

Calendar No. 66

113TH CONGRESS
1ST SESSION**S. 607**

To improve the provisions relating to the privacy of electronic communications.

IN THE SENATE OF THE UNITED STATES

MARCH 19, 2013

Mr. LEAHY (for himself and Mr. LEE) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

APRIL 25, 2013

Reported by Mr. LEAHY, with an amendment

[Omit the part struck through and insert the part printed in *italic*]

A BILL

To improve the provisions relating to the privacy of electronic communications.

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 “Electronic Communica-
5 tions Privacy Act Amendments Act of 2013”.

1 **SEC. 2. CONFIDENTIALITY OF ELECTRONIC COMMUNICA-**
2 **TIONS.**

3 Section 2702(a)(3) of title 18, United States Code,
4 is amended to read as follows:

5 “(3) a provider of remote computing service or
6 electronic communication service to the public shall
7 not knowingly divulge to any governmental entity
8 the contents of any communication described in sec-
9 tion 2703(a), or any record or other information
10 pertaining to a subscriber or customer of such serv-
11 ice.”.

12 **SEC. 3. ELIMINATION OF 180-DAY RULE; SEARCH WARRANT**
13 **REQUIREMENT; REQUIRED DISCLOSURE OF**
14 **CUSTOMER RECORDS.**

15 (a) IN GENERAL.—Section 2703 of title 18, United
16 States Code, is amended—

17 (1) by striking subsections (a), (b), and (c) and
18 inserting the following:

19 “(a) CONTENTS OF WIRE OR ELECTRONIC COMMU-
20 NICATIONS.—A governmental entity may require the dis-
21 closure by a provider of electronic communication service
22 or remote computing service of the contents of a wire or
23 electronic communication that is in electronic storage with
24 or otherwise stored, held, or maintained by the provider
25 only if the governmental entity obtains a warrant issued
26 using the procedures described in the Federal Rules of

1 Criminal Procedure (or, in the case of a State court,
 2 issued using State warrant procedures) that is issued by
 3 a court of competent jurisdiction directing the disclosure.

4 “(b) NOTICE.—Except as provided in section 2705,
 5 not later than 10 business days in the case of a law en-
 6 forcement agency, or not later than 3 business days in
 7 the case of any other governmental entity, after a govern-
 8 mental entity receives the contents of a wire or electronic
 9 communication of a subscriber or customer from a pro-
 10 vider of electronic communication service or remote com-
 11 puting service under subsection (a), the governmental en-
 12 tity shall serve upon, or deliver to by registered or first-
 13 class mail, electronic mail, or other means reasonably cal-
 14 culated to be effective, as specified by the court issuing
 15 the warrant, the subscriber or customer—

16 “(1) a copy of the warrant; and

17 “(2) a notice that includes the information re-
 18 ferred to in clauses (i) and (ii) of section
 19 2705(a)(4)(B).

20 “(c) RECORDS CONCERNING ELECTRONIC COMMU-
 21 NICATION SERVICE OR REMOTE COMPUTING SERVICE.—

22 “(1) IN GENERAL.—Subject to paragraph (2), a
 23 governmental entity may require a provider of elec-
 24 tronic communication service or remote computing
 25 service to disclose a record or other information per-

1 taining to a subscriber or customer of the provider
2 or service (not including the contents of communica-
3 tions), only if the governmental entity—

4 “(A) obtains a warrant issued using the
5 procedures described in the Federal Rules of
6 Criminal Procedure (or, in the case of a State
7 court, issued using State warrant procedures)
8 that is issued by a court of competent jurisdic-
9 tion directing the disclosure;

10 “(B) obtains a court order directing the
11 disclosure under subsection (d);

12 “(C) has the consent of the subscriber or
13 customer to the disclosure; or

14 “(D) submits a formal written request rel-
15 evant to a law enforcement investigation con-
16 cerning telemarketing fraud for the name, ad-
17 dress, and place of business of a subscriber or
18 customer of the provider or service that is en-
19 gaged in telemarketing (as defined in section
20 2325).

21 “(2) INFORMATION TO BE DISCLOSED.—A pro-
22 vider of electronic communication service or remote
23 computing service shall, in response to an adminis-
24 trative subpoena authorized by Federal or State
25 statute, a grand jury, trial, or civil discovery sub-

1 poena, or any means authorized under paragraph
2 (1), disclose to a governmental entity the—

3 “(A) name;

4 “(B) address;

5 “(C) local and long distance telephone con-
6 nection records, or records of session times and
7 durations;

8 “(D) length of service (including start
9 date) and types of service used;

10 “(E) telephone or instrument number or
11 other subscriber number or identity, including
12 any temporarily assigned network address; and

13 “(F) means and source of payment for
14 such service (including any credit card or bank
15 account number), of a subscriber or customer of
16 such service.

17 “(3) NOTICE NOT REQUIRED.—A governmental
18 entity that receives records or information under
19 this subsection is not required to provide notice to
20 a subscriber or customer.”; and

21 (2) by adding at the end the following:

22 “(h) RULE OF CONSTRUCTION.—Nothing in this sec-
23 tion or in section 2702 shall be construed to limit the au-
24 thority of a governmental entity to use an administrative
25 subpoena authorized under a Federal or State statute or

1 to use a Federal or State grand jury, trial, or civil dis-
2 covery subpoena to—

3 “(1) require an originator, addressee, or in-
4 tended recipient of an electronic communication to
5 disclose the contents of the electronic communication
6 to the governmental entity; or

7 “(2) require an entity that provides electronic
8 communication services to the officers, directors, em-
9 ployees, or agents of the entity (for the purpose of
10 carrying out their duties) to disclose the contents of
11 an electronic communication to or from an officer,
12 director, employee, or agent of the entity to a gov-
13 ernmental entity, if the electronic communication is
14 held, stored, or maintained on an electronic commu-
15 nications system owned or operated by the entity.”.

16 (b) TECHNICAL AND CONFORMING AMENDMENTS.—
17 Section 2703(d) of title 18, United States Code, is amend-
18 ed—

19 (1) by striking “A court order for disclosure
20 under subsection (b) or (c)” and inserting “A court
21 order for disclosure under subsection (c)”; and

22 (2) by striking “the contents of a wire or elec-
23 tronic communication, or”.

1 **SEC. 4. DELAYED NOTICE.**

2 Section 2705 of title 18, United States Code, is
3 amended to read as follows:

4 **“SEC. 2705. DELAYED NOTICE.**

5 “(a) DELAY OF NOTIFICATION.—

6 “(1) IN GENERAL.—A governmental entity that
7 is seeking a warrant under section 2703(a) may in-
8 clude in the application for the warrant a request for
9 an order delaying the notification required under
10 section 2703(b) for a period of not more than 180
11 days in the case of a law enforcement agency, or not
12 more than 90 days in the case of any other govern-
13 mental entity.

14 “(2) DETERMINATION.—A court shall grant a
15 request for delayed notification made under para-
16 graph (1) if the court determines that there is rea-
17 son to believe that notification of the existence of the
18 warrant may 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

25 “(E) otherwise seriously jeopardizing an
26 investigation or unduly delaying a trial.

1 “(3) EXTENSION.—Upon request by a govern-
2 mental entity, a court may grant one or more exten-
3 sions of the delay of notification granted under para-
4 graph (2) of not more than 180 days in the case of
5 a law enforcement agency, or not more than 90 days
6 in the case of any other governmental entity.

7 “(4) EXPIRATION OF THE DELAY OF NOTIFICA-
8 TION.—Upon expiration of the period of delay of no-
9 tification under paragraph (2) or (3), the govern-
10 mental entity shall serve upon, or deliver to by reg-
11 istered or first-class mail, electronic mail, or other
12 means reasonably calculated to be effective as speci-
13 fied by the court approving the search warrant, the
14 customer or subscriber—

15 “(A) a copy of the warrant; and

16 “(B) notice that informs the customer or
17 subscriber—

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

20 “(ii) that information maintained for
21 the customer or subscriber by the provider
22 of electronic communication service or re-
23 mote computing service named in the proc-
24 ess or request was supplied to, or re-
25 quested by, the governmental entity;

1 “(iii) of the date on which the warrant
2 was served on the provider and the date on
3 which the information was provided by the
4 provider to the governmental entity;

5 “(iv) that notification of the customer
6 or subscriber was delayed;

7 “(v) the identity of the court author-
8 izing the delay; and

9 “(vi) of the provision of this chapter
10 under which the delay was authorized.

11 “(b) PRECLUSION OF NOTICE TO SUBJECT OF GOV-
12 ERNMENTAL ACCESS.—

13 “(1) IN GENERAL.—A governmental entity that
14 is obtaining the contents of a communication or in-
15 formation or records under section 2703 may apply
16 to a court for an order directing a provider of elec-
17 tronic communication service or remote computing
18 service to which a warrant, order, subpoena, or other
19 directive under section 2703 is directed not to notify
20 any other person of the existence of the warrant,
21 order, subpoena, or other directive for a period of
22 not more than 180 days in the case of a law enforce-
23 ment agency, or not more than 90 days in the case
24 of any other governmental entity.

1 “(2) DETERMINATION.—A court shall grant a
2 request for an order made under paragraph (1) if
3 the court determines that there is reason to believe
4 that notification of the existence of the warrant,
5 order, subpoena, or other directive may result in—

6 “(A) endangering the life or physical safety
7 of an individual;

8 “(B) flight from prosecution;

9 “(C) destruction of or tampering with evi-
10 dence;

11 “(D) intimidation of potential witnesses; or

12 “(E) otherwise seriously jeopardizing an
13 investigation or unduly delaying a trial.

14 “(3) EXTENSION.—Upon request by a govern-
15 mental entity, a court may grant one or more exten-
16 sions of an order granted under paragraph (2) of
17 not more than 180 days in the case of a law enforce-
18 ment agency, or not more than 90 days in the case
19 of any other governmental entity.

20 “(4) PRIOR NOTICE TO LAW ENFORCEMENT.—
21 Upon expiration of the period of delay of notice
22 under this section, and not later than 3 business
23 days before providing notice to a customer or sub-
24 scriber, a provider of electronic communication serv-
25 ice or remote computing service shall notify the gov-

1 ernmental entity that obtained the contents of a
2 communication or information or records under sec-
3 tion 2703 of the intent of the provider of electronic
4 communication service or remote computing service
5 to notify the customer or subscriber of the existence
6 of the warrant, order, or subpoena seeking that in-
7 formation.

8 “(c) DEFINITION.—In this section and section 2703,
9 the term ‘law enforcement agency’ means an agency of the
10 United States, a State, or a political subdivision of a
11 State, authorized by law or by a government agency to
12 engage in or supervise the prevention, detection, investiga-
13 tion, or prosecution of any violation of criminal law, or
14 any other Federal or State agency conducting a criminal
15 investigation.”.

16 **SEC. 5. RULE OF CONSTRUCTION.**

17 Nothing in this Act or an amendment made by this
18 Act shall be construed to apply the warrant requirement
19 for contents of a wire or electronic communication author-
20 ized under this Act or an amendment made by this Act
21 to any other section of title 18, United States Code (in-
22 cluding chapter 119 of such title (commonly known as the
23 “Wiretap Act”)), the Foreign Intelligence Surveillance Act
24 of 1978 (50 U.S.C. 1801 et seq.), or any other provision
25 of Federal law.

1 **SEC. 5. EVALUATION BY THE GOVERNMENT ACCOUNT-**
2 **ABILITY OFFICE.**

3 *Not later than September 30, 2015, the Comptroller*
4 *General of the United States shall submit to Congress a re-*
5 *port regarding the disclosure of customer communications*
6 *and records under section 2703 of title 18, United States*
7 *Code, which shall include—*

8 *(1) an analysis and evaluation of such disclosure*
9 *under section 2703 of title 18, United States Code, as*
10 *in effect before the date of enactment of this Act, in-*
11 *cluding—*

12 *(A) a comprehensive analysis and evalua-*
13 *tion regarding the number of individual in-*
14 *stances, in each of the 5 years before the year in*
15 *which this Act is enacted, in which Federal,*
16 *State, or local law enforcement officers used sec-*
17 *tion 2703 of title 18, United States Code, to ob-*
18 *tain information relevant to an ongoing crimi-*
19 *nal investigation;*

20 *(B) an analysis of the average length of*
21 *time taken by a provider of an electronic com-*
22 *munication service or a remote computing serv-*
23 *ice to comply with requests by law enforcement*
24 *officers for information under section 2703 of*
25 *title 18, United States Code;*

1 (C) the number of individual instances, in
2 each of the 5 years before the year in which this
3 Act is enacted, in which information was re-
4 quested by law enforcement officers from a pro-
5 vider of an electronic communication service or
6 a remote computing service under a warrant as
7 authorized under section 2703(a) of title 18,
8 United States Code;

9 (D) the number of individual instances and
10 type of request, in each of the 5 years before the
11 year in which this Act is enacted, in which in-
12 formation was requested by law enforcement offi-
13 cers from a provider of an electronic communica-
14 tion service or a remote computing service under
15 the other information request provisions in sec-
16 tion 2703 of title 18, United States Code; and

17 (E) the number of individual instances, in
18 each of the 5 years before the year in which this
19 Act is enacted, in which law enforcement officers
20 requested delayed notification to the subscriber or
21 customer under section 2705 of title 18, United
22 States Code; and

23 (2) an analysis and evaluation of such disclosure
24 under section 2703 of title 18, United States Code, as
25 amended by this Act, including—

1 (A) an evaluation of the effects of the
2 amendments to the warrant requirements on
3 judges, court dockets, or any other court oper-
4 ations;

5 (B) a survey of Federal, State, and local
6 judges and law enforcement officers to determine
7 the average length of time required for providers
8 of an electronic communication service or a re-
9 mote computing service to provide the contents of
10 communications requested under a search war-
11 rant, which shall include identifying the number
12 of instances in which a judge was required to
13 order a provider of an electronic communication
14 service or a remote computing service to appear
15 to show cause for failing to comply with a war-
16 rant or to issue an order of contempt against a
17 provider of an electronic communication service
18 or a remote computing service for such a failure;
19 and

20 (C) determining whether the amendments to
21 the warrant requirements resulted in an increase
22 in the use of the emergency exception under sec-
23 tion 2702(b)(8) of title 18, United States Code.

1 **SEC. 6. RULE OF CONSTRUCTION.**

2 *Nothing in this Act or an amendment made by this*
3 *Act shall be construed to preclude the acquisition by the*
4 *United States Government of—*

5 *(1) the contents of a wire or electronic commu-*
6 *nication pursuant to other lawful authorities, includ-*
7 *ing the authorities under chapter 119 of title 18 (com-*
8 *monly known as the “Wiretap Act”), the Foreign In-*
9 *telligence Surveillance Act of 1978 (50 U.S.C. 1801 et*
10 *seq.), or any other provision of Federal law not spe-*
11 *cifically amended by this Act; or*

12 *(2) records or other information relating to a*
13 *subscriber or customer of any electronic communica-*
14 *tions service or remote computing service (not includ-*
15 *ing the content of such communications) pursuant to*
16 *the Foreign Intelligence Surveillance Act of 1978 (50*
17 *U.S.C. 1801 et seq.), chapter 119 of title 18 (com-*
18 *monly known as the “Wiretap Act”), or any other*
19 *provision of Federal law not specifically amended by*
20 *this Act.*

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1ST Session

S. 607

A BILL

To improve the provisions relating to the privacy of
electronic communications.

APRIL 25, 2013

Reported with an amendment