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HOUSE BILL NO. 2953

Offered January 10, 2007

Prefiled January 10, 2007

A BILL to amend and reenact § 19.2-70.3 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 19.2-10.2 and 19-56.2, relating to administrative subpoenas and warrants for providers of electronic communication services or remote computing services.

Patron—Bell

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-70.3 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding sections numbered 19.2-10.2 and 19-56.2 as follows:

§ 19.2-10.2. Administrative subpoena issued for record from provider of electronic communication service or remote computing service.

A. A provider of electronic communication service or remote computing service that is transacting or has transacted any business in the Commonwealth shall disclose a record or other information pertaining to a subscriber to or customer of such service, excluding the contents of electronic communications as required by § 19.2-70.3, to an attorney for the Commonwealth or a law-enforcement officer pursuant to an administrative subpoena issued under this section.

1. In order to obtain such records or other information, the attorney for the Commonwealth or a law-enforcement official must certify that there is reason to believe that the records or other information being sought are relevant to a legitimate law-enforcement investigation.

2. On a motion made promptly by the electronic communication service or remote computing service provider, a court in the jurisdiction in the principal place of business of the service provider may quash or modify the administrative subpoena if the records or other information requested are unusually voluminous in nature or if compliance with the subpoena would otherwise cause an undue burden on the service provider.

B. All records received by an attorney for the Commonwealth or a law-enforcement officer pursuant to an administrative subpoena issued under this section shall be used only for a reasonable length of time and only for a legitimate law-enforcement purpose. Upon completion of the investigation the records held by the attorney for the Commonwealth or a law-enforcement officer shall be destroyed if no prosecution is initiated.

C. No cause of action shall lie in any court against an electronic communication service or remote computing service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of an administrative subpoena issued under this section.

D. Nothing in this section shall require the disclosure of information in violation of any federal law.

§ 19.2-56.2. Warrant issued for search of provider of electronic communication service or remote computing service to the general public.

A. A corporation located in the Commonwealth that provides electronic communication services or remote computing services to the general public, when served with a warrant issued by another state to produce records that would reveal the identity of customers using those services, data stored by or on behalf of the customers, the customers' usage of those services, the recipient or destination of communications sent to or from those customers, or the content of those communications, shall produce those records as if that warrant had been issued by a judge, magistrate, or other person having the authority to issue such warrants in the Commonwealth.

B. A warrant may be issued by a judge, magistrate, or other person having the authority to issue such warrants in the Commonwealth to search corporations that provide electronic communication services or remote computing services to the general public and that are transacting or have transacted business in the Commonwealth for records that would reveal the identity of customers using those services, data stored by or on behalf of the customers, the customers' usage of those services, the recipient or destination of communications sent to or from those customers, or the content of those communications.

§ 19.2-70.3. Obtaining records concerning electronic communication service or remote computing service.

A. 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 such service, excluding the

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59 contents of electronic communications, to an investigative or law-enforcement officer only pursuant to:

60 1. A subpoena issued by *an attorney for the Commonwealth, a law-enforcement officer, or a grand*
61 *jury* of a court of this Commonwealth;

62 2. A search warrant issued by a magistrate, general district court or a circuit court;

63 3. A court order for such disclosure issued as provided in this section; or

64 4. The consent of the subscriber or customer to such disclosure.

65 B. A court shall issue an order for disclosure under this section only if the investigative or
66 law-enforcement officer shows that there is reason to believe the records or other information sought are
67 relevant to a legitimate law-enforcement inquiry. *A court may issue an order for disclosure of records*
68 *concerning electronic communication service or remote computing service providers located in or*
69 *outside the Commonwealth, provided that the provider is transacting or has transacted business in the*
70 *Commonwealth.* A court issuing an order pursuant to this section, on a motion made promptly by the
71 service provider, may quash or modify the order, if the information or records requested are unusually
72 voluminous in nature or compliance with such order would otherwise cause an undue burden on such
73 provider.

74 C. No cause of action shall lie in any court against a provider of a wire or electronic communication
75 service, its officers, employees, agents, or other specified persons for providing information, facilities, or
76 assistance in accordance with the terms of a court order, warrant or subpoena under this section.