

2003—Subsec. (b)(5). Pub. L. 108–21, § 508(b)(1)(C), which directed amendment of par. (5) by striking “or” at the end, could not be executed because “or” did not appear at the end. See 2002 Amendment note below.

Subsec. (b)(6). Pub. L. 108–21, § 508(b)(1)(D), added par. (6). Former par. (6) redesignated (7).

Subsec. (b)(6)(B). Pub. L. 108–21, § 508(b)(1)(A), struck out subpar. (B) which read as follows: “if required by section 227 of the Crime Control Act of 1990; or”.

Subsec. (b)(7), (8). Pub. L. 108–21, § 508(b)(1)(B), redesignated pars. (6) and (7) as (7) and (8), respectively.

Subsec. (c)(5), (6). Pub. L. 108–21, § 508(b)(2), added par. (5) and redesignated former par. (5) as (6).

2002—Subsec. (b)(5). Pub. L. 107–296, § 225(d)(1)(A), struck out “or” at end.

Subsec. (b)(6)(A). Pub. L. 107–296, § 225(d)(1)(B), inserted “or” at end.

Subsec. (b)(6)(C). Pub. L. 107–296, § 225(d)(1)(C), struck out subpar. (C) which read as follows: “if the provider reasonably believes that an emergency involving immediate danger of death or serious physical injury to any person requires disclosure of the information without delay.”

Subsec. (b)(7). Pub. L. 107–296, § 225(d)(1)(D), added par. (7).

2001—Pub. L. 107–56, § 212(a)(1)(A), substituted “Voluntary disclosure of customer communications or records” for “Disclosure of contents” in section catchline.

Subsec. (a)(3). Pub. L. 107–56, § 212(a)(1)(B), added par. (3).

Subsec. (b). Pub. L. 107–56, § 212(a)(1)(C), substituted “Exceptions for disclosure of communications” for “Exceptions” in heading and “A provider described in subsection (a)” for “A person or entity” in introductory provisions.

Subsec. (b)(6)(C). Pub. L. 107–56, § 212(a)(1)(D), added subpar. (C).

Subsec. (c). Pub. L. 107–56, § 212(a)(1)(E), added subsec. (c).

1998—Subsec. (b)(6). Pub. L. 105–314 amended par. (6) generally. Prior to amendment, par. (6) read as follows: “to a law enforcement agency, if such contents—

“(A) were inadvertently obtained by the service provider; and

“(B) appear to pertain to the commission of a crime.”

1988—Subsec. (b)(2). Pub. L. 100–690 substituted “2517” for “2516”.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

§ 2703. Required disclosure of customer communications or records

(a) CONTENTS OF WIRE OR ELECTRONIC COMMUNICATIONS IN ELECTRONIC STORAGE.—A governmental entity may require the disclosure by a provider of electronic communication service of the contents of a wire or electronic communication, that is in electronic storage in an electronic communications system for one hundred and eighty days or less, only pursuant to a warrant issued using the procedures described in the Federal Rules of Criminal Procedure (or, in the case of a State court, issued using State warrant procedures) by a court of competent jurisdiction. A governmental entity may require the disclosure by a provider of electronic communications services of the contents of a wire or electronic communication that has been in electronic storage in an electronic communications system for more than one hundred and eighty days by the means available under subsection (b) of this section.

(b) CONTENTS OF WIRE OR ELECTRONIC COMMUNICATIONS IN A REMOTE COMPUTING SERVICE.—(1) A governmental entity may require a provider of remote computing service to disclose the contents of any wire or electronic communication to which this paragraph is made applicable by paragraph (2) of this subsection—

(A) without required notice to the subscriber or customer, if the governmental entity obtains a warrant issued using the procedures described in the Federal Rules of Criminal Procedure (or, in the case of a State court, issued using State warrant procedures) by a court of competent jurisdiction; or

(B) with prior notice from the governmental entity to the subscriber or customer if the governmental entity—

(i) uses an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury or trial subpoena; or

(ii) obtains a court order for such disclosure under subsection (d) of this section;

except that delayed notice may be given pursuant to section 2705 of this title.

(2) Paragraph (1) is applicable with respect to any wire or electronic communication that is held or maintained on that service—

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

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

(c) RECORDS CONCERNING ELECTRONIC COMMUNICATION SERVICE OR REMOTE COMPUTING SERVICE.—(1) A governmental entity may require a provider of electronic communication service or remote computing service to disclose a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications) only when the governmental entity—

(A) obtains a warrant issued using the procedures described in the Federal Rules of Criminal Procedure (or, in the case of a State court, issued using State warrant procedures) by a court of competent jurisdiction;

(B) obtains a court order for such disclosure under subsection (d) of this section;

(C) has the consent of the subscriber or customer to such disclosure;

(D) submits a formal written request relevant to a law enforcement investigation concerning telemarketing fraud for the name, address, and place of business of a subscriber or customer of such provider, which subscriber or customer is engaged in telemarketing (as such term is defined in section 2325 of this title); or

(E) seeks information under paragraph (2).

(2) A provider of electronic communication service or remote computing service shall disclose to a governmental entity the—

- (A) name;
- (B) address;
- (C) local and long distance telephone connection records, or records of session times and durations;
- (D) length of service (including start date) and types of service utilized;
- (E) telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and
- (F) means and source of payment for such service (including any credit card or bank account number),

of a subscriber to or customer of such service when the governmental entity uses an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury or trial subpoena or any means available under paragraph (1).

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

(d) REQUIREMENTS FOR COURT ORDER.—A court order for disclosure under subsection (b) or (c) may be issued by any court that is a court of competent jurisdiction and shall issue only if the governmental entity offers specific and articulable facts showing that there are reasonable grounds to believe that the contents of a wire or electronic communication, or the records or other information sought, are relevant and material to an ongoing criminal investigation. In the case of a State governmental authority, such a court order shall not issue if prohibited by the law of such State. A court issuing an order pursuant to this section, on a motion made promptly by the service provider, may quash or modify such order, if the information or records requested are unusually voluminous in nature or compliance with such order otherwise would cause an undue burden on such provider.

(e) NO CAUSE OF ACTION AGAINST A PROVIDER DISCLOSING INFORMATION UNDER THIS CHAPTER.—No cause of action shall lie in any court against any provider of wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order, warrant, subpoena, statutory authorization, or certification under this chapter.

(f) REQUIREMENT TO PRESERVE EVIDENCE.—

(1) IN GENERAL.—A provider of wire or electronic communication services or a remote computing service, upon the request of a governmental entity, shall take all necessary steps to preserve records and other evidence in its possession pending the issuance of a court order or other process.

(2) PERIOD OF RETENTION.—Records referred to in paragraph (1) shall be retained for a period of 90 days, which shall be extended for an additional 90-day period upon a renewed request by the governmental entity.

(g) PRESENCE OF OFFICER NOT REQUIRED.—Notwithstanding section 3105 of this title, the presence of an officer shall not be required for service or execution of a search warrant issued in

accordance with this chapter requiring disclosure by a provider of electronic communications service or remote computing service of the contents of communications or records or other information pertaining to a subscriber to or customer of such service.

(Added Pub. L. 99-508, title II, §201[(a)], Oct. 21, 1986, 100 Stat. 1861; amended Pub. L. 100-690, title VII, §§ 7038, 7039, Nov. 18, 1988, 102 Stat. 4399; Pub. L. 103-322, title XXXIII, §330003(b), Sept. 13, 1994, 108 Stat. 2140; Pub. L. 103-414, title II, §207(a), Oct. 25, 1994, 108 Stat. 4292; Pub. L. 104-132, title VIII, §804, Apr. 24, 1996, 110 Stat. 1305; Pub. L. 104-293, title VI, §601(b), Oct. 11, 1996, 110 Stat. 3469; Pub. L. 104-294, title VI, §605(f), Oct. 11, 1996, 110 Stat. 3510; Pub. L. 105-184, §8, June 23, 1998, 112 Stat. 522; Pub. L. 107-56, title II, §§209(2), 210, 212(b)(1), 220(a)(1), (b), Oct. 26, 2001, 115 Stat. 283, 285, 291, 292; Pub. L. 107-273, div. B, title IV, §4005(a)(2), div. C, title I, §11010, Nov. 2, 2002, 116 Stat. 1812, 1822; Pub. L. 107-296, title II, §225(h)(1), Nov. 25, 2002, 116 Stat. 2158; Pub. L. 109-162, title XI, §1171(a)(1), Jan. 5, 2006, 119 Stat. 3123; Pub. L. 111-79, §2(1), Oct. 19, 2009, 123 Stat. 2086.)

REFERENCES IN TEXT

The Federal Rules of Criminal Procedure, referred to in subsecs. (a), (b)(1)(A), and (c)(1)(B)(i), are set out in the Appendix to this title.

AMENDMENTS

2009—Subsecs. (a), (b)(1)(A), (c)(1)(A). Pub. L. 111-79, which directed substitution of “(or, in the case of a State court, issued using State warrant procedures) by a court of competent jurisdiction” for “by a court with jurisdiction over the offense under investigation or an equivalent State warrant”, was executed by making the substitution for “by a court with jurisdiction over the offense under investigation or equivalent State warrant” to reflect the probable intent of Congress.

2006—Subsec. (c)(1)(C). Pub. L. 109-162 struck out “or” at end.

2002—Subsec. (c)(1)(E). Pub. L. 107-273, §4005(a)(2), realigned margins.

Subsec. (e). Pub. L. 107-296 inserted “, statutory authorization” after “subpoena”.

Subsec. (g). Pub. L. 107-273, §11010, added subsec. (g).

2001—Pub. L. 107-56, §212(b)(1)(A), substituted “Required disclosure of customer communications or records” for “Requirements for governmental access” in section catchline.

Subsec. (a). Pub. L. 107-56, §§209(2)(A), (B), 220(a)(1), substituted “Contents of Wire or Electronic” for “Contents of Electronic” in heading and “contents of a wire or electronic” for “contents of an electronic” in two places and “using the procedures described in the Federal Rules of Criminal Procedure by a court with jurisdiction over the offense under investigation” for “under the Federal Rules of Criminal Procedure” in text.

Subsec. (b). Pub. L. 107-56, §209(2)(A), substituted “Contents of Wire or Electronic” for “Contents of Electronic” in heading.

Subsec. (b)(1). Pub. L. 107-56, §§209(2)(C), 220(a)(1), substituted “any wire or electronic communication” for “any electronic communication” in introductory provisions and “using the procedures described in the Federal Rules of Criminal Procedure by a court with jurisdiction over the offense under investigation” for “under the Federal Rules of Criminal Procedure” in subpar. (A).

Subsec. (b)(2). Pub. L. 107-56, §209(2)(C), substituted “any wire or electronic communication” for “any electronic communication” in introductory provisions.

Subsec. (c)(1). Pub. L. 107-56, §§212(b)(1)(C), 220(a)(1), designated subpar. (A) and introductory provisions of

subpar. (B) as par. (1), substituted “A governmental entity may require a provider of electronic communication service or remote computing service to” for “(A) Except as provided in subparagraph (B), a provider of electronic communication service or remote computing service may” and a closing parenthesis for provisions which began with “covered by subsection (a) or (b) of this section) to any person other than a governmental entity.” in former subpar. (A) and ended with “(B) A provider of electronic communication service or remote computing service shall disclose a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by subsection (a) or (b) of this section) to a governmental entity”, redesignated clauses (i) to (iv) of former subpar. (B) as subpars. (A) to (D), respectively, substituted “using the procedures described in the Federal Rules of Criminal Procedure by a court with jurisdiction over the offense under investigation” for “under the Federal Rules of Criminal Procedure” in subpar. (A) and “; or” for period at end of subpar. (D), added subpar. (E), and redesignated former subpar. (C) as par. (2).

Subsec. (c)(2). Pub. L. 107-56, §210, amended par. (2), as redesignated by section 212 of Pub. L. 107-56, by substituting “entity the—” for “entity the name, address, local and long distance telephone toll billing records, telephone number or other subscriber number or identity, and length of service of a subscriber” in introductory provisions, inserting subpars. (A) to (F), striking out “and the types of services the subscriber or customer utilized,” before “when the governmental entity uses an administrative subpoena”, inserting “of a subscriber” at beginning of concluding provisions and designating “to or customer of such service when the governmental entity uses an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury or trial subpoena or any means available under paragraph (1).” as remainder of concluding provisions.

Pub. L. 107-56, §212(b)(1)(C)(iii), (D), redesignated subpar. (C) of par. (1) as par. (2) and temporarily substituted “paragraph (1)” for “subparagraph (B)”.

Pub. L. 107-56, §212(b)(1)(B), redesignated par. (2) as (3).

Subsec. (c)(3). Pub. L. 107-56, §212(b)(1)(B), redesignated par. (2) as (3).

Subsec. (d). Pub. L. 107-56, §220(b), struck out “described in section 3127(2)(A)” after “court of competent jurisdiction”.

1998—Subsec. (c)(1)(B)(iv). Pub. L. 105-184 added cl. (iv).

1996—Subsec. (c)(1)(C). Pub. L. 104-293 inserted “local and long distance” after “address.”

Subsec. (d). Pub. L. 104-294 substituted “in section 3127(2)(A)” for “in section 3126(2)(A)”.

Subsec. (f). Pub. L. 104-132 added subsec. (f).

1994—Subsec. (c)(1)(B). Pub. L. 103-414, §207(a)(1)(A), redesignated cls. (ii) to (iv) as (i) to (iii), respectively, and struck out former cl. (i) which read as follows: “uses an administrative subpoena authorized by a Federal or State statute, or a Federal or State grand jury or trial subpoena;”.

Subsec. (c)(1)(C). Pub. L. 103-414, §207(a)(1)(B), added subpar. (C).

Subsec. (d). Pub. L. 103-414, §207(a)(2), amended first sentence generally. Prior to amendment, first sentence read as follows: “A court order for disclosure under subsection (b) or (c) of this section may be issued by any court that is a court of competent jurisdiction set forth in section 3127(2)(A) of this title and shall issue only if the governmental entity shows that there is reason to believe the contents of a wire or electronic communication, or the records or other information sought, are relevant to a legitimate law enforcement inquiry.”

Pub. L. 103-322 substituted “section 3127(2)(A)” for “section 3126(2)(A)”.

1988—Subsecs. (b)(1)(B)(i), (c)(1)(B)(i). Pub. L. 100-690, §7038, inserted “or trial” after “grand jury”.

Subsec. (d). Pub. L. 100-690, §7039, inserted “may be issued by any court that is a court of competent jurisdiction set forth in section 3126(2)(A) of this title and” before “shall issue”.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107-296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

§ 2704. Backup preservation

(a) **BACKUP PRESERVATION.**—(1) A governmental entity acting under section 2703(b)(2) may include in its subpoena or court order a requirement that the service provider to whom the request is directed create a backup copy of the contents of the electronic communications sought in order to preserve those communications. Without notifying the subscriber or customer of such subpoena or court order, such service provider shall create such backup copy as soon as practicable consistent with its regular business practices and shall confirm to the governmental entity that such backup copy has been made. Such backup copy shall be created within two business days after receipt by the service provider of the subpoena or court order.

(2) Notice to the subscriber or customer shall be made by the governmental entity within three days after receipt of such confirmation, unless such notice is delayed pursuant to section 2705(a).

(3) The service provider shall not destroy such backup copy until the later of—

(A) the delivery of the information; or

(B) the resolution of any proceedings (including appeals of any proceeding) concerning the government's subpoena or court order.

(4) The service provider shall release such backup copy to the requesting governmental entity no sooner than fourteen days after the governmental entity's notice to the subscriber or customer if such service provider—

(A) has not received notice from the subscriber or customer that the subscriber or customer has challenged the governmental entity's request; and

(B) has not initiated proceedings to challenge the request of the governmental entity.

(5) A governmental entity may seek to require the creation of a backup copy under subsection (a)(1) of this section if in its sole discretion such entity determines that there is reason to believe that notification under section 2703 of this title of the existence of the subpoena or court order may result in destruction of or tampering with evidence. This determination is not subject to challenge by the subscriber or customer or service provider.

(b) **CUSTOMER CHALLENGES.**—(1) Within fourteen days after notice by the governmental entity to the subscriber or customer under subsection (a)(2) of this section, such subscriber or customer may file a motion to quash such subpoena or vacate such court order, with copies served upon the governmental entity and with written notice of such challenge to the service provider. A motion to vacate a court order shall be filed in the court which issued such order. A motion to quash a subpoena shall be filed in the