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(Original Signature of Member)

112TH CONGRESS
2D SESSION

H. R. _____

To amend title 18, United States Code, regarding access to stored communications and customer records, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. NADLER introduced the following bill; which was referred to the Committee on _____

A BILL

To amend title 18, United States Code, regarding access to stored communications and customer records, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Electronic Communica-
5 tions Privacy Act Modernization Act of 2012”.

1 **SEC. 2. REQUIREMENT FOR WARRANT FOR ACCESS TO**
2 **CONTENTS; NOTICE RULES.**

3 (a) STANDARD FOR ACCESS TO STORED COMMUNICA-
4 TIONS.—

5 (1) IN GENERAL.—Section 2703(a) of title 18,
6 United States Code, is amended to read as follows:

7 “(a) CONTENTS OF WIRE OR ELECTRONIC COMMU-
8 NICATIONS.—(1) A governmental entity may require the
9 disclosure by a provider of electronic communication serv-
10 ice or remote computing service of the contents of a wire
11 or electronic communication that is stored, held or main-
12 tained by that service only pursuant to—

13 “(A) a warrant complying with the Federal
14 Rules of Criminal Procedure and issued by a court
15 with jurisdiction over the offense under investigation
16 or equivalent State warrant; or

17 “(B) a court under title I or title VII of the
18 Foreign Intelligence Surveillance Act of 1978 (50
19 U.S.C. 1801 et seq. and 1881 et seq.).

20 “(2) Unless delayed notice is ordered under section
21 2705, not later than three days after a governmental enti-
22 ty receives contents of a communication under this sub-
23 section, the governmental entity shall notify the subscriber
24 or customer concerned of the matters required in notices
25 under, and by the means described in, paragraphs (4) and
26 (5) of section 2705(a).”.

1 (2) CONFORMING AMENDMENT.—Section 2703
2 of title 18, United States Code, is amended by strik-
3 ing subsection (b).

4 (b) PROHIBITION ON DISCLOSURE OF CUSTOMER
5 COMMUNICATIONS OR RECORDS.—Section 2702(a)(3) of
6 title 18, United States Code, is amended to read as fol-
7 lows:

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

15 (c) DELAYED NOTICE.—Section 2705 of title 18,
16 United States Code, is amended to read as follows:

17 **“SEC. 2705. DELAYED NOTICE.**

18 “(a) DELAY OF NOTIFICATION.—(1) A governmental
19 entity acting under section 2703(a) may, when a warrant
20 is sought, include in the application a request for an order
21 delaying the notification required under section 2703(a)
22 for a period not to exceed 90 days, and the court shall
23 issue the order if the court determines that there is reason
24 to believe that notification of the existence of the warrant
25 may have an adverse result.

1 “(2) In paragraph (1) the term ‘adverse result’
2 means—

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

5 “(B) flight from prosecution;

6 “(C) destruction of or tampering with evidence;

7 “(D) intimidation of potential witnesses; or

8 “(E) otherwise seriously jeopardizing an inves-
9 tigation or unduly delaying a trial.

10 “(3) The court may, upon application, grant an ex-
11 tension of an order issued under paragraph (1), or of a
12 previous extension of such an order, for up to an addi-
13 tional 90 days.

14 “(4) Upon expiration of the period of delay granted
15 under this subsection, the governmental entity shall pro-
16 vide the customer or subscriber a copy of warrant together
17 with notice that—

18 “(A) states with reasonable specificity the na-
19 ture of the law enforcement inquiry; and

20 “(B) informs such customer or subscriber—

21 “(i) that information maintained for such
22 customer or subscriber by the service provider
23 named in such process or request was supplied
24 to or requested by that governmental authority

1 and the date on which the supplying or request
2 took place;

3 “(ii) that notification of such customer or
4 subscriber was delayed;

5 “(iii) what court made the determination
6 pursuant to which that delay was made; and

7 “(iv) which provision of this chapter al-
8 lowed such delay.

9 “(5) The method of providing matter required to be
10 provided under paragraph (4) may be by service upon the
11 person to whom the matter is to be provided, or delivery
12 by registered or first-class mail, electronic mail, or other
13 means reasonably calculated to be effective as specified by
14 the court issuing the warrant.

15 “(b) PRECLUSION OF NOTICE TO SUBJECT OF GOV-
16 ERNMENTAL ACCESS.—A governmental entity acting
17 under section 2703, to the extent that it may delay notice
18 pursuant to subsection (a) of this section, may apply to
19 a court for an order commanding a provider of electronic
20 communications service or remote computing service to
21 whom a warrant is directed not to notify any other person
22 of the existence of the warrant. The court shall enter such
23 an order, or an extension of such an order (or earlier ex-
24 tension), for a period up to 90 days, if the court deter-
25 mines there is reason to believe that notification of the

1 existence of the warrant will result in an adverse result
2 as that term is defined in subsection (a)(2).”

3 **SEC. 3. REPORTING REQUIREMENTS.**

4 (a) IN GENERAL.—Chapter 121 of title 18, United
5 States Code, is amended by adding at the end the fol-
6 lowing:

7 **“§ 2713. Reporting requirements**

8 “(a) GENERAL RULEMAKING AUTHORITY FOR RE-
9 PORTS UNDER THIS SECTION.—The Director of the Ad-
10 ministrative Office of the United States Courts may make
11 rules regarding the content and form of the reports re-
12 quired under this section and reports required under sec-
13 tion 3126.

14 “(b) REPORTS CONCERNING DISCLOSURES.—

15 “(1) TO ADMINISTRATIVE OFFICE.—Not later
16 than 30 days after the issuance or denial of an order
17 or warrant compelling the disclosure of the contents
18 of any wire or electronic communication or records
19 or information under this chapter the issuing or de-
20 denying judge shall report to the Administrative Office
21 of the United States Courts—

22 “(A) the fact that an order was applied
23 for;

24 “(B) the type of order applied for;

1 “(C) whether the order was granted as ap-
2 plied for, was modified, or was denied;

3 “(D) whether the court also granted de-
4 layed notice and the number of times such
5 delay was granted;

6 “(E) the identity, including district where
7 applicable, of the applying investigative or law
8 enforcement agency making the application and
9 the person authorizing the application; and

10 “(F) the type of information or records
11 sought in the order.

12 “(2) TO CONGRESS.—In April of each year the
13 Director of the Administrative Office of the United
14 States Courts shall report to Congress with respect
15 to the preceding calendar year—

16 “(A) the overall total number of each of
17 the events described in the subparagraphs of
18 paragraph (1), regarding applications reported
19 to that Office; and

20 “(B) a summary and analysis of the data
21 described in paragraph (1).

22 “(c) REPORTS CONCERNING EMERGENCY DISCLO-
23 SURES.—

24 “(1) TO ADMINISTRATIVE OFFICE.—In January
25 of each year, the Attorney General, the Secretary of

1 the Department of Homeland Security, the principal
2 prosecuting attorney of a State, and the principal
3 prosecuting attorney for any political subdivision of
4 a State shall report to the Administrative Office of
5 the United States Courts—

6 “(A) the number of accounts from which
7 voluntary disclosures were made under sections
8 (b)(8), (c)(4), or (e) of section 2702; and

9 “(B) a summary of the basis for disclosure
10 in those instances where—

11 “(i) voluntary disclosures under sec-
12 tion 2702(b)(8) were made; and

13 “(ii) the investigation pertaining to
14 those disclosures was closed without the
15 filing of criminal charges.

16 “(2) TO CONGRESS.—In April of each year the
17 Director of the Administrative Office of the United
18 States Courts shall report to Congress with respect
19 to the preceding calendar year—

20 “(A) the number of voluntary disclosures
21 described in paragraph (1) that were made dur-
22 ing the preceding calendar year; and

23 “(B) a summary and analysis of the infor-
24 mation required to be reported by paragraph
25 (1).

1 “(d) PROVIDER REPORTING REQUIREMENTS.—

2 “(1) TO ADMINISTRATIVE OFFICE.—Except as
3 provided in paragraph (2), in January of each year
4 each provider of electronic communication service or
5 remote computing services shall report with respect
6 to the preceding calendar year to the Administrative
7 Office of the United States Courts—

8 “(A) the number of legal demands received
9 from Federal law enforcement agencies during
10 the preceding calendar year for records con-
11 cerning electronic communication service or re-
12 mote computing service;

13 “(B) the number of legal demands received
14 from Federal law enforcement agencies during
15 the preceding calendar for the contents of wire
16 or electronic communications in an electronic
17 communications service or a remote computing
18 service;

19 “(C) the number of legal demands received
20 from State and local law enforcement agencies
21 during the preceding calendar for records con-
22 cerning electronic communication service or re-
23 mote computing service;

24 “(D) the number of legal demands received
25 from State and local law enforcement agencies

1 during the preceding calendar for the contents
2 of wire or electronic communications in an elec-
3 tronic communications service or a remote com-
4 puting service; and

5 “(E) the number of accounts about which
6 information, including subscriber or customer
7 information, was disclosed, specifying the num-
8 bers disclosed pursuant to legal demand and
9 the numbers disclosed voluntarily, to Federal,
10 State, or local law enforcement agencies.

11 “(2) EXCEPTIONS.—The requirement of para-
12 graph (1) does not apply to a provider of electronic
13 communication services or remote computing serv-
14 ices that, during the reporting period—

15 “(A) received less than 50 requests com-
16 bined from law enforcement agencies;

17 “(B) disclosed account information con-
18 cerning less than 100 subscribers or customers;
19 or

20 “(C) had less than 100,000 total cus-
21 tomers or subscribers at the end of the calendar
22 year.

23 “(3) COMPENSATION.—The Director of the Ad-
24 ministrative Office of the United States Court may
25 provide reasonable compensation to a provider for

1 the costs of compiling a report required under this
2 subsection.

3 “(4) CONFIDENTIALITY OF IDENTITY OF SERV-
4 ICE PROVIDERS.—The Director of the Administra-
5 tive Office of the United States Courts shall estab-
6 lish procedures to prevent the release to the public
7 of the identity of service providers with respect to
8 disclosures they make under this subsection.

9 “(5) TO CONGRESS.—In April of each year, the
10 Director of the Administrative Office of the United
11 States Courts shall report to Congress with respect
12 to the preceding calendar year—

13 “(A) the total numbers of legal demands
14 and of disclosures required to be reported under
15 paragraph (1); and

16 “(B) a summary and analysis of the infor-
17 mation required to be reported by paragraph
18 (1), but without disclosing the identity of any
19 service provider with respect to the disclosures
20 to law enforcement that service provider
21 made.”.

22 (b) CLERICAL AMENDMENT.—The table of sections
23 at the beginning of chapter 121 of title 18, United States
24 Code, is amended by adding at the end the following new
25 item:

“2713. Reporting requirements.”.

1 (c) CONFORMING AMENDMENT.—Section 2702 of
2 title 18, United States Code, is amended by striking sub-
3 section (d).

4 **SEC. 4. REPORT REGARDING MOBILE TRACKING DEVICES.**

5 Not later than two years after the date of the enact-
6 ment of this subsection, the Attorney General shall com-
7 plete a study to determine trends relating to the frequency
8 and effectiveness of the use of mobile tracking devices
9 under section 3117 and report the results of that study
10 to Congress.

11 **SEC. 5. REPORTS CONCERNING PEN REGISTERS AND TRAP**
12 **AND TRACE DEVICES.**

13 Section 3126 of title 18 is amended to read as fol-
14 lows:

15 **“§ 3126. Reports concerning pen registers and trap**
16 **and trace devices**

17 “(a) TO ADMINISTRATIVE OFFICE.—Not later than
18 30 days after the expiration of an order (or each extension
19 thereof) entered under section 3123, or the denial of an
20 order for a pen register or trap and trace device, the
21 issuing or denying judge shall report to the Administrative
22 Office of the United States Courts—

23 “(1) the fact that an order or extension was ap-
24 plied for;

1 “(2) whether the order or extension was grant-
2 ed as applied for, was modified, or was denied;

3 “(3) the period of interceptions authorized by
4 the order, and the number and duration of any ex-
5 tensions of the order;

6 “(4) the offense specified in the order or appli-
7 cation, or extension of an order;

8 “(5) the number and nature of the facilities af-
9 fected; and

10 “(6) the identity, including district, of the ap-
11 plying investigative or law enforcement agency mak-
12 ing the application and the person authorizing the
13 order.

14 “(b) TO CONGRESS.—In April of each year the Direc-
15 tor of the Administrative Office of the United States
16 Courts shall report to Congress with respect to the pre-
17 ceding calendar year—

18 “(1) the number of applications for pen register
19 orders and orders for trap and trace devices; and

20 “(2) a summary and analysis of the information
21 required to be reported by subsection (a).”.

1 **SEC. 6. TRANSITION PROVISION RELATED TO REPORTING**
2 **REQUIREMENTS UNDER AMENDMENTS MADE**
3 **BY THIS ACT.**

4 (a) FOR REPORTS TO THE ADMINISTRATIVE OF-
5 FICE.—Any requirement to report to the Administrative
6 Office of the United States Courts contained in an amend-
7 ment made by this Act shall not take effect until the be-
8 ginning of the first January that begins one year or later
9 after the date of the enactment of this Act .

10 (b) FOR REPORTS TO CONGRESS.—Any requirement
11 for a report to Congress contained in an amendment made
12 by this Act shall not take effect until reports have been
13 required to be made under that amendment to the Admin-
14 istrative Office of the United States Courts pursuant to
15 subsection (a) for an entire calendar year.

16 **SEC. 7. MAKING SUPPRESSION REMEDIES THE SAME FOR**
17 **INTERCEPTED WIRE, ORAL, AND ELEC-**
18 **TRONIC COMMUNICATIONS.**

19 (a) SECTION 2518 AMENDMENTS.—Section 2518(10)
20 of title 18, United States Code, is amended—

21 (1) in paragraph (a), by striking “wire” and in-
22 serting “electronic, wire,”; and

23 (2) by striking paragraph (c).

24 (b) SECTION 2515 AMENDMENT.—Section 2515 of
25 title 18, United States Code, is amended by striking
26 “wire” and inserting “electronic, wire,”.