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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

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A N A C T

RELATING TO CRIMINAL PROCEDURE -- SEARCH WARRANTS--ELECTRONIC DATA
DISCLOSURE PRIVACY ACT

Introduced By: Representatives Filippi, Place, Nardone, Roberts, and Price

Date Introduced: March 22, 2019

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 12 of the General Laws entitled "CRIMINAL PROCEDURE" is
2 hereby amended by adding thereto the following chapter:

3 CHAPTER 5.3

4 ELECTRONIC DATA DISCLOSURE PRIVACY ACT

5 **12-5.3-1. Short title.**

6 This act shall be known as the "Electronic Data Disclosure Privacy Act."

7 **12-5.3-2. Definitions.**

8 As used in this chapter:

9 (1) "Contents" means any information concerning the substance, purport, or meaning of
10 communication.

11 (2) "Electronic communication" means:

12 (i) Any transfer of signs, signals, writing, images, sounds, data, or intelligence of any
13 nature transmitted in whole or in part by a wire, radio, electromagnetic, photogenic, or photo-
14 optical system; or

15 (ii) Any aural transfer made in whole or in part through the use of facilities for the
16 transmission of communications by the aid of wire, cable, or other similar connection between the
17 point of origin and the point of reception, including, but not limited to, the use of the wire, cable,
18 or other similar connection in a switching station.

1 (iii) The term does not include:

2 (A) An oral communication uttered by a person exhibiting an expectation that the
3 communication is not subject to interception under circumstances justifying the expectation;

4 (B) A communication made through a tone-only paging device;

5 (C) A communication from a tracking device, including an electronic or mechanical
6 device that permits the tracking of the movement of a person or object; or

7 (D) Electronic funds transfer information stored by a financial institution in a
8 communications system used for the electronic storage and transfer of funds.

9 (3) “Electronic communication service” means:

10 (i) A service that provides to users the ability to send or receive electronic
11 communications;

12 (ii) A service that provides to users computer storage or processing services; or

13 (iii) A service that acts as an intermediary in the transmission of electronic
14 communications.

15 (4) “Government entity” means a state or local agency, including, but not limited to, a
16 law enforcement entity or any other investigative entity, agency, department, division, bureau,
17 board or commission or an individual acting or purporting to act for or on behalf of a state or
18 local agency.

19 **12-5.3-3. Search warrant or investigative subpoena required.**

20 A governmental entity may only require disclosure by a provider of an electronic
21 communication service of the contents of an electronic communications stored, held, or
22 maintained by that service pursuant to a search warrant (warrant) or investigative subpoena
23 (subpoena) issued by a court upon a finding of probable cause.

24 **12-5.3-4. Notice-delayed notice.**

25 (a) At or before the time that a governmental entity receives the contents of an electronic
26 communication of a subscriber or customer from a provider of an electronic communication
27 service pursuant to § 12-5.3-3, the governmental entity shall serve upon or deliver to the
28 subscriber or customer by registered or first class mail, or other means reasonably calculated to be
29 effective, as specified by the court issuing the warrant or subpoena:

30 (1) A copy of the warrant or subpoena; and

31 (2) A notice that informs the customer or subscriber:

32 (i) The nature of the government inquiry with reasonable specificity;

33 (ii) The information maintained for the customer or subscriber by the provider of the
34 electronic communication service named in the process or request was supplied to or requested by

1 the governmental entity:

2 (iii) The date on which the warrant or subpoena was served on the provider.

3 (b)(1) A governmental entity that is seeking a warrant or subpoena under this chapter
4 may include in the application for the warrant or subpoena a request for an order delaying the
5 notification required under subsection (a) of this section for a period of not more than one year.

6 (2) A governmental entity that is obtaining the contents of an electronic communication
7 may apply to a court for an order directing the provider of an electronic communication service to
8 which a warrant or subpoena under § 12-5.3-3 is directed, not to notify any other person of the
9 existence of the warrant or subpoena for a period of not more than one year.

10 (3) A court shall grant a request for delayed notification made under this section if the
11 court determines that there is a reason to believe that notification of the existence of the warrant
12 or subpoena may result in:

13 (i) Endangering the life or physical safety of another individual;
14 (ii) Flight from prosecution;
15 (iii) Destruction or tampering with evidence;
16 (iv) Intimidation of potential witnesses; or
17 (v) Otherwise seriously jeopardizing an investigation or unduly delaying a trial or grand
18 jury investigation.

19 (4) Upon request of a governmental entity, a court may grant one or more extensions for
20 good cause shown, of the delay of notification granted under subsection (b) of this section. Each
21 extension may not be greater than one hundred eighty (180) days each.

22 (5) Upon expiration of the period of delay under subsection (b) of this section, the
23 governmental entity shall serve upon or deliver to the subscriber or customer by registered or first
24 class mail, or other means reasonably calculated to be effective, as specified by the court issuing
25 the warrant or subpoena, a notice that:

26 (i) Includes the information referred to in subsection (a) of this section; and
27 (ii) Informs the customer or subscriber of the following:
28 (A) That notification required under this chapter was delayed;
29 (B) The identity of the court authorizing the delay;
30 (C) The provision of subsection (b)(3) of this section under which the delay was
31 authorized.

32 (c)(1) A warrant or subpoena issued under this chapter may be served only on a provider
33 of an electronic communication that is a domestic entity or a company or entity otherwise doing
34 business in this state under a contract for a terms of service agreement with a resident of this state

1 if any part of that contract or agreement is to be performed in this state.

2 (2) The provider of an electronic communication shall produce all electronic customer
3 data, contents of communications, and other information sought by the governmental entity
4 pursuant to a valid warrant or subpoena.

5 **12-5.3-5. Rules of construction.**

6 (a) Except as expressly provided, nothing in this chapter may be construed to limit an
7 electronic communication service or any other party from disclosing information about a request
8 issued by a governmental entity for electronic information.

9 (b) Nothing in §§ 12-5.3-2 or 12-5.3-3 may be construed to limit the authority of a
10 governmental entity to use a subpoena authorized under the laws of this state to require an entity
11 that provides electronic communication services to its own officers, directors, employees, or
12 agents for the purpose of carrying out their duties to disclose to the governmental entity the
13 contents of an electronic communication to or from an officer, director, employee, or agent of the
14 entity, if the electronic communication is held, stored, or maintained on an electronic
15 communication service owned or operated by the entity.

16 (c) Nothing in this chapter may be construed to limit a governmental entity's ability to
17 use, maintain, or store information on its own electronic communication service or to disseminate
18 information stored on its own electronic communication service.

19 **12-5.3-6. Admissibility of proof -- Violations.**

20 (a) Except as proof of a violation of this chapter, evidence obtained in violation of this
21 chapter is not admissible in a civil, criminal, or administrative proceeding and may not be used in
22 an affidavit in an effort to obtain a search warrant or court order.

23 (b) The attorney general may apply for an injunction or commence a civil action against
24 any governmental entity to compel compliance with the provisions of this chapter.

25 **12-5.3-7. Standing to challenge warrant or subpoena.**

26 Providers of electronic communications services subject to a warrant or other legal
27 process under this chapter, have standing to challenge a warrant or other legal process that is
28 inconsistent with the provisions of this chapter, any other statute, general law or provision of the
29 United States or Rhode Island Constitutions.

30 **12-5.3-8. No cause of action against providers.**

31 No cause of action shall lie in any court against any provider of electronic
32 communication services, its officers, employees, agents, or other persons acting in its behalf for
33 providing information or assistance in accordance with the provisions of this chapter.

34 **12-5.3-9. Voluntary disclosure of electronic communications.**

1 Nothing in this chapter prohibits the voluntary disclosure of electronic communication
2 information by a provider of an electronic communication service or any other entity when such
3 disclosure is not otherwise prohibited by law, including, but not limited to, those cases in which:

4 (1) The provider first obtains the lawful consent of the subscriber or customer, or
5 originator, an addressee, or intended recipient of the electronic communication; or

6 (2) The provider, in good faith, believes that an emergency involving danger, death, or
7 serious physical injury to a person requires disclosure without delay of communications relating
8 to the emergency.

9 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO CRIMINAL PROCEDURE -- SEARCH WARRANTS--ELECTRONIC DATA
DISCLOSURE PRIVACY ACT

1 This act would require that governmental entities seeking the disclosure of electronic
2 communications from an electronic communication service obtain a warrant or court approved
3 subpoena before doing so. Consent, voluntary disclosure and other exceptions would apply.

4 This act would take effect upon passage.

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