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HOUSE BILL NO. 2953**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee for Courts of Justice
on February 2, 2007)

(Patron Prior to Substitute—Delegate Bell)

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

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 a section numbered 19.2-10.2 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 pursuant to an administrative subpoena issued under this section.

1. In order to obtain such records or other information, the attorney for the Commonwealth must certify that there is reason to believe that the records or other information being sought are relevant to a legitimate law-enforcement investigation concerning violations of §§ 18.2-374.1, 18.2-374.1:1, 18.2-374.3, and 18.2-374.1:2.

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.

3. Records or other information pertaining to a subscriber to or customer of such service include name, address, local and long distance telephone connection records; records of session times and durations; length of service (including start date) and types of service utilized; telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and means and source of payment for such service.

B. All records received by an attorney for the Commonwealth pursuant to an administrative subpoena issued under this section shall be used only for a reasonable length of time not to exceed 30 days and only for a legitimate law-enforcement purpose. Upon completion of the investigation the records held by the attorney for the Commonwealth 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.

§ 19.2-70.3. 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 contents of electronic communications, to an investigative or law-enforcement officer only pursuant to:

- 1. A subpoena issued by a grand jury of a court of this Commonwealth;*
- 2. A search warrant issued by a magistrate, general district court or a circuit court;*
- 3. A court order for such disclosure issued as provided in this section; or*
- 4. The consent of the subscriber or customer to such disclosure.*

B. A court shall issue an order for disclosure under this section only if the investigative or law-enforcement officer shows that there is reason to believe the records or other information sought are relevant to a legitimate law-enforcement inquiry. A court issuing an order pursuant to this section, on a motion made promptly by the service provider, may quash or modify the order, if the information or records requested are unusually voluminous in nature or compliance with such order would otherwise cause an undue burden on such provider.

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

HOUSE SUBSTITUTE

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