

1.1 A bill for an act

1.2 relating to privacy; requiring a government entity to obtain a search warrant before
1.3 accessing electronic communication information; amending Minnesota Statutes
1.4 2018, sections 626A.26, subdivision 3; 626A.27, subdivision 2; 626A.28,
1.5 subdivisions 3, 4, 5; 626A.31, subdivision 1; proposing coding for new law in
1.6 Minnesota Statutes, chapter 626; repealing Minnesota Statutes 2018, sections
1.7 626A.28, subdivisions 1, 2; 626A.29; 626A.30.

1.8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.9 Section 1. **[626.085] SEARCH WARRANT REQUIRED FOR ELECTRONIC**
1.10 **COMMUNICATION INFORMATION.**

1.11 Subdivision 1. Definitions. As used in this section, the following terms have the meanings
1.12 given them:

1.13 (1) "electronic communication" means the transfer of signs, signals, writings, images,
1.14 sounds, data, or intelligence of any nature in whole or in part by a wire, radio,
1.15 electromagnetic, photoelectric, or photo-optical system;

1.16 (2) "electronic communication information" means any information about an electronic
1.17 communication or the use of an electronic communication service, limited to the contents
1.18 of electronic communications and precise or approximate location of the sender or recipients
1.19 at any point during the communication;

1.20 (3) "electronic communication service" has the meaning given in section 626A.01,
1.21 subdivision 17; and

1.22 (4) "government entity" has the meaning given in section 626A.42, subdivision 1,
1.23 paragraph (d).

2.1 Subd. 2. **Warrant required; exceptions.** (a) Except as provided in paragraph (b), a
2.2 government entity must obtain a search warrant to require disclosure of electronic
2.3 communication information.

2.4 (b) A government entity may request disclosure of electronic communication information
2.5 without a search warrant if the agency has valid consent from one authorized to give it, or
2.6 exigent circumstances exist where there is a danger to the life or physical safety of an
2.7 individual.

2.8 Subd. 3. **Notice to subject.** A government entity accessing electronic communication
2.9 information under subdivision 2 must provide notice to the subject of the information
2.10 consistent with the requirements of subdivision 4 and section 626.16.

2.11 Subd. 4. **Notice; temporary nondisclosure of search warrant.** (a) Within a reasonable
2.12 time but not later than 90 days after the court unseals the search warrant under this
2.13 subdivision, the issuing or denying judge shall cause to be served on the persons named in
2.14 the warrant and the application an inventory which shall include notice of:

2.15 (1) the fact of the issuance of the warrant or the application;

2.16 (2) the date of the issuance and the period of authorized, approved, or disapproved
2.17 collection of electronic communication information, or the denial of the application; and

2.18 (3) the fact that during the period electronic communication information was or was not
2.19 collected.

2.20 (b) A search warrant authorizing collection of electronic communication information
2.21 must direct that:

2.22 (1) the warrant be sealed for a period of 90 days or until the objective of the warrant has
2.23 been accomplished, whichever is shorter; and

2.24 (2) the warrant be filed with the court administrator within ten days of the expiration of
2.25 the warrant.

2.26 (c) The prosecutor may request that the search warrant, supporting affidavits, and any
2.27 order granting the request not be filed. An order must be issued granting the request in whole
2.28 or in part if, from affidavits, sworn testimony, or other evidence, the court finds reasonable
2.29 grounds exist to believe that filing the warrant may cause the search or a related search to
2.30 be unsuccessful, create a substantial risk of injury to an innocent person, or severely hamper
2.31 an ongoing investigation.

3.1 (d) The search warrant must direct that following the commencement of any criminal
 3.2 proceeding utilizing evidence obtained in or as a result of the search, the supporting
 3.3 application or affidavit must be filed either immediately or at any other time as the court
 3.4 directs. Until such filing, the documents and materials ordered withheld from filing must
 3.5 be retained by the judge or the judge's designee.

3.6 Subd. 5. **Reports.** (a) At the same time as notice is provided according to the requirements
 3.7 of subdivision 4, the issuing or denying judge shall report to the state court administrator:

3.8 (1) the fact that a warrant was applied for under this section;

3.9 (2) the fact that the warrant was granted as applied for, was modified, or was denied;

3.10 (3) the period of collection of electronic communication information authorized by the
 3.11 warrant, and the number and duration of any extensions of the warrant;

3.12 (4) the offense specified in the warrant or application, or extension of a warrant; and

3.13 (5) the identity of the applying investigative or peace officer and agency making the
 3.14 application and the person authorizing the application.

3.15 (b) On or before November 15 of each even-numbered year, the state court administrator
 3.16 shall transmit to the legislature a report concerning: (1) all warrants authorizing the collection
 3.17 of electronic communication information during the two previous calendar years; and (2)
 3.18 all applications that were denied during the two previous calendar years. Each report shall
 3.19 include a summary and analysis of the data required to be filed under this section. The report
 3.20 is public and must be available for public inspection at the Legislative Reference Library
 3.21 and the state court administrator's office and website.

3.22 (c) Nothing in this section prohibits or restricts a service provider from producing an
 3.23 annual report summarizing the demands or requests it receives under this section.

3.24 Sec. 2. Minnesota Statutes 2018, section 626A.26, subdivision 3, is amended to read:

3.25 Subd. 3. **Exceptions.** Subdivision 1 does not apply with respect to conduct authorized:

3.26 (1) by the person or entity providing a wire or electronic communications service;

3.27 (2) by a user of that service with respect to a communication of or intended for that user;

3.28 or

3.29 (3) in ~~sections~~ section 626.085, 626A.05 to 626A.09, or 626A.28, or 626A.29.

4.1 Sec. 3. Minnesota Statutes 2018, section 626A.27, subdivision 2, is amended to read:

4.2 Subd. 2. **Exceptions.** A person or entity may divulge the contents of a communication:

4.3 (1) to an addressee or intended recipient of the communication or an agent of the
4.4 addressee or intended recipient;

4.5 (2) as otherwise authorized in section 626.085, 626A.02, subdivision 2, paragraph (a);
4.6 626A.05; or section 626A.28;

4.7 (3) with the lawful consent of the originator or an addressee or intended recipient of the
4.8 communication, or the subscriber in the case of remote computing service;

4.9 (4) to a person employed or authorized or whose facilities are used to forward a
4.10 communication to its destination;

4.11 (5) as may be necessarily incident to the rendition of the service or to the protection of
4.12 the rights or property of the provider of that service; or

4.13 (6) to a law enforcement agency, if the contents:

4.14 (i) were inadvertently obtained by the service provider; and

4.15 (ii) appear to pertain to the commission of a crime.

4.16 Sec. 4. Minnesota Statutes 2018, section 626A.28, subdivision 3, is amended to read:

4.17 Subd. 3. **Records concerning electronic communication service or remote computing**
4.18 **service.** (a) Except as provided in paragraph (b) or chapter 325M, a provider of electronic
4.19 communication service or remote computing service may disclose a record or other
4.20 information pertaining to a subscriber to or customer of the service, not including the contents
4.21 of communications ~~covered by subdivision 1 or 2~~, to any person other than a governmental
4.22 entity.

4.23 (b) A provider of electronic communication service or remote computing service may
4.24 disclose a record or other information pertaining to a subscriber to or customer of the service,
4.25 not including the contents of communications ~~covered by subdivision 1 or 2~~, to a
4.26 governmental entity only when the governmental entity:

4.27 (1) uses an administrative subpoena authorized by statute, or a grand jury subpoena;

4.28 (2) obtains a warrant;

4.29 (3) obtains a court order for such disclosure under subdivision 4; or

4.30 (4) has the consent of the subscriber or customer to the disclosure.

5.1 (c) A governmental entity receiving records or information under this subdivision is not
5.2 required to provide notice to a subscriber or customer.

5.3 (d) Notwithstanding paragraph (b), a provider of electronic communication service or
5.4 remote computing service may not disclose location information covered by section 626A.42
5.5 to a government entity except as provided in that section.

5.6 Sec. 5. Minnesota Statutes 2018, section 626A.28, subdivision 4, is amended to read:

5.7 Subd. 4. **Requirements for court order.** A court order for disclosure under subdivision
5.8 ~~2 or 3~~ must issue only if the governmental entity shows that there is reason to believe the
5.9 ~~contents of a wire or electronic communication, or the~~ records or other information sought,
5.10 are relevant to a legitimate law enforcement inquiry. A court issuing an order pursuant to
5.11 this section, on a motion made promptly by the service provider, may quash or modify such
5.12 order, if the information or records requested are unusually voluminous in nature or
5.13 compliance with such order otherwise would cause an undue burden on such provider.

5.14 Sec. 6. Minnesota Statutes 2018, section 626A.28, subdivision 5, is amended to read:

5.15 Subd. 5. **No cause of action against a provider disclosing certain information.** No
5.16 cause of action lies in any court against any provider of wire or electronic communication
5.17 service, its officers, employees, agents, or other specified persons for providing information,
5.18 facilities, or assistance in accordance with the terms of a court order, warrant, subpoena, or
5.19 certification under ~~sections~~ section 626.085 or 626A.26 to 626A.34.

5.20 Sec. 7. Minnesota Statutes 2018, section 626A.31, subdivision 1, is amended to read:

5.21 Subdivision 1. **Payment.** Except as otherwise provided in subdivision 3, a governmental
5.22 entity obtaining ~~the contents of communications, records, or other information under sections~~
5.23 section 626A.27, or 626A.28, and 626A.29 shall pay to the person or entity assembling or
5.24 providing the information a fee for reimbursement for costs that are reasonably necessary
5.25 and that have been directly incurred in searching for, assembling, reproducing, or otherwise
5.26 providing the information. The reimbursable costs must include any costs due to necessary
5.27 disruption of normal operations of the electronic communication service or remote computing
5.28 service in which the information may be stored.

5.29 Sec. 8. **REPEALER.**

5.30 Minnesota Statutes 2018, sections 626A.28, subdivisions 1 and 2; 626A.29; and 626A.30,
5.31 are repealed.