

119TH CONGRESS  
2D SESSION

**S.** \_\_\_\_\_

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.

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IN THE SENATE OF THE UNITED STATES

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Mr. LEE (for himself and Mr. WYDEN) introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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**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       Section 2702 of title 18, United States Code, is  
7 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), in the matter pre-  
11 ceding subparagraph (A)—

12 (i) by striking “to the public”;

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

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

19 (C) in paragraph (3)—

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

22 (ii) by striking “divulge” and insert-  
23 ing “disclose”;

24 (2) in subsection (b)—

1 (A) in the matter preceding paragraph

2 (1)—

3 (i) by striking “divulge” and inserting

4 “disclose”; and

5 (ii) by inserting “wire or electronic”

6 before “communication”;

7 (B) by amending paragraph (1) to read as

8 follows:

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

15 (C) by amending paragraph (3) to read as

16 follows:

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

22 (3) in subsection (c)—

23 (A) in the matter preceding paragraph

24 (1)—

1 (i) by striking “divulge” and inserting  
2 “disclose”; and

3 (ii) by inserting “wire or electronic”  
4 before “communications”; and

5 (B) by amending paragraph (2) to read as  
6 follows:

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

9 **SEC. 3. AMENDMENTS TO REQUIRED DISCLOSURE SEC-**  
10 **TION.**

11 (a) IN GENERAL.—Section 2703 of title 18, United  
12 States Code is amended—

13 (1) in subsection (a)—

14 (A) by striking “A governmental entity”  
15 and inserting “Except as provided in sub-  
16 sections (j) and (k), a governmental entity”;

17 (B) by striking “provider of electronic  
18 communication service” and inserting “provider  
19 of electronic communication service or remote  
20 computing service”;

21 (C) by striking “pursuant to” and insert-  
22 ing “if the governmental entity obtains”;

23 (D) by striking “by a court of competent  
24 jurisdiction.” and inserting “that is issued by a  
25 court of competent jurisdiction and that may

1           indicate the date by which the provider must  
2           make the disclosure to the governmental entity.  
3           In the absence of a date on the warrant indi-  
4           cating the date by which the provider must  
5           make disclosure to the governmental entity, the  
6           provider shall promptly respond to the war-  
7           rant.”; and

8           (E) by striking “provider of electronic  
9           communication services” and inserting “pro-  
10          vider of electronic communication service or re-  
11          mote computing service”;

12          (2) in subsection (c)—

13                (A) in paragraph (1)—

14                   (i) in the matter preceding subpara-  
15                   graph (A)—

16                        (I) by striking “A governmental  
17                        entity” and inserting “Except as pro-  
18                        vided in subsections (j) and (k), a  
19                        governmental entity”; and

20                        (II) by striking “only when the  
21                        governmental entity” and inserting  
22                        “only”;

23                        (ii) in subparagraph (A)—

1 (I) by striking “obtains a war-  
2 rant issued” and inserting “if the gov-  
3 ernmental entity obtains a warrant”;

4 (II) by striking “by the Presi-  
5 dent) by a court” and inserting the  
6 following: “by the President) that—  
7 “(i) is issued by a court”;

8 (III) by inserting “and” after  
9 “jurisdiction;”; and

10 (IV) by adding at the end the fol-  
11 lowing:

12 “(ii) may indicate the date by which  
13 the provider must make the disclosure to  
14 the governmental entity;”;

15 (iii) in subparagraph (B), by inserting  
16 “if the governmental entity” before “ob-  
17 tains”;

18 (iv) in subparagraph (C), by striking  
19 “has the consent of the subscriber or cus-  
20 tomer to such disclosure;” and inserting  
21 “with the lawful consent of the subscriber  
22 or customer; or”;

23 (v) by striking subparagraph (D);

24 (vi) by redesignating subparagraph  
25 (E) as subparagraph (D); and

1 (vii) in subparagraph (D), as so reded-  
2 ignated, by striking “seeks information”  
3 and inserting “as otherwise authorized”;  
4 and

5 (B) in paragraph (2)—

6 (i) in the matter preceding subpara-  
7 graph (A), by inserting “, in response to  
8 an administrative subpoena authorized by  
9 Federal or State statute, a grand jury,  
10 trial, or civil discovery subpoena, or any  
11 means available under paragraph (1),”  
12 after “shall”; and

13 (ii) in the matter following subpara-  
14 graph (F), by striking “of a subscriber”  
15 and all that follows and inserting “of a  
16 subscriber or customer of such service.”;

17 (3) in subsection (d)—

18 (A) by striking “the contents of a wire or  
19 electronic communication, or”;

20 (B) by striking “sought,” and inserting  
21 “sought”; and

22 (C) by striking “section” and inserting  
23 “subsection”; and

24 (4) by adding at the end the following:

1           “(i) NOTICE.—Except as provided in section 2705,  
2 a provider of electronic communication service or remote  
3 computing service may notify a subscriber or customer of  
4 a receipt of a warrant, court order, subpoena, or request  
5 under subsection (a), (c), or (d) of this section.

6           “(j) RULE OF CONSTRUCTION RELATED TO LEGAL  
7 PROCESS.—Nothing in this section or in section 2702  
8 shall modify the authorities for a governmental entity to  
9 obtain a wire or electronic communication (including the  
10 contents of that communication) from a provider of a re-  
11 mote computing service or electronic communication serv-  
12 ice if—

13                 “(1) the originator, addressee, or intended re-  
14 cipient of such communication is an officer, director,  
15 employee, or agent of the provider acting in their ca-  
16 pacity as such an officer, director, employee, or  
17 agent; or

18                 “(2) the communication—

19                         “(A) advertises or promotes a product or  
20 service; and

21                         “(B) has been made readily available to  
22 the general public.

23           “(k) RULE OF CONSTRUCTION RELATED TO CON-  
24 GRESSIONAL SUBPOENAS.—Nothing in this section or in  
25 section 2702 shall limit the power of inquiry vested in the

1 Congress by article I of the Constitution of the United  
2 States.”.

3 (b) WARRANT REQUIREMENT FOR STORED COMMU-  
4 NICATIONS CONTENT.—Section 2703 of title 18, United  
5 States Code, is amended—

6 (1) in subsection (a)—

7 (A) by striking “, that is in electronic stor-  
8 age in an electronic communications system for  
9 one hundred and eighty days or less,”; and

10 (B) by striking the last sentence;

11 (2) by striking subsection (b) and inserting the  
12 following:

13 “(b) [Repealed].”; and

14 (3) in subsection (d) by striking “(b) or”.