



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB4793

Introduced 2/6/2024, by Rep. Anna Moeller

SYNOPSIS AS INTRODUCED:

See Index

Amends the Criminal Code of 2012. Provides that in connection with the investigation of an offense under the Code, or a pending matter charging an offense under the Code, a court shall have jurisdiction over a foreign public or private corporation, partnership, unincorporated association, or other non-governmental entity that transacts business within the State to issue a subpoena, search warrant, or court order for the production of communications, records, or other information and to enforce compliance. Amends the Code of Criminal Procedure of 1963. Establishes procedures for serving a search warrant upon foreign corporations that are electronic communication services and remote computing services allowing a search for records that are in the actual or constructive possession of a foreign corporation that provides electronic communication services or remote computing services to the general public, if those records would reveal: (1) the identity of the customers using those services; (2) data stored by, or on behalf of, the customer; (3) the customer's usage of those services; (4) the recipient or destination of communications sent to or from those customers; or (5) the content of those communications. Provides that, when properly served with a search warrant issued by an Illinois court, a foreign corporation subject to provision shall provide to the applicant all records sought pursuant to that warrant within 8 business days of receipt, including those records maintained or located outside the State. Provides that a foreign corporation seeking to quash the warrant must seek relief from the court that issued the warrant within the time required for production of records. Provides that the issuing court shall hear and decide that motion no later than 8 days after the motion is filed. Provides that no cause of action shall lie against any foreign or Illinois corporation subject to this Section, its officers, employees, agents, or other specified persons for providing records, information, facilities, or assistance in accordance with the terms of a warrant issued pursuant to the provision. Provides that the provision does not apply to corporations that do not provide electronic communication services or remote computing services to the general public.

LRB103 37582 RLC 67708 b

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Criminal Code of 2012 is amended by adding
5 Section 1-5.1 as follows:

6 (720 ILCS 5/1-5.1 new)

7 Sec. 1-5.1. Jurisdiction pertaining to records of stored
8 communications kept by foreign business entities.

9 (a) In connection with the investigation of an offense
10 under this Code, or a pending matter charging an offense under
11 this Code, a court shall have jurisdiction over a foreign
12 public or private corporation, partnership, unincorporated
13 association, or other non-governmental entity that transacts
14 business within this State:

15 (1) to issue a subpoena, grand jury subpoena,
16 administrative subpoena, search warrant, or court order
17 for the production of communications, records, or other
18 information, as provided in 18 U.S.C. 2703 and Section
19 115-17b of the Code of Criminal Procedure of 1963;

20 (2) to issue a subpoena or grand jury subpoena for
21 testimony of a custodian of records of the entity,
22 regarding information described in paragraph (1). An
23 entity that complies with a subpoena under this Section

1 may petition the court for reimbursement in the amounts
2 permitted in Section 4.3 of the Circuit Courts Act for a
3 custodian who resides within this State, and the amounts
4 permitted in Section 3 of the Uniform Act to Secure the
5 Attendance of Witnesses from Within or Without a State in
6 Criminal Proceedings for a custodian who resides outside
7 of this State; and

8 (3) to enforce compliance with legal process described
9 in this Section issued by a court, or a subpoena issued by
10 a grand jury, or an administrative subpoena issued by a
11 State's Attorney or the Attorney General, through contempt
12 of court or any other method provided by law.

13 (b) Service of legal process pursuant to this Section may
14 be completed by delivery to a registered agent filed with the
15 Secretary of State, or any other manner authorized by law.

16 (c) An entity served with process under paragraph (1) of
17 subsection (a) shall produce the information sought therein
18 within 5 business days of receipt. A court may require
19 production in less than 5 business days upon finding that
20 faster compliance is necessary to avoid an adverse result. A
21 court may reasonably extend the time allowed for production
22 upon finding that the entity has shown good cause, and that an
23 extension of time will not cause an adverse result. For
24 purposes of this Section, an "adverse result" is one that
25 endangers an individual's life or physical safety, or is
26 likely to result in flight from prosecution, destruction or

1 loss of evidence, intimidation of potential witnesses, serious
2 jeopardy to an investigation, or undue delay of trial.

3 (d) Objections or motions to quash process described in
4 this Section shall be filed and heard by the issuing court, or
5 for grand jury and administrative subpoenas, by a court in the
6 county to which the subpoena is to be returned.

7 (e) The following entities shall be deemed to have
8 consented to jurisdiction and service as described in this
9 Section:

10 (1) a foreign corporation that, on or after the
11 effective date of this amendatory Act of the 103rd General
12 Assembly:

13 (A) files with the Secretary of State an
14 application for authority to transact business within
15 this State pursuant to the Business Corporation Act;

16 or

17 (B) having been previously authorized by the
18 Secretary of State, files an annual report pursuant to
19 the Business Corporation Act of 1983;

20 (2) a foreign limited liability company that, on or
21 after the effective date of this amendatory Act of the
22 103rd General Assembly:

23 (A) files with the Secretary of State an
24 application for admission to transact business within
25 this State pursuant to the Limited Liability Company
26 Act; or

1 (B) having been previously authorized by the
2 Secretary of State, files an annual report pursuant to
3 the Limited Liability Company Act;

4 (3) a foreign limited partnership that, on or after
5 the effective date of this amendatory Act of the 103rd
6 General Assembly, files with the Secretary of State a
7 statement of foreign qualification or renewal statement
8 pursuant to the Uniform Partnership Act (1997); and

9 (4) a foreign limited liability partnership that, on
10 or after the effective date of this amendatory Act of the
11 103rd General Assembly:

12 (A) files with the Secretary of State an
13 application for a certificate of authority to transact
14 business within this State pursuant to the Uniform
15 Limited Partnership Act (2001); or

16 (B) having been previously authorized by the
17 Secretary of State, files an annual report pursuant to
18 the Uniform Limited Partnership Act (2001).

19 (f) This Section shall not be construed to limit
20 jurisdiction under any other basis otherwise provided by law.

21 Section 10. The Code of Criminal Procedure of 1963 is
22 amended by adding Section 108-4.5 as follows:

23 (725 ILCS 5/108-4.5 new)

24 Sec. 108-4.5. Foreign electronic communication services

1 and remote computing services.

2 (a) In this Section:

3 "Adverse result" occurs when notification of the existence
4 of a search warrant results in:

5 (1) danger to the life or physical safety of an
6 individual;

7 (2) a flight from prosecution;

8 (3) the destruction of or tampering with evidence;

9 (4) the intimidation of potential witnesses; or

10 (5) serious jeopardy to an investigation or undue
11 delay of a trial.

12 "Applicant" means a peace officer as defined in Section
13 2-13 of the Criminal Code of 2012 to whom a search warrant is
14 issued pursuant to this Section.

15 "Electronic communication services" and "remote computing
16 services" shall be construed in accordance with 18 U.S.C. 2701
17 through 2711.

18 "Foreign corporation" has the meaning ascribed to it in
19 Section 1.80 of the Business Corporation Act of 1983.

20 "Illinois corporation" means any corporation or other
21 entity that is subject to Section 5.25 of the Business
22 Corporation Act of 1983, excluding foreign corporations.

23 "Properly served" means that a search warrant has been
24 delivered by hand, or in a manner reasonably allowing for
25 proof of delivery if delivered by United States mail,
26 overnight delivery service, or facsimile to a person or entity

1 listed in Section 5.25 of the Business Corporation Act of 1983
2 or covered by this Section.

3 (b) The following provisions apply to any search warrant
4 issued under this Section allowing a search for records that
5 are in the actual or constructive possession of a foreign
6 corporation that provides electronic communication services or
7 remote computing services to the general public, if those
8 records would reveal:

9 (1) the identity of the customers using those
10 services;

11 (2) data stored by, or on behalf of, the customer;

12 (3) the customer's usage of those services;

13 (4) the recipient or destination of communications
14 sent to or from those customers; or

15 (5) the content of those communications.

16 (c) When properly served with a search warrant issued by
17 an Illinois court, a foreign corporation subject to this
18 Section shall provide to the applicant, within 8 business days
19 of receipt, all records sought pursuant to that warrant,
20 including those records maintained or located outside this
21 State.

22 (d) If the applicant makes a showing and the judge finds
23 that failure to produce records within less than 8 business
24 days would cause an adverse result, the warrant may require
25 production of records within less than 8 business days. A
26 court may reasonably extend the time required for production

1 of the records upon finding that the foreign corporation has
2 shown good cause for that extension and that an extension of
3 time would not cause an adverse result.

4 (e) A foreign corporation seeking to quash the warrant
5 must seek relief from the court that issued the warrant within
6 the time required for production of records under this
7 Section. The issuing court shall hear and decide that motion
8 no later than 8 court days after the motion is filed.

9 (f) The foreign corporation shall verify the authenticity
10 of records that it produces by providing a written affidavit
11 or statement to that effect.

12 (g) An Illinois corporation that provides electronic
13 communication services or remote computing services to the
14 general public, when served with a warrant issued by another
15 state to produce records that would reveal:

16 (1) the identity of the customers using those
17 services;

18 (2) data stored by, or on behalf of, the customer;

19 (3) the customer's usage of those services;

20 (4) the recipient or destination of communications
21 sent to or from those customers; or

22 (5) the content of those communications,
23 shall produce those records as if that warrant had been issued
24 by an Illinois court.

25 (h) No cause of action shall lie against any foreign or
26 Illinois corporation subject to this Section, its officers,

1 employees, agents, or other specified persons for providing
2 records, information, facilities, or assistance in accordance
3 with the terms of a warrant issued pursuant to this Section.

4 (i) This Section does not apply to corporations that do
5 not provide electronic communication services or remote
6 computing services to the general public.

1 INDEX

2 Statutes amended in order of appearance

3 720 ILCS 5/1-5.1 new

4 725 ILCS 5/108-4.5 new