

SENATE BILL 924

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CF 4r1873

By: **Senators Raskin, Shank, Currie, Feldman, Forehand, Kittleman, Klausmeier, Madaleno, Middleton, and Ramirez**

Introduced and read first time: January 31, 2014

Assigned to: Judicial Proceedings

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 10-4A-04 and 10-4A-06
2 Annotated Code of Maryland
3 (2013 Replacement Volume and 2013 Supplement)

4 BY adding to
5 Article – Courts and Judicial Proceedings
6 Section 10-4A-09 and 10-4A-10
7 Annotated Code of Maryland
8 (2013 Replacement Volume and 2013 Supplement)

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

11 **Article – Courts and Judicial Proceedings**

12 10-4A-04.

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

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

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

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

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

33 **(II) THE SERVICE PROVIDER DESCRIBED IN**
34 **SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL PRODUCE ALL INFORMATION**
35 **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.

1 [(2) An investigative or law enforcement officer may require a provider
2 of wire or electronic communications services to disclose the contents of wire or
3 electronic communication that has been in electronic storage in an electronic
4 communications system for more than 180 days in accordance with the procedures
5 provided under subsection (b) of this section.

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

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

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

14 1. Uses a grand jury subpoena; or

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

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

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

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

27 **(C) A SERVICE PROVIDER MAY DIVULGE THE CONTENTS OF A**
28 **COMMUNICATION TO AN AGENT OF THE STATE OR A POLITICAL SUBDIVISION OF**
29 **THE STATE IN RESPONSE TO A REQUEST IF:**

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

1 **(2) THE REQUEST DOCUMENTS THE FACTUAL BASIS FOR**
2 **BELIEVING THAT THE EMERGENCY REQUIRES OBTAINING WITHOUT DELAY THE**
3 **INFORMATION RELATING TO THE EMERGENCY; AND**

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

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

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

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

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

27 **1. OBTAINS A SEARCH WARRANT ISSUED BY A COURT**
28 **OF COMPETENT JURISDICTION WITHOUT NOTICE TO THE SUBSCRIBER OR**
29 **CUSTOMER; OR**

30 **2. WITH PRIOR NOTICE FROM THE OFFICER TO THE**
31 **SUBSCRIBER OR CUSTOMER:**

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

35 **[2.** Obtains a warrant from a court of competent
36 jurisdiction;

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

3 [4.] **C.** Has the consent of the subscriber or customer
4 to the disclosure.

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

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

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

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

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

26 10-4A-06.

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

28 (2) “Adverse result” means:

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

30 (ii) Flight from prosecution;

31 (iii) Destruction of or tampering with evidence;

32 (iv) Intimidation of potential witnesses; or

1 (v) Otherwise seriously jeopardizing an investigation or unduly
2 delaying a trial.

3 (3) “Supervisory official” means:

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

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

7 (iii) The Attorney General of the State or a Deputy Attorney
8 General;

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

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

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

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

22 (2) An investigative or law enforcement officer [acting under §
23 10–4A–04 of this subtitle] may:

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

29 [(2)] (II) If a subpoena issued by a court of competent jurisdiction or a
30 grand jury subpoena is obtained **UNDER § 10–4A–04(D) OF THIS SUBTITLE**, delay
31 the notification required under [§ 10–4A–05 of] this subtitle for a period not to exceed
32 90 days, upon the execution of a written certification to a court of competent

1 jurisdiction by a supervisory official that there is reason to believe that notification of
2 the existence of the subpoena may have an adverse result.

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

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

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

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

16 (1) States with reasonable specificity the nature of the law
17 enforcement inquiry; and

18 (2) Informs the customer or subscriber:

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

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

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

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

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

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

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

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

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

14 **10-4A-09.**

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

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

22
23 **(2)** THE OFFENSE SPECIFIED IN THE WARRANT OR APPLICATION
24 FOR THE WARRANT;

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

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

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

31 **(B) (1)** IN JUNE OF EACH YEAR, BEGINNING IN 2015, THE
32 ADMINISTRATIVE OFFICE OF THE COURTS SHALL TRANSMIT TO THE GENERAL
33 ASSEMBLY, IN ACCORDANCE WITH § 2-1254 OF THE STATE GOVERNMENT
34 ARTICLE, AND MAKE AVAILABLE ON THE ADMINISTRATIVE OFFICE OF THE

1 COURTS' PUBLIC WEB SITE A FULL AND COMPLETE REPORT CONCERNING THE
2 NUMBER OF APPLICATIONS FOR WARRANTS AUTHORIZING OR REQUIRING THE
3 DISCLOSURE OF INFORMATION DESCRIBED IN SUBSECTION (A) OF THIS
4 SECTION.

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

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

11 10-4A-10.

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

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

18 (1) INJUNCTIVE RELIEF;

19 (2) REASONABLE ATTORNEY'S FEES AND OTHER LITIGATION
20 COSTS REASONABLY INCURRED; AND

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

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