

HOUSE BILL 1074

E2

EMERGENCY BILL

4lr2543

By: **Delegates Smigiel, Dwyer, Glass, Kipke, McComas, McDermott, Parrott, and Serafini**

Introduced and read first time: February 6, 2014

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Fourth Amendment Protection Act**

3 FOR the purpose of stating the policy of the State concerning the collection of certain
4 electronic data or metadata of a person without a warrant; prohibiting an
5 agency of the State, a political subdivision of the State, an employee of an
6 agency or political subdivision, or a corporation providing services on behalf of
7 the State or a political subdivision from engaging in certain activities relating to
8 the collection of certain electronic data or metadata of a person; providing for
9 certain penalties; making the provisions of this Act severable; making this Act
10 an emergency measure; and generally relating to the collection of certain
11 electronic data or metadata of a person without a warrant.

12 BY adding to

13 Article – Criminal Procedure

14 Section 17–101 through 17–104 to be under the new title “Title 17. Fourth
15 Amendment Protection Act”

16 Annotated Code of Maryland

17 (2008 Replacement Volume and 2013 Supplement)

18 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
19 MARYLAND, That the Laws of Maryland read as follows:

20 **Article – Criminal Procedure**

21 **TITLE 17. FOURTH AMENDMENT PROTECTION ACT.**

22 **17–101.**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 IT IS THE POLICY OF THE STATE TO REFUSE MATERIAL SUPPORT,
2 PARTICIPATION, OR ASSISTANCE TO ANY FEDERAL AGENCY THAT CLAIMS THE
3 POWER TO, OR WITH ANY FEDERAL LAW, RULE, REGULATION, OR ORDER THAT
4 PURPORTS TO, AUTHORIZE THE COLLECTION OF ELECTRONIC DATA OR
5 METADATA OF A PERSON IN ACCORDANCE WITH AN ACTION NOT BASED ON A
6 WARRANT THAT PARTICULARLY DESCRIBES THE PERSON, PLACE, AND THING TO
7 BE SEARCHED OR SEIZED.

8 **17-102.**

9 NOTWITHSTANDING ANY LAW, REGULATION, RULE, OR ORDER TO THE
10 CONTRARY, AN AGENCY OF THE STATE, A POLITICAL SUBDIVISION OF THE
11 STATE, AN EMPLOYEE OF AN AGENCY OR A POLITICAL SUBDIVISION ACTING IN
12 THE EMPLOYEE'S OFFICIAL CAPACITY, OR A CORPORATION PROVIDING
13 SERVICES ON BEHALF OF THE STATE OR A POLITICAL SUBDIVISION OF THE
14 STATE MAY NOT:

15 (1) PROVIDE MATERIAL SUPPORT, PARTICIPATION, OR
16 ASSISTANCE IN ANY FORM WITH ANY FEDERAL AGENCY THAT CLAIMS THE
17 POWER TO, OR WITH ANY FEDERAL LAW, RULE, REGULATION, OR ORDER THAT
18 PURPORTS TO, AUTHORIZE THE COLLECTION OF ELECTRONIC DATA OR
19 METADATA OF ANY PERSON IN ACCORDANCE WITH AN ACTION NOT BASED ON A
20 WARRANT THAT PARTICULARLY DESCRIBES THE PERSON, PLACE, AND THING TO
21 BE SEARCHED OR SEIZED;

22 (2) UTILIZE ANY ASSETS, STATE FUNDS, OR FUNDS ALLOCATED
23 BY THE STATE TO LOCAL ENTITIES, IN WHOLE OR IN PART, TO ENGAGE IN AN
24 ACTIVITY THAT AIDS A FEDERAL AGENCY, FEDERAL AGENT, OR CORPORATION
25 PROVIDING SERVICES TO THE FEDERAL GOVERNMENT IN THE COLLECTION OF
26 ELECTRONIC DATA OR METADATA OF A PERSON IN ACCORDANCE WITH AN
27 ACTION NOT BASED ON A WARRANT THAT PARTICULARLY DESCRIBES THE
28 PERSON, PLACE, AND THING TO BE SEARCHED OR SEIZED;

29 (3) PROVIDE SERVICES, OR PARTICIPATE OR ASSIST WITH THE
30 PROVIDING OF SERVICES, TO A FEDERAL AGENCY, FEDERAL AGENT, OR
31 CORPORATION PROVIDING SERVICES TO THE FEDERAL GOVERNMENT THAT IS
32 INVOLVED IN THE COLLECTION OF ELECTRONIC DATA OR METADATA OF A
33 PERSON IN ACCORDANCE WITH AN ACTION NOT BASED ON A WARRANT THAT
34 PARTICULARLY DESCRIBES THE PERSON, PLACE, AND THING TO BE SEARCHED
35 OR SEIZED; OR

36 (4) USE INFORMATION IN A CRIMINAL INVESTIGATION OR
37 PROSECUTION PROVIDED BY A FEDERAL AGENCY, AGENT, OR CORPORATION

1 PROVIDING SERVICES TO THE FEDERAL GOVERNMENT THAT WAS OBTAINED
2 THROUGH THE COLLECTION OF ELECTRONIC DATA OR METADATA OF A PERSON
3 IN ACCORDANCE WITH AN ACTION NOT BASED ON A WARRANT THAT
4 PARTICULARLY DESCRIBES THE PERSON, PLACE, AND THING TO BE SEARCHED
5 OR SEIZED.

6 17-103.

7 (A) (1) A POLITICAL SUBDIVISION OF THE STATE MAY NOT RECEIVE
8 STATE GRANT FUNDS IF THE POLITICAL SUBDIVISION ADOPTS A RULE, AN
9 ORDER, AN ORDINANCE, OR A POLICY UNDER WHICH THE POLITICAL
10 SUBDIVISION VIOLATES § 17-102 OF THIS TITLE.

11 (2) STATE GRANT FUNDS FOR THE POLITICAL SUBDIVISION
12 SHALL BE DENIED FOR THE FISCAL YEAR FOLLOWING THE YEAR IN WHICH A
13 FINAL JUDICIAL DETERMINATION IN AN ACTION BROUGHT UNDER THIS
14 SECTION IS MADE THAT THE POLITICAL SUBDIVISION HAS INTENTIONALLY
15 REQUIRED ACTIONS THAT VIOLATE THE PROHIBITIONS IN § 17-102 OF THIS
16 TITLE.

17 (B) IF AN AGENT OR EMPLOYEE OF THE STATE OR OF A POLITICAL
18 SUBDIVISION OF THE STATE KNOWINGLY VIOLATES THE PROHIBITIONS IN §
19 17-102 OF THIS TITLE:

20 (1) THE AGENT OR EMPLOYEE SHALL BE DEEMED TO HAVE
21 RESIGNED ANY COMMISSION FROM THE STATE THAT THE AGENT OR EMPLOYEE
22 MAY POSSESS;

23 (2) THE OFFICE OF THE AGENT OR EMPLOYEE SHALL BE DEEMED
24 VACANT; AND

25 (3) THE AGENT OR EMPLOYEE SHALL BE FOREVER INELIGIBLE TO
26 HOLD AN OFFICE OF TRUST, HONOR, OR EMOLUMENT UNDER THE LAWS OF THE
27 STATE.

28 (C) A CORPORATION OR PERSON THAT PROVIDES SERVICES TO OR ON
29 BEHALF OF THE STATE AND VIOLATES THE PROHIBITIONS OF § 17-102 OF THIS
30 TITLE SHALL BE FOREVER INELIGIBLE TO ACT ON BEHALF OF, OR PROVIDE
31 SERVICES TO, THE STATE OR ANY POLITICAL SUBDIVISION OF THE STATE.

32 17-104.

1 **THIS SECTION MAY BE CITED AS THE FOURTH AMENDMENT PROTECTION**
2 **ACT.**

3 SECTION 2. AND BE IT FURTHER ENACTED, That if any provision of this
4 Act or the application thereof to any person or circumstance is held invalid for any
5 reason in a court of competent jurisdiction, the invalidity does not affect other
6 provisions or any other application of this Act which can be given effect without the
7 invalid provision or application, and for this purpose the provisions of this Act are
8 declared severable.

9 SECTION 3. AND BE IT FURTHER ENACTED, That this Act is an emergency
10 measure, is necessary for the immediate preservation of the public health or safety,
11 has been passed by a yea and nay vote supported by three-fifths of all the members
12 elected to each of the two Houses of the General Assembly, and shall take effect from
13 the date it is enacted.