

HOUSE BILL 912

E2

4r1873
CF SB 924

By: **Delegates Smigiel, Carr, Rosenberg, and Waldstreicher**

Introduced and read first time: February 5, 2014

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Courts – Electronic Communications – Privacy**

3 FOR the purpose of altering provisions of law governing the manner in which an
4 investigative or law enforcement officer may require a wire or electronic
5 communication service to disclose the contents of certain wire or electronic
6 communications; requiring a certain probable cause for the issuance of a certain
7 warrant under certain circumstances; requiring a court that issues a certain
8 warrant to indicate a certain deadline to a certain service provider; authorizing
9 service of the warrant on a certain service provider; requiring a certain service
10 provider to produce certain information; authorizing a certain service provider
11 to request a certain extension; authorizing the court to grant an extension
12 under certain circumstances; authorizing a service provider to provide certain
13 information on the request of an agent of this State or a political subdivision of
14 this State in response to a certain request under certain circumstances;
15 requiring a certain subscriber to be provided a certain notice; authorizing a
16 certain subscriber to seek judicial review of a certain warrant, court order, or
17 subpoena; requiring a certain agent to provide a certain notice under certain
18 circumstances in a certain manner; authorizing a court to grant a certain
19 application to direct a certain service provider not to make a certain notification
20 under certain circumstances; authorizing a court to grant a certain application
21 under certain circumstances; providing for the admissibility of certain
22 communications content; requiring a certain court to annually submit a certain
23 report to the Administrative Office of the Courts on a certain date; requiring the
24 Administrative Office of the Courts to annually submit a certain report to the
25 General Assembly on a certain date; providing for a certain cause of action;
26 defining certain terms; making certain stylistic and conforming changes; and
27 generally relating to the privacy of electronic communications.

28 BY repealing and reenacting, with amendments,
29 Article – Courts and Judicial Proceedings
30 Section 10–4A–04 and 10–4A–06

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland
2 (2013 Replacement Volume and 2013 Supplement)

3 BY adding to
4 Article – Courts and Judicial Proceedings
5 Section 10–4A–09 and 10–4A–10
6 Annotated Code of Maryland
7 (2013 Replacement Volume and 2013 Supplement)

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

10 **Article – Courts and Judicial Proceedings**

11 10–4A–04.

12 (a) (1) An investigative or law enforcement officer may require a provider
13 of wire or electronic communication service to disclose the contents of wire or
14 electronic communication that is in electronic storage in a wire or electronic
15 communications system [for 180 days or less,] only in accordance with a search
16 warrant issued by a court of competent jurisdiction **BASED ON PROBABLE CAUSE**
17 **THAT:**

18 **(I) A SPECIFIC MISDEMEANOR OR FELONY HAS BEEN OR IS**
19 **BEING COMMITTED; AND**

20 **(II) THE ELECTRONIC CUSTOMER DATA OR**
21 **COMMUNICATIONS CONTENT BEING SOUGHT CONSTITUTES EVIDENCE OF THE**
22 **MISDEMEANOR OR FELONY.**

23 **(B) (1) A COURT THAT ISSUES A WARRANT UNDER SUBSECTION (A)**
24 **OF THIS SECTION SHALL INDICATE IN THE WARRANT THE DEADLINE FOR**
25 **COMPLIANCE BY THE SERVICE PROVIDER.**

26 **(2) (I) A WARRANT UNDER SUBSECTION (A) OF THIS SECTION**
27 **MAY BE SERVED ON A SERVICE PROVIDER THAT IS A DOMESTIC ENTITY OR A**
28 **COMPANY OR ENTITY OTHERWISE DOING BUSINESS IN THE STATE UNDER A**
29 **CONTRACT OR A TERMS–OF–SERVICE AGREEMENT WITH A RESIDENT OF THE**
30 **STATE ONLY IF PART OF THAT CONTRACT OR AGREEMENT IS TO BE PERFORMED**
31 **IN THE STATE.**

32 **(II) THE SERVICE PROVIDER DESCRIBED IN**
33 **SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL PRODUCE ALL INFORMATION**
34 **SOUGHT:**

1 1. REGARDLESS OF WHETHER THE INFORMATION IS
2 HELD AT A LOCATION IN THIS STATE OR AT A LOCATION IN ANOTHER STATE;
3 AND

4 2. WITHIN THE PERIOD ALLOWED FOR COMPLIANCE
5 WITH THE WARRANT.

6 (3) (I) A SERVICE PROVIDER RESPONDING TO A WARRANT
7 ISSUED UNDER SUBSECTION (A) OF THIS SECTION MAY REQUEST AN EXTENSION
8 OF THE PERIOD FOR COMPLIANCE WITH THE WARRANT IF EXTENUATING
9 CIRCUMSTANCES EXIST TO JUSTIFY THE EXTENSION.

10 (II) THE COURT SHALL GRANT A REQUEST FOR AN
11 EXTENSION BASED ON THE CIRCUMSTANCES DESCRIBED IN SUBPARAGRAPH (I)
12 OF THIS PARAGRAPH IF:

13 1. THE LAW ENFORCEMENT OFFICER AUTHORIZED
14 TO APPLY FOR THE WARRANT OR ANOTHER APPROPRIATE AUTHORIZED LAW
15 ENFORCEMENT OFFICER AGREES TO THE EXTENSION; OR

16 2. THE COURT FINDS THAT THE NEED FOR THE
17 EXTENSION OUTWEIGHS THE LIKELIHOOD THAT THE EXTENSION COULD
18 RESULT IN:

19 A. DANGER TO THE LIFE OR PHYSICAL SAFETY OF AN
20 INDIVIDUAL;

21 B. A FLIGHT FROM PROSECUTION BY AN ALLEGED
22 OFFENDER;

23 C. THE DESTRUCTION OF OR TAMPERING WITH
24 EVIDENCE;

25 D. THE INTIMIDATION OF A POTENTIAL WITNESS; OR

26 E. SERIOUS JEOPARDY TO AN INVESTIGATION OR
27 UNDUE DELAY OF A TRIAL.

28 (4) ONLY THE COMMUNICATIONS CONTENT DESCRIBED IN THE
29 WARRANT APPLICATION MAY BE SEIZED UNDER THE WARRANT.

30 [(2) An investigative or law enforcement officer may require a provider
31 of wire or electronic communications services to disclose the contents of wire or
32 electronic communication that has been in electronic storage in an electronic

1 communications system for more than 180 days in accordance with the procedures
2 provided under subsection (b) of this section.

3 (b) (1) An investigative or law enforcement officer may require a provider
4 of remote computing service to disclose the contents of wire or electronic
5 communication to which this paragraph applies under paragraph (2) of this
6 subsection:

7 (i) Without notice to the subscriber or customer, if the officer
8 obtains a search warrant issued by a court of competent jurisdiction; or

9 (ii) With prior notice from the officer to the subscriber or
10 customer, if the officer:

11 1. Uses a grand jury subpoena; or

12 2. Obtains a court order requiring the disclosure under
13 subsection (d) of this section.

14 (2) Paragraph (1) of this subsection applies to any wire or electronic
15 communication that is held or maintained on a remote computing service:

16 (i) On behalf of, and received by means of electronic
17 transmission from, or created by means of computer processing of communications
18 received by means of electronic transmission from, a subscriber or customer of the
19 remote computing service; and

20 (ii) Solely for the purpose of providing storage or computer
21 processing services to the subscriber or customer, if the provider is not authorized to
22 access the contents of any communication for purposes of providing any services other
23 than storage or computer processing.]

24 (c) A SERVICE PROVIDER MAY DIVULGE THE CONTENTS OF A
25 COMMUNICATION TO AN AGENT OF THE STATE OR A POLITICAL SUBDIVISION OF
26 THE STATE IN RESPONSE TO A REQUEST IF:

27 (1) THE SERVICE PROVIDER REASONABLY BELIEVES THAT AN
28 EMERGENCY INVOLVING IMMEDIATE DANGER OF THE DEATH OF OR SERIOUS
29 PHYSICAL INJURY TO AN INDIVIDUAL REQUIRES DISCLOSURE WITHOUT DELAY
30 OF COMMUNICATIONS RELATING TO THE EMERGENCY;

31 (2) THE REQUEST DOCUMENTS THE FACTUAL BASIS FOR
32 BELIEVING THAT THE EMERGENCY REQUIRES OBTAINING WITHOUT DELAY THE
33 INFORMATION RELATING TO THE EMERGENCY; AND

1 **(3) NOT LATER THAN 48 HOURS AFTER THE AGENT OBTAINS**
2 **ACCESS TO RECORDS, THE AGENT FILES WITH THE APPROPRIATE COURT A**
3 **SIGNED, SWORN STATEMENT BY A SUPERVISORY OFFICIAL PROVIDING THE**
4 **FOUNDATIONS FOR THE EMERGENCY ACCESS AND SEEKING RETROACTIVE**
5 **APPROVAL.**

6 **[(c)] (D)** (1) (i) In this subsection, “record or other information”
7 includes name, address, local and long distance telephone connection records, or
8 records of session times and durations, length of service (including start date) and
9 types of service utilized, telephone or instrument number or other subscriber number
10 or identity, including any temporarily assigned network address, and means and
11 source of payment for such service, including any credit card or bank account number.

12 (ii) “Record or other information” does not include the contents
13 of communications to which [subsections (a) and (b)] **SUBSECTION (A)** of this section
14 **[apply] APPLIES.**

15 (2) (i) **[Except as provided in] SUBJECT TO** subparagraph (ii) of
16 this paragraph, a provider of electronic communications service or remote computing
17 service may disclose a record or other information pertaining to a subscriber to or a
18 customer of the service to **[any person other than]** an investigative or law enforcement
19 officer.

20 (ii) A provider of electronic communications service or remote
21 computing service shall disclose a record or other information pertaining to a
22 subscriber to or a customer of the service to an investigative or law enforcement officer
23 only if the officer:

24 **1. OBTAINS A SEARCH WARRANT ISSUED BY A COURT**
25 **OF COMPETENT JURISDICTION WITHOUT NOTICE TO THE SUBSCRIBER OR**
26 **CUSTOMER; OR**

27 **2. WITH PRIOR NOTICE FROM THE OFFICER TO THE**
28 **SUBSCRIBER OR CUSTOMER:**

29 **[1.] A.** Uses a subpoena issued by a court of competent
30 jurisdiction, a State grand jury subpoena, or a subpoena authorized under § 15–108 of
31 the Criminal Procedure Article;

32 **[2.]** Obtains a warrant from a court of competent
33 jurisdiction;

34 **3.] B.** Obtains a court order requiring the disclosure
35 under **[subsection (d)] SUBSECTION (F)** of this section; or

1 [4.] C. Has the consent of the subscriber or customer
2 to the disclosure.

3 [(3) An investigative or law enforcement officer receiving records or
4 information under this subsection is not required to provide notice to a subscriber or
5 customer.]

6 **(E) A SUBSCRIBER WHOSE COMMUNICATIONS CONTENT OR**
7 **SUBSCRIBER INFORMATION IS SOUGHT IN ACCORDANCE WITH A WARRANT,**
8 **COURT ORDER, OR SUBPOENA ISSUED UNDER THIS SUBTITLE MAY SEEK**
9 **JUDICIAL REVIEW OF THE WARRANT, COURT ORDER, OR SUBPOENA.**

10 [(d)] **(F)** (1) A court of competent jurisdiction may issue an order
11 requiring disclosure under [subsection (b) or (c)] **SUBSECTION (D)** of this section only
12 if the investigative or law enforcement officer shows that there is reason to believe the
13 contents of a wire or electronic communication, or the records or other information
14 sought, are relevant to a legitimate law enforcement inquiry.

15 (2) A court issuing an order under this section may quash or modify
16 the order, on a motion made promptly by the service provider, if the information or
17 records requested are unusually voluminous in nature or if compliance with the order
18 otherwise would cause an undue burden on the provider.

19 [(e)] **(G)** Nothing in this subtitle may be construed as creating a cause of
20 action against any provider of wire or electronic communication service, its officers,
21 employees, agents, or other specified persons for providing information, facilities, or
22 assistance in accordance with the terms of a court order, warrant, subpoena, or
23 certification under this subtitle.

24 10-4A-06.

25 (a) (1) In this section the following words have the meanings indicated.

26 (2) “Adverse result” means:

27 (i) Endangering the life or physical safety of an individual;

28 (ii) Flight from prosecution;

29 (iii) Destruction of or tampering with evidence;

30 (iv) Intimidation of potential witnesses; or

31 (v) Otherwise seriously jeopardizing an investigation or unduly
32 delaying a trial.

1 (3) “Supervisory official” means:

2 (i) The Secretary or Deputy Secretary of State Police;

3 (ii) The chief of police, deputy chief of police, or equivalent
4 official of a law enforcement agency of any political subdivision of the State;

5 (iii) The Attorney General of the State or a Deputy Attorney
6 General;

7 (iv) The State Prosecutor or Deputy State Prosecutor; or

8 (v) A State’s Attorney or Deputy State’s Attorney.

9 (b) **(1) (I) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
10 **SUBSECTION, NOT LATER THAN 3 BUSINESS DAYS AFTER AN AGENT OF THE**
11 **STATE OR A POLITICAL SUBDIVISION OF THE STATE RECEIVES**
12 **COMMUNICATIONS CONTENT FROM A SERVICE PROVIDER IN ACCORDANCE WITH**
13 **§ 10–4A–04 OF THIS SUBTITLE, THE AGENT SHALL SERVE ON OR DELIVER TO**
14 **THE SUBSCRIBER OR CUSTOMER A NOTICE AS DESCRIBED IN SUBSECTION (E)**
15 **OF THIS SECTION.**

16 **(II) THE NOTICE REQUIRED IN SUBPARAGRAPH (I) OF THIS**
17 **PARAGRAPH MAY BE SERVED OR DELIVERED BY REGISTERED OR FIRST–CLASS**
18 **MAIL, ELECTRONIC MAIL, OR OTHER MEANS REASONABLY CALCULATED TO BE**
19 **EFFECTIVE AS SPECIFIED BY THE COURT ISSUING THE WARRANT.**

20 **(2)** An investigative or law enforcement officer [acting under §
21 10–4A–04 of this subtitle] may:

22 **[(1) (I)** If a [court order] **WARRANT** is sought, include in the
23 application a request for an order delaying the notification required under [§
24 10–4A–05 of] this subtitle for a period not to exceed 90 days, which the court shall
25 grant, if the court determines that there is reason to believe that notification of the
26 existence of the court order may have an adverse result; or

27 **[(2) (II)** If a subpoena issued by a court of competent jurisdiction or a
28 grand jury subpoena is obtained **UNDER § 10–4A–04(D) OF THIS SUBTITLE**, delay
29 the notification required under [§ 10–4A–05 of] this subtitle for a period not to exceed
30 90 days, upon the execution of a written certification to a court of competent
31 jurisdiction by a supervisory official that there is reason to believe that notification of
32 the existence of the subpoena may have an adverse result.

1 (c) The investigative or law enforcement officer shall maintain a true copy of
2 a certification executed under [subsection (b)(2)] **SUBSECTION (B)(2)(II)** of this
3 section.

4 (d) **(1)** Extensions of a delay in notification may be granted by the court
5 upon application or by certification by a supervisory official under subsection (b) of
6 this section.

7 **(2)** An extension **DESCRIBED IN SUBSECTION (B)(1) OF THIS**
8 **SECTION** may not exceed 90 days.

9 (e) [Upon] **IN ACCORDANCE WITH SUBSECTION (B)(1) OF THIS SECTION,**
10 **OR ON** expiration of the period of a delay of notification under [subsection (b) or (d)]
11 **SUBSECTION (B)(2) OR (D)** of this section, the investigative or law enforcement
12 officer shall serve upon, or deliver by registered or first-class mail, to the customer or
13 subscriber a copy of the process or request together with a notice that:

14 (1) States with reasonable specificity the nature of the law
15 enforcement inquiry; and

16 (2) Informs the customer or subscriber:

17 (i) That information maintained for the customer or subscriber
18 by the service provider named in the process or request was supplied to or requested
19 by that investigative or law enforcement officer and the date on which the information
20 was supplied or the request was made;

21 (ii) That notification of the customer or subscriber was delayed;

22 (iii) Of the identity of the investigative or law enforcement
23 officer or court that made the certification or determination authorizing the delay; and

24 (iv) Of the statutory authority for the delay.

25 (f) **(1) (I)** If notice to the subscriber is [not required under §
26 10-4A-04(b)(1) of this subtitle or if notice is] delayed under subsection (b) or (d) of this
27 section, an investigative or law enforcement officer acting under § 10-4A-04 of this
28 subtitle may apply to a court for an order requiring a provider of electronic
29 communications service or remote computing service to whom a warrant, subpoena, or
30 court order is directed, for such period as the court deems appropriate, not to notify
31 any other person of the existence of the warrant, subpoena, or court order.

32 **(II)** The court shall enter an order under this subsection if the
33 court determines that there is reason to believe that notification of the existence of the
34 warrant, subpoena, or court order will have an adverse result.

1 **(2) THE COURT MAY, ON APPLICATION, GRANT ONE OR MORE**
2 **EXTENSIONS OF AN ORDER GRANTED UNDER PARAGRAPH (1) OF THIS**
3 **SUBSECTION FOR AN ADDITIONAL 15 DAYS.**

4 **(G) (1) EXCEPT IN A JUDICIAL OR AN ADMINISTRATIVE PROCEEDING**
5 **ALLEGING A VIOLATION OF THIS SECTION, NO COMMUNICATIONS CONTENT**
6 **OBTAINED IN VIOLATION OF THIS SECTION SHALL BE ADMISSIBLE IN A**
7 **CRIMINAL, A CIVIL, AN ADMINISTRATIVE OR ANY OTHER PROCEEDING.**

8 **(2) DISCOVERY OF THE LOCATION INFORMATION APPLICATION,**
9 **AFFIDAVIT, WARRANT, AND ADDITIONAL RELATED DOCUMENTS, IF ANY, IS**
10 **SUBJECT TO THE PROVISIONS OF MARYLAND RULES 4-262 AND 4-263.**

11 **10-4A-09.**

12 **(A) ON THE SECOND FRIDAY IN JANUARY OF EACH CALENDAR YEAR, A**
13 **COURT THAT ISSUED OR DENIED A WARRANT UNDER THIS SECTION DURING THE**
14 **PRECEDING CALENDAR YEAR SHALL SUBMIT A REPORT TO THE**
15 **ADMINISTRATIVE OFFICE OF THE COURTS SPECIFYING WITH REGARD TO EACH**
16 **WARRANT APPLICATION RECEIVED BY THE COURT:**

17 **(1) THE IDENTITY OF THE AGENT OF THE STATE OR A POLITICAL**
18 **SUBDIVISION OF THE STATE MAKING THE APPLICATION;**

19
20 **(2) THE OFFENSE SPECIFIED IN THE WARRANT OR APPLICATION**
21 **FOR THE WARRANT;**

22 **(3) THE NATURE OF THE FACILITIES FROM WHICH OR THE PLACE**
23 **WHERE THE INFORMATION WAS TO BE OBTAINED;**

24 **(4) WHETHER THE WARRANT WAS GRANTED AS APPLIED FOR,**
25 **WAS MODIFIED, OR WAS DENIED; AND**

26 **(5) THE PERIOD OF DISCLOSURES AUTHORIZED BY THE WARRANT**
27 **AND THE NUMBER AND DURATION OF EXTENSIONS OF THE WARRANT.**

28 **(B) (1) IN JUNE OF EACH YEAR, BEGINNING IN 2015, THE**
29 **ADMINISTRATIVE OFFICE OF THE COURTS SHALL TRANSMIT TO THE GENERAL**
30 **ASSEMBLY, IN ACCORDANCE WITH § 2-1254 OF THE STATE GOVERNMENT**
31 **ARTICLE, AND MAKE AVAILABLE ON THE ADMINISTRATIVE OFFICE OF THE**
32 **COURTS' PUBLIC WEB SITE A FULL AND COMPLETE REPORT CONCERNING THE**
33 **NUMBER OF APPLICATIONS FOR WARRANTS AUTHORIZING OR REQUIRING THE**

1 DISCLOSURE OF INFORMATION DESCRIBED IN SUBSECTION (A) OF THIS
2 SECTION.

3 (2) (I) A REPORT DESCRIBED IN PARAGRAPH (1) OF THIS
4 SUBSECTION SHALL INCLUDE A SUMMARY AND ANALYSIS OF THE DATA
5 REQUIRED TO BE FILED WITH THAT OFFICE.

6 (II) THE ADMINISTRATIVE OFFICE OF THE COURTS MAY
7 ISSUE GUIDANCE REGARDING THE FORM OF A REPORT UNDER THIS
8 SUBSECTION.

9 10-4A-10.

10 (A) A SERVICE PROVIDER OR A SUBSCRIBER OR CUSTOMER OF THAT
11 PROVIDER THAT IS AGGRIEVED BY A VIOLATION OF THIS SUBTITLE HAS A CIVIL
12 CAUSE OF ACTION IF THE CONDUCT CONSTITUTING THE VIOLATION WAS
13 COMMITTED KNOWINGLY OR INTENTIONALLY.

14 (B) AN AGGRIEVED PERSON UNDER SUBSECTION (A) OF THIS SECTION
15 IS ENTITLED TO:

16 (1) INJUNCTIVE RELIEF;

17 (2) REASONABLE ATTORNEY'S FEES AND OTHER LITIGATION
18 COSTS REASONABLY INCURRED; AND

19 (3) THE SUM OF THE ACTUAL DAMAGES SUFFERED AND ALL
20 PROFITS MADE BY THE VIOLATOR AS A RESULT OF THE VIOLATION OR \$1,000,
21 WHICHEVER IS GREATER.

22 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
23 October 1, 2014.