

SENATE BILL 785

By Beavers

AN ACT to amend Tennessee Code Annotated, Title 39, Chapter 13, Part 6 and Title 40, Chapter 6, relative to electronic data.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 40, Chapter 6, is amended by adding Sections 2–4 as a new, appropriately designated part.

SECTION 2. As used in this part:

(1) “Electronic communication service” means a service that provides to users of the service the ability to send or receive wire or electronic communications;

(2) “Electronic device” means a device that enables access to or use of an electronic communication service or remote computing service;

(3) “Governmental entity” means the state or any political subdivision of the state, including, but not limited to, any municipality, county, utility district, school district, special service district, agency, department, division, bureau, board, or commission. A governmental entity includes any law enforcement agency that is a lawfully established state or local public agency responsible for the prevention and detection of crime, local government code enforcement, or the enforcement of penal, traffic, regulatory, game, or controlled substance laws, including an individual acting or purporting to act for or on behalf of a state or local agency;

(4) “Remote computing service” means the provision of computer storage or processing services by means of an electronic communications system;

(5) “Stored data” means data or records that are stored on an electronic device that contains:

(A) Information revealing the identity of users of the applicable service, device, or program;

(B) Information about a user's use of the applicable service, device, or program;

(C) Information that identifies the recipient or destination of a wire communication or electronic communication sent to or by the user;

(D) The content of a wire communication or electronic communication sent to or by the user; or

(E) Any data, documents, files, or communications stored by or on behalf of the user with the applicable service provider or on the user's electronic device; and

(6) "Transmitted data" means data or records that are in the possession, care, custody, or control of a provider of an electronic communications service, or a remote computing service, that contains:

(A) Information revealing the identity of users of the applicable service, device, or program;

(B) Information about a user's use of the applicable service, device, or program;

(C) Information that identifies the recipient or destination of a wire communication or electronic communication sent to or by the user;

(D) The content of a wire communication or electronic communication sent to or by the user; or

(E) Any data, documents, files, or communications stored by or on behalf of the user with the applicable service provider or on the user's electronic device.

SECTION 3.

(a)

(1) Except as provided in subsection (b), no governmental entity shall obtain the stored data or transmitted data of an electronic device without a search warrant issued by a duly authorized court upon probable cause.

(2) A governmental entity may not use, copy, or disclose, for any purpose, any stored data or transmitted data of an electronic device that is not the subject of the warrant in subdivision (a)(1) that is collected during efforts to obtain the stored data or transmitted data of the electronic device that is the subject of the warrant.

(3) The data described in subdivision (a)(2) shall be destroyed in an unrecoverable manner by the governmental entity no later than twenty-four (24) hours after the data is collected.

(b) A governmental entity may obtain the stored data or transmitted data of an electronic device without a search warrant:

(1) With the informed, affirmative consent of the owner or user of the electronic device;

(2) In accordance with judicially recognized exceptions to warrant requirements; or

(3) If the owner has voluntarily and publicly disclosed stored data or transmitted data.

SECTION 4.

(a) Notice shall be given to the user whose stored data, transmitted data, or electronic device was searched or obtained by a governmental entity pursuant to a warrant issued under Section 3(a).

(b) Unless delayed notice is ordered pursuant to subsection (c), the governmental entity shall provide notice to the user whose electronic device was

searched or whose stored data or transmitted data was obtained by the governmental entity within three (3) days of obtaining the stored data or transmitted data or conducting the search. The notice shall be made by personal service or delivered by registered or first-class mail, electronic mail, or any other means reasonably calculated to be effective as specified by the court issuing the warrant. The notice shall contain the following information:

(1) The nature of the law enforcement inquiry, with reasonable specificity;

(2) The stored data or transmitted data of the user that was supplied to or requested by the governmental entity and the date on which it was provided or requested;

(3) If stored data or transmitted data was obtained from a provider of electronic communication service or other third party, the identity of the provider of electronic communication service or the third party from whom the information was obtained; and

(4) Whether the notification was delayed pursuant to subsection (c) and, if so, the court that granted the delay and the reasons for granting the delay.

(c) A governmental entity acting pursuant to Section 3(a) may include in the application for a warrant a request for an order to delay the notification required pursuant to this section for a period not to exceed ninety (90) days. The court shall issue the order if the court determines that there is reason to believe that notification may have an adverse result. Upon expiration of the period of delay granted pursuant to this subsection (c) and any extension granted pursuant to subsection (d), the governmental entity shall provide the user a copy of the warrant together with a notice pursuant to subsections (a) and (b).

(d) A governmental entity acting pursuant to Section 3(a) may include in its application for a warrant a request for an order directing a provider of electronic communication service to which the warrant is directed not to notify any other person of the existence of the warrant for a period of not more than ninety (90) days. The court shall issue the order if the court determines that there is reason to believe that notification of the existence of the warrant may have an adverse result. Absent an order to delay notification or upon expiration of the period of delay, a provider of electronic communication service to which a warrant is directed may provide notice to any other person.

SECTION 5. This act shall take effect upon becoming a law, the public welfare requiring it.