

ASSEMBLY, No. 1794

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblyman ERIK PETERSON

District 23 (Hunterdon, Somerset and Warren)

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.



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

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7
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
48 recipients or destinations of communications sent to or from those

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

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

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

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

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

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

44 d. Any corporation, unincorporated association or other person
45 who provides records, information, facilities or assistance pursuant
46 to this section shall be immune from civil liability arising from the
47 provision of the records, information, facilities or assistance.

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

17 Each separate violation of this section shall constitute a distinct
18 violation and a separate sanction shall be imposed for each
19 violation.
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21 2. This act shall take effect immediately.
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24 STATEMENT 25

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

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

47 This bill also requires domestic corporations that provide
48 electronic communication services or remote computing services to

1 the general public to fully comply with out-of-state search warrants,
2 court orders and subpoenas seeking records that would reveal the
3 identity of customers using those services and other pertinent
4 information about those customers and their usage of those services.
5 In addition to the requested records, a domestic corporation must
6 provide an affidavit attesting to the authenticity and accuracy of the
7 records produced in accordance with the rules of evidence of the
8 requesting jurisdiction.

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

12 Violations of the bill's provisions would constitute contempt of
13 court. In addition to the penalties imposed for contempt, the
14 violator is subject to a civil penalty of between \$10,000 and
15 \$50,000 and the court also may suspend or revoke a corporation's
16 license to do business in the State.