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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2020

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A N A C T

RELATING TO COMMERCIAL LAW - GENERAL REGULATORY PROVISIONS -  
ESTABLISHING THE ELECTRONIC INFORMATION OR DATA PRIVACY ACT

Introduced By: Senators de la Cruz, Morgan, Paolino, Euer, and Lombardi

Date Introduced: February 13, 2020

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 6 of the General Laws entitled "COMMERCIAL LAW - GENERAL  
2 REGULATORY PROVISIONS" is hereby amended by adding thereto the following chapter:

3 CHAPTER 13.4

4 ELECTRONIC INFORMATION OR DATA PRIVACY ACT

5 **6-13.4-1. Short title.**

6 This chapter shall be known and may be cited as the "Electronic Information or Data  
7 Privacy Act."

8 **6-13.4-2. Definitions.**

9 As used in this chapter:

10 (1) "Electronic communication service" means a service that provides to users of the  
11 service the ability to send or receive wire or electronic communications.

12 (2) "Electronic device" means a device that enables access to or use of an electronic  
13 communication service, remote computing service, or location information service.

14 (3)(i) "Electronic information or data" means information or data including a sign, signal,  
15 writing, image, sound, or intelligence of any nature transmitted or stored in whole or in part by a  
16 wire, radio, electromagnetic, photoelectronic, or photooptical system.

17 (ii) "Electronic information or data" means and includes the location information, stored  
18 data, or transmitted data of an electronic device.

- 1           (iii) "Electronic information or data" does not include:
- 2           (A) A wire or oral communication;
- 3           (B) A communication made through a tone-only paging device; or
- 4           (C) Electronic funds transfer information stored by a financial institution in a
- 5           communications system used for the electronic storage and transfer of money.
- 6           (4) "Law enforcement agency" means an entity of the state or a political subdivision of
- 7           the state that exists to primarily prevent, detect, or prosecute crime and enforce criminal statutes
- 8           or ordinances.
- 9           (5) "Location information" means information, obtained by means of a tracking device,
- 10           concerning the location of an electronic device that, in whole or in part, is generated or derived
- 11           from or obtained by the operation of an electronic device.
- 12           (6) "Location information service" means the provision of a global positioning service or
- 13           other mapping, location, or directional information service.
- 14           (7) "Oral communication" means the same as that term is defined in § 12-5.1-1.
- 15           (8) "Remote computing service" means the provision to the public of computer storage or
- 16           processing services by means of an electronic communications system.
- 17           (9) "Subscriber record" means a record or information of a provider of an electronic
- 18           communication service or remote computing service that reveals the subscriber's or customer's:
- 19           (i) Name;
- 20           (ii) Address;
- 21           (iii) Local and long distance telephone connection record, or record of session time and
- 22           duration;
- 23           (iv) Length of service, including the start date;
- 24           (v) Type of service used;
- 25           (vi) Telephone number, instrument number, or other subscriber or customer number or
- 26           identification, including a temporarily assigned network address; and
- 27           (vii) Means and source of payment for the service, including a credit card or bank
- 28           account number.
- 29           (10) "Transmitted data" means electronic information or data that is transmitted
- 30           wirelessly:
- 31           (i) From an electronic device to another electronic device without the use of an
- 32           intermediate connection or relay; or
- 33           (ii) From an electronic device to a nearby antenna.
- 34           (11) "Wire communication" means the same as that term is defined in 18 U.S.C. § 2510.

1           **6-13.4-3. Warrant requirements and exceptions.**

2           (a)(1) Except as provided in subsection (b) of this section, for a criminal investigation or  
3 prosecution, a law enforcement agency may not obtain, without a search warrant issued by a court  
4 upon probable cause:

5           (i) The location information, stored data, or transmitted data of an electronic device; or

6           (ii) Electronic information or data transmitted by the owner of the electronic information  
7 or data to a remote computing service provider.

8           (2) Except as provided in subsection (a)(3) of this section, a law enforcement agency may  
9 not use, copy, or disclose, for any purpose, the location information, stored data, transmitted data  
10 of an electronic device, or electronic information or data provided by a remote computing service  
11 provider, that:

12           (i) Is not the subject of the warrant; and

13           (ii) Is collected as part of an effort to obtain the location information, stored data,  
14 transmitted data of an electronic device, or electronic information or data provided by a remote  
15 computing service provider that is the subject of the warrant in subsection (a)(1) of this section.

16           (3) A law enforcement agency may use, copy, or disclose the transmitted data of an  
17 electronic device used to communicate with the electronic device that is the subject of the warrant  
18 if the law enforcement agency reasonably believes that the transmitted data is necessary to  
19 achieve the objective of the warrant.

20           (4) The electronic information or data described in subsection (a)(2) shall be destroyed in  
21 an unrecoverable manner by the law enforcement agency as soon as reasonably possible after the  
22 electronic information or data is collected.

23           (b)(1) A law enforcement agency may obtain location information without a warrant for  
24 an electronic device:

25           (i) In accordance with exigent circumstances when a police officer or law enforcement  
26 official has an objectively reasonable basis that serious injury or death may result upon delay;

27           (ii) If the device is reported stolen by the owner;

28           (iii) With the informed, affirmative consent of the owner or user of the electronic device;

29           (iv) In accordance with a judicially recognized exception to warrant requirements;

30           (v) If the owner has voluntarily and publicly disclosed the location information; or

31           (vi) From the remote computing service provider if the remote computing service  
32 provider voluntarily discloses the location information:

33           (A) Under a belief that an emergency exists involving an imminent risk to an individual  
34 of death, serious physical injury, sexual abuse, live-streamed sexual exploitation, kidnapping, or

1 human trafficking; or

2 (B) That is inadvertently discovered by the remote computing service provider and  
3 appears to pertain to the commission of a felony, or of a misdemeanor involving physical  
4 violence, sexual abuse, or dishonesty.

5 (2) A law enforcement agency may obtain stored or transmitted data from an electronic  
6 device, or electronic information or data transmitted by the owner of the electronic information or  
7 data to a remote computing service provider, without a warrant:

8 (i) With the informed consent of the owner of the electronic device or electronic  
9 information or data;

10 (ii) In accordance with a judicially recognized exception to warrant requirements;

11 (iii) In connection with a report forwarded by the National Center for Missing and  
12 Exploited Children under 18 U.S.C. § 2258A; or

13 (iv) From a remote computing service provider if the remote computing service provider  
14 voluntarily discloses the stored or transmitted data as otherwise permitted under 18 U.S.C. §  
15 2702.

16 (3) A prosecutor may obtain a judicial order or warrant as otherwise permitted by law.

17 (c) An electronic communication service provider or remote computing service provider,  
18 the provider's officers, employees, agents or other specified persons may not be held liable for  
19 providing information, facilities, or assistance in good faith reliance on the terms of the warrant  
20 issued under this section or without a warrant in accordance with subsection (b) of this section.

21 (d) Nothing in this chapter limits or affects the disclosure of public records under chapter  
22 2 of title 38.

23 **6-13.4-4. Notification required - Delayed notification.**

24 (a)(1) Except as provided in subsection (b) of this section, a law enforcement agency that  
25 executes a warrant pursuant to this chapter shall, within fourteen (14) days after the day on which  
26 the electronic information or data that is the subject of the warrant is obtained by the law  
27 enforcement agency, issue a notification to the owner of the electronic device or electronic  
28 information or data specified in the warrant that states:

29 (i) That a warrant was applied for and granted;

30 (ii) The kind of warrant issued;

31 (iii) The period of time during which the collection of the electronic information or data  
32 was authorized;

33 (iv) The offense specified in the application for the warrant;

34 (v) The identity of the law enforcement agency that filed the application; and

1           (vi) The identity of the judge who issued the warrant.

2           (2) The notification requirement under subsection (a)(1) of this section is not triggered  
3 until the owner of the electronic device or electronic information or data specified in the warrant  
4 is known, or could be reasonably identified, by the law enforcement agency.

5           (b) A law enforcement agency seeking a warrant pursuant to the provision of this chapter  
6 may submit a request, and the court may grant permission, to delay the notification required by  
7 subsection (a) of this section for a period not to exceed thirty (30) days, if the court determines  
8 that there is reasonable cause to believe that the notification may:

9           (1) Endanger the life or physical safety of an individual;

10          (2) Cause a person to flee from prosecution;

11          (3) Lead to the destruction of or tampering with evidence;

12          (4) Intimidate a potential witness; or

13          (5) Otherwise seriously jeopardize an investigation or unduly delay a trial.

14          (c)(1) When a delay of notification is granted under subsection (b) of this section and  
15 upon application by the law enforcement agency, the court may grant additional extensions of up  
16 to thirty (30) days each.

17          (2) Notwithstanding subsection (c)(1) of this section, when a delay of notification is  
18 granted under subsection (b), and upon application by a law enforcement agency, the court may  
19 grant an additional extension of up to sixty (60) days if the court determines that a delayed  
20 notification is justified because the investigation involving the warrant:

21          (i) Is Interstate in nature and sufficiently complex; or

22          (ii) Is likely to extend up to or beyond an additional sixty (60) days.

23          (d) Upon expiration of the period of delayed notification granted under subsection (b) or  
24 (c) of this section, the law enforcement agency shall serve upon or deliver by first-class mail, or  
25 by other means if delivery is impracticable, to the owner of the electronic device or electronic  
26 information or data a copy of the warrant together with notice that:

27          (1) States with reasonable specificity the nature of the law enforcement inquiry; and

28          (2) Contains:

29          (i) The information described in subsection (a)(1) of this section;

30          (ii) A statement that notification of the search was delayed;

31          (iii) The name of the court that authorized the delay of notification; and

32          (iv) A reference to the provision of this chapter that allowed the delay of notification.

33          (e) A law enforcement agency is not required to notify the owner of the electronic device  
34 or electronic information or data if the owner is located outside of the United States.

1           **6-13.4-5. Law enforcement use.**

2           (a) Except as provided pursuant to subsection (b) of this section, a law enforcement  
3 agency may not obtain, use, copy, or disclose, for a criminal investigation or prosecution, any  
4 record or information, other than subscriber record, of a provider of an electronic communication  
5 service or remote computing service related to a subscriber or customer without a warrant.

6           (b) A law enforcement agency may obtain, use, copy, or disclose a subscriber record, or  
7 other record or information related to a subscriber or customer, without a warrant:

8           (1) With the informed, affirmed consent of the subscriber or customer;

9           (2) In accordance with a judicially recognized exception to warrant requirements;

10          (3) If the subscriber or customer voluntarily discloses the record in a manner that is  
11 publicly accessible; or

12          (4) If the provider of an electronic communication service or remote computing service  
13 voluntarily discloses the record:

14          (i) Under a belief that an emergency exists involving the imminent risk to an individual  
15 of:

16           (A) Death;

17           (B) Serious physical injury;

18           (C) Sexual abuse;

19           (D) Live-streamed sexual exploitation;

20           (E) Kidnapping; or

21           (F) Human trafficking;

22          (ii) That is inadvertently discovered by the provider, if the record appears to pertain to the  
23 commission of:

24           (A) A felony; or

25           (B) A misdemeanor involving physical violence, sexual abuse, or dishonesty; or

26           (iii) As otherwise permitted under 18 U.S.C. § 2702.

27          (c) A provider of an electronic communication service or remote computing service, or  
28 the provider's officers, employees, agents, or other specified persons may not be held liable for  
29 providing information, facilities, or assistance in good faith reliance on the terms of a warrant  
30 issued under this section, or without a warrant in accordance with the provisions of subsection (b)  
31 of this section.

32           **6-13.4-6. Exclusion of records.**

33           All electronic information or data and records of a provider of an electronic  
34 communications service or remote computing service pertaining to a subscriber or customer that

1 [are obtained in violation of the provisions of this chapter shall be subject to the rules governing](#)  
2 [exclusion as if the record were obtained in violation of the Fourth Amendment to the United](#)  
3 [States Constitution.](#)

4 SECTION 2. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

A N A C T

RELATING TO COMMERCIAL LAW - GENERAL REGULATORY PROVISIONS -  
ESTABLISHING THE ELECTRONIC INFORMATION OR DATA PRIVACY ACT

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1           This act would provide electronic data and information privacy protection. The act would  
2 limit access by law enforcement to electronic data and information to specified circumstances and  
3 to situations when a warrant is issued.

4           This act would take effect upon passage.

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