

HB0251S01 compared with HB0251

~~{deleted text}~~ shows text that was in HB0251 but was deleted in HB0251S01.

inserted text shows text that was not in HB0251 but was inserted into HB0251S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Representative Ryan D. Wilcox proposes the following substitute bill:

ELECTRONIC~~{KEYWORD AND}~~ LOCATION AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ryan D. Wilcox

Senate Sponsor: _____

LONG TITLE

General Description:

This bill ~~{prohibits}~~addresses access to and use of~~{reverse-keyword and}~~ reverse-location data.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ ~~{prohibits}~~places restrictions on and establishes procedures for the seeking or granting of ~~{a reverse-keyword or reverse-location court order;~~

→ ~~prohibits the request of reverse-keyword and}~~access to reverse-location data;~~{ and~~

→ ~~prohibits the use of evidence derived from reverse-keyword or reverse-location data}~~

- ▶ creates exceptions; and

HB0251S01 compared with HB0251

▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

77-23e-101, Utah Code Annotated 1953

77-23e-102, Utah Code Annotated 1953

77-23e-103, Utah Code Annotated 1953

77-23e-104, Utah Code Annotated 1953

77-23e-105, Utah Code Annotated 1953

~~{ 77-23e-106, Utah Code Annotated 1953~~

}

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

Section 1. Section 77-23e-101 is enacted to read:

CHAPTER 23e. ~~{ACCESS TO REVERSE-KEYWORD AND }~~REVERSE-LOCATION{
ELECTRONIC DATA} WARRANT ACT

77-23e-101. Title.

This chapter is known as "~~{Access to Reverse-Keyword and Reverse-Location
Electronic Data}~~Reverse-location Warrant Act."

Section 2. Section 77-23e-102 is enacted to read:

77-23e-102. Definitions.

As used in this chapter:

(1) "~~{Governmental entity}~~" means:

~~_____ (a) the state, a county, a municipality, a higher education institution, a local district, a
special service district, or any other}~~ Anonymized" means identifying information connected to
an electronic device has been rendered anonymous in a manner that the subject, including an
individual, household, device, or Internet protocol (IP) address, is not identifiable.

(2) "Law enforcement agency" means an entity of the state or a political subdivision of
the state ~~{or an administrative subunit of any political subdivision, including a law~~

HB0251S01 compared with HB0251

~~enforcement entity or any other investigative entity, agency, department, division, bureau, board, or commission; or~~

~~—— (b) }that exists to primarily prevent, detect, or prosecute crime and enforce criminal statutes or ordinances, and includes~~ an individual or entity acting for or on behalf of ~~{an organization described in Subsection (1)(a):~~

~~—— (2) "Reverse-keyword court order" means a court order, including a search warrant, that:~~

~~—— (a) compels the disclosure of records or information identifying an unnamed person, by name or other unique identifier, who:~~

~~—— (i) electronically searched for a particular word, phrase, or website; or~~

~~—— (ii) visited a particular website through a link generated by a search; and~~

~~—— (b) is or is not limited to a specific geographic area or time frame.~~

~~—— (3) "Reverse-keyword request" means a request, in the absence of a court order, by any governmental entity, that:~~

~~—— (a) seeks the voluntary provision of records or information identifying an unnamed person, by name or other unique identifier, who:~~

~~—— (i) electronically searched for a particular word, phrase, or website; or~~

~~—— (ii) visited a particular website through a link generated by a search; and~~

~~—— (b) is or is not limited to a specific geographic area or time frame.~~

~~—— (4) }a law enforcement agency.~~

~~(3) "Reverse-location {court order" means a court order, including a search warrant, that:~~

~~—— (a) compels the disclosure of records }data" means a record or information {pertaining} that:~~

~~(a) pertains to the location of an {unspecified} electronic device or the named user or owner of the device; and~~

~~(b) has a scope that extends to an unknown number of electronic devices present in a given geographic area at a given time, regardless of whether the location is measured by global positioning {system} coordinates, cell tower connectivity, wi-fi positioning, or other form of location detection.~~

~~{5}4) "Reverse-location {request" means a request, in the absence of a court order, by~~

HB0251S01 compared with HB0251

a governmental entity:

~~_____ (a) that seeks the voluntary provision of records or information pertaining to the location of an unspecified;~~ warrant" means a search warrant seeking reverse-location data.

(5) "Identifying information" means information tied to an electronic device for the named user or owner of the device; and

~~_____ (b) has a scope that extends to an unknown number of;~~ that identifies the user's or owner's:

(a) name;

(b) address;

(c) telephone number;

(d) email address;

(e) cellular network provider; or

(f) any other identifying information peculiar to the electronic devices present in a given geographic area at a given time, regardless of whether the location is measured by global positioning system coordinates, cell tower connectivity, wi-fi positioning, or other form of location detection; device.

Section 3. Section 77-23e-103 is enacted to read:

77-23e-103. ~~{ Prohibitions on reverse-keyword and }~~ **Warrant required to obtain reverse-location {court orders:**

~~_____ (1) A governmental entity may not seek, from any court, a reverse-keyword court order or;~~ data from provider of cellular services or application services.

(1) A law enforcement agency must secure a reverse-location {court order:

~~_____ (2) A court subject to the laws of the state may not issue a reverse-keyword court order or;~~ warrant to obtain reverse-location data from a cellular network provider or other technology company that provides application services for electronic devices.

(2) (a) The nature and extent of the reverse-location data that may be obtained under a warrant depends upon the facts and circumstances obtained during the criminal investigation.

(b) To obtain a reverse-location {court order:

~~_____ (3) A governmental entity may not seek, secure, obtain, borrow, purchase, or review any information or data obtained through a reverse-keyword court order or;~~ warrant for anonymized reverse-location data within a specified geographic area, a law enforcement

HB0251S01 compared with HB0251

agency shall, in the sworn warrant application:

(i) include a map or other visual depiction that represents the specified geographic area for which the warrant is seeking data;

(ii) if feasible, provide the number of individuals that the law enforcement agency estimates will be included within the scope of the warrant; and

(iii) establish probable cause that evidence of a crime will be found within the specified geographic area and within a specified period of time.

(c) After executing a warrant described in Subsection (2)(b), a law enforcement agency may obtain a reverse-location ~~court order~~ warrant for anonymized reverse-location data outside the geographic area described in the initial warrant if the law enforcement agency:

(i) if feasible, provides the number of individuals that the law enforcement agency estimates will be included within the scope of the warrant; and

(ii) in a sworn warrant application, establishes probable cause that evidence of a crime will be found outside the specified geographic area and within a specified period of time.

(d) To obtain a reverse-location warrant for identifying information connected to an electronic device, a law enforcement agency shall, in the sworn warrant application, establish probable cause that the user of the electronic device was involved in a crime.

(3) If a court grants a reverse-location warrant for anonymized data under Subsection (2)(b) or (c), the court shall require that all data provided pursuant to the warrant be anonymized before the data is released to the law enforcement agency, so that the law enforcement agency will be unable to identify an individual from the provided data.

Section 4. Section ~~77-23e-104~~ is enacted to read:

~~77-23e-104. Prohibitions on reverse-keyword and~~ Exceptions.

Nothing in this chapter:

(1) limits or affects the disclosure of public records under Title 63G, Chapter 2, Government Records Access and Management Act;

(2) affects the rights of an employer under Section 34-48-202 or an administrative rule adopted under Section 63F-1-206;

(3) limits or affects the disclosure or use of records and information obtained through the National Center for Missing and Exploited Children (NCMEC) under 18 U.S.C. Sec. 2258A; or

HB0251S01 compared with HB0251

~~(4) prevents a law enforcement agency from obtaining reverse-location requests.~~

~~A governmental entity may not:~~

~~(1) make a reverse-keyword request or a reverse-location request; or~~

~~(2) seek, secure, obtain, borrow, purchase, or review any information or data obtained through a reverse-keyword request or a reverse-location request;~~ data under a judicially recognized exception to the warrant requirement.

Section 5. Section 77-23e-105 is enacted to read:

77-23e-105. Assistance prohibited.

~~A governmental entity may not seek the assistance of an agency of the federal government or an agency of another state or subdivision to obtain information or data from a reverse-keyword court order, reverse-location court order, reverse-keyword request, or reverse-location request, if the governmental entity would be barred from directly seeking that information or data under this chapter.~~

~~Section 6. Section 77-23e-106 is enacted to read:~~

~~77-23e-106. Inadmissibility and suppression of information and evidence.~~

~~(1) As used in this section, "derived from" means evidence discovered or acquired from a reverse-location keyword court order, reverse-location court order, reverse-keyword request, or reverse-location request, where the governmental entity would not have originally possessed the evidence but for the unlawful court order or request, regardless of any claim that the evidence:~~

~~(a) is attenuated from the unlawful court order or request;~~

~~(b) inevitably would have been discovered; or~~

~~(c) subsequently was re-obtained through other means.~~

~~(2) Except as evidence of a violation of this chapter, information or data obtained, accessed, or otherwise secured;~~ Remedy for violation.

Reverse-location data obtained in violation of the provisions of this chapter is ~~not~~ admissible in any criminal, civil, administrative, or other proceeding.

~~(3) Evidence derived from information or data described in Subsection (2) is not admissible in any criminal, civil, administrative, or other proceeding.~~

subject to the rules governing exclusion as if the records were obtained in violation of the Fourth Amendment to the United States Constitution and Utah Constitution, Article I, Section

HB0251S01 compared with HB0251

14.