

ASSEMBLY, No. 616

STATE OF NEW JERSEY 214th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2010 SESSION

Sponsored by:

Assemblyman ERIK PETERSON

District 23 (Warren and Hunterdon)

SYNOPSIS

Requires foreign corporations providing electronic communication services or remote computing services to comply with New Jersey subpoenas, court orders and search warrants.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



A616 PETERSON

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1 AN ACT concerning electronic communication services and remote
2 computing services and supplementing Title 2A of the New
3 Jersey Statutes.

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5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

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8 1. a. As used in this section:

9 "Adverse result" includes but is not limited to, danger to the life
10 or physical safety of a person, flight from prosecution, destruction
11 of or tampering with evidence, intimidation of potential witnesses,
12 jeopardy to an investigation or undue delay of a trial.

13 "Domestic corporation" means a corporation for profit organized
14 under the "New Jersey Business Corporation Act," N.J.S.14A:1-1 et
15 seq., for a purpose or purposes for which a corporation may be
16 organized under the "New Jersey Business Corporation Act,"
17 N.J.S.14A:1-1 et seq., and shall also include any corporation or
18 unincorporated association that conducts business in this State,
19 regardless of whether the entity is organized under any law of this
20 State or is organized for a purpose recognized by the "New Jersey
21 Business Corporation Act," N.J.S.14A:1-1 et seq.

22 "Electronic communication service" shall have the same
23 meaning as set forth in section 2 of P.L.1968, c.409 (C.2A:156A-2).

24 "Foreign corporation" means a corporation for profit organized
25 under the laws of a jurisdiction other than this State for a purpose or
26 purposes for which a corporation may be organized under the "New
27 Jersey Business Corporation Act," N.J.S.14A:1-1 et seq., and shall
28 also include any corporation or unincorporated association that
29 conducts business in this State, regardless of whether the entity is
30 organized under the laws of any jurisdiction or is organized for a
31 purpose recognized by the "New Jersey Business Corporation Act,"
32 N.J.S.14A:1-1 et seq.

33 "Properly served" means delivery to a person authorized to
34 receive service of process by hand, overnight delivery service,
35 United States Mail, or any other manner reasonably allowing for
36 proof of delivery. With regard to foreign corporations, service shall
37 be made in accordance with the provisions of N.J.S.14A:4-2.

38 "Remote computing service" shall have the same meaning as set
39 forth in section 2 of P.L.1968, c.409 (C.2A:156A-2).

40 b. (1) Except as provided in paragraph (2) of this subsection, a
41 foreign corporation that provides electronic communication services
42 or remote computing services to the general public, when properly
43 served with a search warrant or court order issued by a New Jersey
44 court or a subpoena issued by a New Jersey law enforcement
45 agency, to produce records that would reveal the identity of the
46 customers using those services, data stored by, or on behalf of,
47 those customers, the usage of those services by those customers, the

1 recipients or destinations of communications sent to or from those
2 customers, or the content of those communications, shall produce
3 those records within five business days of the receipt of the warrant,
4 court order or subpoena, including records maintained or located
5 outside this State.

6 (2) When the applicant for a search warrant or court order makes
7 a showing, and the issuing judge finds, that failure to produce
8 records pursuant to that warrant or court order within less than five
9 business days would cause an adverse result, that warrant or court
10 order may require production of records within less than five
11 business days. A court may reasonably extend the time required for
12 production of the records upon finding that the foreign corporation
13 has shown good cause for that extension and that an extension of
14 time would not cause an adverse result.

15 (3) A foreign corporation seeking to quash a search warrant or
16 court order shall seek relief from the court that issued that warrant
17 or court order within the time required for production of records
18 pursuant to this subsection. The issuing court shall hear and decide
19 the motion in an expedited manner.

20 (4) A foreign corporation shall verify the authenticity and
21 accuracy of the records it produces by providing an affidavit. These
22 records shall be admissible in accordance with the New Jersey
23 Rules of Evidence.

24 c. (1) A domestic corporation that provides electronic
25 communication services or remote computing services to the
26 general public, when properly served with a search warrant, court
27 order or subpoena issued by the United States, another state or any
28 other territory or jurisdiction of the United States to produce
29 records that would reveal the identity of the customers using those
30 services, data stored by, or on behalf of, those customers, the usage
31 of those services by those customers, the recipients or destinations
32 of communications sent to or from those customers, or the content
33 of those communications, shall produce those records as if that
34 warrant or court order had been issued by a New Jersey court or that
35 subpoena had been issued by a New Jersey law enforcement
36 agency.

37 (2) A domestic corporation which provides records pursuant to
38 this subsection shall also provide an affidavit attesting to the
39 authenticity and accuracy of the records, which affidavit shall be
40 produced in accordance with the rules of evidence of the state or
41 jurisdiction making the request, if those rules of evidence permit.
42 The person requesting the records shall notify the domestic
43 corporation if that affidavit will be needed and the manner in which
44 that affidavit must be drawn.

45 d. Any corporation, unincorporated association or other person
46 who provides records, information, facilities or assistance pursuant

1 to this section shall be immune from civil liability arising from the
2 provision of the records, information, facilities or assistance.
3 e. Any corporation, unincorporated association or other person
4 that is subject to the provisions of this section who violates any
5 provision of this section shall be deemed to be in contempt of court.
6 In addition to any penalties that may be imposed for contempt, the
7 violator shall be subject to a civil penalty of not less than \$10,000
8 or more than \$50,000. The Attorney General, county prosecutor, or
9 a designee may bring an action in Superior Court to impose and
10 collect the civil penalty, and such other relief as deemed
11 appropriate, pursuant to "The Penalty Enforcement Law of 1999,"
12 P.L.1999, c.274 (C.2A:58-10 et seq.). The Superior Court shall
13 have jurisdiction over the action, which shall be decided in a
14 summary manner. In addition to the imposition of a civil penalty,
15 the court may suspend or revoke any license, franchise, certificates
16 of incorporation, or privilege to do business in this State and order
17 any other remedy as the court deems just, including injunctive
18 relief.
19 Each separate violation of this section shall constitute a distinct
20 violation and a separate sanction shall be imposed for each
21 violation.

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23 2. This act shall take effect immediately.

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26 STATEMENT

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28 This bill requires out-of-State corporations that provide
29 electronic communication or remote computing services to produce
30 certain customer information when required to do so by a New
31 Jersey search warrant, court order or subpoena. The bill also
32 requires in-State corporations that provide these services to produce
33 customer information when required by an out-of-State search
34 warrant, court order or subpoena.

35 Specifically, foreign corporations that provide electronic
36 communication or remote computing services to the general public
37 are required to fully comply with New Jersey search warrants, court
38 orders and subpoenas seeking such customer records as their
39 identity, the data they store, and the nature and destination of their
40 communications. The foreign corporation has five business days to
41 produce the records, unless the court requires an earlier return date
42 in order to avoid any potential adverse result. The court may grant
43 the corporation more time to produce the information if good cause
44 is shown and there would be no adverse result. The foreign
45 corporation must provide an affidavit attesting to the authenticity of
46 the records. The records would be admissible evidence. The

1 corporation would have to apply to the court that issued the warrant
2 or order to avoid compliance.

3 This bill also requires domestic corporations that provide
4 electronic communication services or remote computing services to
5 the general public to fully comply with out-of-state search warrants,
6 court orders and subpoenas seeking records that would reveal the
7 identity of customers using those services and other pertinent
8 information about those customers and their usage of those services.
9 In addition to the requested records, a domestic corporation must
10 provide an affidavit attesting to the authenticity and accuracy of the
11 records produced in accordance with the rules of evidence of the
12 requesting jurisdiction.

13 A foreign or domestic corporation which provides records,
14 information, facilities or assistance pursuant to this bill will be
15 immune from any related civil liability.

16 Violations of the bill's provisions would constitute contempt of
17 court. In addition to the penalties imposed for contempt, the
18 violator is subject to a civil penalty of between \$10,000 and
19 \$50,000 and the court also may suspend or revoke a corporation's
20 license to do business in the State.