

**SENATE . . . . . No. 796****The Commonwealth of Massachusetts**

PRESENTED BY:

***Karen E. Spilka****To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act updating privacy protections for personal electronic information.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Karen E. Spilka</i>	<i>Second Middlesex and Norfolk</i>
<i>Martha M. Walz</i>	<i>8th Suffolk</i>
<i>William N. Brownsberger</i>	<i>Second Suffolk and Middlesex</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>
<i>Timothy J. Toomey, Jr.</i>	<i>26th Middlesex</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>
<i>Brian R. Mannal</i>	<i>2nd Barnstable</i>
<i>Sonia Chang-Diaz</i>	<i>Second Suffolk</i>
<i>Kenneth J. Donnelly</i>	<i>Fourth Middlesex</i>
<i>Ryan C. Fattman</i>	<i>18th Worcester</i>
<i>Christopher G. Fallon</i>	<i>33rd Middlesex</i>
<i>Sheila C. Harrington</i>	<i>1st Middlesex</i>
<i>John V. Fernandes</i>	<i>10th Worcester</i>
<i>Diana DiZoglio</i>	<i>14th Essex</i>
<i>Timothy R. Madden</i>	<i>Barnstable, Dukes and Nantucket</i>

<i>Benjamin B. Downing</i>	<i>Berkshire, Hampshire, Franklin and Hampden</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>
<i>Denise Andrews</i>	<i>2nd Franklin</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>F. Jay Barrows</i>	<i>1st Bristol</i>
<i>Ellen Story</i>	<i>3rd Hampshire</i>
<i>Thomas P. Conroy</i>	<i>13th Middlesex</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Paul R. Heroux</i>	<i>2nd Bristol</i>
<i>Stephen M. Brewer</i>	<i>Worcester, Hampden, Hampshire and Middlesex</i>
<i>Thomas M. McGee</i>	<i>Third Essex</i>
<i>Brian A. Joyce</i>	<i>Norfolk, Bristol and Plymouth</i>
<i>Byron Rushing</i>	<i>9th Suffolk</i>
<i>Katherine M. Clark</i>	<i>Fifth Middlesex</i>

# SENATE . . . . . No. 796

---

By Ms. Spilka, a petition (accompanied by bill, Senate, No. 796) of Karen E. Spilka, Martha M. Walz, William N. Brownsberger, Kay Khan and other members of the General Court for legislation to update privacy protections for personal electronic information. The Judiciary.

---

## The Commonwealth of Massachusetts

\_\_\_\_\_  
In the Year Two Thousand Thirteen  
\_\_\_\_\_

An Act updating privacy protections for personal electronic information.

*Whereas*, The deferred operation of this act would tend to defeat its purpose, which is to protect the privacy of personal electronic information, therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience., therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1           SECTION 1. Section 1B of chapter 276 of the General Laws, as appearing in the 2010  
2 Official Edition, is hereby amended by inserting after the definition of “electronic  
3 communication services” the following definition:-

4           “Electronic device”, any device that enables access to, or use of, an electronic  
5 communication service, remote computing service or location information service.

6           SECTION 2. Said section 1B of said chapter 276, as so appearing, is hereby further  
7 amended by inserting after the definition of “foreign corporation” the following definitions:-

8           “Location information”, any information concerning the location of an electronic device  
9 that, in whole or in part, is generated by or derived from the operation of that device.

10          “Location information service”, a global positioning service or other mapping, locational  
11 or directional information service.

SECTION 3. Subsection (b) of said section 1B of said chapter 276, as so appearing, is hereby amended by striking out the language in lines 38 to 45, inclusive, and inserting in place thereof the following:-

(b) A court or justice authorized to issue warrants in criminal cases may, upon complaint on oath that the complainant believes

(i) that particular identified records or information hereinafter described are actually or constructively possessed by a Massachusetts or foreign corporation that provides electronic communication services, remote computing services or location information services, and

(ii) that such records or information constitute evidence of or the means or instrumentalities of the commission of a specified criminal offense under the laws of the commonwealth, if satisfied that there is probable cause for such beliefs, issue a warrant identifying those records to be searched for and commanding the person making application for the warrant to properly serve the warrant upon the corporation and take all other actions prescribed by this section:-

SECTION 4. Said subsection (b) of said section 1B of said chapter 276, as so appearing, is hereby further amended by striking out, in line 51, the word “or”.

SECTION 5. Said subsection (b) of said section 1B of said chapter 276, as so appearing, is hereby further amended by striking out paragraph (5) and inserting in place thereof the following:-

(5) the content of those communications stored by an electronic communication or remote computing service; or

(6) location information.

SECTION 6. Subsection (c) of said section 1B of said chapter 276, as so appearing, is hereby amended by striking out the language in lines 54 to 58, inclusive, and inserting in place thereof the following:-

(c) The following provisions shall apply to any search warrant issued under this section and to any subpoena issued in the course of a criminal investigation or proceeding directed to a Massachusetts or foreign corporation that provides electronic communication services, remote computing services or location information services:

SECTION 7. Said subsection (c) of said section 1B of said chapter 276, as so appearing, is hereby further amended by striking out, in lines 61, 69, 72 and 83, the word “foreign”.

SECTION 8. Said section 1B of said chapter 276, as so appearing, is hereby further amended by adding the following:-

(f) Search warrants issued under this section shall designate the corporation or other entity in possession of the records or data sought and shall describe, with particularity, the record systems and information to be provided. They shall be issued in the form and manner prescribed in sections 2A½ and 2B, in so far as they are applicable, and shall be directed to the government office or public official making application for the warrant, which shall serve the warrant upon the corporation or other entity.

(g) Not later than 7 days after information described in paragraphs (1) to (6), inclusive, of subsection (b) is obtained by a government office or public official under this section, that office or official shall serve upon, or deliver by registered or first-class mail, electronic mail, or other means reasonably calculated to be effective as specified by the court issuing the warrant to the customer or subscriber a copy of the warrant, a copy of the application for the warrant and notice that informs the customer or subscriber of the following:

(1) the nature of the law enforcement inquiry with reasonable specificity;

(2) that information maintained for the customer or subscriber by the provider of an electronic communications service, remote computing service or location information service was requested by or supplied to that government office or public official, and a description of that information;

(3) the dates on which the request was made and on which the information was supplied;

(4) whether notification of the customer or subscriber was delayed under subsection (h); and

(5) which court made the certification or determination under which that delay was made, if applicable.

(h) A government office or public official may include in its application for a warrant a request for an order delaying the notification required under subsection (g) for a period not to exceed 90 days, and the court shall issue the order if it determines there is reason to believe that notification of the existence of the warrant may have an adverse result. Upon expiration of any period of delay granted under this subsection, the government office or public official shall provide the customer or subscriber a copy of the warrant together with notice required under, and by the means described in, subsection (g).

(i) A government office or public official may include in its application for a warrant a request for an order directing a corporation to which a warrant is directed not to notify any other person of the existence of the warrant for a period of not more than 90 days, and the court shall issue the order if the court determines that there is reason to believe that notification of the existence of the warrant will have an adverse result.

(j) The court may, upon application, grant 1 or more extensions of orders granted under subsections (h) and (i) for an additional 90 days.

(k) Notwithstanding any general or special law to the contrary, a government office or public official may obtain information described in paragraphs (1) to (6), inclusive, of subsection (b):

(1) with the express consent of the owner or user of the electronic communications device concerned;

(2) in order to respond to the user's call for emergency services; or

(3) if it reasonably believes that an emergency involving immediate danger of death or serious physical injury to any person requires obtaining without delay information relating to the emergency; provided, however, that the request is narrowly tailored to address the emergency and subject to the following limitations:

(i) the request shall document the factual basis for believing that an emergency involving immediate danger of death or serious physical injury to a person requires obtaining without delay of the information relating to the emergency; and

(ii) not later than 48 hours after the government office obtains access to records, it shall file with the appropriate court a signed, sworn statement of a supervisory official of a rank designated by the head of the office setting forth the grounds for the emergency access.

(l) On the second Friday of January of each calendar year, any judge issuing or denying a warrant under this section during the preceding calendar year shall report on each such warrant to the office of court management within the trial court:

(1) the fact that the warrant was applied for;

(2) the identity of the agency making the application;

(3) the offense specified in the warrant or application therefor;

(4) the nature of the facilities from which or the place where the information was to be obtained;

(5) the fact that the warrant was granted as applied for, was modified or was denied; and

(6) the period of disclosures authorized by the warrant, and the number and duration of any extensions of the warrant.

In June of each year, beginning in 2014, the court administrator in the office of court management within the trial court shall transmit to the legislature a full and complete report

concerning the number of applications for warrants authorizing or requiring the disclosure of information described in paragraphs (1) to (6), inclusive, of subsection (b) under this act. The reports shall include a summary and analysis of the data required to be filed with that office. The reports shall be filed with the offices of the clerk of the house and the senate and shall be public records. The court administrator in the office of court management within the trial court shall issue guidance regarding the form of the reports.

(m) Except in a judicial proceeding alleging a violation of this section, no information obtained in violation of this section shall be admissible in any criminal, civil, administrative or other proceeding.

SECTION 9. Chapter 276 is hereby amended by inserting after section 2A the following section:-

Section 2A½. A warrant for records or data from a corporation providing electronic communication services, remote computing services or location information services shall be in substantially the following form:

THE COMMONWEALTH OF MASSACHUSETTS.

(COUNTY), ss.

(NAME) COURT.

To the Sheriffs of our several counties, or their deputies, any State Police Officer, or any Constable or Police Officer of any city or town, within our said Commonwealth.

Proof by affidavit having been made this day before (name of person authorized to issue warrant) by (names of person or persons whose affidavits have been taken) that there is probable cause for believing that certain records or data in the possession of (identify corporation) constitute evidence of or the means or instrumentalities of the commission of (specified criminal offense under the laws of the commonwealth).

We therefore command you to present this warrant to (identify corporation), which warrant shall operate as an order for immediate disclosure of the following records or data:

(description of records or data),

and if any such records or data are disclosed to bring it before (court having jurisdiction) at (name of court and location).

Dated at (city or town) this \_\_\_\_\_ day of \_\_\_\_\_, (insert year).

Clerk.

143           SECTION 10. Section 2B of said chapter 276, as appearing in the 2010 Official Edition,  
144 is hereby amended by striking clauses 3 and 4 of the model affidavit and inserting in place  
145 thereof the following:-

146           3. Based upon the foregoing reliable information (and upon my personal knowledge)  
147 there is probable cause to believe that the property, records or data hereinafter described (has  
148 been stolen, or is being concealed, or constitutes evidence of a particular offense, etc.) and may  
149 be found (in the possession of A. B. or any other person or corporation) at premises (identify).

150           4. The (property, records, or data) for which I seek issuance of a search warrant is the  
151 following: (here describe the property, records, or data as particularly as possible).

152           SECTION 11. Section 3A of said chapter 276, as so appearing, is hereby amended by  
153 inserting after the word “search”, in line 1, the following words:- or to obtain electronic  
154 communication, remote computing or location information records.

155           SECTION 12. Said section 3A of said chapter 276, as so appearing, is hereby further  
156 amended by striking out, in line 6, the word “search”.