



# Senate

General Assembly

**File No. 570**

*January Session, 2005*

Substitute Senate Bill No. 1356

*Senate, April 28, 2005*

The Committee on Judiciary reported through SEN. MCDONALD of the 27th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

***AN ACT AUTHORIZING LAW ENFORCEMENT OFFICIALS TO REQUEST EX PARTE AUTHORITY TO COMPEL DISCLOSURE OF TELEPHONE AND INTERNET RECORDS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2005*) (a) For the purposes of  
2 this section and section 2 of this act:

3 (1) "Basic subscriber information" means: (A) Name, (B) address, (C)  
4 local and long distance telephone connection records or records of  
5 session times and durations, (D) length of service, including start date,  
6 and types of services utilized, (E) telephone or instrument number or  
7 other subscriber number or identity, including any assigned Internet  
8 protocol address, and (F) means and source of payment for such  
9 service, including any credit card or bank account number;

10 (2) "Call-identifying information" means dialing or signaling  
11 information that identifies the origin, direction, destination or  
12 termination of each communication generated or received by a

13 subscriber or customer by means of any equipment, facility or service  
14 of a telecommunications carrier;

15 (3) "Electronic communication service" means "electronic  
16 communication service" as defined in 18 USC 2510, as amended from  
17 time to time;

18 (4) "Law enforcement official" means the Chief State's Attorney, a  
19 state's attorney, an inspector with the Division of Criminal Justice, a  
20 sworn member of the Division of State Police within the Department of  
21 Public Safety or a sworn member of an organized local police  
22 department;

23 (5) "Remote computing service" means "remote computing service"  
24 as defined in section 18 USC 2711, as amended from time to time; and

25 (6) "Telecommunications carrier" means "telecommunications  
26 carrier" as defined in 47 USC 1001, as amended from time to time.

27 (b) A law enforcement official may request an ex parte order from a  
28 judge of the superior court to compel (1) a telecommunications carrier  
29 to disclose call-identifying information pertaining to a subscriber or  
30 customer, or (2) a provider of electronic communication service or  
31 remote computing service to disclose basic subscriber information  
32 pertaining to a subscriber or customer. The judge shall grant such  
33 order if the law enforcement official states a reasonable and articulable  
34 suspicion that a crime has been or is being committed or that exigent  
35 circumstances exist and such call-identifying or basic subscriber  
36 information is relevant and material to an ongoing criminal  
37 investigation. The order shall state upon its face the case number  
38 assigned to such investigation, the date and time of issuance and the  
39 name of the judge authorizing the order. The law enforcement official  
40 shall have any ex parte order issued pursuant to this subsection signed  
41 by the authorizing judge within forty-eight hours or not later than the  
42 next business day, whichever is earlier.

43 (c) A telecommunications carrier shall disclose call-identifying

44 information and a provider of electronic communication service or  
45 remote computing service shall disclose basic subscriber information  
46 to a law enforcement official when an order is issued pursuant to  
47 subsection (b) of this section.

48 (d) Not later than forty-eight hours after the issuance of an order  
49 pursuant to subsection (b) of this section, the law enforcement official  
50 shall mail notice of the issuance of such order to the subscriber or  
51 customer whose call-identifying information or basic subscriber  
52 information is the subject of such order, except that such notification  
53 may be delayed for a period of up to ninety days upon the execution of  
54 a written certification of such official to the judge who authorized the  
55 order that there is reason to believe that notification of the existence of  
56 the order may result in (1) endangering the life or physical safety of an  
57 individual, (2) flight from prosecution, (3) destruction of or tampering  
58 with evidence, (4) intimidation of potential witnesses, or (5) otherwise  
59 seriously jeopardizing the investigation. The law enforcement official  
60 shall maintain a true copy of such certification. During such ninety-day  
61 period, the law enforcement official may request the court to extend  
62 such period of delayed notification. Such period may be extended  
63 beyond ninety days only upon approval of the court.

64 (e) A telecommunications carrier or provider of electronic  
65 communication service or remote computing service that provides  
66 information pursuant to an order issued pursuant to subsection (b) of  
67 this section shall be compensated for the reasonable expenses incurred  
68 in providing such information.

69 (f) Any telecommunications carrier or provider of electronic  
70 communication service or remote computing service that provides  
71 information in good faith pursuant to an order issued pursuant to  
72 subsection (b) of this section shall be afforded the legal protections  
73 provided under 18 USC 3124, as amended from time to time, with  
74 regard to such actions.

75 Sec. 2. (NEW) (*Effective October 1, 2005*) Not later than January  
76 fifteenth of each year, each law enforcement official shall report to the

77 Chief State's Attorney the information required by this section with  
 78 respect to each order issued pursuant to section 1 of this act in the  
 79 preceding calendar year. The Chief State's Attorney shall, based upon  
 80 the reports filed by each law enforcement official and not later than  
 81 January thirty-first of each year, submit a report, in accordance with  
 82 the provisions of section 11-4a of the general statutes, to the joint  
 83 standing committee of the General Assembly having cognizance of  
 84 matters relating to criminal law and procedure concerning orders  
 85 issued pursuant to section 1 of this act in the preceding calendar year.  
 86 The report shall include the following information: (1) The number of  
 87 orders issued, (2) whether the order was directed to a  
 88 telecommunications carrier, provider of electronic communication  
 89 service or provider of remote computing service, (3) whether the  
 90 information sought was call-identifying information or basic  
 91 subscriber information, (4) the statutory offense or offenses that were  
 92 the subject of the investigation, (5) the number of notifications that  
 93 were delayed pursuant to subsection (d) of section 1 of this act, and the  
 94 reason for such delayed notification, (6) the number of motions to  
 95 vacate an order that were filed, and the number of motions granted or  
 96 denied, (7) the number of investigations concluded and the final result  
 97 of such investigations, and (8) the status of any criminal prosecution  
 98 resulting from the investigation.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2005	New section
Sec. 2	October 1, 2005	New section

**JUD**      *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

### OFA Fiscal Note

#### State Impact:

Agency Affected	Fund-Effect	FY 06 \$	FY 07 \$
Judicial Dept.; Criminal Justice, Div.; Public Safety, Dept.	GF - Cost	Minimal	Minimal

Note: GF=General Fund

#### Municipal Impact:

Municipalities	Effect	FY 06 \$	FY 07 \$
Municipal Police Dpts (Statewide Aggregate)	Cost	Minimal	Minimal

### Explanation

Upon request by any law enforcement official, the bill provides for the issuance of *ex parte* orders by the judge of the superior court to require a telecommunications carrier to disclose call-identifying information or an electronic communication service or remote computing service must disclose basic subscriber information, as defined in the bill. Police officers must request a search warrant for such information under current law, which takes more time to administer than the issuance of an order. Passage of the bill could therefore result in a workload decrease to state and local police.

Under the bill, any telecommunications carrier or provider of electronic communication service or remote computing service that provides information pursuant to an order issued under the bill is entitled to compensation for reasonable expenses incurred. On a statewide basis (including state and local law enforcement), it is anticipated that the annual cost to compensate companies for reasonable expenses incurred under the bill would be less than \$50,000 annually given the relatively low number of orders expected (about 100). The bill does not specify which governmental agency or

agencies must pay this compensation.

Lastly, the bill requires law enforcement officials and the Chief State's Attorney to track and report annually to the General Assembly on the usage of the bill's provisions. This could be accommodated at minimal cost.

**OLR Bill Analysis**

sSB 1356

**AN ACT AUTHORIZING LAW ENFORCEMENT OFFICIALS TO REQUEST EX PARTE AUTHORITY TO COMPEL DISCLOSURE OF TELEPHONE AND INTERNET RECORDS****SUMMARY:**

This bill requires telecommunications carriers and electronic communication and remote computing service providers to disclose their customers' call-identifying information or basic subscriber information, respectively, to designated law enforcement officials based on court orders, rather than search warrants. It requires superior court judges to issue these orders without notifying the customer or holding a hearing (ex parte) when the official states (1) a reasonable and articulable suspicion that a crime has been or is being committed or that emergency (exigent) circumstances exist and (2) that the customer information is relevant and material to an ongoing criminal investigation. It establishes post-disclosure deadlines for notifying the customer that his call identifying or subscriber information has been given to law enforcement officials.

The bill protects providers who disclose the information in good faith.

The bill also requires law enforcement officials to report to the chief state's attorney annually on the orders, including grounds for requesting them. It requires the chief state's attorney to file yearly reports with the Judiciary Committee.

EFFECTIVE DATE: October 1, 2005

**DEFINITIONS**

The bill adopts federal definitions for the service providers and customer records it covers.

***Telecommunications Carrier***

A "telecommunications carrier" is a person or entity that transmits or switches wire or electronic communications as a common carrier for

hire. It includes commercial mobile service providers and wire or electronic switching or transmission services that substantially replace portions of a local telephone exchange service, as determined by the Federal Communications Commission (47 USC § 1001(8)).

### ***Electronic Communication and Remote Computing Services***

An “electronic communication service” is any service which provides to its users thereof the ability to send or receive wire or electronic communications (18 USC § 2510(15)). A “remote computing service” means the provision to the public of computer storage or processing services by means of an electronic communications system (18 USC § 2711(2)).

### ***Basic Subscriber Information***

“Basic subscriber information” is (1) name, address, telephone or instrument number, or other subscriber number or identity, including any assigned Internet protocol address; (2) local and long distance telephone connection records or records of session times and durations; (3) length of service, including start date, and types of services utilized; and (4) source of payment for such service, including any credit card or bank account number.

### ***Call Identifying information***

“Call identifying information” is dialing or signaling information that identifies the origin, direction, destination, or termination of each communication generated or received by a subscriber or customer by means of any equipment, facility, or service of a telecommunications carrier (47 USC § 1001(2)).

### ***Law Enforcement Official***

The law enforcement personnel the bill authorizes to obtain disclosure orders are:

1. the chief state’s attorney or each state’s attorney,
2. Division of Criminal Justice inspectors,
3. sworn members of the State Police, and

4. sworn members of an organized local police department.

## **CONTENTS OF COURT ORDERS**

Under the bill, court disclosure orders must include the case number assigned to the criminal investigation giving rise to the order, the date and time of issuance, and the name of the issuing judge. The authorizing judge must sign the order within 48 hours of its issuance, or the next business day, whichever is earlier. (It is unclear whether providers must disclose their records when presented with an unsigned order.)

## **SERVICE PROVIDER COMPLIANCE**

The bill requires telecommunications carriers to disclose call-identifying information and electronic communication or remote computing service providers to disclose basic subscriber information to a designated law enforcement official when a judge issues a disclosure order. They must be paid the reasonable expenses they incur to comply with the order, and they are subject to the same legal protections and good faith immunity for their actions as are available under federal law (18 USC § 3124).

## **SUBSCRIBER OR CUSTOMER NOTIFICATION**

The bill requires the law enforcement official to mail a notice to the person whose records were the subject of the order of its existence. This must be done within 48 hours after the order is issued. Notification can be delayed for up to 90 days if the enforcement officer presents the issuing judge a written certification that there is reason to believe that notification of the order's existence may result in:

1. an individual's life or physical safety being endangered,
2. flight from prosecution,
3. evidence tampering or destruction,
4. intimidation of potential witnesses, or
5. seriously jeopardizing the investigation.

The officer must keep a true copy of the certification and may ask the court for an additional extension during the initial 90-day period.

## **REPORTS TO JUDICIARY COMMITTEE**

Under the bill, each law enforcement officer must report to the chief state’s attorney by January 15 of each year on orders issued the previous year. The chief state’s attorney must use the data in the individual reports to compile the data and provide it in a report to the Judiciary Committee by January 31 of each year.

The individual and chief state’s attorney’s reports must include:

1. the number of orders issued;
2. the types of entities they were directed to;
3. whether the order sought call-identifying information or basic subscriber information;
4. the statutory offenses that were being investigated;
5. the number of delayed notifications courts approved and the reasons for each;
6. the number of motions to vacate that were filed, and their dispositions;
7. the number of investigations concluded and their final outcomes; and
8. the status of any criminal prosecution resulting from the investigations.

## **COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Substitute  
Yea 36    Nay 3