

1 **Electronic Information Privacy Act Amendments**
 2026 GENERAL SESSION
 STATE OF UTAH
 Chief Sponsor: Jason B. Kyle
 Senate Sponsor: Todd Weiler

2
3 **LONG TITLE**

4 **General Description:**

5 This bill amends the Electronic Information Privacy Act.

6 **Highlighted Provisions:**

7 This bill:

- 8 ▸ amends and clarifies definitions;
- 9 ▸ clarifies and amends procedures and requirements for a law enforcement agency that
10 seeks to obtain, use, copy, or disclose certain electronic information or records;
- 11 ▸ revises liability provisions for a provider of an electronic communication service or a
12 remote computing service;
- 13 ▸ provides that the procedures and requirements described in the Electronic Information
14 Privacy Act (act) are the only permissible methods for a law enforcement agency to
15 obtain, use, copy, disclose, or otherwise access certain electronic information or records,
16 with certain exceptions;
- 17 ▸ prohibits a law enforcement agency from contracting with or otherwise using a third party
18 to obtain, use, copy, disclose, or otherwise access certain electronic information or
19 records in a manner that the law enforcement agency would be prohibited from doing
20 directly, with certain exceptions;
- 21 ▸ provides that electronic information or records obtained in violation of the act, as well as
22 any evidence derived from the electronic information or records, are subject to the same
23 rules governing exclusion of evidence obtained in violation of constitutional
24 requirements; and
- 25 ▸ makes technical and conforming changes.

26 **Money Appropriated in this Bill:**

27 None

28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **77-23c-101.2**, as last amended by Laws of Utah 2023, Chapter 38233 **77-23c-102**, as last amended by Laws of Utah 2023, Chapters 382, 51434 **77-23c-103**, as last amended by Laws of Utah 2023, Chapter 38235 **77-23c-104**, as last amended by Laws of Utah 2023, Chapter 38236 **77-23c-105**, as enacted by Laws of Utah 2019, Chapter 362

37 ENACTS:

38 **77-23c-104.1**, Utah Code Annotated 1953

39

40 *Be it enacted by the Legislature of the state of Utah:*41 Section 1. Section **77-23c-101.2** is amended to read:42 **77-23c-101.2 . Definitions.**

43 As used in this chapter:

- 44 (1) "Electronic communication service" means a service that provides to users of the
45 service the ability to send or receive wire or electronic communications.
- 46 (2) "Electronic device" means a device that enables access to or use of an electronic
47 communication service, remote computing service, or location information service.
- 48 (3)(a) "Electronic information" means information or data including a sign, signal,
49 writing, image, sound, or intelligence of any nature transmitted or stored in whole or
50 in part by a wire, radio, electromagnetic, photoelectronic, or photooptical system.
- 51 (b) "Electronic information" includes the location information, stored data, or
52 transmitted data of an electronic device.
- 53 (c) "Electronic information" does not include:
- 54 (i) a wire or oral communication;
- 55 (ii) a communication made through a tone-only paging device; or
- 56 (iii) electronic funds transfer information stored by a financial institution in a
57 communications system used for the electronic storage and transfer of money.
- 58 (4) "Law enforcement agency" means:
- 59 (a) an entity of the state or a political subdivision of the state that exists to primarily
60 prevent, detect, or prosecute crime and enforce criminal statutes or ordinances; or
- 61 (b) an individual or entity acting for or on behalf of an entity described in Subsection

- 62 (4)(a).
- 63 (5)(a) "Location information" means information concerning the geographical location
64 of an electronic device that, in whole or in part, is generated or derived from or
65 obtained by the operation of an electronic device or the operation of a software
66 application on an electronic device.
- 67 (b) "Location information" includes past, current, and future location information.
- 68 (6) "Location information service" means the provision of a global positioning service or
69 other mapping, location, or directional information service.
- 70 (7) "Oral communication" means the same as that term is defined in Section 77-23a-3.
- 71 (8) "Remote computing service" means the provision to the public of computer storage or
72 processing services by means of an electronic communications system.
- 73 (9) "Subscriber record" means a record or information that:
- 74 (a)(i) is in the possession of a provider of an electronic communication service or a
75 remote computing service;
- 76 (ii) is created or maintained by a provider of an electronic communication service or
77 a remote computing service; or
- 78 (iii) is received from, or derived from, a record or information originally possessed,
79 created, or maintained by a provider of an electronic communication service or a
80 remote computing service; and
- 81 (b) reveals a subscriber's or customer's:
- 82 (i) name;
- 83 (ii) address;
- 84 (iii) local or long distance telephone connection record, or record of session time and
85 duration;
- 86 (iv) length of service, including the start date;
- 87 (v) type of service used;
- 88 (vi) telephone number, instrument number, or other subscriber or customer number or
89 identification, including a temporarily assigned network address; or
- 90 (vii) means or source of payment to the electronic communication service or a remote
91 computing service, including a credit card or bank account number.
- 92 [(9)] (10) "Transmitted data" means electronic information that is transmitted wirelessly:
- 93 (a) from an electronic device to another electronic device without the use of an
94 intermediate connection or relay; or
- 95 (b) from an electronic device to a nearby antenna or from a nearby antenna to an

96 electronic device.

97 ~~[(10)]~~ (11) "Wire communication" means the same as that term is defined in Section
98 77-23a-3.

99 Section 2. Section **77-23c-102** is amended to read:

100 **77-23c-102 . Electronic information privacy -- Warrant required for disclosure.**

101 (1)(a) Except as provided in Subsection (2)~~[-or]~~ , (4), or Section 77-23c-104.1, and
102 subject to Section 77-23c-105, for a criminal investigation or prosecution, a law
103 enforcement agency may not obtain, ~~[without]~~ copy, or use the following information
104 or data except through the use of a search warrant issued by a court upon probable
105 cause:

106 (i) the location information, stored data, or transmitted data of an electronic device; or

107 (ii) electronic information transmitted by the owner of the electronic information:

108 (A) to a provider of a remote computing service; or

109 (B) through a provider of an electronic communication service.

110 (b)(i) Except as provided in Subsection (1)(b)(ii) and subject to Subsection (1)(c), [a]
111 if a law enforcement agency, in response to a warrant obtained under Subsection
112 (1)(a), obtains information or data described in Subsection (1)(a)(i) or (ii), the law
113 enforcement agency may not use, copy, or disclose, for any purpose, [the location
114 information, stored data, or transmitted data of an electronic device, or electronic
115 information provided by a provider of a remote computing service or an electronic
116 communication service,] any information or data described in Subsection (1)(a)(i)
117 or (ii) that:

118 ~~[(i)]~~ (A) is not the subject of the warrant obtained under Subsection (1)(a); and

119 ~~[(ii)]~~ (B) is collected as part of an effort to obtain the ~~[location information, stored~~
120 ~~data, or transmitted data of an electronic device, or electronic information~~
121 ~~provided by a provider of a remote computing service or an electronic~~
122 ~~communication service]~~ information or data described in Subsection (1)(a)(i) or
123 (ii) that is the subject of the warrant [in] obtained under Subsection (1)(a).

124 ~~[(e)]~~ (ii) A law enforcement agency may use, copy, or disclose the transmitted data of
125 an electronic device used to communicate with the electronic device that is the
126 subject of the warrant if the law enforcement agency reasonably believes that the
127 transmitted data is necessary to achieve the objective of the warrant.

128 ~~[(d)]~~ (c) The electronic information described in Subsection (1)(b) shall be destroyed in
129 an unrecoverable manner by the law enforcement agency as soon as reasonably

- 130 possible after the electronic information is collected.
- 131 (2)(a) [A-] Except as provided in Subsection (2)(c) or Section 77-23c-104.1 and subject
132 to Section 77-23c-105, a law enforcement agency may obtain location information
133 without a warrant for an electronic device only:
- 134 (i) in accordance with Section 53-10-104.5;
 - 135 (ii) if the device is reported stolen by the owner;
 - 136 (iii) with the informed, affirmative consent of the owner or user of the electronic
137 device;
 - 138 (iv) except for the automobile exception to the warrant requirement, in accordance
139 with a judicially recognized exception to warrant requirements;
 - 140 (v) if the owner has voluntarily and publicly disclosed the location information; or
 - 141 (vi) from a provider of a remote computing service or an electronic communications
142 service if the provider voluntarily discloses the location information:
 - 143 (A) under a belief that an emergency exists involving an imminent risk to an
144 individual of death, serious physical injury, sexual abuse, live-streamed sexual
145 exploitation, kidnapping, or human trafficking; or
 - 146 (B) that is inadvertently discovered by the provider and appears to pertain to the
147 commission of a felony, or of a misdemeanor involving physical violence,
148 sexual abuse, or dishonesty.
- 149 (b) [A-] Except as provided in Subsection (2)(c) or Section 77-23c-104.1 and subject to
150 Section 77-23c-105, a law enforcement agency may obtain stored data or transmitted
151 data from an electronic device or electronic information transmitted by the owner of
152 the electronic information to a provider of a remote computing service or through a
153 provider of an electronic communication service, without a warrant, only:
- 154 (i) with the informed consent of the owner of the electronic device or electronic
155 information;
 - 156 (ii) except for the automobile exception to the warrant requirement, in accordance
157 with a judicially recognized exception to warrant requirements; or
 - 158 (iii) subject to Subsection (2)(a)(vi)(B), from a provider of a remote computing
159 service or an electronic communication service if the provider voluntarily
160 discloses the stored or transmitted data as otherwise permitted under 18 U.S.C.
161 Sec. 2702.
- 162 (c) A prosecutor may obtain a judicial order as described in Section 77-22-2.5 for the
163 purposes described in Section 77-22-2.5.

164 (3) A provider of an electronic communication service or a remote computing service, the
 165 provider's officers, employees, or agents, or other specified persons may not be held
 166 liable for [~~providing~~] information, facilities, or assistance provided in good faith reliance [
 167 ~~on the terms of the warrant issued under this section or without a warrant in accordance~~
 168 ~~with Subsection (2)] under this section.~~

169 [(4) ~~Nothing in this chapter:~~]

170 [(a) ~~limits or affects the disclosure of public records under Title 63G, Chapter 2,~~
 171 ~~Government Records Access and Management Act;~~]

172 [(b) ~~affects the rights of an employer under Subsection 34-48-202(1)(e) or an~~
 173 ~~administrative rule adopted under Section 63A-16-205; or]~~

174 [(c) ~~limits the ability of a law enforcement agency to receive or use information, without~~
 175 ~~a warrant or subpoena, from the National Center for Missing and Exploited Children~~
 176 ~~under 18 U.S.C. Sec. 2258A.]~~

177 Section 3. Section **77-23c-103** is amended to read:

178 **77-23c-103 . Notification required -- Exceptions -- Delayed notification.**

179 (1)(a) Except as provided in Subsection (1)(b) or (2), a law enforcement agency that
 180 executes a warrant under [~~Subsection 77-23c-102(1) or 77-23c-104(3)] Section
 181 77-23c-102 or 77-23c-104 shall serve the owner of the electronic device or electronic
 182 information specified in the warrant with a notice described in Subsection (3):~~

183 (i) within 90 days after the day on which the electronic device or the electronic
 184 information is obtained by the law enforcement agency but in no case more than
 185 three days after the day on which the investigation is concluded; or

186 (ii) if the owner of the electronic device or electronic information specified in the
 187 warrant is unknown to the law enforcement agency, within 90 days after the day
 188 on which the law enforcement agency identifies, or reasonably could identify, the
 189 owner.

190 (b) A law enforcement agency is not required to serve a notice described in Subsection
 191 (1)(a) to the owner of the electronic device or electronic information if the owner is
 192 located outside of the United States.

193 (2)(a)(i) A law enforcement agency seeking a warrant in accordance with [~~Subsection~~
 194 77-23c-102(1)(a) or 77-23c-104(3)] Section 77-23c-102 or 77-23c-104 may submit
 195 a request, and the court may grant permission, to delay service of the notice
 196 required under Subsection (1) for a period not to exceed 30 days, if the court
 197 determines that there is reasonable cause to believe that the notification may:

- 198 (A) endanger the life or physical safety of an individual;
199 (B) cause a person to flee from prosecution;
200 (C) lead to the destruction of or tampering with evidence;
201 (D) intimidate a potential witness; or
202 (E) otherwise seriously jeopardize an investigation or unduly delay a trial.
- 203 (ii) When a delay of notification is granted under Subsection (2)(a)(i) and upon
204 application by the law enforcement agency, the court may grant additional
205 extensions of up to 30 days each.
- 206 (b)(i) A law enforcement agency that seeks a warrant for an electronic device or
207 electronic information in accordance with [~~Subsection 77-23c-102(1)(a) or~~
208 ~~77-23c-104(3)~~] Section 77-23c-102 or 77-23c-104 may submit a request to the
209 court, and the court may grant permission, to delay service of the notice required
210 under Subsection (1), if the purpose of delaying the notification is to apprehend an
211 individual:
- 212 (A) who is a fugitive from justice under Section 77-30-13; and
213 (B) for whom an arrest warrant has been issued for a violent felony offense as
214 defined in Section 76-3-203.5.
- 215 (ii)(A) The court may grant the request under Subsection (2)(b)(i) to delay
216 notification until the individual who is a fugitive from justice under Section
217 77-30-13 is apprehended by the law enforcement agency.
- 218 (B) A law enforcement agency shall serve the notice required under Subsection (1)
219 to the owner of the electronic device or electronic information within 14 days
220 after the day on which the law enforcement agency apprehends the individual
221 described in Subsection (2)(b)(i).
- 222 (3) A notice required under Subsection (1) shall include:
- 223 (a) a copy of the warrant; and
224 (b) a written statement identifying:
- 225 (i) the offense specified in the warrant application;
226 (ii) the identity of the law enforcement agency that filed the application;
227 (iii) the date on which the electronic information was obtained; and
228 (iv) the number and length of any authorized delays in serving the notice required
229 under Subsection (1), including, if applicable, the name of the court that
230 authorized the delay and a reference to the provision of this chapter that permitted
231 the delay.

232 (4) A law enforcement agency shall serve the notice required under Subsection (1) to the
 233 owner of the electronic device or electronic information by:

- 234 (a) personal service on the owner;
 235 (b) first-class mail to the owner's last-known address; or
 236 (c) other reasonable means if the owner's last-known address is unknown.

237 Section 4. Section **77-23c-104** is amended to read:

238 **77-23c-104 . Third-party electronic information and records.**

239 ~~[(1) As used in this section, "subscriber record" means a record or information of a provider
 240 of an electronic communication service or remote computing service that reveals the
 241 subscriber's or customer's:]~~

242 ~~[(a) name;]~~

243 ~~[(b) address;]~~

244 ~~[(c) local and long distance telephone connection record, or record of session time and
 245 duration;]~~

246 ~~[(d) length of service, including the start date;]~~

247 ~~[(e) type of service used;]~~

248 ~~[(f) telephone number, instrument number, or other subscriber or customer number or
 249 identification, including a temporarily assigned network address; and]~~

250 ~~[(g) means and source of payment for the service, including a credit card or bank
 251 account number.]~~

252 ~~[(2)] (1) Except as provided in [Chapter 22, Subpoena Powers for Aid of Criminal
 253 Investigation and Grants of Immunity or Section 77-23f-105,] Subsection (2) or Section
 254 77-22-2.5 or 77-23c-104.1, and subject to Section 77-23c-105, a law enforcement
 255 agency may not, except through the use of a search warrant issued by a court upon
 256 probable cause, obtain, use, copy, or disclose[-] :~~

257 ~~(a) a subscriber record[-] ; or~~

258 ~~[(3)] (b) [A law enforcement agency may not obtain, use, copy, or disclose,]for a
 259 criminal investigation or prosecution, any record or information related to a
 260 subscriber or a customer, other than a subscriber record, [of a] that is:~~

261 ~~(i) in the possession of a provider of an electronic communication service or a remote
 262 computing service[-related to a subscriber or customer without a warrant.] ;~~

263 ~~(ii) created or maintained by a provider of an electronic communication service or a
 264 remote computing service; or~~

265 ~~(iii) received from, or derived from, a record or information originally possessed,~~

266 created, or maintained by a provider of an electronic communication service or a
267 remote computing service.

268 [(4)] (2) [~~Notwithstanding Subsections (2) and (3), a~~] Except as provided in Section
269 77-23c-104.1 and subject to Section 77-23c-105, a law enforcement agency may obtain,
270 use, copy, or disclose a subscriber record, or other record or information related to a
271 subscriber or customer described in Subsection (1)(b), without an investigative subpoena
272 or a warrant, only:

273 (a) with the informed, affirmed consent of the subscriber or customer;
274 (b) in accordance with a judicially recognized exception to warrant requirements;
275 (c) if the subscriber or customer voluntarily discloses the record in a manner that is
276 publicly accessible; or
277 (d) if the provider of an electronic communication service or remote computing service
278 voluntarily discloses the record:

279 (i) under a belief that an emergency exists involving the imminent risk to an
280 individual of:
281 (A) death;
282 (B) serious physical injury;
283 (C) sexual abuse;
284 (D) live-streamed sexual exploitation;
285 (E) kidnapping; or
286 (F) human trafficking;
287 (ii) that is inadvertently discovered by the provider, if the record appears to pertain to
288 the commission of:
289 (A) a felony; or
290 (B) a misdemeanor involving physical violence, sexual abuse, or dishonesty; or
291 (iii) subject to Subsection [~~77-23c-104(4)(d)(ii)] (2)(d)(ii), as otherwise permitted~~
292 under 18 U.S.C. Sec. 2702.

293 [(5)] (3) A provider of an electronic communication service or remote computing service, or
294 the provider's officers, employees, agents, or other specified persons may not be held
295 liable for [~~providing~~]information, facilities, or assistance provided in good faith reliance [
296 on the terms of a warrant issued under this section, or without a warrant in accordance
297 with Subsection (3)] under this section.

298 Section 5. Section **77-23c-104.1** is enacted to read:

299 **77-23c-104.1 . Exceptions from chapter requirements.**

- 300 (1) A law enforcement agency may obtain, use, copy, disclose, or otherwise access
301 electronic information or a record described in this chapter without complying with the
302 requirements and procedures described in this chapter if the law enforcement agency
303 obtains the electronic information or record:
- 304 (a)(i) from a federal law enforcement agency, a law enforcement agency in a different
305 state, or a law enforcement agency in a different country; and
- 306 (ii) the law enforcement agency described in Subsection (1)(a)(i) obtained the
307 electronic information or record:
- 308 (A) in a legal manner under the constitutional requirements and any applicable
309 laws, rules, and procedures of that jurisdiction; and
- 310 (B) as part of an investigation of conduct that was occurring in that jurisdiction or
311 of a person over which the law enforcement agency had jurisdiction;
- 312 (b) as part of a written interagency agreement that:
- 313 (i) establishes a joint task force or investigative partnership with a federal law
314 enforcement agency, a law enforcement agency in a different state, or a law
315 enforcement agency in a different country; and
- 316 (ii) defines the scope and purpose of the joint task force or investigative partnership;
317 or
- 318 (c) at the law enforcement agency's request:
- 319 (i) from a federal law enforcement agency, a law enforcement agency in a different
320 state, or a law enforcement agency in a different country; and
- 321 (ii) if the procedures employed to obtain the electronic information or record by the
322 law enforcement agency described in Subsection (1)(c)(i) comply with the level of
323 legal process that is required under this chapter.
- 324 (2) Nothing in this chapter:
- 325 (a) limits or affects the disclosure of public records under Title 63G, Chapter 2,
326 Government Records Access and Management Act;
- 327 (b) affects the rights of an employer under Subsection 34-48-202(1)(e) or an
328 administrative rule adopted under Section 63A-16-205; or
- 329 (c) limits the ability of a law enforcement agency to receive or use information, without
330 a warrant or subpoena, from:
- 331 (i) the National Center for Missing and Exploited Children under 18 U.S.C. Sec.
332 2258A; or
- 333 (ii) information publicly or otherwise legally accessible to a law enforcement agency

334 without a warrant, subpoena, or court order, either for free or for a fee, from a
335 third-party data aggregator.

336 Section 6. Section **77-23c-105** is amended to read:

337 **77-23c-105 . Chapter is exclusive method of obtaining, using, copying, or**
338 **disclosing electronic information or records -- Exclusion of electronic information or**
339 **records obtained, used, copied, or disclosed in violation of this chapter.**

340 [All-electronic-]

341 (1) A law enforcement agency may only obtain, use, copy, disclose, or otherwise access
342 electronic information or a record described in this chapter if the law enforcement
343 agency has:

344 (a) complied with the applicable procedures and requirements provided under this
345 chapter; or

346 (b) obtained the electronic information or record under an exception described in Section
347 77-23c-104.1.

348 (2) Except as provided in Section 77-23c-104.1, a law enforcement agency may not
349 approach, solicit, direct, or contract with or otherwise use a third party, including a
350 federal agency, an agency in a different state, or an agency in a different country, to
351 obtain, use, copy, disclose, or otherwise access electronic information or a record
352 described in this chapter:

353 (a) in a manner that the law enforcement agency would be prohibited from doing
354 directly under this chapter; or

355 (b) in an attempt to circumvent or subvert the requirements of this chapter.

356 (3)(a) Electronic information [or data and records of a provider of an electronic
357 communications service or remote computing service pertaining to a subscriber or
358 customer] or records described in this chapter that are obtained, used, copied,
359 disclosed, or otherwise accessed in violation of the provisions of this chapter shall be
360 subject to the rules governing exclusion as if the electronic information or records
361 were obtained, used, copied, disclosed, or otherwise accessed in violation of the
362 Fourth Amendment to the United States Constitution and Utah Constitution, Article I,
363 Section 14.

364 (b) Evidence derived from electronic information or records described in Subsection
365 (3)(a) shall be subject to the rules governing exclusion as if the evidence were
366 obtained, used, copied, disclosed, or otherwise accessed in violation of the Fourth
367 Amendment to the United States Constitution and Utah Constitution, Article I,

368 Section 14.
369 Section 7. **Effective Date.**
370 This bill takes effect on May 6, 2026.