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GENERAL PROVISIONS (5 ILCS 855/) Protecting Household Privacy Act.

(5 ILCS 855/1)

Sec. 1. Short title. This Act may be cited as the Protecting Household Privacy Act.

(Source: P.A. 102-597, eff. 1-1-22.)

(5 ILCS 855/5)

Sec. 5. Definitions. As used in this Act:

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

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

"Household electronic device" means any device primarily intended for use within a household that is capable of facilitating any electronic communication, excluding personal computing devices and digital gateway devices. For purposes of this Act: "personal computing device" means a personal computer, cell phone, smartphone, or tablet; and "digital gateway device" means a modem, router, wireless access point, or cable set-top box serviced by a cable provider.

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

"Law enforcement agency" means any agency of this State or a political subdivision of this State which is vested by law with the duty to maintain public order and to enforce criminal laws.

(Source: P.A. 102-597, eff. 1-1-22.)

(5 ILCS 855/10)

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

(Source: P.A. 102-597, eff. 1-1-22.)

(5 ILCS 855/15)

Sec. 15. Exceptions. This Act does not prohibit a law enforcement agency from obtaining household electronic data:

(1) If a law enforcement agency first obtains a warrant under Section 108-4 of the Code of Criminal Procedure of 1963.

(2) To respond to a call for emergency services concerning the user or possessor of a household electronic device.

(3) In an emergency situation:

(A) involving a clear and present danger of imminent death or great bodily harm to a person or persons resulting from a kidnapping, abduction, or the holding of a hostage by force or the threat of the imminent use of force;

(B) where there was no previous notice of the emergency to the investigative or law enforcement officer sufficient to obtain prior judicial approval and the officer reasonably believes that an order permitting the obtaining of household electronic data would issue were there prior judicial review;

(C) the household electronic data is necessary and the only potential data available to prevent imminent death or great bodily harm to a person or persons; and

(D) the data must and can be accessed before a warrant could be issued to prevent imminent death or great bodily harm to a person or persons.

(4) With the lawful consent of the owner of the household electronic device or person in actual or constructive possession of the household electronic device, excluding law enforcement personnel.

(5) In all emergency cases arising under paragraph (2) or (3), an application for a search warrant approving the previous obtaining of household electronic data must be made within 72 hours of its commencement. In order to approve obtaining household electronic data, the judge must make a determination:

(A) that he or she would have granted a search warrant had the information been before the court prior to the obtaining of the household electronic data; and

(B) there was an emergency situation as defined in subparagraph (C) of paragraph (3).

If an application for approval under this paragraph is denied, the household electronic data obtained under this exception shall be inadmissible in accordance with Section 30.

(Source: P.A. 102-597, eff. 1-1-22.)

(5 ILCS 855/20)

Sec. 20. Information retention. If a law enforcement agency obtains household electronic data under paragraphs (1) through (3) of Section 15 and does not file criminal charges, the agency shall destroy all information obtained within 60 days after obtaining the data, 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 information is relevant to an ongoing investigation.

(Source: P.A. 102-597, eff. 1-1-22.)

(5 ILCS 855/25)

Sec. 25. Information disclosure by law enforcement agencies.

(a) If a law enforcement agency obtains household electronic data under Section 15, the agency shall not disclose any information obtained, except that a supervisor of that agency may disclose particular information to another government agency, employee of a government agency, or material witness:

(1) if the information is relevant to a criminal proceeding or investigation by a grand jury; or

(2) with the lawful consent of the owner, or person in actual or constructive possession, of the household electronic device.

(b) When disclosing household electronic data to any other party, the disclosing law enforcement agency must make reasonable efforts to limit disclosure to the minimum necessary

to accomplish the intended purpose of the disclosure.
(Source: P.A. 102-597, eff. 1-1-22.)

(5 ILCS 855/30)

Sec. 30. Admissibility. 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 this Act, then the information shall be presumed to be inadmissible in any judicial or administrative proceeding. The State may overcome this presumption by proving the applicability of a judicially recognized exception to the exclusionary rule of the Fourth Amendment to the United States Constitution or Section 6 of Article I of the Illinois Constitution, or by a preponderance of the evidence that the law enforcement officer was acting in good faith and reasonably believed that one or more of the exceptions identified in Section 15 existed at the time the household electronic data was obtained.

(Source: P.A. 102-597, eff. 1-1-22.)

(5 ILCS 855/35)

Sec. 35. Providing household electronic data to a law enforcement agency not required. Except as provided in Section 15, nothing in this Act shall be construed to require a person or entity to provide household electronic data to a law enforcement agency under this Act. If law enforcement acquires information from a household electronic device under Section 15, any information so acquired is subject to Sections 20 and 25.

(Source: P.A. 102-597, eff. 1-1-22.)

(5 ILCS 855/40)

Sec. 40. Security of production. Any person or entity that provides household electronic data in response to a request from any law enforcement agency under this Act shall take reasonable measures to ensure the confidentiality, integrity, and security of any household electronic data during transmission to any law enforcement agency, and to limit any production of household electronic data to information responsive to the law enforcement agency request.

(Source: P.A. 102-597, eff. 1-1-22.)

(5 ILCS 855/45)

Sec. 45. Limitation. Nothing in this Act shall be construed to apply to the interception, recording, wiretap, or other acquisition of electronic communications as they are transmitted in real time.

(Source: P.A. 102-597, eff. 1-1-22.)

(5 ILCS 855/50)

Sec. 50. Conflict with other laws. In the event of any conflict between this Act and any applicable federal or State law, the requirement that establishes the higher standard for law enforcement to obtain information shall govern. Nothing in this Act prohibits the use of a lawful grand jury subpoena to obtain information which was obtainable by grand jury subpoena prior to the effective date of this Act.

(Source: P.A. 102-597, eff. 1-1-22.)

(5 ILCS 855/55)

Sec. 55. Liability. Nothing in this Act expands existing civil or criminal liability of an individual or entity arising under any applicable federal or State law.

(Source: P.A. 102-597, eff. 1-1-22.)

