

HOUSE No. 1545

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act relative to computer crimes..

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. Chapter 271 of the General Laws is hereby amended by striking out section
2 17B,as appearing in the 2000 Official Edition, and inserting in place thereof following section:-

3 Section 17B. Except as otherwise prohibited under section 2703 of Title 18 of the United
4 States Code, whenever the attorney general or a district attorney has reasonable grounds to
5 believe that records in the possession of (i) a common carrier subject to the jurisdiction of the

6 department of telecommunications and energy, as defined in paragraph (d) of section 12
7 of chapter 159; or (ii) a provider of electronic communication service as defined in subparagraph
8 (15) of section 2510 of Title 18 of the United States Code; or (iii) a provider of remote

9 computing service as defined in section 2711 of Title 18 of the United States Code, are relevant

10 and material to an ongoing criminal investigation, the attorney general or district attorney may

11 issue an administrative subpoena demanding all such records in the possession of such common

12 carrier or service, and such records forthwith shall be delivered to the attorney general or district

13 attorney. No such common carrier or service, or employee thereof shall be civilly or criminally

14 responsible for furnishing any records or information in compliance with such demand. Nothing

in this section shall limit the right of the attorney general or a district attorney otherwise to obtain records from such a common carrier or service pursuant to a search warrant, a court order or a grand jury or trial subpoena.

Notwithstanding the provisions of this section, a subpoena issued pursuant to this section shall not be used to obtain records disclosing the content of electronic communications, or subscriber account records disclosing Internet locations which have been accessed including, but not limited to, websites, chat channels and newsgroups, but excluding servers used to initially access the Internet. Nor shall the recipient of such a subpoena provide any such records. accessed, in response to such a subpoena."

SECTION 2. Chapter 276 of the General Laws is hereby amended by inserting after section 1A, as so appearing, the following new section:

SECTION 1B. (a) As used in this section, the following terms shall have the following meanings:

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

danger to the life or physical safety of an individual;

a flight from prosecution;

the destruction of or tampering with evidence;

the intimidation of a potential witness or witnesses; or

serious jeopardy to an investigation or undue delay of a trial.

"Electronic communication services", shall be construed in accordance with Title 18, sections 2701 to 2711 of the United States Code. This definition shall not apply to corporations that do not provide those services to the general public.

"Foreign corporation", any corporation or other entity that makes a contract or engages in a terms of service agreement with a resident of the commonwealth to be performed in whole or in part by either party in the commonwealth. The making of the contract or terms of service agreement is considered to be the agreement of the foreign corporation that a search warrant or subpoena properly served on it has the same legal force and effect as if served personally within the commonwealth.

"Massachusetts corporation", any corporation or other entity that is subject to chapter 155 or chapter 156B.

"Properly served", that a search warrant or subpoena has been delivered by hand, by United States mail, by commercial delivery service, by facsimile or by any other manner to any officer of the corporation or its general manager in the commonwealth, to any natural person designated by it as agent for the service of process, or if the corporation has designated a corporate agent, to any person named in the latest certificate filed pursuant to section 4 of chapter 181.

"Remote computing services", shall be construed in accordance with Title 18, sections 2701 to 2711, inclusive, of the United States Code. This definition shall not apply to corporations that do not provide those services to the general public.

"Subpoena", a grand jury or trial subpoena issued in the course of a criminal proceeding or an administrative subpoena issued pursuant to Chapter 271, section 17B.

(b) A court or justice authorized to issue warrants in criminal cases may, upon complaint on oath that the complainant believes that any of the records hereinafter named are actually or constructively possessed by a foreign corporation that provides electronic communication services or remote computing services, if satisfied that probable cause has been established for such belief, issue a warrant identifying those records to be searched for and commanding the person seeking such warrant to properly serve the warrant upon the foreign corporation:

(1) those records which would reveal the identity of a customer using those services;

(2) data stored by or on behalf of a customer;

(3) records of a customer's usage of those services;

(4) records of the source of communications sent to or the recipient or destination of communications sent from a customer; or

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

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

(1) When properly served with a search warrant issued by a Massachusetts court or justice pursuant to this section or a subpoena, a foreign corporation subject to this section shall provide all records sought pursuant to that warrant or subpoena within 5 business days of receipt, including those records maintained or located outside the commonwealth.

77 (2) If an the applicant makes a showing and the court or justice finds that failure to
78 produce records within less than 5 business days would cause an adverse result, a warrant may
79 require production of records within less than 5 business days;

80 (3) A court or justice may reasonably extend the time required for production of the
81 records upon finding that the foreign corporation has shown good cause for that extension and
82 that an extension of time would not cause an adverse result;

83 (4) A foreign corporation seeking to quash a warrant or subpoena served on it pursuant to
84 this section must seek relief from the court that issued the warrant or the court which has
85 jurisdiction over the subpoena within the time required for production of records pursuant to this
86 section.

87 The court shall hear and decide that motion no later than 5 court days after the motion is
88 filed;

89 (5) In the case of an administrative subpoena issued by the attorney general, the superior
90 court of Suffolk county shall have jurisdiction; in the case of an administrative subpoena issued
91 by a district attorney, the superior court in any county in which the district attorney maintains an
92 office shall have jurisdiction; and

93 (6) The foreign corporation shall verify the authenticity of records that it produces by
94 providing an affidavit from the person in custody of those records certifying that they are true
95 and complete.

96 (d) A Massachusetts corporation that provides electronic communication services or
97 remote computing services, when served with a warrant or subpoena issued by another state to

98 produce records that would reveal the identity of the customers using those services, data stored
99 by, or on behalf of the customer, the customer's usage of those services, the recipient or
100 destination of communications sent to or from those customers, or the content of those
101 communications, shall produce those records as if that warrant or subpoena had been issued
102 under Massachusetts law.

103 (e) No cause of action shall lie against any foreign or Massachusetts corporation subject
104 to this section, its officers, employees, agents or other specified persons for providing records,
105 information, facilities or assistance in accordance with the terms of a warrant or subpoena issued
106 pursuant to this section.