

ACT 226

H.B. NO. 1641

A Bill for an Act Relating to Governmental Access to Stored Communications.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 803-47.6, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (a) and (b) to read:

~~“(a) A governmental entity may require the disclosure by a provider of electronic communication service of the contents of an electronic communication [that has been in electronic storage for one hundred and eighty days or less, where storage has taken place,] pursuant to a search warrant only. [A governmental entity may require the disclosure by a provider of electronic communication service of the contents of an electronic communication that has been in electronic storage for more than one hundred and eighty days by the means available under subsection (b) of this section.]~~

(b) A governmental entity may require a provider of remote computing services to disclose the contents of any electronic communication [to which this subsection is made applicable by subsection (c) of this section:

- (1) ~~Without notice to the subscriber or customer, if a search warrant has been obtained; or~~
- (2) ~~With prior notice to the subscriber or customer, if a court order for disclosure under subsection (d) of this section has been obtained;~~

~~except that delayed notice may be authorized by the order.] pursuant to a search warrant only.”~~

2. By amending subsections (d) and (e) to read:

“(d)(1) A provider of electronic communication service or remote computing service may disclose a record or other information pertaining to a subscriber to, or customer of, the service (other than the contents of any electronic communication) to any person other than a governmental entity.

(2) 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, the service (other than the contents of an electronic communication) to a governmental entity only when:

(A) Presented with a search warrant;

(B) Presented with a court order ~~[for]~~, which seeks the disclosure[;] of transactional records, other than real-time transactional records;

(C) The consent of the subscriber or customer to the disclosure has been obtained; or

(D) Presented with an administrative subpoena authorized by statute, an attorney general subpoena, or a grand jury or trial subpoena, which seeks the disclosure of information concerning electronic communication, including but not limited to the name, address, local and long distance telephone billing records, telephone number or other subscriber number or identity, and length of service of a subscriber to or customer of the service, and the types of services the subscriber or customer utilized.

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

(e) A court order for disclosure under subsection ~~[(b) or (c) of this section]~~ (d) shall issue only if the governmental entity demonstrates probable cause that the ~~[contents of a wire or electronic communication, or]~~ records or other information sought, constitute or relate to the fruits, implements, or existence of a crime or are relevant to a legitimate law enforcement inquiry. An order may be quashed or modified if, upon a motion promptly made, the service provider shows that compliance would be unduly burdensome because of the voluminous nature of the information or records requested, or some other stated reason establishing such a hardship.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved July 7, 2014.)