

House Bill 1360

By: Representatives Boggs of the 145th, Bordeaux of the 125th, Westmoreland of the 86th, Jenkins of the 93rd, Smyre of the 111th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 6 of Chapter 9 of Title 16 of the Official Code of Georgia Annotated,
2 relating to computer systems protection, so as to provide for procedures for and limitations
3 on the issuance and enforcement of subpoenas and warrants in certain computer related
4 crimes; to provide for admissibility of evidence; to amend Article 2 of Chapter 5 of Title 17
5 of the Official Code of Georgia Annotated, relating to searches with warrants, so as to
6 provide for procedures for and limitations on the issuance of search warrants to out-of-state
7 businesses that provide electronic communication services or remote computing services; to
8 provide for compliance by Georgia businesses with warrants issued in other states; to define
9 certain terms; to provide for related matters; to provide an effective date; to repeal conflicting
10 laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 style="text-align:center">**SECTION 1.**

13 Article 6 of Chapter 9 of Title 16 of the Official Code of Georgia Annotated, relating to
14 computer systems protection, is amended by designating the existing provisions of such
15 article as Part I thereof and adding a new part to read as follows:

16 style="text-align:center">"Part 2

17 16-9-100.

18 As used in this part, the term:

19 (1) 'Electronic communication' means any transfer of signs, signals, writing, images,
20 sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio,
21 electromagnetic, photoelectronic, or photo-optical system that affects interstate or foreign
22 commerce, but does not include:

23 (A) Any wire or oral communication;

24 (B) Any communication made through a tone-only paging device;

- 1 (C) Any communication from a tracking device; or
- 2 (D) Electronic funds transfer information stored by a financial institution in a
3 communications system used for the electronic storage and transfer of funds.
- 4 (2) 'Electronic communication service' means any service which provides to users
5 thereof the ability to send or receive wire or electronic communications.
- 6 (3) 'Electronic communications system' means any wire, radio, electromagnetic,
7 photo-optical, or photoelectronic facilities for the transmission of wire or electronic
8 communications, and any computer facilities or related electronic equipment for the
9 electronic storage of such communications.
- 10 (4) 'Electronic means' is any device or apparatus which can be used to intercept a wire,
11 oral, or electronic communication other than:
- 12 (A) Any telephone or telegraph instrument, equipment, or facility or any component
13 thereof:
- 14 (i) Furnished to the subscriber or user by a provider of wire or electronic
15 communication service in the ordinary course of its business and being used by the
16 subscriber or user in the ordinary course of its business or furnished by such
17 subscriber or user for connection to the facilities of such service and used in the
18 ordinary course of its business; or
- 19 (ii) Being used by a provider of wire or electronic communication service in the
20 ordinary course of its business, or by an investigative or law enforcement officer in
21 the ordinary course of his or her duties; or
- 22 (B) A hearing aid or similar device being used to correct subnormal hearing to not
23 better than normal.
- 24 (5) 'Electronic storage' means:
- 25 (A) Any temporary, intermediate storage of a wire or electronic communication
26 incidental to the electronic transmission thereof; and
- 27 (B) Any storage of such communication by an electronic communication service for
28 purposes of backup protection of such communication.
- 29 (6) 'Law enforcement unit' shall have the same definition as that provided for in Code
30 Section 35-8-2.
- 31 (7) 'Remote computing service' means the provision to the public of computer storage
32 or processing services by means of an electronic communications system.
- 33 (8) 'Tracking device' means an electronic or mechanical device which permits the
34 tracking of the movement of a person or object.

1 16-9-101.

2 (a) In any investigation of a violation of Part 1 of this article or any other criminal offense
3 involving the use of a computer in furtherance of the crime, the Attorney General, any
4 district attorney, or any solicitor-general shall have the power to administer oaths; to call
5 any party to testify under oath at such investigations; to require the attendance of witnesses
6 and the production of books, records, and papers; and to take the depositions of witnesses.
7 The Attorney General, any such district attorney, or solicitor-general is authorized to issue
8 a subpoena for any witness or a subpoena to compel the production of any books, records,
9 or papers.

10 (b) In case of refusal to obey a subpoena issued under this Code section to any person and
11 upon application by the Attorney General, district attorney, or solicitor-general, the
12 superior court in whose jurisdiction the witness is to appear or in which the books, records,
13 or papers are to be produced may issue to that person an order requiring him or her to
14 appear before the court to show cause why he or she should not be held in contempt for
15 refusal to obey the subpoena. Failure to obey a subpoena may be punished by the court as
16 contempt of court.

17 16-9-102.

18 (a)(1) Any law enforcement unit, the Attorney General, district attorney, or
19 solicitor-general who is conducting an investigation of a violation of Part 1 of this article
20 or other criminal offense involving the use of a computer in furtherance of the crime may
21 require the disclosure by a provider of electronic communication service or remote
22 computing service of the contents of a wire or electronic communication that is in
23 electronic storage in an electronic communications system for 180 days or less pursuant
24 to a search warrant issued under the provisions of Article 2 of Chapter 5 of Title 17
25 relating to searches with warrants by a court with jurisdiction over the offense under
26 investigation.

27 (2) Such court may require the disclosure by a provider of electronic communication
28 service or remote computing service of the contents of a wire or electronic
29 communication that has been in electronic storage in an electronic communications
30 system for more than 180 days by the means available under subsection (b) of this Code
31 section.

32 (b)(1) Any law enforcement unit, the Attorney General, district attorney, or
33 solicitor-general may require a provider of electronic communication service or remote
34 computing service to disclose a record or other information pertaining to a subscriber to
35 or customer of such service, excluding the contents of communications stored for 180

1 days or less, only when any law enforcement unit, the Attorney General, district attorney,
2 or solicitor-general:

3 (A) Obtains a search warrant as provided in Article 2 of Chapter 5 of Title 17;

4 (B) Obtains a court order for such disclosure under subsection (c) of this Code section;

5 (C) Has the consent of the subscriber or customer to such disclosure; or

6 (D) Seeks information under paragraph (2) of this subsection.

7 (2) A provider of electronic communication service or remote computing service shall
8 disclose to any law enforcement unit, the Attorney General, district attorney, or
9 solicitor-general the following:

10 (A) Name;

11 (B) Address;

12 (C) Local and long distance telephone connection records or records of session times
13 and durations;

14 (D) Length of service, including start date, and types of service utilized;

15 (E) Telephone or instrument number or other subscriber number or identity including
16 any temporarily assigned network address; and

17 (F) Means and source of payment for such service, including any credit card or bank
18 account number, of a subscriber to or customer of such service when any law
19 enforcement unit, the Attorney General, district attorney, or solicitor-general uses an
20 administrative subpoena authorized by Code Section 16-9-101 or 45-15-17, a grand
21 jury or trial subpoena, or any means available under paragraph (1) of this subsection.

22 (3) Any law enforcement unit, the Attorney General, district attorney, or solicitor-general
23 receiving records or information under this subsection shall not be required to provide
24 notice to a subscriber or customer. A provider of electronic communication service or
25 remote computing service shall not disclose to a subscriber or customer the existence of
26 any warrant or subpoena issued pursuant to this part nor shall a provider of electronic
27 communication service or remote computing service disclose to a subscriber or customer
28 that any records have been requested by or disclosed to a law enforcement unit, the
29 Attorney General, a district attorney, or a solicitor-general pursuant to this part.

30 (c) A court order for disclosure for purposes of subsection (b) of this Code section may be
31 issued by any court that is a superior court with jurisdiction over the offense under
32 investigation and shall issue only if a law enforcement unit, the Attorney General, district
33 attorney, or solicitor-general offers specific and articulable facts showing that there are
34 reasonable grounds to believe that the contents of a wire or electronic communication or
35 the records or other information sought is relevant and material to an ongoing criminal
36 investigation. A court issuing an order pursuant to this subsection, on a motion made
37 promptly by a provider of electronic communication service or remote computing service,

1 may quash or modify such order if compliance with such order would be unduly
2 burdensome or oppressive on such provider.

3 (d)(1) Any records supplied pursuant to this part shall be accompanied by the affidavit
4 of the custodian or other qualified witness stating in substance each of the following:

5 (A) The affiant is the duly authorized custodian of the records or other qualified
6 witness and has authority to certify the records;

7 (B) The copy is a true copy of all the records described in the subpoena, court order,
8 or search warrant and the records were delivered to the attorney or the attorney's
9 representative;

10 (C) The records were prepared by the personnel of the business in the ordinary course
11 of business at or near the time of the act, condition, or event;

12 (D) The sources of information and method and time of preparation were such as to
13 indicate its trustworthiness;

14 (E) The identity of the records; and

15 (F) A description of the mode of preparation of the records.

16 (2) If the business has none of the records described or only part thereof, the custodian
17 or other qualified witness shall so state in the affidavit.

18 (3) If the original records would be admissible in evidence if the custodian or other
19 qualified witness had been present and testified to the matters stated in the affidavit, the
20 copy of the records shall be admissible in evidence. The affidavit shall be admissible as
21 evidence of the matters stated therein and the matters so stated shall be presumed true.
22 When more than one person has knowledge of the facts, more than one affidavit may be
23 made. The presumption established by this paragraph is a presumption affecting the
24 burden of producing evidence.

25 (4) No later than 30 days prior to trial, a party intending to offer such evidence shall
26 provide written notice of such intentions to the opposing party or parties. A motion
27 opposing the admission of such evidence shall be filed within ten days of the filing of
28 such notice, and the court shall hold a hearing and rule on such motion no later than ten
29 days prior to trial. Failure of a party to file such motion opposing admission prior to trial
30 shall constitute a waiver of objection to the records and affidavit; provided, however, that
31 the court, for good cause shown, may grant relief from such waiver."

32 **SECTION 2.**

33 Article 2 of Chapter 5 of Title 17 the Official Code of Georgia Annotated, relating to
34 searches with warrants, is amended by adding a new Code section to read as follows:

35 "17-5-33.

36 (a) As used in this Code section, the term:

1 (1) 'Adverse result' means that notification of the existence of a search warrant results
2 in:

3 (A) Danger to the life or physical safety of an individual;

4 (B) A flight from prosecution;

5 (C) The destruction of or tampering with evidence;

6 (D) The intimidation of potential witnesses; or

7 (E) Serious jeopardy to an investigation or undue delay of a trial.

8 (2) 'Business' means any lawful activity engaged in for profit or not for profit, whether
9 organized as a corporation; partnership, either general or limited; sole proprietorship;
10 alien corporation required to register under the provisions of Code Section 16-14-15; or
11 an institution, association, profession, occupation, or calling of any kind, or otherwise.

12 (3) 'Electronic communication service' or 'remote computing service' shall have the same
13 meaning provided in Code Section 16-9-100; provided, however, that this paragraph shall
14 not apply to business entities that do not provide those services to the general public.

15 (4) 'Properly served' means that the search warrant is issued and executed as provided
16 for under the provisions of this article and includes without limitation service upon a
17 registered agent of an out-of-state business.

18 (5) 'Out-of-state business' means any foreign business that is qualified to do business in
19 this state.

20 (b) The following provisions shall apply to any search warrant issued pursuant to this
21 article allowing a search for records that are in the actual or constructive possession of an
22 out-of-state business that provides electronic communication service or remote computing
23 service to the general public where those records would reveal the identity of the customers
24 using those services, data stored by, or on behalf of, the customer, the customer's usage of
25 those services, the recipient or destination of communications sent to or from those
26 customers, or the content of those communications:

27 (1) When properly served with a search warrant issued by a Georgia court, an
28 out-of-state business subject to this Code section shall provide to the applicant all records,
29 including those records maintained or located outside this state, sought pursuant to that
30 warrant within five business days of receipt;

31 (2) Where the applicant makes a showing and the court finds that failure to produce
32 records within five business days would cause an adverse result, the warrant may require
33 production of records within fewer than five business days;

34 (3) A court may extend the time required for production of the records upon finding that
35 the out-of-state business has shown good cause for that extension and that an extension
36 of time would not cause an adverse result; and

1 (4) An out-of-state business seeking to quash the warrant must seek relief from the court
2 that issued the warrant within the time required for production of records pursuant to this
3 Code section. The issuing court shall hear and decide that motion no later than five days
4 after the motion is filed.

5 (c) A Georgia business that provides electronic communication service or remote
6 computing service to the general public when served with a warrant issued by another state
7 to produce records that would reveal the identity of the customers using those services, data
8 stored by, or on behalf of, the customer, the customer's usage of those services, the
9 recipient or destination of communications sent to or from those customers, or the content
10 of those communications, shall produce those records as if that warrant had been issued by
11 a Georgia court.

12 (d) No cause of action shall lie against any out-of-state or Georgia business subject to this
13 Code section, its officers, employees, agents, or other specified persons for providing
14 records, information, facilities, or assistance in accordance with the terms of a warrant
15 issued pursuant to this chapter."

16 **SECTION 3.**

17 This Act shall become effective upon its approval by the Governor or upon its becoming law
18 without such approval.

19 **SECTION 4.**

20 All laws and parts of laws in conflict with this Act are repealed.