administrative  
53 subpoena issued by a district attorney, the superior court in any county in which the district  
54 attorney maintains an office shall have jurisdiction; and

55 (vi) the corporation shall verify the authenticity of records that it produces by  
56 providing an affidavit from the custodian of the records which certifies that the records are true  
57 and complete.

58 SECTION 5. Said section 1B of said chapter 276, as so appearing, is hereby further  
59 amended by adding the following 7 subsections:-

60 (f) A search warrant issued pursuant to this section shall designate the corporation or  
61 other entity in possession of the records or data sought and shall describe with particularity the  
62 record systems and information to be provided. A search warrant shall be issued in the form and  
63 manner prescribed in sections 2A½ and 2B and shall be directed to the government office or  
64 public official making the application for the warrant who shall serve the warrant upon the  
65 corporation or other entity.

66 (g) Not later than 7 days after the information in clauses (i) to (vi), inclusive, of  
67 subsection (b) is obtained by a government office or public official pursuant to this section, the  
68 government office or public official shall serve upon, or deliver by registered or first-class mail,  
69 electronic mail or other means reasonably calculated to be effective as specified by the court  
70 issuing the warrant to, the customer or subscriber a copy of the warrant, a copy of the application  
71 for the warrant and notice informing the customer or subscriber of the following: (i) the nature of  
72 the law enforcement inquiry with reasonable specificity; (ii) information maintained for the  
73 customer or subscriber by the provider of an electronic communications service, remote  
74 computing service or location information service was requested by or supplied to the  
75 government office or public official and a description of the information; (iii) the dates on which  
76 the request was made and on which the information was supplied; (iv) whether notification of the

77 customer or subscriber was delayed under subsection (h); and (v) which court made the  
78 certification or determination under which the delay was made, if applicable.

79 (h) A government office or public official may include in its application for a warrant a  
80 request for an order delaying the notification required under subsection (g) for a period not to  
81 exceed 90 days. The court shall issue the order if it determines that there is reason to believe that  
82 notification of the existence of the warrant may have an adverse result. Upon expiration of any  
83 period of delay granted pursuant to this subsection, the government office or public official shall  
84 provide the customer or subscriber with a copy of the warrant and the notice required pursuant  
85 to, and by the means described in, said subsection (g).

86 (i) A government office or public official may include in its application for a warrant a  
87 request for an order directing a corporation on which a warrant is served not to notify any other  
88 person of the existence of the warrant for a period of not more than 90 days. The court shall  
89 issue the order if it determines that there is reason to believe that notification of the existence of  
90 the warrant may have an adverse result.

91 (j) The court may, upon application, grant 1 or more extensions of orders granted under  
92 subsections (h) and (i) for an additional 90 days.

93 (k) Notwithstanding any general or special law to the contrary, a government office or  
94 public official may obtain the information in clauses (i) to (vi), inclusive, of subsection (b):

95 (i) with the express consent of the owner or user of the electronic communications  
96 device concerned;

97 (ii) in order to respond to the user's call for emergency services; or

98 (iii) if the government office or public official reasonably believes that an  
99 emergency involving immediate danger of death or serious physical injury to any person requires  
100 obtaining information relating to the emergency without delay; provided, however, that the  
101 request is narrowly tailored to address the emergency and subject to the following limitations:

102 (A) the request shall document the factual basis for believing that an  
103 emergency involving immediate danger of death or serious physical injury to a person requires  
104 obtaining the information relating to the emergency without delay; and

105 (B) not later than 48 hours after the government office or public official  
106 obtains access to the records, the government office or public official shall file with the  
107 appropriate court a signed, sworn statement of a supervisory official of a rank designated by the  
108 head of the office setting forth the grounds for the emergency access.

109 (l) Except in a judicial proceeding alleging a violation of this section, no information  
110 obtained in violation of this section shall be admissible in any criminal, civil, administrative or  
111 other proceeding.

112 SECTION 6. Chapter 276 is hereby further amended by inserting after section 2A the  
113 following section:-

114 Section 2A½. A warrant for records or data from a corporation providing electronic  
115 communication services, remote computing services or location information services shall be in  
116 substantially the following form:

117 THE COMMONWEALTH OF MASSACHUSETTS.

118 (COUNTY), ss.

(NAME) COURT.

119 To the Sheriffs of our several counties, or their deputies, any State Police Officer, or any  
120 Constable or Police Officer of any city or town, within our said Commonwealth.

121 Proof by affidavit having been made this day before (name of person authorized to issue  
122 warrant) by (names of person or persons whose affidavits have been taken) that there is probable  
123 cause for believing that certain records or data in the possession of (identify corporation)  
124 constitute evidence of or the means or instrumentalities of the commission of (specified criminal  
125 offense under the laws of the commonwealth).

126 We therefore command you to present this warrant to (identify corporation), which  
127 warrant shall operate as an order for immediate disclosure of the following records or data:

128 (description of records or data),

129 and if any such records or data are disclosed to bring it before (court having jurisdiction)  
130 at (name of court and location).

131 Dated at (city or town) this \_\_\_\_\_ day of \_\_\_\_\_, (insert year).

132 Clerk.

133 SECTION 7. The second paragraph of section 2B of said chapter 276, as appearing in the  
134 2012 Official Edition, is hereby amended by striking out subparagraphs 3 and 4 of the affidavit  
135 and inserting in place thereof the following subparagraphs:-

136 3. Based upon the foregoing reliable information (and upon my personal knowledge)  
137 there is probable cause to believe that the property, records or data hereinafter described (has  
138 been stolen, or is being concealed, or constitutes evidence of a particular offense, etc.) and may  
139 be found (in the possession of A.B. or any other person or corporation) at premises (identify).



140 4. The (property, records or data) for which I seek the issuance of a search warrant is the  
141 following: (here describe the property, records or data as particularly as possible).

142 SECTION 8. Section 3A of said chapter 276, as so appearing, is hereby amended by  
143 inserting after the word “search”, in line 1, the following words:- or to obtain electronic  
144 communication, remote computing or location information records.

145 SECTION 9. Said section 3A of said chapter 276, as so appearing, is hereby further  
146 amended by striking out, in line 6, the word “search”.

147 SECTION 10. The court administrator in the office of court management within the trial  
148 court shall study and evaluate the costs and feasibility of establishing an electronic system to  
149 record the number of applications for warrants authorizing or requiring the disclosure of  
150 information described in clauses (i) to (vi), inclusive, of subsection (b) of section 1B of chapter  
151 276 of the General Laws. The court administrator shall submit a report detailing the costs  
152 associated with the implementation of the system and any recommendations to the clerks of the  
153 senate and house of representatives and the house and senate chairs of the joint committee on the  
154 judiciary by January 1, 2015.