

1 **Purpose: In the nature of a substitute.**

4 **S. 356**

6 **To improve the provisions relating to the privacy of**  
7 **electronic communications.**

9 **Referred to the Committee on \_\_\_\_\_ and ordered to be**  
10 **printed**

11 **Ordered to lie on the table and to be printed**

12 **AMENDMENT IN THE NATURE OF A SUBSTITUTE INTENDED TO**  
13 **BE PROPOSED BY \_\_\_\_\_**

14 **Viz:**

15 **Strike all after the enacting clause and insert the following:**

16 ~~Be it enacted by the Senate and House of Representatives of the United States of America in~~  
17 ~~Congress assembled,~~

18 **SECTION 1. SHORT TITLE.**

19 This Act may be cited as the "Email Privacy Act".

20 **SEC. 2. VOLUNTARY DISCLOSURE CORRECTIONS.**

21 ~~(a) In General.—~~ **Section** Section 2702 of title 18, United States Code, is amended—

22 (1) in subsection (a)—

23 (A) in paragraph (1)—

24 (i) by striking "divulge" and inserting "disclose"; **and**

25 (ii) by striking "while in electronic storage by that service" and inserting "that  
26 is in electronic storage with or otherwise stored, held, or maintained by that  
27 service";

28 (B) in paragraph (2)—

29 (i) by striking "to the public";

30 (ii) by striking "divulge" and inserting "disclose"; and

31 (iii) by striking "which is carried or maintained on that service" and inserting  
32 "that is stored, held, or maintained by that service"; and

1 (C) in paragraph (3)—

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

3 (ii) by striking “a provider of” and inserting “a person or entity providing”;

4 (2) in subsection (b)—

5 (A) in the matter preceding paragraph (1), by inserting “wire or electronic” before  
6 “communication”;

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

8 “(1) to an originator, addressee, or intended recipient of such communication, to the  
9 subscriber or customer on whose behalf the provider stores, holds, or maintains such  
10 communication, or to an agent of such addressee, intended recipient, subscriber, or  
11 customer;”;

12 (C) by amending paragraph (3) to read as follows:

13 “(3) with the lawful consent of the originator, addressee, or intended recipient of such  
14 communication, or of the subscriber or customer on whose behalf the provider stores, holds,  
15 or maintains such communication;”;

16 (3) in subsection (c) by inserting “wire or electronic” before “communications”;

17 (4) in each of subsections (b) and (c), by striking “divulge” and inserting “disclose”; and

18 (5) in subsection (c), by amending paragraph (2) to read as follows:

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

## 20 SEC. 3. AMENDMENTS TO REQUIRED DISCLOSURE 21 SECTION.

22 Section 2703 of title 18, United States Code, is amended—

23 (1) by striking subsections (a) through (c) and inserting the following:

24 “(a) Contents of Wire or Electronic Communications in Electronic ~~Storage.~~—~~Except~~  
25 ~~Storage.~~—

26 “(1) **WARRANT.**—~~Except~~ as provided in subsections (i) and (j), a governmental entity  
27 may require the disclosure by a provider of electronic communication service of the  
28 contents of a wire or electronic communication that is in electronic storage with or  
29 otherwise stored, held, or maintained by that service only if the governmental entity obtains  
30 a warrant issued using the procedures described in the Federal Rules of Criminal Procedure  
31 (or, in the case of a State court, issued using State warrant procedures) that—

32 “(1)“(A) is issued by a court of competent jurisdiction; and

33 \*\* 1 “(B) may indicate the date by which the provider ~~must~~ **shall** make the  
34 disclosure to the governmental entity.

35  
36 “(2) ~~may indicate the date by which the provider must make the disclosure to the~~

1 ~~governmental entity.~~In“(2) **PROMPT RESPONSE.**—In the absence of a date on the warrant  
2 indicating the date by which the provider ~~must~~ **shall** make disclosure to the governmental  
3 entity, the provider shall promptly respond to the warrant.

4 “(b) Contents of Wire or Electronic Communications in a Remote Computing Service.—

5 “(1) ~~IN GENERAL.~~—~~EXCEPT GENERAL.~~—

6 “(A) **WARRANT.**—~~Except~~ as provided in subsections (i) and (j), a governmental  
7 entity may require the disclosure by a provider of remote computing service of the  
8 contents of a wire or electronic communication that is stored, held, or maintained by  
9 that service only if the governmental entity obtains a warrant issued using the  
10 procedures described in the Federal Rules of Criminal Procedure (or, in the case of a  
11 State court, issued using State warrant procedures) that—

12 “(A)“(i) is issued by a court of competent jurisdiction; and

13  
14 \* 1 “(B) ~~may indicate the date by which the provider must make the disclosure~~  
15 ~~to the governmental entity.~~

16 “(ii) **may indicate the date by which the provider shall make the disclosure**  
17 **to the governmental entity.**

18 ~~In~~“(B) **PROMPT RESPONSE.**—In the absence of a date on the warrant indicating the  
19 date by which the provider ~~must~~ **shall** make disclosure to the governmental entity, the  
20 provider shall promptly respond to the warrant.

21 “(2) **APPLICABILITY.**—Paragraph (1) is applicable with respect to any wire or electronic  
22 communication that is stored, held, or maintained by the provider—

23 “(A) on behalf of, and received by means of electronic transmission from (or created  
24 by means of computer processing of communication received by means of electronic  
25 transmission from), a subscriber or customer of such remote computing service; and

26 “(B) solely for the purpose of providing storage or computer processing services to  
27 such subscriber or customer, if the provider is not authorized to access the contents of  
28 any such communications for purposes of providing any services other than storage or  
29 computer processing.

30 “(c) Records Concerning Electronic Communication Service or Remote Computing Service.—

31 “(1) ~~IN GENERAL.~~—Except as provided in subsections (i) and (j), a governmental entity  
32 may require the disclosure by a provider of electronic communication service or remote  
33 computing service of a record or other information pertaining to a subscriber to or customer  
34 of such service (not including the contents of ~~a wire or electronic communications~~)  
35 **communication**), only—

36 “(A) if a governmental entity obtains a warrant issued using the procedures  
37 described in the Federal Rules of Criminal Procedure (or, in the case of a State court,  
38 issued using State warrant procedures) that—

39 “(i) is issued by a court of competent jurisdiction directing the disclosure; and

40 “(ii) may indicate the date by which the provider ~~must~~ **shall** make the

1 disclosure to the governmental entity;  
2 “(B) if a governmental entity obtains a court order directing the disclosure under  
3 subsection (d);

4 “(C) with the lawful consent of the subscriber or customer;

5 ~~or~~“(D) if a governmental entity submits a formal written request relevant to a  
6 law enforcement investigation concerning telemarketing fraud for the name,  
7 address, and place of business of a subscriber or customer of the provider, which  
8 subscriber or customer is engaged in telemarketing (as defined in section 2325);  
9 or

10 ~~“(D)–~~“(E) as otherwise authorized in paragraph (2).

11 “(2) SUBSCRIBER OR CUSTOMER INFORMATION.—A provider of electronic communication  
12 service or remote computing service shall, in response to an administrative subpoena  
13 authorized by Federal or State statute, a grand jury, trial, or civil discovery subpoena, or any  
14 means available under paragraph (1), disclose to a governmental entity the—

15 “(A) name;

16 “(B) address;

17 “(C) local and long distance telephone connection records, or records of session  
18 times and durations;

19 “(D) length of service (including start date) and types of service used;

20 “(E) telephone or instrument number or other subscriber or customer number or  
21 identity, including any temporarily assigned network address; and

22 “(F) means and source of payment for such service (including any credit card or  
23 bank account number);

24 of a subscriber or customer of such service.

25 “(3) NOTICE NOT REQUIRED.—A governmental entity that receives records or information  
26 under this subsection is not required to provide notice to a subscriber or customer.”;

27 (2) in subsection (d)—

28 (A) by striking “(b) or”;

29 (B) by striking “the contents of a wire or electronic communication, or”;

30 (C) by striking “sought,” and inserting “sought”; and

31 (D) by striking “section” and inserting “subsection”; and

32 (3) by adding at the end the following:

33 “(h) Notice.—Except as provided in section 2705, a provider of electronic communication  
34 service or remote computing service may notify a subscriber or customer of a receipt of a  
35 warrant, court order, subpoena, or request under subsection (a), (b), (c), or (d) of this section.

36 “(i) Rule of Construction Related to Legal Process.—Nothing in this section or in section 2702  
37 shall limit the authority of a governmental entity to use an administrative subpoena authorized by

1 Federal or State statute, a grand jury, trial, or civil discovery subpoena, or a warrant issued using  
2 the procedures described in the Federal Rules of Criminal Procedure (or, in the case of a State  
3 court, issued using State warrant procedures) by a court of competent jurisdiction to—

4 “(1) require an originator, addressee, or intended recipient of a wire or electronic  
5 communication to disclose a wire or electronic communication (including the contents of  
6 that communication) to the governmental entity;

7 “(2) require a person or entity that provides an electronic communication service to the  
8 officers, directors, employees, or agents of the person or entity (for the purpose of carrying  
9 out their duties) to disclose a wire or electronic communication (including the contents of  
10 that communication) to or from the person or entity itself or to or from an officer, director,  
11 employee, or agent of the entity to a governmental entity, if the wire or electronic  
12 communication is stored, held, or maintained on an electronic communications system  
13 owned, operated, or controlled by the person or entity; or

14 “(3) require a person or entity that provides a remote computing service or electronic  
15 communication service to disclose a wire or electronic communication (including the  
16 contents of that communication) that advertises or promotes a product or service and that  
17 has been made readily accessible to the general public.

18 “(j) Rule of Construction Related to Congressional Subpoenas.—Nothing in this section or in  
19 section 2702 shall limit the power of inquiry vested in the Congress by Article I of the  
20 Constitution of the United States, including the authority to compel the production of a wire or  
21 electronic communication (including the contents of a wire or electronic communication) that is  
22 stored, held, or maintained by a person or entity that provides remote computing service or  
23 electronic communication service.”.

## 24 SEC. 4. DELAYED NOTICE.

25 Section 2705 of title 18, United States Code, is amended to read as follows:

### 26 “2705. Delayed notice

27 “(a) In General.—A governmental entity acting under section 2703 may apply to a court for an  
28 order directing a provider of electronic communication service or remote computing service to  
29 which a warrant, order, subpoena, or other directive under section 2703 is directed not to notify  
30 any other person of the existence of the warrant, order, subpoena, or other directive.

31 “(b) Determination.—A court shall grant a request for an order made under subsection (a) for  
32 delayed notification of up to 180 days if the court determines that there is reason to believe that  
33 notification of the existence of the warrant, order, subpoena, or other directive will likely result  
34 in—

35 “(1) endangering the life or physical safety of an individual;

36 “(2) flight from prosecution;

37 “(3) destruction of or tampering with evidence;

38 “(4) intimidation of potential witnesses; or

39 “(5) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

1 “(c) Extension.—Upon request by a governmental entity, a court may grant one or more  
2 extensions, for periods of up to 180 days each, of an order granted in accordance with subsection  
3 (b).”.

## 4 SEC. 5. RULE OF CONSTRUCTION.

5 Nothing in this Act or an amendment made by this Act shall be construed to preclude the  
6 acquisition by the United States Government of—

7 (1) the contents of a wire or electronic communication pursuant to other lawful  
8 authorities, including the authorities under chapter 119 of title 18 (commonly known as the  
9 “Wiretap Act”), the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.),  
10 or any other provision of Federal law not specifically amended by this Act; or

11 (2) records or other information relating to a subscriber or customer of any electronic  
12 communication service or remote computing service (not including the content of such  
13 communications) pursuant to the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.  
14 1801 et seq.), chapter 119 of title 18 (commonly known as the “Wiretap Act”), or any other  
15 provision of Federal law not specifically amended by this Act.

16 ~~Passed the House of Representatives April 27, 2016.~~

17 ~~Attest:~~

18 ~~Clerk.66514~~

19 ~~114th CONGRESS~~

20 ~~2d Session~~

21 ~~H. R. 699~~

22  
23 ~~AN ACT~~

24 ~~To amend title 18, United States Code, to update the privacy protections for electronic-~~  
25 ~~communications information that is stored by third party service providers in order to protect-~~  
26 ~~consumer privacy interests while meeting law enforcement needs, and for other purposes.~~