

116TH CONGRESS
2D SESSION

H. R. 8961

To amend title 18, United States Code, to update the privacy protections for electronic communications information that is stored by third-party service providers in order to protect consumer privacy interests while meeting law enforcement needs, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 14, 2020

Mr. NADLER (for himself, Mr. SENSENBRENNER, Ms. DELBENE, and Mr. RODNEY DAVIS of Illinois) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, to update the privacy protections for electronic communications information that is stored by third-party service providers in order to protect consumer privacy interests while meeting law enforcement needs, and for other purposes.

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 “Email Privacy Act”.

5 **SEC. 2. VOLUNTARY DISCLOSURE CORRECTIONS.**

6 (a) IN GENERAL.—Section 2702 of title 18, United
7 States Code, is amended—

1 (1) in subsection (a)—

2 (A) in paragraph (1)—

3 (i) by striking “divulge” and inserting
4 “disclose”; and

5 (ii) by striking “while in electronic
6 storage by that service” and inserting
7 “that is in electronic storage with or other-
8 wise stored, held, or maintained by that
9 service”;

10 (B) in paragraph (2)—

11 (i) by striking “to the public”;

12 (ii) by striking “divulge” and insert-
13 ing “disclose”; and

14 (iii) by striking “which is carried or
15 maintained on that service” and inserting
16 “that is stored, held, or maintained by that
17 service”; and

18 (C) in paragraph (3)—

19 (i) by striking “divulge” and inserting
20 “disclose”; and

21 (ii) by striking “a provider of” and in-
22 serting “a person or entity providing”;

23 (2) in subsection (b)—

1 (A) in the matter preceding paragraph (1),
2 by inserting “wire or electronic” before “com-
3 munication”;

4 (B) by amending paragraph (1) to read as
5 follows:

6 “(1) to an originator, addressee, or intended re-
7 cipient of such communication, to the subscriber or
8 customer on whose behalf the provider stores, holds,
9 or maintains such communication, or to an agent of
10 such addressee, intended recipient, subscriber, or
11 customer;”; and

12 (C) by amending paragraph (3) to read as
13 follows:

14 “(3) with the lawful consent of the originator,
15 addressee, or intended recipient of such communica-
16 tion, or of the subscriber or customer on whose be-
17 half the provider stores, holds, or maintains such
18 communication;”;

19 (3) in subsection (c) by inserting “wire or elec-
20 tronic” before “communications”;

21 (4) in each of subsections (b) and (c), by strik-
22 ing “divulge” and inserting “disclose”; and

23 (5) in subsection (c), by amending paragraph
24 (2) to read as follows:

1 “(2) with the lawful consent of the subscriber
2 or customer;”.

3 **SEC. 3. AMENDMENTS TO REQUIRED DISCLOSURE SEC-**
4 **TION.**

5 Section 2703 of title 18, United States Code, is
6 amended—

7 (1) by striking subsections (a) through (c) and
8 inserting the following:

9 “(a) CONTENTS OF WIRE OR ELECTRONIC COMMU-
10 NICATIONS IN ELECTRONIC STORAGE.—Except as pro-
11 vided in subsections (i) and (j), a governmental entity may
12 require the disclosure by a provider of electronic commu-
13 nication service of the contents of a wire or electronic com-
14 munication that is in electronic storage with or otherwise
15 stored, held, or maintained by that service only if the gov-
16 ernmental entity obtains a warrant issued using the proce-
17 dures described in the Federal Rules of Criminal Proce-
18 dure (or, in the case of a State court, issued using State
19 warrant procedures) that—

20 “(1) is issued by a court of competent jurisdic-
21 tion; and

22 “(2) may indicate the date by which the pro-
23 vider must make the disclosure to the governmental
24 entity.

1 In the absence of a date on the warrant indicating the
2 date by which the provider must make disclosure to the
3 governmental entity, the provider shall promptly respond
4 to the warrant.

5 “(b) CONTENTS OF WIRE OR ELECTRONIC COMMU-
6 NICATIONS IN A REMOTE COMPUTING SERVICE.—

7 “(1) IN GENERAL.—Except as provided in sub-
8 sections (i) and (j), a governmental entity may re-
9 quire the disclosure by a provider of remote com-
10 puting service of the contents of a wire or electronic
11 communication that is stored, held, or maintained by
12 that service only if the governmental entity obtains
13 a warrant issued using the procedures described in
14 the Federal Rules of Criminal Procedure (or, in the
15 case of a State court, issued using State warrant
16 procedures) that—

17 “(A) is issued by a court of competent ju-
18 risdiction; and

19 “(B) may indicate the date by which the
20 provider must make the disclosure to the gov-
21 ernmental entity.

22 In the absence of a date on the warrant indicating
23 the date by which the provider must make disclosure
24 to the governmental entity, the provider shall
25 promptly respond to the warrant.

1 “(2) APPLICABILITY.—Paragraph (1) is appli-
2 cable with respect to any wire or electronic commu-
3 nication that is stored, held, or maintained by the
4 provider—

5 “(A) on behalf of, and received by means
6 of electronic transmission from (or created by
7 means of computer processing of communica-
8 tion received by means of electronic trans-
9 mission from), a subscriber or customer of such
10 remote computing service; and

11 “(B) solely for the purpose of providing
12 storage or computer processing services to such
13 subscriber or customer, if the provider is not
14 authorized to access the contents of any such
15 communications for purposes of providing any
16 services other than storage or computer proc-
17 essing.

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

20 “(1) IN GENERAL.—Except as provided in sub-
21 sections (i) and (j), a governmental entity may re-
22 quire the disclosure by a provider of electronic com-
23 munication service or remote computing service of a
24 record or other information pertaining to a sub-
25 scriber to or customer of such service (not including

1 the contents of wire or electronic communications),
2 only—

3 “(A) if a governmental entity obtains a
4 warrant issued using the procedures described
5 in the Federal Rules of Criminal Procedure (or,
6 in the case of a State court, issued using State
7 warrant procedures) that—

8 “(i) is issued by a court of competent
9 jurisdiction directing the disclosure; and

10 “(ii) may indicate the date by which
11 the provider must make the disclosure to
12 the governmental entity;

13 “(B) if a governmental entity obtains a
14 court order directing the disclosure under sub-
15 section (d);

16 “(C) with the lawful consent of the sub-
17 scriber or customer; or

18 “(D) as otherwise authorized in paragraph
19 (2).

20 “(2) SUBSCRIBER OR CUSTOMER INFORMA-
21 TION.—A provider of electronic communication serv-
22 ice or remote computing service shall, in response to
23 an administrative subpoena authorized by Federal or
24 State statute, a grand jury, trial, or civil discovery

1 subpoena, or any means available 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 or customer number or iden-
12 tity, including any temporarily assigned net-
13 work address; and

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

17 of a subscriber or customer of such service.

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

22 (2) in subsection (d)—

23 (A) by striking “(b) or”;

24 (B) by striking “the contents of a wire or
25 electronic communication, or”;

1 (C) by striking “sought,” and inserting
2 “sought”; and

3 (D) by striking “section” and inserting
4 “subsection”; and

5 (3) by adding at the end the following:

6 “(h) NOTICE.—Except as provided in section 2705,
7 a provider of electronic communication service or remote
8 computing service may notify a subscriber or customer of
9 a receipt of a warrant, court order, subpoena, or request
10 under subsection (a), (b), (c), or (d) of this section.

11 “(i) RULE OF CONSTRUCTION RELATED TO LEGAL
12 PROCESS.—Nothing in this section or in section 2702
13 shall limit the authority of a governmental entity to use
14 an administrative subpoena authorized by Federal or
15 State statute, a grand jury, trial, or civil discovery sub-
16 poena, or a warrant issued using the procedures described
17 in the Federal Rules of Criminal Procedure (or, in the
18 case of a State court, issued using State warrant proce-
19 dures) by a court of competent jurisdiction to—

20 “(1) require an originator, addressee, or in-
21 tended recipient of a wire or electronic communica-
22 tion to disclose a wire or electronic communication
23 (including the contents of that communication) to
24 the governmental entity;

1 “(2) require a person or entity that provides an
2 electronic communication service to the officers, di-
3 rectors, employees, or agents of the person or entity
4 (for the purpose of carrying out their duties) to dis-
5 close a wire or electronic communication (including
6 the contents of that communication) to or from the
7 person or entity itself or to or from an officer, direc-
8 tor, employee, or agent of the entity to a govern-
9 mental entity, if the wire or electronic communica-
10 tion is stored, held, or maintained on an electronic
11 communications system owned, operated, or con-
12 trolled by the person or entity; or

13 “(3) require a person or entity that provides a
14 remote computing service or electronic communica-
15 tion service to disclose a wire or electronic commu-
16 nication (including the contents of that communica-
17 tion) that advertises or promotes a product or serv-
18 ice and that has been made readily accessible to the
19 general public.

20 “(j) RULE OF CONSTRUCTION RELATED TO CON-
21 GRESSIONAL SUBPOENAS.—Nothing in this section or in
22 section 2702 shall limit the power of inquiry vested in the
23 Congress by article I of the Constitution of the United
24 States, including the authority to compel the production
25 of a wire or electronic communication (including the con-

1 tents of a wire or electronic communication) that is stored,
2 held, or maintained by a person or entity that provides
3 remote computing service or electronic communication
4 service.”.

5 **SEC. 4. DELAYED NOTICE.**

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

8 **“§ 2705. Delayed notice**

9 “(a) IN GENERAL.—A governmental entity acting
10 under section 2703 may apply to a court for an order di-
11 recting a provider of electronic communication service or
12 remote computing service to which a warrant, order, sub-
13 poena, or other directive under section 2703 is directed
14 not to notify any other person of the existence of the war-
15 rant, order, subpoena, or other directive.

16 “(b) DETERMINATION.—A court shall grant a re-
17 quest for an order made under subsection (a) for delayed
18 notification of up to 180 days if the court determines that
19 there is reason to believe that notification of the existence
20 of the warrant, order, subpoena, or other directive will
21 likely result in—

22 “(1) endangering the life or physical safety of
23 an individual;

24 “(2) flight from prosecution;

25 “(3) destruction of or tampering with evidence;

1 “(4) intimidation of potential witnesses; or

2 “(5) otherwise seriously jeopardizing an inves-
3 tigation or unduly delaying a trial.

4 “(c) EXTENSION.—Upon request by a governmental
5 entity, a court may grant one or more extensions, for peri-
6 ods of up to 180 days each, of an order granted in accord-
7 ance with subsection (b).”.

8 **SEC. 5. RULE OF CONSTRUCTION.**

9 Nothing in this Act or an amendment made by this
10 Act shall be construed to preclude the acquisition by the
11 United States Government of—

12 (1) the contents of a wire or electronic commu-
13 nication pursuant to other lawful authorities, includ-
14 ing the authorities under chapter 119 of title 18
15 (commonly known as the “Wiretap Act”), the For-
16 eign Intelligence Surveillance Act of 1978 (50
17 U.S.C. 1801 et seq.), or any other provision of Fed-
18 eral law not specifically amended by this Act; or

19 (2) records or other information relating to a
20 subscriber or customer of any electronic communica-
21 tion service or remote computing service (not includ-
22 ing the content of such communications) pursuant to
23 the Foreign Intelligence Surveillance Act of 1978
24 (50 U.S.C. 1801 et seq.), chapter 119 of title 18
25 (commonly known as the “Wiretap Act”), or any

- 1 other provision of Federal law not specifically
- 2 amended by this Act.

