

**STORAGE OF ELECTRONIC RECORDS**

2012 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Bradley M. Daw**

Senate Sponsor: Stephen H. Urquhart

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**LONG TITLE**

**General Description:**

This bill eliminates provisions regarding access to electronic records by government agencies and requires a search warrant in all cases.

**Highlighted Provisions:**

This bill:

- ▶ eliminates the provision that allows access to electronic records on a server longer than 180 days; and
- ▶ requires a search warrant in all cases for the contents of electronic records.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**77-23b-4**, as enacted by Laws of Utah 1988, Chapter 251

**77-23b-6**, as last amended by Laws of Utah 1993, Chapter 38

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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **77-23b-4** is amended to read:

**77-23b-4. Disclosure by a provider -- Grounds for requiring disclosure -- Court order.**

(1) [(a)] A government entity may only require the disclosure by a provider of

30 electronic communication services of the contents of an electronic communication that is in  
31 electronic storage in an electronic communication system [~~for 180 days or less~~] pursuant to a  
32 warrant issued under the Utah Rules of Criminal Procedure or an equivalent federal warrant.

33 [~~(b) A governmental entity may require the disclosure, by a provider of electronic  
34 communication systems, of the contents of an electronic communication that has been in  
35 electronic storage in an electronic communication system for more than 180 days under  
36 Subsection (2):]~~

37 [~~(2) (a) A governmental entity may require a provider of remote computing services to  
38 disclose the contents of any electronic communications to which Subsection (2)(a) is made  
39 applicable by Subsection (2)(b):]~~

40 [~~(i) without required notice to the subscriber or customer, if the governmental entity  
41 obtains a warrant issued under the Utah Rules of Criminal Procedure or an equivalent federal  
42 warrant; or]~~

43 [~~(ii) with prior notice from the governmental agency to the subscriber or customer if  
44 the governmental entity:]~~

45 [~~(A) uses an administrative subpoena authorized by a state or federal statute or a state  
46 or federal grand jury subpoena; or]~~

47 [~~(B) obtains a court order for disclosure under Subsection (4), except delayed notice  
48 may be given under Section 77-23b-6:]~~

49 [~~(b)~~] (2) Subsection [~~(2)(a)~~] (1) applies to any electronic communication that is held or  
50 maintained on that service:

51 [~~(i)~~] (a) on behalf of and received by means of electronic transmission from or created  
52 by means of computer processing of communications received by means of electronic  
53 transmission from a subscriber or customer of the remote computing service; and

54 [~~(ii)~~] (b) solely for the purpose of providing storage or computer processing services to  
55 the subscriber or customer, if the provider is not authorized to access the contents of any  
56 communication for purposes of providing any services other than storage or computer  
57 processing.

58 (3) (a) (i) Except under Subsection (3)(a)(ii), a provider of electronic communication  
59 services or remote computing services may disclose a record or other information pertaining to  
60 a subscriber to or customer of the service, not including the contents of communication  
61 covered by Subsection (1) [~~or (2)~~], to any person other than a governmental agency.

62 (ii) A provider of electronic communication services or remote computing services  
63 shall disclose a record or other information pertaining to a subscriber to or customer of the  
64 service, not including the contents of communication covered by Subsection (1) [~~or (2)~~], to a  
65 governmental entity only when the entity:

66 (A) uses an administrative subpoena authorized by a state or federal statute or a state or  
67 federal grand jury subpoena;

68 (B) obtains a warrant issued under the Utah Rules of Criminal Procedure or an  
69 equivalent federal warrant;

70 (C) obtains a court order for the disclosure under Subsection (4); or

71 (D) has the consent of the subscriber or customer to the disclosure.

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

74 (4) (a) A court order for disclosure under [~~Subsection (2) or (3)~~] this section may be  
75 issued only if the governmental entity shows there is reason to believe the contents of a wire or  
76 electronic communication, or the records or other information sought, are relevant to a  
77 legitimate law enforcement inquiry.

78 (b) A court issuing an order under this section, on a motion made promptly by the  
79 service provider, may quash or modify the order, if the information or records requested are  
80 unusually voluminous in nature or compliance with the order otherwise would cause an undue  
81 burden on the provider.

82 (5) A cause of action [~~does~~] may not [be] be brought in any court against any provider  
83 of wire or electronic communications services, its officers, employees, agents, or other  
84 specified persons, for providing information, facilities, or assistance in accordance with the  
85 terms of a court order, warrant, subpoena, or certification under this chapter.

86 Section 2. Section **77-23b-6** is amended to read:

87 **77-23b-6. Notifying subscriber or customer of court order -- Requested delay --**  
88 **Grounds -- Limits.**

89 (1) (a) The governmental entity acting under [~~Subsection~~] Section 77-23b-4[~~(2)~~] may:

90 (i) if a court order is sought, include in the application a request for an order delaying  
91 [~~the~~] notification [~~requirement under Subsection 77-23b-4(2)~~] to the subscriber for not to  
92 exceed 90 days and, if the court determines there is reason to believe that notification of  
93 existence of the court order may have an adverse result [~~under Subsection (1)(b)~~], the court  
94 shall grant the order; or

95 (ii) if an administrative subpoena authorized by a state or federal statute or a state or  
96 federal grand jury subpoena is obtained, delay [~~the~~] notification [~~required under Subsection~~  
97 ~~77-23b-4(2)~~] to the subscriber for not to exceed 90 days, upon the execution of a written  
98 certification of a supervisory official that there is reason to believe that the notification of the  
99 existence of the subpoena may have an adverse result [~~under Subsection (1)(b)~~].

100 (b) An adverse result [~~under Subsection (1)(a)~~] is:

101 (i) endangering the life or physical safety of an individual;

102 (ii) flight from prosecution;

103 (iii) destruction of or tampering with evidence;

104 (iv) intimidation of potential witnesses; or

105 (v) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

106 (c) The governmental entity shall maintain a true copy of certification under  
107 Subsection (1)(a)(ii).

108 (d) Extensions of the delay of notification under Section 77-23b-4 of up to 90 days  
109 each, may be granted by the court upon application, or by certification by a governmental  
110 entity, but only in accordance with Subsection (2).

111 (e) On expiration of the period of delay of notification under Subsection (1)(a) or (d),  
112 the governmental entity shall serve upon, or deliver by registered or first class mail, to the  
113 customer or subscriber a copy of the process or request together with a notice:

- 114 (i) stating with reasonable specificity the nature of the law enforcement inquiry; and
- 115 (ii) informing the customer or subscriber:
  - 116 (A) that information maintained for the customer or subscriber by the service provider
  - 117 named in the process or request was supplied to or requested by that governmental authority
  - 118 and the date the supplying or request took place;
  - 119 (B) that notification of the customer or subscriber was delayed;
  - 120 (C) which governmental entity or court made the certification or determination
  - 121 pursuant to which that delay was made; and
  - 122 (D) which provision of this chapter allows the delay.
- 123 (f) As used in this subsection, "supervisory official" means the investigative agent in
- 124 charge or assistant investigative agent in charge or an equivalent of an investigative agency's
- 125 headquarters or regional office; a county sheriff or chief deputy sheriff, or police chief or
- 126 assistant police chief; the officer in charge of an investigative task force or the assistant officer
- 127 in charge; or the attorney general, an assistant attorney general, a county attorney or district
- 128 attorney, a deputy county attorney or deputy district attorney, or the chief prosecuting attorney
- 129 of any political subdivision of the state.
- 130 (2) A governmental entity acting under Section 77-23b-4, when not required to notify
- 131 the subscriber or customer [~~under Subsection 77-23b-4(2)(a)~~], or to the extent that it may delay
- 132 notice under Subsection (1), may apply to a court for an order commanding the provider of
- 133 electronic communications service or remote computing service to whom a warrant, subpoena,
- 134 or court order is directed, for a period of time the court considers appropriate, to not notify any
- 135 other person of the existence of the warrant, subpoena, or court order. The court shall enter the
- 136 order if it determines that there is reason to believe that notification of the existence of the
- 137 warrant, subpoena, or court order will result in:
  - 138 (a) endangering the life or physical safety of an individual;
  - 139 (b) flight from prosecution;
  - 140 (c) destruction of or tampering with evidence;
  - 141 (d) intimidation of potential witnesses; or

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(e) otherwise seriously jeopardizing an investigation or unduly delaying a trial.