HOUSE DOCKET, NO. 1014 FILED ON: 1/15/2013

HOUSE . . . . . No. 1684

The Commonwealth of Massachusetts

PRESENTED BY:

Martha M. Walz

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:
Martha M. Walz	*8th Suffolk*
Tom Sannicandro	*7th Middlesex*
Ryan C. Fattman	*18th Worcester*
Paul W. Mark	*2nd Berkshire*
William N. Brownsberger	*Second Suffolk and Middlesex*
Anne M. Gobi	*5th Worcester*
Peter V. Kocot	*1st Hampshire*
Aaron Michlewitz	*3rd Suffolk*
Josh S. Cutler	*6th Plymouth*
Gailanne M. Cariddi	*1st Berkshire*
Frank I. Smizik	*15th Norfolk*
Cleon H. Turner	*1st Barnstable*
Kay Khan	*11th Middlesex*
Sheila C. Harrington	*1st Middlesex*
Chris Walsh	*6th Middlesex*
Denise Provost	*27th Middlesex*
Ruth B. Balser	*12th Middlesex*
James J. O'Day	*14th Worcester*

Sarah K. Peake	*4th Barnstable*
Paul McMurtry	*11th Norfolk*
Jeffrey N. Roy	*10th Norfolk*
Michael O. Moore	*Second Worcester*
Jonathan D. Zlotnik	*2nd Worcester*
Timothy J. Toomey, Jr.	*26th Middlesex*
Cheryl A. Coakley-Rivera	*10th Hampden*
Carl M. Sciortino, Jr.	*34th Middlesex*
Benjamin Swan	*11th Hampden*
Stephen L. DiNatale	*3rd Worcester*
Brian R. Mannal	*2nd Barnstable*
Cory Atkins	*14th Middlesex*
Frank A. Moran	*17th Essex*
David M. Rogers	*24th Middlesex*
Sonia Chang-Diaz	*Second Suffolk*
Christine E. Canavan	*10th Plymouth*
Lori A. Ehrlich	*8th Essex*
Jay R. Kaufman	*15th Middlesex*
Danielle W. Gregoire	*4th Middlesex*
Jonathan Hecht	*29th Middlesex*
John J. Lawn, Jr.	*10th Middlesex*
John W. Scibak	*2nd Hampshire*
Christopher G. Fallon	*33rd Middlesex*
Diana DiZoglio	*14th Essex*
Bradley H. Jones, Jr.	*20th Middlesex*
Viriato Manuel deMacedo	*1st Plymouth*
Timothy R. Madden	*Barnstable, Dukes and Nantucket*
Denise Andrews	*2nd Franklin*
Alice Hanlon Peisch	*14th Norfolk*
Jason M. Lewis	*Fifth Middlesex*
F. Jay Barrows	*1st Bristol*
James M. Cantwell	*4th Plymouth*
Thomas P. Conroy	*13th Middlesex*
Linda Dorcena Forry	*12th Suffolk*
Jennifer E. Benson	*37th Middlesex*
Carolyn C. Dykema	*8th Middlesex*
Sean Garballey	*23rd Middlesex*
Aaron Vega	*5th Hampden*
Paul R. Heroux	*2nd Bristol*

Carlos Henriquez	*5th Suffolk*
Antonio F. D. Cabral	*13th Bristol*
Joseph F. Wagner	*8th Hampden*
Kenneth I. Gordon	*21st Middlesex*
Byron Rushing	*9th Suffolk*
Katherine M. Clark	*Fifth Middlesex*

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HOUSE . . . . . No. 1684

By Ms. Walz of Boston, a petition (accompanied by bill, House, No. 1684) of Martha M. Walz and others for legislation to further define 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 peace.

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.

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

15 (b) A court or justice authorized to issue warrants in criminal cases may, upon complaint
16 on oath that the complainant believes (i) that particular identified records or information
17 hereinafter described are actually or constructively possessed by a Massachusetts or foreign
18 corporation that provides electronic communication services, remote computing services or
19 location information services, and (ii) that such records or information constitute evidence of or
20 the means or instrumentalities of the commission of a specified criminal offense under the laws
21 of the commonwealth, if satisfied that there is probable cause for such beliefs, issue a warrant
22 identifying those records to be searched for and commanding the person making application for
23 the warrant to properly serve the warrant upon the corporation and take all other actions
24 prescribed by this section:-

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

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

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

32 (6) location information.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

109 In June of each year, beginning in 2014, the court administrator in the office of court
110 management within the trial court shall transmit to the legislature a full and complete report
111 concerning the number of applications for warrants authorizing or requiring the disclosure of
112 information described in paragraphs (1) to (6), inclusive, of subsection (b) under this act. The
113 reports shall include a summary and analysis of the data required to be filed with that office. The
114 reports shall be filed with the offices of the clerk of the house and the senate and shall be public
115 records. The court administrator in the office of court management within the trial court shall
116 issue guidance regarding the form of the reports.

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

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

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

125 THE COMMONWEALTH OF MASSACHUSETTS.

126 (COUNTY), ss. (NAME) COURT.

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

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

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

136 (description of records or data),

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

139 Dated at (city or town) this _____ day of _____, (insert year).

140

141 Clerk.

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

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

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

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

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