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TITLE 18--CRIMES AND CRIMINAL PROCEDURE

PART I--CRIMES

CHAPTER 121--STORED WIRE AND ELECTRONIC COMMUNICATIONS AND TRANSACTIONAL
RECORDS ACCESSSec. 2703. Required disclosure of customer communications or
records

(a) Contents of Wire or Electronic Communications in Electronic Storage.--A governmental entity may require the disclosure by a provider of electronic communication service of the contents of a wire or electronic communication, that is in electronic storage in an electronic communications system for one hundred and eighty days or less, only pursuant to a warrant issued using the procedures described in the Federal Rules of Criminal Procedure by a court with jurisdiction over the offense under investigation or equivalent State warrant. A governmental entity may require the disclosure by a provider of electronic communications services of the contents of a wire or electronic communication that has been in electronic storage in an electronic communications system for more than one hundred and eighty days by the means available under subsection (b) of this section.

(b) Contents of Wire or Electronic Communications in a Remote Computing Service.--(1) A governmental entity may require a provider of remote computing service to disclose the contents of any wire or electronic communication to which this paragraph is made applicable by paragraph (2) of this subsection--

(A) without required notice to the subscriber or customer, if the governmental entity obtains a warrant issued using the procedures described in the Federal Rules of Criminal Procedure by a court with jurisdiction over the offense under investigation or equivalent State warrant; or

(B) with prior notice from the governmental entity to the subscriber or customer if the governmental entity--

(i) uses an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury or trial subpoena; or

(ii) obtains a court order for such disclosure under subsection (d) of this section;

except that delayed notice may be given pursuant to section 2705 of this title.

(2) Paragraph (1) is applicable with respect to any wire or electronic communication that is held or maintained on that service--

(A) on behalf of, and received by means of electronic transmission from (or created by means of computer processing of communications received by means of electronic transmission from), a subscriber or customer of such remote computing service; and

(B) solely for the purpose of providing storage or computer processing services to such subscriber or customer, if the provider is not authorized to access the contents of any such communications for purposes of providing any services other than storage or computer processing.

(c) Records Concerning Electronic Communication Service or Remote

Computing Service.--(1) A governmental entity may require a provider of electronic communication service or remote computing service to disclose a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications) only when the governmental entity--

(A) obtains a warrant issued using the procedures described in the Federal Rules of Criminal Procedure by a court with jurisdiction over the offense under investigation or equivalent State warrant;

(B) obtains a court order for such disclosure under subsection (d) of this section;

(C) has the consent of the subscriber or customer to such disclosure;

(D) submits a formal written request relevant to a law enforcement investigation concerning telemarketing fraud for the name, address, and place of business of a subscriber or customer of such provider, which subscriber or customer is engaged in telemarketing (as such term is defined in section 2325 of this title); or

(E) seeks information under paragraph (2).

(2) A provider of electronic communication service or remote computing service shall disclose to a governmental entity the--

(A) name;

(B) address;

(C) local and long distance telephone connection records, or records of session times and durations;

(D) length of service (including start date) and types of service utilized;

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

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

of a subscriber to or customer of such service when the governmental entity uses an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury or trial subpoena or any means available under paragraph (1).

(3) A governmental entity receiving records or information under this subsection is not required to provide notice to a subscriber or customer.

(d) Requirements for Court Order.--A court order for disclosure under subsection (b) or (c) may be issued by any court that is a court of competent jurisdiction and shall issue only if the governmental entity offers specific and articulable facts showing that there are reasonable grounds to believe that the contents of a wire or electronic communication, or the records or other information sought, are relevant and material to an ongoing criminal investigation. In the case of a State governmental authority, such a court order shall not issue if prohibited by the law of such State. A court issuing an order pursuant to this section, on a motion made promptly by the service provider, may quash or modify such order, if the information or records requested are unusually voluminous in nature or compliance with such order otherwise would cause an undue burden on such provider.

(e) No Cause of Action Against a Provider Disclosing Information Under This Chapter.--No cause of action shall lie in any court against any provider of wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order, warrant, subpoena, statutory authorization, or certification under this chapter.

(f) Requirement To Preserve Evidence.--

(1) In general.--A provider of wire or electronic communication services or a remote computing service, upon the request of a

governmental entity, shall take all necessary steps to preserve records and other evidence in its possession pending the issuance of a court order or other process.

(2) Period of retention.--Records referred to in paragraph (1) shall be retained for a period of 90 days, which shall be extended for an additional 90-day period upon a renewed request by the governmental entity.

(g) Presence of Officer Not Required.--Notwithstanding section 3105 of this title, the presence of an officer shall not be required for service or execution of a search warrant issued in accordance with this chapter requiring disclosure by a provider of electronic communications service or remote computing service of the contents of communications or records or other information pertaining to a subscriber to or customer of such service.

(Added Pub. L. 99-508, title II, Sec. 201[(a)], Oct. 21, 1986, 100 Stat. 1861; amended Pub. L. 100-690, title VII, Secs. 7038, 7039, Nov. 18, 1988, 102 Stat. 4399; Pub. L. 103-322, title XXXIII, Sec. 330003(b), Sept. 13, 1994, 108 Stat. 2140; Pub. L. 103-414, title II, Sec. 207(a), Oct. 25, 1994, 108 Stat. 4292; Pub. L. 104-132, title VIII, Sec. 804, Apr. 24, 1996, 110 Stat. 1305; Pub. L. 104-293, title VI, Sec. 601(b), Oct. 11, 1996, 110 Stat. 3469; Pub. L. 104-294, title VI, Sec. 605(f), Oct. 11, 1996, 110 Stat. 3510; Pub. L. 105-184, Sec. 8, June 23, 1998, 112 Stat. 522; Pub. L. 107-56, title II, Secs. 209(2), 210, 212(b)(1), 220(a)(1), (b), Oct. 26, 2001, 115 Stat. 283, 285, 291, 292; Pub. L. 107-273, div. B, title IV, Sec. 4005(a)(2), div. C, title I, Sec. 11010, Nov. 2, 2002, 116 Stat. 1812, 1822; Pub. L. 107-296, title II, Sec. 225(h)(1), Nov. 25, 2002, 116 Stat. 2158; Pub. L. 109-162, title XI, Sec. 1171(a)(1), Jan. 5, 2006, 119 Stat. 3123.)

Amendment of Section

For termination of amendment by sections 209(2), 212(b)(1), 220(a)(1), (b) of Pub. L. 107-56, see Termination Date of 2001 Amendment note below.

References in Text

The Federal Rules of Criminal Procedure, referred to in subsecs. (a), (b)(1)(A), and (c)(1)(B)(i), are set out in the Appendix to this title.

Amendments

2006--Subsec. (c)(1)(C). Pub. L. 109-162 struck out ``or'' at end.

2002--Subsec. (c)(1)(E). Pub. L. 107-273, Sec. 4005(a)(2), realigned margins.

Subsec. (e). Pub. L. 107-296 inserted ``, statutory authorization'' after ``subpoena''.

Subsec. (g). Pub. L. 107-273, Sec. 11010, added subsec. (g).

2001--Pub. L. 107-56, Secs. 212(b)(1)(A), 224, temporarily substituted ``Required disclosure of customer communications or records'' for ``Requirements for governmental access'' in section catchline. See Termination Date of 2001 Amendment note below.

Subsec. (a). Pub. L. 107-56, Secs. 209(2)(A), (B), 220(a)(1), 224, temporarily substituted ``Contents of Wire or Electronic'' for ``Contents of Electronic'' in heading and ``contents of a wire or electronic'' for ``contents of an electronic'' in two places and ``using the procedures described in the Federal Rules of Criminal Procedure by a court with jurisdiction over the offense under investigation'' for ``under the Federal Rules of Criminal Procedure'' in text. See

Termination Date of 2001 Amendment note below.

Subsec. (b). Pub. L. 107-56, Secs. 209(2)(A), 224, temporarily substituted ``Contents of Wire or Electronic'' for ``Contents of Electronic'' in heading. See Termination Date of 2001 Amendment note below.

Subsec. (b)(1). Pub. L. 107-56, Secs. 209(2)(C), 220(a)(1), 224, temporarily substituted ``any wire or electronic communication'' for ``any electronic communication'' in introductory provisions and ``using the procedures described in the Federal Rules of Criminal Procedure by a court with jurisdiction over the offense under investigation'' for ``under the Federal Rules of Criminal Procedure'' in subpar. (A). See Termination Date of 2001 Amendment note below.

Subsec. (b)(2). Pub. L. 107-56, Secs. 209(2)(C), 224, temporarily substituted ``any wire or electronic communication'' for ``any electronic communication'' in introductory provisions. See Termination Date of 2001 Amendment note below.

Subsec. (c)(1). Pub. L. 107-56, Secs. 212(b)(1)(C), 220(a)(1), 224, temporarily designated subpar. (A) and introductory provisions of subpar. (B) as par. (1), substituted ``A governmental entity may require a provider of electronic communication service or remote computing service to'' for ``(A) Except as provided in subparagraph (B), a provider of electronic communication service or remote computing service may'' and a closing parenthesis for provisions which began with ``covered by subsection (a) or (b) of this section) to any person other than a governmental entity.'' in former subpar. (A) and ended with ``(B) A provider of electronic communication service or remote computing service shall disclose a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by subsection (a) or (b) of this section) to a governmental entity'', redesignated clauses (i) to (iv) of former subpar. (B) as subpars. (A) to (D), respectively, substituted ``using the procedures described in the Federal Rules of Criminal Procedure by a court with jurisdiction over the offense under investigation'' for ``under the Federal Rules of Criminal Procedure'' in subpar. (A) and ``; or'' for period at end of subpar. (D), added subpar. (E), and redesignated former subpar. (C) as par. (2). See Termination Date of 2001 Amendment note below.

Subsec. (c)(2). Pub. L. 107-56, Sec. 210, amended par. (2), as redesignated by section 212 of Pub. L. 107-56, by substituting ``entity the--'' for ``entity the name, address, local and long distance telephone toll billing records, telephone number or other subscriber number or identity, and length of service of a subscriber'' in introductory provisions, inserting subpars. (A) to (F), striking out ``and the types of services the subscriber or customer utilized,'' before ``when the governmental entity uses an administrative subpoena'', inserting ``of a subscriber'' at beginning of concluding provisions and designating ``to or customer of such service when the governmental entity uses an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury or trial subpoena or any means available under paragraph (1).'' as remainder of concluding provisions.

Pub. L. 107-56, Secs. 212(b)(1)(C)(iii), (D), 224, temporarily redesignated subpar. (C) of par. (1) as par. (2) and temporarily substituted ``paragraph (1)'' for ``subparagraph (B)''.

See Termination Date of 2001 Amendment note below.

Pub. L. 107-56, Secs. 212(b)(1)(B), 224, temporarily redesignated par. (2) as (3). See Termination Date of 2001 Amendment note below.

Subsec. (c)(3). Pub. L. 107-56, Secs. 212(b)(1)(B), 224, temporarily redesignated par. (2) as (3). See Termination Date of 2001 Amendment note below.

Subsec. (d). Pub. L. 107-56, Secs. 220(b), 224, temporarily struck out ``described in section 3127(2)(A)'' after ``court of competent jurisdiction''. See Termination Date of 2001 Amendment note below.

1998--Subsec. (c)(1)(B)(iv). Pub. L. 105-184 added cl. (iv).

1996--Subsec. (c)(1)(C). Pub. L. 104-293 inserted ``local and long distance'' after ``address,''.

Subsec. (d). Pub. L. 104-294 substituted ``in section 3127(2)(A)'' for ``in section 3126(2)(A)''.

Subsec. (f). Pub. L. 104-132 added subsec. (f).

1994--Subsec. (c)(1)(B). Pub. L. 103-414, Sec. 207(a)(1)(A), redesignated cls. (ii) to (iv) as (i) to (iii), respectively, and struck out former cl. (i) which read as follows: ``uses an administrative subpoena authorized by a Federal or State statute, or a Federal or State grand jury or trial subpoena;''.

Subsec. (c)(1)(C). Pub. L. 103-414, Sec. 207(a)(1)(B), added subpar. (C).

Subsec. (d). Pub. L. 103-414, Sec. 207(a)(2), amended first sentence generally. Prior to amendment, first sentence read as follows: ``A court order for disclosure under subsection (b) or (c) of this section may be issued by any court that is a court of competent jurisdiction set forth in section 3127(2)(A) of this title and shall issue only if the governmental entity shows that there is reason to believe the contents of a wire or electronic communication, or the records or other information sought, are relevant to a legitimate law enforcement inquiry.''

Pub. L. 103-322 substituted ``section 3127(2)(A)'' for ``section 3126(2)(A)''.

1988--Subsecs. (b)(1)(B)(i), (c)(1)(B)(i). Pub. L. 100-690, Sec. 7038, inserted ``or trial'' after ``grand jury''.

Subsec. (d). Pub. L. 100-690, Sec. 7039, inserted ``may be issued by any court that is a court of competent jurisdiction set forth in section 3126(2)(A) of this title and'' before ``shall issue''.

Effective Date of 2002 Amendment

Amendment by Pub. L. 107-296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107-296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

Termination Date of 2001 Amendment

Amendment by sections 209(2), 212(b)(1), 220(a)(1), (b) of Pub. L. 107-56 to cease to have effect Feb. 3, 2006, except amendment to continue in effect with respect to any particular foreign intelligence investigation that began before Feb. 3, 2006, or with respect to any particular offense or potential offense that began or occurred before Feb. 3, 2006, see section 224 of Pub. L. 107-56, set out as a note under section 2510 of this title.