

By Mr. Baddour, a petition (accompanied by bill, Senate, No. 834) of Steven A. Baddour, Thomas F. Reilly, Attorney General, Jarrett T. Barrios, Richard T. Moore and other members of the General Court for legislation to protect victims of computer crimes. The Judiciary.

**The Commonwealth of Massachusetts**

In the Year Two Thousand and Five.

AN ACT TO PROTECT VICTIMS OF COMPUTER CRIMES.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Chapter 271 of the General Laws is hereby  
2 amended by striking out section 17B, as appearing in the 2000  
3 Official Edition, and inserting in place thereof following section:—  
4 Section 17B. Except as otherwise prohibited under section  
5 2703 of Title 18 of the United States Code, whenever the attorney  
6 general or a district attorney has reasonable grounds to believe  
7 that records in the possession of (i) a common carrier subject to  
8 the jurisdiction of the department of telecommunications and  
9 energy, as defined in paragraph (d) of section 12 of chapter 159;  
10 or (ii) a provider of electronic communication service as defined  
11 in subparagraph (15) of section 2510 of Title 18 of the United  
12 States Code; or (iii) a provider of remote computing service as  
13 defined in section 2711 of Title 18 of the United States Code, are  
14 relevant and material to an ongoing criminal investigation, the  
15 attorney general or district attorney may issue an administrative  
16 subpoena demanding all such records in the possession of such  
17 common carrier or service, and such records shall be delivered to  
18 the attorney general or district attorney within fourteen (14) days  
19 of receipt of the subpoena. No such common carrier or service, or  
20 employee thereof shall be civilly or criminally responsible for fur-  
21 nishing any records or information in compliance with such  
22 demand. Nothing in this section shall limit the right of the  
23 attorney general or a district attorney otherwise to obtain records

24 from such a common carrier or service pursuant to a search war-  
25 rant, a court order or a grand jury or trial subpoena.

26 Notwithstanding the provisions of this section, a subpoena  
27 issued pursuant to this section shall not be used to obtain records  
28 disclosing the content of electronic communications, or subscriber  
29 account records disclosing Internet locations which have been  
30 accessed including, but not limited to, websites, chat channels and  
31 newsgroups, but excluding servers used to initially access the  
32 Internet. Nor shall the recipient of such a subpoena provide any  
33 such records. accessed, in response to such a subpoena.

1 SECTION 2. Chapter 276 of the General Laws is hereby amended  
2 by inserting after section 1A, as so appearing, the following section:—

3 Section 1B. (a) As used in this section, the following terms  
4 shall have the following meanings:

5 Adverse result, occurs when notification of the existence of a  
6 search warrant results in:

7 (1) danger to the life or physical safety of an individual;

8 (2) a flight from prosecution;

9 (3) the destruction of or tampering with evidence;

10 (4) the intimidation of a potential witness or witnesses; or

11 (5) serious jeopardy to an investigation or undue delay of a  
12 trial.

13 Electronic communication services, shall be construed in accor-  
14 dance with Title 18, sections 2701 to 2711 of the United States  
15 Code. This definition shall not apply to corporations that do not  
16 provide those services to the general public.

17 Foreign corporation, any corporation or other entity that makes  
18 a contract or engages in a terms of service agreement with a resi-  
19 dent of the commonwealth to be performed in whole or in part by  
20 either party in the commonwealth. The making of the contract or  
21 terms of service agreement is considered to be the agreement of  
22 the foreign corporation that a search warrant or subpoena properly  
23 served on it has the same legal force and effect as if served per-  
24 sonally within the commonwealth.

25 Massachusetts corporation, any corporation or other entity that  
26 is subject to chapter 155 or chapter 156B.

27 Properly served, that a search warrant or subpoena has been  
28 delivered by hand, by United States mail, by commercial delivery

29 service, by facsimile or by any other manner to any officer of the  
30 corporation or its general manager in the commonwealth, to any  
31 natural person designated by it as agent for the service of process,  
32 or if the corporation has designated a corporate agent, to any  
33 person named in the latest certificate filed pursuant to section 4 of  
34 chapter 181.

35 Remote computing services, shall be construed in accordance  
36 with Title 18, sections 2701 to 2711, inclusive, of the United  
37 States Code. This definition shall not apply to corporations that do  
38 not provide those services to the general public.

39 Subpoena, a grand jury or trial subpoena issued in the course of  
40 a criminal proceeding or an administrative subpoena issued pur-  
41 suant to Chapter 271, section 17B.

42 (b) A court or justice authorized to issue warrants in criminal  
43 cases may, upon complaint on oath that the complainant believes  
44 that any of the records hereinafter named are actually or construc-  
45 tively possessed by a foreign corporation that provides electronic  
46 communication services or remote computing services, if satisfied  
47 that probable cause has been established for such belief, issue a  
48 warrant identifying those records to be searched for and com-  
49 manding the person seeking such warrant to properly serve the  
50 warrant upon the foreign corporation:

51 (1) those records which would reveal the identity of a customer  
52 using those services;

53 (2) data stored by or on behalf of a customer;

54 (3) records of a customer's usage of those services;

55 (4) records of the source of communications sent to or the  
56 recipient or destination of communications sent from a customer;  
57 or

58 (5) the content of those communications stored by an electronic  
59 communication or remote commuting service.

60 (c) The following provisions shall apply to any search warrant  
61 issued pursuant to this section and to any subpoena issued in the  
62 course of a criminal investigation or proceeding directed to a for-  
63 eign corporation that provides electronic communication services  
64 or remote computing services:

65 (1) When properly served with a search warrant issued by a  
66 Massachusetts court or justice pursuant to this section or a sub-  
67 poena, a foreign corporation subject to this section shall provide

68 all records sought pursuant to that warrant or subpoena within  
69 14 days of receipt, including those records maintained or located  
70 outside the commonwealth.

71 (2) If an the applicant makes a showing and the court or justice  
72 finds that failure to produce records within less than 14 days  
73 would cause an adverse result, a warrant may require production  
74 of records within less than 14 days;

75 (3) A court or justice may reasonably extend the time required  
76 for production of the records upon finding that the foreign corpo-  
77 ration has shown good cause for that extension and that an exten-  
78 sion of time would not cause an adverse result;

79 (4) A foreign corporation seeking to quash a warrant or sub-  
80 poena served on it pursuant to this section must seek relief from  
81 the court that issued the warrant or the court which has jurisdic-  
82 tion over the subpoena within the time required for production of  
83 records pursuant to this section. The court shall hear and decide  
84 that motion no later than 14 days after the motion is filed;

85 (5) In the case of an administrative subpoena issued by the  
86 attorney general, the superior court of Suffolk county shall have  
87 jurisdiction; in the case of an administrative subpoena issued by a  
88 district attorney, the superior court in any county in which the dis-  
89 trict attorney maintains an office shall have jurisdiction; and

90 (6) The foreign corporation shall verify the authenticity of records  
91 that it produces by providing an affidavit from the person in custody  
92 of those records certifying that they are true and complete.

93 (d) A Massachusetts corporation that provides electronic com-  
94 munication services or remote computing services, when served  
95 with a warrant or subpoena issued by another state to produce  
96 records that would reveal the identity of the customers using those  
97 services, data stored by, or on behalf of the customer, the cus-  
98 tomer's usage of those services, the recipient or destination of  
99 communications sent to or from those customers, or the content of  
100 those communications, shall produce those records as if that war-  
101 rant or subpoena had been issued under Massachusetts law.

102 (e) No cause of action shall lie against any foreign or Massachu-  
103 setts corporation subject to this section, its officers, employees,  
104 agents or other specified persons for providing records, information,  
105 facilities or assistance in accordance with the terms of a warrant or  
106 subpoena issued pursuant to this section.