

# HOUSE BILL No. 4848

July 12, 2017, Introduced by Rep. Lucido and referred to the Committee on Judiciary.

A bill to amend 1966 PA 189, entitled

"An act to provide procedures for making complaints for, obtaining, executing and returning search warrants; and to repeal certain acts and parts of acts,"

by amending section 1 (MCL 780.651), as amended by 2014 PA 383, and by adding section 1a.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 1. (1) When an affidavit is made on oath to a judge or  
2       district court magistrate authorized to issue warrants in criminal  
3       cases, and the affidavit establishes grounds for issuing a warrant  
4       under this act, the judge or district court magistrate, if he or  
5       she is satisfied that there is probable cause for the search, shall  
6       issue a warrant to search the house, building, or other location or  
7       place where the person, property, or thing to be searched for and  
8       seized is situated.

9       (2) An affidavit for a search warrant may be made by any

1 electronic or electromagnetic means of communication, including by  
2 facsimile or over a computer network, if both of the following  
3 occur:

4 (a) The judge or district court magistrate orally administers  
5 the oath or affirmation to an applicant for a search warrant who  
6 submits an affidavit under this subsection.

7 (b) The affiant signs the affidavit. Proof that the affiant  
8 has signed the affidavit may consist of an electronically or  
9 electromagnetically transmitted facsimile of the signed affidavit  
10 or an electronic signature on an affidavit transmitted over a  
11 computer network.

12 (3) A judge or district court magistrate may issue a written  
13 search warrant in person or by any electronic or electromagnetic  
14 means of communication, including by facsimile or over a computer  
15 network.

16 (4) A judge or district court magistrate may sign an  
17 electronically issued search warrant when he or she is at any  
18 location in this state.

19 (5) The peace officer or department receiving an  
20 electronically or electromagnetically issued search warrant ~~shall~~  
21 **MUST** receive proof that the issuing judge or district court  
22 magistrate has signed the warrant before the warrant is executed.  
23 Proof that the issuing judge or district court magistrate has  
24 signed the warrant may consist of an electronically or  
25 electromagnetically transmitted facsimile of the signed warrant or  
26 an electronic signature on a warrant transmitted over a computer  
27 network.

1           (6) If an oath or affirmation is orally administered by  
2 electronic or electromagnetic means of communication under this  
3 section, the oath or affirmation is considered to be administered  
4 before the judge or district court magistrate.

5           (7) If an affidavit for a search warrant is submitted by  
6 electronic or electromagnetic means of communication, or a search  
7 warrant is issued by electronic or electromagnetic means of  
8 communication, the transmitted copies of the affidavit or search  
9 warrant are duplicate originals of the affidavit or search warrant  
10 and are not required to contain an impression made by an impression  
11 seal.

12           (8) Except as provided in subsection (9), an affidavit for a  
13 search warrant contained in any court file or court record  
14 retention system is nonpublic information.

15           (9) On the fifty-sixth day following the issuance of a search  
16 warrant, the search warrant affidavit contained in any court file  
17 or court record retention system is public information unless,  
18 before the fifty-sixth day after the search warrant is issued, a  
19 peace officer or prosecuting attorney obtains a suppression order  
20 from a judge or district court magistrate upon a showing under oath  
21 that suppression of the affidavit is necessary to protect an  
22 ongoing investigation or the privacy or safety of a victim or  
23 witness. The suppression order may be obtained ex parte in the same  
24 manner that the search warrant was issued. An initial suppression  
25 order issued under this subsection expires on the fifty-sixth day  
26 after the order is issued. A second or subsequent suppression order  
27 may be obtained in the same manner as the initial suppression order

1 and shall expire on a date specified in the order. This subsection  
2 and subsection (8) do not affect a person's right to obtain a copy  
3 of a search warrant affidavit from the prosecuting attorney or law  
4 enforcement agency under the freedom of information act, 1976 PA  
5 442, MCL 15.231 to 15.246.

6 (10) THIS SECTION DOES NOT APPLY TO THE FOLLOWING, EXCEPT AS  
7 PROVIDED IN SECTION 1A:

8 (A) COMPELLING THE PRODUCTION OF OR ACCESS TO ELECTRONIC  
9 COMMUNICATION INFORMATION FROM A SERVICE PROVIDER.

10 (B) COMPELLING THE PRODUCTION OF OR ACCESS TO ELECTRONIC  
11 DEVICE INFORMATION FROM ANY PERSON OR ENTITY OTHER THAN THE  
12 AUTHORIZED POSSESSOR OF THE DEVICE.

13 (C) ACCESSING ELECTRONIC DEVICE INFORMATION BY MEANS OF  
14 PHYSICAL INTERACTION OR ELECTRONIC COMMUNICATION WITH THE  
15 ELECTRONIC DEVICE.

16 (D) THE PUBLIC RELEASE OF INFORMATION CONTAINED IN AN  
17 AFFIDAVIT AND WARRANT ISSUED UNDER SECTION 1A.

18 SEC. 1A. (1) EXCEPT AS OTHERWISE PROVIDED UNDER THIS SECTION,  
19 A GOVERNMENTAL ENTITY MAY COMPEL THE PRODUCTION OF OR ACCESS TO  
20 ELECTRONIC COMMUNICATION INFORMATION FROM A SERVICE PROVIDER OR  
21 COMPEL THE PRODUCTION OF OR ACCESS TO ELECTRONIC DEVICE INFORMATION  
22 FROM A PERSON OR ENTITY OTHER THAN THE AUTHORIZED POSSESSOR OF THE  
23 DEVICE ONLY AFTER FIRST OBTAINING A WARRANT UNDER THIS SECTION.

24 (2) A GOVERNMENTAL ENTITY MAY ACCESS ELECTRONIC DEVICE  
25 INFORMATION BY MEANS OF PHYSICAL INTERACTION OR ELECTRONIC  
26 COMMUNICATION WITH THE DEVICE ONLY AS FOLLOWS:

27 (A) WITH THE SPECIFIC CONSENT OF THE AUTHORIZED POSSESSOR OF

1 THE DEVICE.

2 (B) WITH THE SPECIFIC CONSENT OF THE OWNER OF THE DEVICE, ONLY  
3 IF THE DEVICE HAS BEEN REPORTED AS LOST OR STOLEN.

4 (C) IF THE GOVERNMENTAL ENTITY, IN GOOD FAITH, REASONABLY  
5 BELIEVES THAT AN EMERGENCY INVOLVING IMMINENT DANGER OF DEATH OR  
6 SERIOUS PHYSICAL INJURY TO ANY PERSON REQUIRES ACCESS TO THE  
7 ELECTRONIC DEVICE INFORMATION.

8 (D) IF THE GOVERNMENTAL ENTITY, IN GOOD FAITH, REASONABLY  
9 BELIEVES THE DEVICE TO BE LOST, STOLEN, OR ABANDONED, PROVIDED THAT  
10 THE ENTITY SHALL ONLY ACCESS ELECTRONIC DEVICE INFORMATION IN ORDER  
11 TO ATTEMPT TO IDENTIFY, VERIFY, OR CONTACT THE OWNER OR AUTHORIZED  
12 POSSESSOR OF THE DEVICE.

13 (E) EXCEPT WHERE PROHIBITED BY LAW, IF THE DEVICE IS SEIZED  
14 FROM AN INMATE'S POSSESSION OR FOUND IN AN AREA OF A CORRECTIONAL  
15 FACILITY UNDER THE JURISDICTION OF THE DEPARTMENT OF CORRECTIONS  
16 WHERE INMATES HAVE ACCESS AND THE DEVICE IS NOT IN THE POSSESSION  
17 OF AN INDIVIDUAL AND THE DEVICE IS NOT KNOWN OR BELIEVED TO BE THE  
18 POSSESSION OF AN AUTHORIZED VISITOR. NOTHING IN THIS SUBDIVISION  
19 SUPERSEDES OR OVERRIDES SECTION 2A OF 1981 PA 7, MCL 801.262A.

20 (3) A WARRANT FOR ELECTRONIC INFORMATION MUST COMPLY WITH ALL  
21 THE FOLLOWING REQUIREMENTS:

22 (A) IT DESCRIBES WITH PARTICULARITY THE INFORMATION TO BE  
23 SEIZED BY SPECIFYING THE TIME PERIODS COVERED AND, AS APPROPRIATE  
24 AND REASONABLE, THE TARGET INDIVIDUALS OR ACCOUNTS, THE  
25 APPLICATIONS OR SERVICES COVERED, AND THE TYPES OF INFORMATION  
26 SOUGHT.

27 (B) IT REQUIRES THAT ANY INFORMATION OBTAINED THROUGH THE

1 EXECUTION OF THE WARRANT THAT IS UNRELATED TO THE OBJECTIVE OF THE  
2 WARRANT MUST BE SEALED AND NOT SUBJECT TO FURTHER REVIEW, USE, OR  
3 DISCLOSURE WITHOUT A COURT ORDER. A COURT SHALL ISSUE SUCH AN ORDER  
4 UPON A FINDING THAT THERE IS PROBABLE CAUSE TO BELIEVE THAT THE  
5 INFORMATION IS RELEVANT TO THE COMMISSION OF A CRIME, OR REVIEW,  
6 USE, OR DISCLOSURE IS REQUIRED BY STATE OR FEDERAL LAW.

7 (C) IT COMPLIES WITH THE LAWS OF THIS STATE AND OF THE UNITED  
8 STATES, INCLUDING ANY PROVISIONS PROHIBITING, LIMITING, OR IMPOSING  
9 ADDITIONAL REQUIREMENTS ON THE USE OF SEARCH WARRANTS. IF DIRECTED  
10 TO A SERVICE PROVIDER, THE WARRANT MUST BE ACCOMPANIED BY AN ORDER  
11 REQUIRING THE SERVICE PROVIDER TO VERIFY THE AUTHENTICITY OF  
12 ELECTRONIC INFORMATION THAT IT PRODUCES.

13 (4) WHEN ISSUING ANY WARRANT FOR ELECTRONIC INFORMATION, OR  
14 UPON THE PETITION FROM THE TARGET OR RECIPIENT OF THE WARRANT OR  
15 ORDER, A COURT MAY, AT ITS DISCRETION, REQUIRE THAT ANY INFORMATION  
16 OBTAINED THROUGH THE EXECUTION OF THE WARRANT THAT IS UNRELATED TO  
17 THE OBJECTIVE OF THE WARRANT BE DESTROYED AS SOON AS FEASIBLE AFTER  
18 THE TERMINATION OF THE CURRENT INVESTIGATION AND ANY RELATED  
19 INVESTIGATIONS OR PROCEEDINGS.

20 (5) A SERVICE PROVIDER MAY VOLUNTARILY DISCLOSE ELECTRONIC  
21 COMMUNICATION INFORMATION OR SUBSCRIBER INFORMATION WHEN THAT  
22 DISCLOSURE IS NOT OTHERWISE PROHIBITED BY LAW. IF INFORMATION IS  
23 DISCLOSED UNDER THIS SUBSECTION, THE SERVICE PROVIDER SHALL NOTIFY  
24 THE SUBSCRIBER TO WHOM THE INFORMATION PERTAINS NOT MORE THAN 30  
25 DAYS AFTER THE DISCLOSURE. THE NOTICE SHALL INCLUDE A LIST OF THE  
26 INFORMATION THAT WAS DISCLOSED.

27 (6) IF A GOVERNMENTAL ENTITY RECEIVES ELECTRONIC COMMUNICATION

1 INFORMATION VOLUNTARILY PROVIDED UNDER SUBSECTION (5) , IT SHALL  
2 DESTROY THAT INFORMATION WITHIN 90 DAYS UNLESS 1 OR MORE OF THE  
3 FOLLOWING CIRCUMSTANCES APPLY:

4 (A) THE GOVERNMENTAL ENTITY HAS OR OBTAINS THE SPECIFIC  
5 CONSENT OF THE SENDER OR RECIPIENT OF THE ELECTRONIC COMMUNICATIONS  
6 ABOUT WHAT INFORMATION WAS DISCLOSED.

7 (B) THE GOVERNMENTAL ENTITY OBTAINS A COURT ORDER AUTHORIZING  
8 THE RETENTION OF THE INFORMATION. A COURT SHALL ISSUE A RETENTION  
9 ORDER UPON A FINDING THAT THE CONDITIONS JUSTIFYING THE INITIAL  
10 VOLUNTARY DISCLOSURE PERSIST, IN WHICH CASE THE COURT SHALL  
11 AUTHORIZE THE RETENTION OF THE INFORMATION ONLY FOR SO LONG AS  
12 THOSE CONDITIONS PERSIST, OR THERE IS PROBABLE CAUSE TO BELIEVE  
13 THAT THE INFORMATION CONSTITUTES EVIDENCE THAT A CRIME HAS BEEN  
14 COMMITTED.

15 (C) THE GOVERNMENTAL ENTITY REASONABLY BELIEVES THAT THE  
16 INFORMATION RELATES TO CHILD PORNOGRAPHY.

17 (7) IF A GOVERNMENTAL ENTITY OBTAINS ELECTRONIC INFORMATION IN  
18 AN EMERGENCY THAT INVOLVES IMMINENT DANGER OF DEATH OR SERIOUS  
19 PHYSICAL INJURY TO A PERSON AND THAT REQUIRES ACCESS TO THE  
20 ELECTRONIC INFORMATION WITHOUT DELAY, THE ENTITY SHALL, WITHIN 7  
21 DAYS AFTER OBTAINING THE ELECTRONIC INFORMATION, FILE WITH THE  
22 APPROPRIATE COURT AN APPLICATION FOR A WARRANT AUTHORIZING THE  
23 OBTAINING OF THE ELECTRONIC INFORMATION OR A MOTION SEEKING  
24 APPROVAL OF THE EMERGENCY DISCLOSURES THAT SETS FORTH THE FACTS  
25 GIVING RISE TO THE EMERGENCY AND, IF APPLICABLE, A REQUEST  
26 SUPPORTED BY A SWORN AFFIDAVIT FOR AN ORDER DELAYING NOTIFICATION  
27 UNDER SUBSECTION (10) . THE COURT SHALL PROMPTLY RULE ON THE

1 APPLICATION OR MOTION AND SHALL ORDER THE IMMEDIATE DESTRUCTION OF  
2 ALL INFORMATION OBTAINED, AND IMMEDIATE NOTIFICATION UNDER  
3 SUBSECTION (9) IF NOTICE HAS NOT ALREADY BEEN GIVEN, UPON A FINDING  
4 THAT THE FACTS DID NOT GIVE RISE TO AN EMERGENCY OR UPON REJECTING  
5 THE WARRANT OR ORDER APPLICATION ON ANY OTHER GROUND.

6 (8) THIS SECTION DOES NOT LIMIT THE AUTHORITY OF A  
7 GOVERNMENTAL ENTITY TO USE AN ADMINISTRATIVE, GRAND JURY, TRIAL, OR  
8 CIVIL DISCOVERY SUBPOENA TO DO 1 OR MORE OF THE FOLLOWING:

9 (A) REQUIRE AN ORIGINATOR, ADDRESSEE, OR INTENDED RECIPIENT OF  
10 AN ELECTRONIC COMMUNICATION TO DISCLOSE ANY ELECTRONIC  
11 COMMUNICATION INFORMATION ASSOCIATED WITH THAT COMMUNICATION.

12 (B) REQUIRE AN ENTITY THAT PROVIDES ELECTRONIC COMMUNICATION  
13 SERVICES TO ITS OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS FOR THE  
14 PURPOSE OF CARRYING OUT THEIR DUTIES, TO DISCLOSE ELECTRONIC  
15 COMMUNICATION INFORMATION ASSOCIATED WITH AN ELECTRONIC  
16 COMMUNICATION TO OR FROM AN OFFICER, DIRECTOR, EMPLOYEE, OR AGENT  
17 OF THE ENTITY.

18 (C) REQUIRE A SERVICE PROVIDER TO PROVIDE SUBSCRIBER  
19 INFORMATION.

20 (9) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, A  
21 GOVERNMENTAL ENTITY THAT EXECUTES A WARRANT, OR OBTAINS ELECTRONIC  
22 INFORMATION IN AN EMERGENCY UNDER SUBSECTION (7), SHALL SERVE UPON,  
23 OR DELIVER TO BY REGISTERED OR FIRST-CLASS MAIL, ELECTRONIC MAIL,  
24 OR OTHER MEANS REASONABLY CALCULATED TO BE EFFECTIVE, THE  
25 IDENTIFIED TARGETS OF THE WARRANT OR EMERGENCY REQUEST, A NOTICE  
26 THAT INFORMS THE RECIPIENT THAT INFORMATION ABOUT THE RECIPIENT HAS  
27 BEEN COMPELLED OR REQUESTED AND STATES WITH REASONABLE SPECIFICITY

1 THE NATURE OF THE GOVERNMENT INVESTIGATION UNDER WHICH THE  
2 INFORMATION IS SOUGHT. THE NOTICE MUST INCLUDE A COPY OF THE  
3 WARRANT OR A WRITTEN STATEMENT SETTING FORTH FACTS GIVING RISE TO  
4 THE EMERGENCY. THE NOTICE MUST BE PROVIDED CONTEMPORANEOUSLY WITH  
5 THE EXECUTION OF A WARRANT OR, IN THE CASE OF AN EMERGENCY, WITHIN  
6 7 DAYS AFTER OBTAINING THE ELECTRONIC INFORMATION.

7 (10) WHEN A WARRANT IS SOUGHT OR ELECTRONIC INFORMATION IS  
8 OBTAINED IN AN EMERGENCY UNDER SUBSECTION (7), THE GOVERNMENTAL  
9 ENTITY MAY SUBMIT A REQUEST SUPPORTED BY A SWORN AFFIDAVIT FOR AN  
10 ORDER DELAYING NOTIFICATION AND PROHIBITING ANY PARTY PROVIDING  
11 INFORMATION FROM NOTIFYING ANOTHER PARTY THAT INFORMATION HAS BEEN  
12 SOUGHT. THE COURT SHALL ISSUE THE ORDER IF THE COURT DETERMINES  
13 THAT THERE IS REASON TO BELIEVE THAT NOTIFICATION MAY HAVE AN  
14 ADVERSE RESULT, BUT ONLY FOR THE PERIOD OF TIME THAT THE COURT  
15 FINDS THAT THERE IS REASON TO BELIEVE THAT THE NOTIFICATION MAY  
16 HAVE THAT ADVERSE RESULT, AND NOT TO EXCEED 90 DAYS. THE COURT MAY  
17 GRANT EXTENSIONS OF THE DELAY FOR NOT MORE THAN 90 DAYS EACH ON THE  
18 SAME GROUNDS AS PROVIDED IN THIS SUBSECTION. UPON EXPIRATION OF THE  
19 PERIOD OF DELAY OF THE NOTIFICATION, THE GOVERNMENTAL ENTITY SHALL  
20 SERVE UPON, OR DELIVER TO BY REGISTERED OR FIRST-CLASS MAIL,  
21 ELECTRONIC MAIL, OR OTHER MEANS REASONABLY CALCULATED TO BE  
22 EFFECTIVE AS SPECIFIED BY THE COURT ISSUING THE ORDER AUTHORIZING  
23 DELAYED NOTIFICATION, THE IDENTIFIED TARGETS OF THE WARRANT, A  
24 DOCUMENT THAT INCLUDES THE INFORMATION DESCRIBED IN SUBSECTION (9),  
25 A COPY OF ALL ELECTRONIC INFORMATION OBTAINED OR A SUMMARY OF THAT  
26 INFORMATION, INCLUDING, AT A MINIMUM, THE NUMBER AND TYPES OF  
27 RECORDS DISCLOSED, THE DATE AND TIME WHEN THE EARLIEST AND LATEST

1 RECORDS WERE CREATED, AND A STATEMENT OF THE GROUNDS FOR THE  
2 COURT'S DETERMINATION TO GRANT A DELAY IN NOTIFYING THE INDIVIDUAL.

3 (11) IF THERE IS NO IDENTIFIED TARGET OF A WARRANT OR  
4 EMERGENCY REQUEST AT THE TIME OF ITS ISSUANCE, THE GOVERNMENTAL  
5 ENTITY SHALL SUBMIT TO THE ATTORNEY GENERAL WITHIN 7 DAYS OF THE  
6 EXECUTION OF THE WARRANT OR ISSUANCE OF THE REQUEST ALL OF THE  
7 INFORMATION REQUIRED IN SUBSECTION (9). IF AN ORDER DELAYING NOTICE  
8 IS OBTAINED UNDER SUBSECTION (10), THE GOVERNMENTAL ENTITY SHALL  
9 SUBMIT TO THE ATTORNEY GENERAL UPON THE EXPIRATION OF THE PERIOD OF  
10 DELAY OF THE NOTIFICATION ALL OF THE INFORMATION REQUIRED IN  
11 SUBSECTION (10). THE ATTORNEY GENERAL SHALL PUBLISH THE INFORMATION  
12 SUBMITTED TO THE ATTORNEY GENERAL UNDER THIS SUBSECTION ON ITS  
13 INTERNET WEBSITE NOT MORE THAN 90 DAYS AFTER RECEIPT. THE ATTORNEY  
14 GENERAL MAY REDACT NAMES OR OTHER PERSONAL IDENTIFYING INFORMATION  
15 FROM THE INFORMATION ON ITS INTERNET WEBSITE.

16 (12) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, NOTHING IN  
17 THIS ACT PROHIBITS OR LIMITS A SERVICE PROVIDER OR ANY OTHER PARTY  
18 FROM DISCLOSING INFORMATION ABOUT A REQUEST OR DEMAND FOR  
19 ELECTRONIC INFORMATION.

20 (13) A PERSON IN A TRIAL, HEARING, OR PROCEEDING MAY MOVE TO  
21 SUPPRESS ANY ELECTRONIC INFORMATION OBTAINED OR RETAINED IN  
22 VIOLATION OF THE FOURTH AMENDMENT TO THE CONSTITUTION OF THE UNITED  
23 STATES, SECTION 11 OF ARTICLE I OF THE STATE CONSTITUTION OF 1963,  
24 OR THIS SECTION.

25 (14) THE ATTORNEY GENERAL MAY COMMENCE A CIVIL ACTION TO  
26 COMPEL ANY GOVERNMENT ENTITY TO COMPLY WITH THE PROVISIONS OF THIS  
27 SECTION.

1 (15) AN INDIVIDUAL WHOSE INFORMATION IS TARGETED BY A WARRANT,  
2 ORDER, OR OTHER LEGAL PROCESS THAT IS INCONSISTENT WITH THIS  
3 SECTION, THE STATE CONSTITUTION OF 1963, OR THE CONSTITUTION OF THE  
4 UNITED STATES, A SERVICE PROVIDER, OR ANY OTHER RECIPIENT OF THE  
5 WARRANT, ORDER, OR OTHER LEGAL PROCESS MAY PETITION THE ISSUING  
6 COURT TO VOID OR MODIFY THE WARRANT, ORDER, OR PROCESS, OR TO ORDER  
7 THE DESTRUCTION OF ANY INFORMATION OBTAINED IN VIOLATION OF THIS  
8 SECTION, THE STATE CONSTITUTION OF 1963, OR THE CONSTITUTION OF THE  
9 UNITED STATES.

10 (16) AS USED IN THIS SECTION:

11 (A) "ADVERSE RESULT" MEANS ANY OF THE FOLLOWING:

12 (i) DANGER TO THE LIFE OR PHYSICAL SAFETY OF AN INDIVIDUAL.

13 (ii) FLIGHT FROM PROSECUTION.

14 (iii) DESTRUCTION OF OR TAMPERING WITH EVIDENCE.

15 (iv) INTIMIDATION OF POTENTIAL WITNESSES.

16 (v) SERIOUS JEOPARDY TO AN INVESTIGATION OR UNDUE DELAY OF A  
17 TRIAL.

18 (B) "AUTHORIZED POSSESSOR" MEANS THE POSSESSOR OF AN  
19 ELECTRONIC DEVICE IF THAT PERSON IS THE OWNER OF THE DEVICE OR HAS  
20 BEEN AUTHORIZED TO POSSESS THE DEVICE BY THE OWNER OF THE DEVICE.

21 (C) "ELECTRONIC COMMUNICATION" MEANS THE TRANSFER OF SIGNS,  
22 SIGNALS, WRITINGS, IMAGES, SOUNDS, DATA, OR INTELLIGENCE OF ANY  
23 NATURE IN WHOLE OR IN PART BY A WIRE, RADIO, ELECTROMAGNETIC,  
24 PHOTOELECTRIC, OR PHOTO-OPTICAL SYSTEM.

25 (D) "ELECTRONIC COMMUNICATION INFORMATION" MEANS ANY  
26 INFORMATION ABOUT AN ELECTRONIC COMMUNICATION OR THE USE OF AN  
27 ELECTRONIC COMMUNICATION SERVICE, INCLUDING, BUT NOT LIMITED TO,

1 THE CONTENTS, SENDER, RECIPIENTS, FORMAT, OR LOCATION OF THE SENDER  
2 OR RECIPIENTS AT ANY POINT DURING THE COMMUNICATION, THE TIME OR  
3 DATE THE COMMUNICATION WAS CREATED, SENT, OR RECEIVED, OR ANY  
4 INFORMATION PERTAINING TO ANY INDIVIDUAL OR DEVICE PARTICIPATING IN  
5 THE COMMUNICATION, INCLUDING, BUT NOT LIMITED TO, AN IP ADDRESS.  
6 ELECTRONIC COMMUNICATION INFORMATION DOES NOT INCLUDE SUBSCRIBER  
7 INFORMATION AS DEFINED IN THIS SECTION.

8 (E) "ELECTRONIC COMMUNICATION SERVICE" MEANS A SERVICE THAT  
9 PROVIDES TO ITS SUBSCRIBERS OR USERS THE ABILITY TO SEND OR RECEIVE  
10 ELECTRONIC COMMUNICATIONS, INCLUDING ANY SERVICE THAT ACTS AS AN  
11 INTERMEDIARY IN THE TRANSMISSION OF ELECTRONIC COMMUNICATIONS, OR  
12 STORES ELECTRONIC COMMUNICATION INFORMATION.

13 (F) "ELECTRONIC DEVICE" MEANS A DEVICE THAT STORES, GENERATES,  
14 OR TRANSMITS INFORMATION IN ELECTRONIC FORM.

15 (G) "ELECTRONIC DEVICE INFORMATION" MEANS ANY INFORMATION  
16 STORED ON OR GENERATED THROUGH THE OPERATION OF AN ELECTRONIC  
17 DEVICE, INCLUDING THE CURRENT AND PRIOR LOCATIONS OF THE DEVICE.

18 (H) "ELECTRONIC INFORMATION" MEANS ELECTRONIC COMMUNICATION  
19 INFORMATION OR ELECTRONIC DEVICE INFORMATION.

20 (I) "GOVERNMENTAL ENTITY" MEANS A DEPARTMENT OR AGENCY OF THIS  
21 STATE OR A POLITICAL SUBDIVISION OF THIS STATE, OR AN INDIVIDUAL  
22 ACTING FOR OR ON BEHALF OF THIS STATE OR A POLITICAL SUBDIVISION OF  
23 THIS STATE.

24 (J) "SERVICE PROVIDER" MEANS A PERSON OR ENTITY OFFERING AN  
25 ELECTRONIC COMMUNICATION SERVICE.

26 (K) "SPECIFIC CONSENT" MEANS CONSENT PROVIDED DIRECTLY TO THE  
27 GOVERNMENT ENTITY SEEKING INFORMATION, INCLUDING, BUT NOT LIMITED

1 TO, WHEN THE GOVERNMENTAL ENTITY IS THE ADDRESSEE OR INTENDED  
2 RECIPIENT OR A MEMBER OF THE INTENDED AUDIENCE OF AN ELECTRONIC  
3 COMMUNICATION. SPECIFIC CONSENT DOES NOT REQUIRE THAT THE  
4 ORIGINATOR OF THE COMMUNICATION HAVE ACTUAL KNOWLEDGE THAT AN  
5 ADDRESSEE, INTENDED RECIPIENT, OR MEMBER OF THE SPECIFIC AUDIENCE  
6 IS A GOVERNMENTAL ENTITY.

7 (l) "SUBSCRIBER INFORMATION" MEANS THE NAME, STREET ADDRESS,  
8 TELEPHONE NUMBER, ELECTRONIC MAIL ADDRESS, OR SIMILAR CONTACT  
9 INFORMATION PROVIDED BY THE SUBSCRIBER TO THE PROVIDER TO ESTABLISH  
10 OR MAINTAIN AN ACCOUNT OR COMMUNICATION CHANNEL, A SUBSCRIBER OR  
11 ACCOUNT NUMBER OR IDENTIFIER, THE LENGTH OF SERVICE, AND THE TYPES  
12 OF SERVICES USED BY A USER OF OR SUBSCRIBER TO A SERVICE PROVIDER.

13 Enacting section 1. This amendatory act takes effect 90 days  
14 after the date it is enacted into law.