



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

SB3414

Introduced 2/14/2020, by Sen. Cristina Castro

SYNOPSIS AS INTRODUCED:

New Act

Creates the Protecting Household Privacy Act. Provides that a law enforcement agency shall not obtain household electronic data or direct the acquisition of household electronic data from a private party or other third party. Provides exceptions. Provides that if a law enforcement agency obtains household electronic data under the Act, the agency within 30 days shall destroy all information obtained, except that a supervisor at that agency may retain particular information if: (1) there is reasonable suspicion that the information contains evidence of criminal activity; or (2) the owner of the household electronic device consents to voluntarily provide the desired household electronic data. Provides that if the court finds by a preponderance of the evidence that a law enforcement agency obtained household electronic data pertaining to a person or his or her effects in violation of the Act, then the information shall be presumed to be inadmissible in any judicial or administrative proceeding. Provides that any person or entity that provides household electronic data in response to a request from any law enforcement agency under the Act shall take reasonable measures to ensure the confidentiality, integrity, and security of any household electronic data provided to any law enforcement agency, and to limit any production of household electronic data to information relevant to the law enforcement agency request. Provides that if a manufacturer of a household electronic device discloses household electronic data to any third party, the manufacturer shall make the following information available on a clear and conspicuous notice on the manufacturer's Internet website: (1) all categories of household electronic data disclosed to third parties; and (2) the names of all third parties that receive household electronic data.

LRB101 19414 RLC 70254 b

1 AN ACT concerning household electronic data.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Protecting Household Privacy Act.

6 Section 5. Definitions. As used in this Act:

7 "Electronic communication" means any origination,
8 transmission, emission, transfer, or reception of signs,
9 signals, data, writings, images, video, audio, or intelligence
10 of any nature by telephone, including cellular telephones or a
11 wire, Internet, wireless, radio, electromagnetic,
12 photo-electronic or photo-optical system, cable television,
13 fiber optic, satellite, microwave, Internet-based or wireless
14 distribution network, system, facility or related technology.

15 "Household" means any single or multiple family dwelling,
16 including but not limited to a single family home, house,
17 apartment, mobile home, trailer, building, condominium,
18 duplex, townhouse, or other living quarters, used or intended
19 to be used as a dwelling place and immediately surrounding
20 area.

21 "Household electronic device" means any device intended
22 for use within a household that is capable of facilitating any
23 electronic communication.

1 "Household electronic data" means any information or input
2 provided by a person to a household electronic device.

3 "Law enforcement agency" means any agency of this State or
4 a unit of local government which is vested by law or ordinance
5 with the duty to maintain public order and to enforce criminal
6 laws or ordinances.

7 "Third party" means (i) a private entity that is a separate
8 legal entity from the manufacturer of the household electronic
9 device; (ii) a private entity that does not share common
10 ownership or common corporate control with the manufacturer of
11 the household electronic device; or (iii) a private entity that
12 does not share a brand name or common branding with the
13 manufacturer of the household electronic device such that the
14 affiliate relationship is clear to the customer.

15 Section 10. Prohibited use of household electronic data.
16 Except as provided in Section 15, a law enforcement agency
17 shall not obtain household electronic data or direct the
18 acquisition of household electronic data from a private party
19 or other third party.

20 Section 15. Exceptions. This Act does not prohibit a law
21 enforcement agency from obtaining household electronic data
22 if:

23 (1) the law enforcement agency first obtains a court
24 order under Section 108-4 of the Code of Criminal Procedure

1 of 1963 based on probable cause to believe that the person
2 whose household electronic data is sought has committed, is
3 committing, or is about to commit a crime or the effect is
4 evidence of a crime, or if the household electronic data is
5 authorized under an arrest warrant issued under Section
6 107-9 of the Code of Criminal Procedure of 1963 to aid in
7 the apprehension or the arrest of the person named in the
8 arrest warrant. An order issued under a finding of probable
9 cause under this Section must be limited to a period of 60
10 days, renewable by the judge upon a showing of good cause
11 for subsequent periods of 60 days. A court may grant a law
12 enforcement entity's request to obtain household
13 electronic data under this Section through testimony made
14 by electronic means using a simultaneous video and audio
15 transmission between the requestor and a judge, based on
16 sworn testimony communicated in the transmission. The
17 entity making the request, and the court authorizing the
18 request shall follow the procedure under subsection (c) of
19 Section 108-4 of the Code of Criminal Procedure of 1963
20 which authorizes the electronic issuance of search
21 warrants; or

22 (2) the owner of the household electronic device
23 consents to voluntarily provide the desired household
24 electronic data.

25 Section 20. Information retention. If a law enforcement

1 agency obtains household electronic data under Section 15,
2 the agency within 30 days shall destroy all information
3 obtained, except that a supervisor at that agency may retain
4 particular information if:

5 (1) there is reasonable suspicion that the information
6 contains evidence of criminal activity; or

7 (2) the information is relevant to an ongoing
8 investigation or pending criminal trial.

9 Section 25. Information disclosure by law enforcement
10 agencies. If a law enforcement agency obtains household
11 electronic data under Section 15, the agency shall not disclose
12 any information obtained, except that a supervisor of that
13 agency may disclose particular information to another
14 government agency if:

15 (1) there is reasonable suspicion that the information
16 contains evidence of criminal activity; or

17 (2) the information is relevant to an ongoing investigation
18 or pending criminal trial.

19 Section 30. Information disclosure by manufacturers. If a
20 manufacturer of a household electronic device discloses
21 household electronic data to any third party, the manufacturer
22 shall make the following information available on a clear and
23 conspicuous notice on the manufacturer's Internet website:

24 (1) all categories of household electronic data

1 disclosed to third parties; and
2 (2) the names of all third parties that receive
3 household electronic data.

4 Section 35. Admissibility. If the court finds by a
5 preponderance of the evidence that a law enforcement agency
6 obtained household electronic data pertaining to a person or
7 his or her effects in violation, then the information shall be
8 presumed to be inadmissible in any judicial or administrative
9 proceeding. The State may overcome this presumption by proving
10 the applicability of a judicially recognized exception to the
11 exclusionary rule of the Fourth Amendment to the United States
12 Constitution or Article I, Section 6 of the Illinois
13 Constitution, or by a preponderance of the evidence that the
14 law enforcement officer was acting in good faith and reasonably
15 believed that one or more of the exceptions identified in
16 Section 15 existed at the time the household electronic data
17 was obtained.

18 Section 40. Providing household electronic data to a law
19 enforcement agency not required. Except as provided in Section
20 15, nothing in this Act shall be construed to require a person
21 or entity to provide household electronic data to a law
22 enforcement agency under this Act. If law enforcement acquires
23 information from a household electronic device under Section
24 15, any information so acquired is subject to Sections 20 and

1 25.

2 Section 45. Security of production. Any person or entity
3 that provides household electronic data in response to a
4 request from any law enforcement agency under this Act shall
5 take reasonable measures to ensure the confidentiality,
6 integrity, and security of any household electronic data
7 provided to any law enforcement agency, and to limit any
8 production of household electronic data to information
9 relevant to the law enforcement agency request.