

AMENDMENT TO H.R. 1731, AS REPORTED
OFFERED BY MR. YODER OF KANSAS

Add at the end the following new section:

1 **SEC. ____ . PRIVACY OF EMAIL.**

2 (a) **SHORT TITLE.**—This section may be cited as the
3 “Email Privacy Act”.

4 (b) **CONFIDENTIALITY OF ELECTRONIC COMMUNICA-**
5 **TIONS.**—Section 2702(a)(3) of title 18, United States
6 Code, is amended to read as follows:

7 “(3) a provider of remote computing service or
8 electronic communication service to the public shall
9 not knowingly divulge to any governmental entity
10 the contents of any communication described in sec-
11 tion 2703(a), or any record or other information
12 pertaining to a subscriber or customer of such serv-
13 ice.”.

14 (c) **ELIMINATION OF 180-DAY RULE; SEARCH WAR-**
15 **RANT REQUIREMENT; REQUIRED DISCLOSURE OF CUS-**
16 **TOMER RECORDS.**—

17 (1) **IN GENERAL.**—Section 2703 of title 18,
18 United States Code, is amended—

19 (A) by striking subsections (a), (b), and (c)
20 and inserting the following:

1 “(a) CONTENTS OF WIRE OR ELECTRONIC COMMU-
2 NICATIONS.—A governmental entity may require the dis-
3 closure by a provider of electronic communication service
4 or remote computing service of the contents of a wire or
5 electronic communication that is in electronic storage with
6 or otherwise stored, held, or maintained by the provider
7 only if the governmental entity obtains a warrant issued
8 using the procedures described in the Federal Rules of
9 Criminal Procedure (or, in the case of a State court,
10 issued using State warrant procedures) that is issued by
11 a court of competent jurisdiction directing the disclosure.

12 “(b) NOTICE.—Except as provided in section 2705,
13 not later than 10 business days in the case of a law en-
14 forcement agency, or not later than 3 business days in
15 the case of any other governmental entity, after a govern-
16 mental entity receives the contents of a wire or electronic
17 communication of a subscriber or customer from a pro-
18 vider of electronic communication service or remote com-
19 puting service under subsection (a), the governmental en-
20 tity shall serve upon, or deliver to by registered or first-
21 class mail, electronic mail, or other means reasonably cal-
22 culated to be effective, as specified by the court issuing
23 the warrant, the subscriber or customer—

24 “(1) a copy of the warrant; and

1 “(2) a notice that includes the information re-
2 ferred to in clauses (i) and (ii) of section
3 2705(a)(4)(B).

4 “(c) RECORDS CONCERNING ELECTRONIC COMMU-
5 NICATION SERVICE OR REMOTE COMPUTING SERVICE.—

6 “(1) IN GENERAL.—Subject to paragraph (2), a
7 governmental entity may require a provider of elec-
8 tronic communication service or remote computing
9 service to disclose a record or other information per-
10 taining to a subscriber or customer of the provider
11 or service (not including the contents of communica-
12 tions), only if the governmental entity—

13 “(A) obtains a warrant issued using the
14 procedures described in the Federal Rules of
15 Criminal Procedure (or, in the case of a State
16 court, issued using State warrant procedures)
17 that is issued by a court of competent jurisdic-
18 tion directing the disclosure;

19 “(B) obtains a court order directing the
20 disclosure under subsection (d);

21 “(C) has the consent of the subscriber or
22 customer to the disclosure; or

23 “(D) submits a formal written request rel-
24 evant to a law enforcement investigation con-
25 cerning telemarketing fraud for the name, ad-

1 dress, and place of business of a subscriber or
2 customer of the provider or service that is en-
3 gaged in telemarketing (as defined in section
4 2325).

5 “(2) INFORMATION TO BE DISCLOSED.—A pro-
6 vider of electronic communication service or remote
7 computing service shall, in response to an adminis-
8 trative subpoena authorized by Federal or State
9 statute, a grand jury, trial, or civil discovery sub-
10 poena, or any means authorized under paragraph
11 (1), disclose to a governmental entity the—

12 “(A) name;

13 “(B) address;

14 “(C) local and long distance telephone con-
15 nection records, or records of session times and
16 durations;

17 “(D) length of service (including start
18 date) and types of service used;

19 “(E) telephone or instrument number or
20 other subscriber number or identity, including
21 any temporarily assigned network address; and

22 “(F) means and source of payment for
23 such service (including any credit card or bank
24 account number), of a subscriber or customer of
25 such service.

1 “(3) NOTICE NOT REQUIRED.—A governmental
2 entity that receives records or information under
3 this subsection is not required to provide notice to
4 a subscriber or customer.”; and

5 (B) by adding at the end the following:

6 “(h) RULE OF CONSTRUCTION.—Nothing in this sec-
7 tion or in section 2702 shall be construed to limit the au-
8 thority of a governmental entity to use an administrative
9 subpoena authorized under a Federal or State statute or
10 to use a Federal or State grand jury, trial, or civil dis-
11 covery subpoena to—

12 “(1) require an originator, addressee, or in-
13 tended recipient of an electronic communication to
14 disclose the contents of the electronic communication
15 to the governmental entity; or

16 “(2) require an entity that provides electronic
17 communication services to the officers, directors, em-
18 ployees, or agents of the entity (for the purpose of
19 carrying out their duties) to disclose the contents of
20 an electronic communication to or from an officer,
21 director, employee, or agent of the entity to a gov-
22 ernmental entity, if the electronic communication is
23 held, stored, or maintained on an electronic commu-
24 nications system owned or operated by the entity.”.

1 (2) TECHNICAL AND CONFORMING AMEND-
2 MENTS.—Section 2703(d) of title 18, United States
3 Code, is amended—

4 (A) by striking “A court order for disclo-
5 sure under subsection (b) or (c)” and inserting
6 “A court order for disclosure under subsection
7 (c)”;

8 (B) by striking “the contents of a wire or
9 electronic communication, or”.

10 (d) DELAYED NOTICE.—Section 2705 of title 18,
11 United States Code, is amended to read as follows:

12 **“SEC. 2705. DELAYED NOTICE.**

13 “(a) DELAY OF NOTIFICATION.—

14 “(1) IN GENERAL.—A governmental entity that
15 is seeking a warrant under section 2703(a) may in-
16 clude in the application for the warrant a request for
17 an order delaying the notification required under
18 section 2703(b) for a period of not more than 180
19 days in the case of a law enforcement agency, or not
20 more than 90 days in the case of any other govern-
21 mental entity.

22 “(2) DETERMINATION.—A court shall grant a
23 request for delayed notification made under para-
24 graph (1) if the court determines that there is rea-

1 son to believe that notification of the existence of the
2 warrant may result in—

3 “(A) endangering the life or physical safety
4 of an individual;

5 “(B) flight from prosecution;

6 “(C) destruction of or tampering with evi-
7 dence;

8 “(D) intimidation of potential witnesses; or

9 “(E) otherwise seriously jeopardizing an
10 investigation or unduly delaying a trial.

11 “(3) EXTENSION.—Upon request by a govern-
12 mental entity, a court may grant one or more exten-
13 sions of the delay of notification granted under para-
14 graph (2) of not more than 180 days in the case of
15 a law enforcement agency, or not more than 90 days
16 in the case of any other governmental entity.

17 “(4) EXPIRATION OF THE DELAY OF NOTIFICA-
18 TION.—Upon expiration of the period of delay of no-
19 tification under paragraph (2) or (3), the govern-
20 mental entity shall serve upon, or deliver to by reg-
21 istered or first-class mail, electronic mail, or other
22 means reasonably calculated to be effective as speci-
23 fied by the court approving the search warrant, the
24 customer or subscriber—

25 “(A) a copy of the warrant; and

1 “(B) notice that informs the customer or
2 subscriber—

3 “(i) of the nature of the law enforce-
4 ment inquiry with reasonable specificity;

5 “(ii) that information maintained for
6 the customer or subscriber by the provider
7 of electronic communication service or re-
8 mote computing service named in the proc-
9 ess or request was supplied to, or re-
10 requested by, the governmental entity;

11 “(iii) of the date on which the warrant
12 was served on the provider and the date on
13 which the information was provided by the
14 provider to the governmental entity;

15 “(iv) that notification of the customer
16 or subscriber was delayed;

17 “(v) the identity of the court author-
18 izing the delay; and

19 “(vi) of the provision of this chapter
20 under which the delay was authorized.

21 “(b) PRECLUSION OF NOTICE TO SUBJECT OF GOV-
22 ERNMENTAL ACCESS.—

23 “(1) IN GENERAL.—A governmental entity that
24 is obtaining the contents of a communication or in-
25 formation or records under section 2703 may apply

1 to a court for an order directing a provider of elec-
2 tronic communication service or remote computing
3 service to which a warrant, order, subpoena, or other
4 directive under section 2703 is directed not to notify
5 any other person of the existence of the warrant,
6 order, subpoena, or other directive for a period of
7 not more than 180 days in the case of a law enforce-
8 ment agency, or not more than 90 days in the case
9 of any other governmental entity.

10 “(2) DETERMINATION.—A court shall grant a
11 request for an order made under paragraph (1) if
12 the court determines that there is reason to believe
13 that notification of the existence of the warrant,
14 order, subpoena, or other directive may result in—

15 “(A) endangering the life or physical safety
16 of an individual;

17 “(B) flight from prosecution;

18 “(C) destruction of or tampering with evi-
19 dence;

20 “(D) intimidation of potential witnesses; or

21 “(E) otherwise seriously jeopardizing an
22 investigation or unduly delaying a trial.

23 “(3) EXTENSION.—Upon request by a govern-
24 mental entity, a court may grant one or more exten-
25 sions of an order granted under paragraph (2) of

1 not more than 180 days in the case of a law enforce-
2 ment agency, or not more than 90 days in the case
3 of any other governmental entity.

4 “(4) PRIOR NOTICE TO LAW ENFORCEMENT.—
5 Upon expiration of the period of delay of notice
6 under this section, and not later than 3 business
7 days before providing notice to a customer or sub-
8 scriber, a provider of electronic communication serv-
9 ice or remote computing service shall notify the gov-
10 ernmental entity that obtained the contents of a
11 communication or information or records under sec-
12 tion 2703 of the intent of the provider of electronic
13 communication service or remote computing service
14 to notify the customer or subscriber of the existence
15 of the warrant, order, or subpoena seeking that in-
16 formation.

17 “(c) DEFINITION.—In this section and section 2703,
18 the term ‘law enforcement agency’ means an agency of the
19 United States, a State, or a political subdivision of a
20 State, authorized by law or by a government agency to
21 engage in or supervise the prevention, detection, investiga-
22 tion, or prosecution of any violation of criminal law, or
23 any other Federal or State agency conducting a criminal
24 investigation.”.

1 (e) EVALUATION BY THE GOVERNMENT ACCOUNT-
2 ABILITY OFFICE.—Not later than September 30, 2017,
3 the Comptroller General of the United States shall submit
4 to Congress a report regarding the disclosure of customer
5 communications and records under section 2703 of title
6 18, United States Code, which shall include—

7 (1) an analysis and evaluation of such disclo-
8 sure under section 2703 of title 18, United States
9 Code, as in effect before the date of enactment of
10 this Act, including—

11 (A) a comprehensive analysis and evalua-
12 tion regarding the number of individual in-
13 stances, in each of the 5 years before the year
14 in which this Act is enacted, in which Federal,
15 State, or local law enforcement officers used
16 section 2703 of title 18, United States Code, to
17 obtain information relevant to an ongoing
18 criminal investigation;

19 (B) an analysis of the average length of
20 time taken by a provider of an electronic com-
21 munication service or a remote computing serv-
22 ice to comply with requests by law enforcement
23 officers for information under section 2703 of
24 title 18, United States Code;

1 (C) the number of individual instances, in
2 each of the 5 years before the year in which
3 this Act is enacted, in which information was
4 requested by law enforcement officers from a
5 provider of an electronic communication service
6 or a remote computing service under a warrant
7 as authorized under section 2703(a) of title 18,
8 United States Code;

9 (D) the number of individual instances and
10 type of request, in each of the 5 years before
11 the year in which this Act is enacted, in which
12 information was requested by law enforcement
13 officers from a provider of an electronic com-
14 munication service or a remote computing serv-
15 ice under the other information request provi-
16 sions in section 2703 of title 18, United States
17 Code; and

18 (E) the number of individual instances, in
19 each of the 5 years before the year in which
20 this Act is enacted, in which law enforcement
21 officers requested delayed notification to the
22 subscriber or customer under section 2705 of
23 title 18, United States Code; and

1 (2) an analysis and evaluation of such disclo-
2 sure under section 2703 of title 18, United States
3 Code, as amended by this section, including—

4 (A) an evaluation of the effects of the
5 amendments to the warrant requirements on
6 judges, court dockets, or any other court oper-
7 ations;

8 (B) a survey of Federal, State, and local
9 judges and law enforcement officers to deter-
10 mine the average length of time required for
11 providers of an electronic communication serv-
12 ice or a remote computing service to provide the
13 contents of communications requested under a
14 search warrant, which shall include identifying
15 the number of instances in which a judge was
16 required to order a provider of an electronic
17 communication service or a remote computing
18 service to appear to show cause for failing to
19 comply with a warrant or to issue an order of
20 contempt against a provider of an electronic
21 communication service or a remote computing
22 service for such a failure; and

23 (C) determining whether the amendments
24 to the warrant requirements resulted in an in-
25 crease in the use of the emergency exception

1 under section 2702(b)(8) of title 18, United
2 States Code.

3 (f) RULE OF CONSTRUCTION.—Nothing in this sec-
4 tion or an amendment made by this section shall be con-
5 strued to preclude the acquisition by the United States
6 Government of—

7 (1) the contents of a wire or electronic commu-
8 nication pursuant to other lawful authorities, includ-
9 ing the authorities under chapter 119 of title 18
10 (commonly known as the “Wiretap Act”), the For-
11 eign Intelligence Surveillance Act of 1978 (50
12 U.S.C. 1801 et seq.), or any other provision of Fed-
13 eral law not specifically amended by this section; or

14 (2) records or other information relating to a
15 subscriber or customer of any electronic communica-
16 tions service or remote computing service (not in-
17 cluding the content of such communications) pursu-
18 ant to the Foreign Intelligence Surveillance Act of
19 1978 (50 U.S.C. 1801 et seq.), chapter 119 of title
20 18 (commonly known as the “Wiretap Act”), or any
21 other provision of Federal law not specifically
22 amended by this section.

