

Subject Electronic Communications Privacy Act

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Overview

This bill would enact the “Minnesota Electronic Communications Privacy Act.” The bill would prohibit government entities—including law enforcement agencies—from accessing information about electronic communications (e.g. phone calls, emails, text messages, etc.) without a court warrant. The bill also: imposes new requirements on warrants for electronic communication information; mandates that government entities notify individuals whose information is the subject of such a warrant; provides remedies for those affected by violations of the bill’s requirements; and requires the judiciary to report to the legislature on warrants issued.

There is currently a “Privacy of Communications Act” at Chapter 626A. The existing law was originally passed in 1969 and covered “wire or oral” communications. That law was revised in 1989 so that it covered “wire, oral, or electronic communications.” Subsequent changes have also been made in Chapter 626A. The provisions in this bill would be in addition to existing law.

Summary

Section	Description
1	Short title. The act may be cited as the “Minnesota Electronic Communications Privacy Act.”
2	Definitions. Defines the following terms: “adverse result,” “authorized possessor,” “electronic communication,” “electronic communication information,” “electronic communication service,” “electronic device,” “electronic device information,” “electronic information,” “government entity,” “service provider,” “specific consent,” and “subscriber information.”
3	Government entity prohibitions; exceptions. Subd. 1. Prohibitions. Prohibits a government entity from: (1) compelling or incentivizing a service provider to produce or allow government access to electronic communication information; (2) compelling any person other than the

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	<p>authorized possessor of a device to allow access to the electronic device information; or (3) accessing electronic device information by physical interaction or electronic communication with the device.</p>
	<p>Subd. 2. Exceptions. Paragraph (1) provides that—with a proper court-issued search warrant or wiretap order—a government entity may compel a service provider or a person other than the authorized possessor of a device to produce or allow access to electronic communication information. Paragraph (2) allows a government entity to access electronic device information by physical interaction or electronic communication with the device under circumstances specified in clauses (i) through (v).</p>
	<p>Subd. 3. Warrant. Adds additional requirements for a court issuing a warrant for electronic communication information. Allows the court to appoint a special master to oversee execution of the warrant.</p>
	<p>Subd. 4. Service provider; voluntary disclosure. Allows a service provider to voluntarily disclose electronic communication information or subscriber information. But requires a government entity who receives that voluntarily disclosed information to destroy it unless the entity has certain consents or a court order. Also imposes requirements and restrictions on a court order to retain such voluntarily disclosed information.</p>
	<p>Subd. 5. Emergency. Permits a government entity to obtain electronic communication information in a life-threatening emergency situation, but requires the entity to seek court approval of that action after the fact.</p>
	<p>Subd. 6. Subpoena. Specifies that this section does not limit the ability of a government entity to obtain certain information via subpoena.</p>
	<p>Subd. 7. Recipient voluntary disclosure. Specifies that this section does not prohibit a person who receives an electronic communication from voluntarily disclosing that information to a government entity.</p>
	<p>Subd. 8. Construction. Provides that courts should not interpret this section to expand any existing government authority to access electronic information.</p>
4	<p>Notices required.</p> <p>Subd. 1. Notice. Requires a government entity that obtains electronic communication information must notify targets of the warrant.</p> <p>Subd. 2. Emergency; delay of notice. For emergency situations under section 3, subdivision 5, allows a government entity to request a court order to delay the notice required under subdivision 1.</p> <p>Subd. 3. No identified target. For instances where a government entity obtains electronic communication information in an emergency situation, but no target is</p>

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	<p>identified, requires the entity to submit required information to the Minnesota Supreme Court, which must publish reports on the information.</p> <p>Subd. 4. Service provider. Specifies that nothing in this section prevents a service provider from disclosing information about a request for electronic information.</p>
5	<p>Remedies.</p> <p>Subd. 1. Suppression. Permits a party in any trial, hearing, or legal proceeding to move to suppress electronic communication information obtained in violation of this act, or the state or federal constitutions.</p> <p>Subd. 2. Attorney general. Empowers the attorney general to file a civil lawsuit against a government entity to compel compliance with this act.</p> <p>Subd. 3. Petition. Provides that any person whose information is sought in violation of this act or the state or federal constitutions may petition the relevant court for relief.</p> <p>Subd. 4. No cause of action. Provides immunity from suit for corporations that disclose information in compliance with this act.</p>
6	<p>Reports.</p> <p>Requires the judge who issues or denies a warrant for electronic communication information under section 3 to report specified information to the state court administrator, who must prepare a biennial report to the legislature regarding the warrants.</p>



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