

1 HB659
2 151295-1
3 By Representative Hall
4 RFD: Judiciary
5 First Read: 23-APR-13

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8 SYNOPSIS: Under existing law, a court or magistrate
9 may issue a warrant for the search of a place and
10 the seizure of property or things identified in the
11 warrant where there is probable cause to believe
12 that specified grounds exist.

13 This bill would provide for a warrant
14 procedure for the acquisition of stored
15 communications and other identifying information in
16 the possession of a foreign corporation that is a
17 provider of electronic communication services or
18 remote computing services, and procedures for an
19 Alabama corporation that provides electronic
20 communication services or remote computing services
21 when served with a warrant issued by a court in
22 another state.

23 This bill would prohibit a governmental
24 entity from obtaining the contents of a wire or
25 electronic communication from a provider of
26 electronic communication services or remote
27 computing services that is stored, held, or

1 maintained by that service provider without a valid
2 search warrant issued by a duly authorized judge or
3 magistrate, with jurisdiction over the offense
4 under investigation, using established warrant
5 procedures.

6 This bill would prohibit, except as
7 provided, a person or entity providing electronic
8 communication services or remote computing services
9 from knowingly divulging to any person or entity
10 the contents of a wire or electronic communication
11 that is stored, held, or maintained by that service
12 provider.

13 This bill would also provide civil remedies
14 for violations, including possible punitive
15 damages, attorney's fees, and court costs.

16
17 A BILL
18 TO BE ENTITLED
19 AN ACT
20

21 Relating to searches and seizures; to provide for a
22 warrant procedure for the acquisition of stored communications
23 and other identifying information in the possession of foreign
24 and domestic corporations; to prohibit a governmental entity
25 from obtaining the contents of a wire or electronic
26 communication from a provider of electronic communication
27 services or remote computing services without a valid search

1 warrant; and to provide civil remedies for the unauthorized
2 disclosure of the contents of a wire or electronic
3 communication by a service provider.

4 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

5 Section 1. (a) For the purposes of this section, the
6 following terms shall have the following meanings:

7 (1) ADVERSE RESULT. When notification of the
8 existence of a search warrant results in any of the following:

9 a. Danger to the life or physical safety of an
10 individual.

11 b. A flight from prosecution.

12 c. The destruction of or tampering with evidence.

13 d. The intimidation of potential witnesses.

14 e. Serious jeopardy to an investigation or undue
15 delay of a trial.

16 (2) ALABAMA CORPORATION. Any corporation or other
17 entity that is organized under the laws of this state.

18 (3) APPLICANT. The law enforcement officer to whom a
19 search warrant is issued.

20 (4) ELECTRONIC COMMUNICATION. Any transfer of signs,
21 signals, writing, images, sounds, data, or intelligence of any
22 nature transmitted in whole or in part by a wire, radio,
23 electromagnetic, photoelectronic or photooptical system that
24 affects interstate or foreign commerce. The term does not
25 include any of the following:

26 a. Any wire or oral communication.

1 b. Any communication made through a tone-only paging
2 device.

3 c. Any communication from a tracking device.

4 d. Electronic funds transfer information stored by a
5 financial institution in a communications system used for the
6 electronic storage and transfer of funds.

7 (5) ELECTRONIC COMMUNICATION SERVICES. Any service
8 that provides to users thereof the ability to send or receive
9 wire or electronic communications. The term shall be subject
10 to and construed in accordance with the Electronic
11 Communications Privacy Act in Chapter 121, commencing with
12 Section 2701, of Part I of Title 18 of the United States Code
13 Annotated.

14 (6) FOREIGN CORPORATION. Any corporation or other
15 entity organized under the laws of any other state or
16 jurisdiction other than the State of Alabama.

17 (7) PROPERLY SERVED. A search warrant that has been
18 delivered by hand, or in a manner reasonably allowing for
19 proof of delivery if delivered by United States mail,
20 overnight delivery service, or facsimile to a person
21 authorized to accept service under existing law.

22 (8) REMOTE COMPUTING SERVICES. The provision to the
23 public of computer storage or processing services by means of
24 an electronic communications system. The term shall be subject
25 to and construed in accordance with the Electronic
26 Communications Privacy Act in Chapter 121, commencing with

1 Section 2701, of Part I of Title 18 of the United States Code
2 Annotated.

3 Section 2. (a) The following provisions shall apply
4 to any search warrant issued pursuant to this act allowing a
5 search for records that are in the actual or constructive
6 possession of a foreign corporation that provides electronic
7 communication services or remote computing services, where
8 those records would reveal the identity of the customers using
9 those services, data stored by, or on behalf of, the customer,
10 the customer's usage of those services, the recipient or
11 destination of communications sent to or from those customers,
12 or the content of those communications:

13 (1) When properly served with a search warrant
14 issued by a judge or magistrate in this state, a foreign
15 corporation subject to this section shall provide to the
16 applicant all records sought pursuant to that warrant within
17 five business days of receipt, including those records
18 maintained or located outside this state.

19 (2) Where the applicant makes a showing and the
20 judge or magistrate finds that failure to produce records
21 within less than five business days would cause an adverse
22 result, the warrant may require production of records within
23 less than five business days. A court may reasonably extend
24 the time required for production of the records upon finding
25 that the foreign corporation has shown good cause for that
26 extension and that an extension of time would not cause an
27 adverse result.

1 (3) A foreign corporation seeking to quash the
2 warrant must seek relief from the court that issued the
3 warrant within the time required for production of records
4 pursuant to this section. The issuing court shall hear and
5 decide that motion no later than five court days after the
6 motion is filed.

7 (4) The foreign corporation shall verify the
8 authenticity of records that it produces by providing an
9 affidavit signed by an officer, director, or agent of the
10 foreign corporation. Those records shall be admissible in
11 evidence as set forth in the Alabama Rules of Evidence.

12 (b) An Alabama corporation that provides electronic
13 communication services or remote computing services, when
14 served with a warrant issued by another state to produce
15 records that would reveal the identity of the customers using
16 those services, data stored by, or on behalf of, the customer,
17 the customer's usage of those services, the recipient or
18 destination of communications sent to or from those customers,
19 or the content of those communications, shall produce those
20 records as if that warrant had been issued by a court in this
21 state.

22 (c) A cause of action may not be asserted against
23 any foreign or Alabama corporation subject to this section,
24 its officers, employees, agents, or other specified persons
25 for providing records, information, facilities, or assistance
26 in accordance with the terms of a warrant issued pursuant to
27 this section.

1 Section 3. (a) A governmental entity may not obtain
2 from a provider of electronic communication services or remote
3 computing services the contents of a wire or electronic
4 communication that is stored, held, or maintained by that
5 service provider without a valid search warrant issued by a
6 duly authorized judge or magistrate with jurisdiction over the
7 offense under investigation using procedures established
8 pursuant to this act.

9 (b) Except as otherwise provided in Section 4,
10 within three days after a governmental entity receives the
11 requested contents from a service provider, the governmental
12 entity shall serve upon or deliver by registered or
13 first-class mail, electronic mail, or other means reasonably
14 calculated to be effective as specified by the court issuing
15 the warrant, to the subscriber, customer, or user a copy of
16 the warrant and a notice that includes the information
17 specified in subdivision (2) of subsection (c) of Section 4.

18 (c) For purposes of this section, "governmental
19 entity" means a department or agency of the state or any
20 political subdivision thereof, or an individual acting for or
21 on behalf of the state or any political subdivision thereof.

22 Section 4. (a) (1) A governmental entity acting under
23 Section 2, when a search warrant is sought, may include in the
24 application a request, supported by sworn affidavit, for an
25 order delaying the warrant notification required under
26 subsection (b) of Section 3.

1 (2) The court shall grant the request if the court
2 determines that there is reason to believe that notification
3 of the existence of the warrant may have an adverse result as
4 defined in Section 1, but only for the period of time that the
5 court finds there is reason to believe that the warrant
6 notification may have that adverse result, and in no event
7 shall the period of time for the delay exceed 90 days.

8 (b) The court may grant extensions of the delay of
9 the warrant notification provided for in subsection (b) of
10 Section 3, of up to 90 days each on the same grounds as
11 provided in subsection (a).

12 (c) Upon expiration of the period of delay of the
13 warrant notification under subsection (a) or (b), the
14 governmental entity shall serve upon, or deliver by registered
15 or first-class mail, electronic mail, or other means
16 reasonably calculated to be effective as specified by the
17 court issuing the warrant, the customer, user, or subscriber a
18 copy of the warrant together with a notice that does both of
19 the following:

20 (1) States with reasonable specificity the nature of
21 the governmental inquiry.

22 (2) Informs the customer, user, or subscriber of all
23 of the following:

24 a. That information maintained for the customer or
25 subscriber by the service provider named in the process or
26 request was supplied to, or requested by, that governmental

1 entity and the date on which the supplying or request took
2 place.

3 b. That warrant notification to the customer or
4 subscriber was delayed.

5 c. The grounds for the court's determination to
6 grant the delay.

7 d. Which provisions of this act authorized the
8 delay.

9 Section 5. (a) Except as provided in subsection (b),
10 a person or entity providing an electronic communication
11 service or remote computing service shall not knowingly
12 divulge to any person or entity the contents of a wire or
13 electronic communication that is stored, held, or maintained
14 by that service.

15 (b) A service provider described in subsection (a)
16 may divulge the contents of a communication under any of the
17 following circumstances:

18 (1) To an addressee or intended recipient of the
19 communication or an agent of the addressee or intended
20 recipient.

21 (2) As otherwise authorized in Section 2.

22 (3) With the lawful consent of the originator, an
23 addressee, or intended recipient of the communication, or the
24 subscriber in the case of remote computing service.

25 (4) To a person employed or authorized or whose
26 facilities are used to forward the communication to its
27 destination.

1 (5) As may be necessary incident to the rendition of
2 the service or to the protection of the rights or property of
3 the provider of that service.

4 (6) To a law enforcement agency, if the contents
5 were inadvertently obtained by the service provider and appear
6 to pertain to the commission of a crime.

7 (7) To a governmental entity, if the provider, in
8 good faith, believes that an emergency involving the danger of
9 death or serious physical injury to any person requires
10 disclosure without delay of communications relating to the
11 emergency.

12 Section 6. (a) Except as otherwise provided in
13 subsection (c) of Section 2, any provider of electronic
14 communication service or remote computing service, subscriber,
15 or other person aggrieved by any knowing or intentional
16 violation of this act may, in a civil action, recover from the
17 person, entity, or governmental entity that committed the
18 violation, relief as may be appropriate.

19 (b) In a civil action under this section,
20 appropriate relief includes, but is not limited to, all of the
21 following:

22 (1) Preliminary and other equitable or declaratory
23 relief.

24 (2) Damages under subsection (c).

25 (3) Reasonable attorney's fees and other costs
26 reasonably incurred.

1 (c) (1) The court may assess as damages, in a civil
2 action, the amount of the actual damages suffered by the
3 plaintiff and any profits made by the violator as a result of
4 the violation, but in no case shall a person be entitled to
5 recover less than the amount of one thousand dollars (\$1,000).

6 (2) If a court determines by clear and convincing
7 evidence that a person violating this section consciously or
8 deliberately engaged in oppression, fraud, wantonness, or
9 malice, the court may assess punitive damages.

10 Section 7. This act shall become effective on the
11 first day of the third month following its passage and
12 approval by the Governor, or its otherwise becoming law.