

ARKANSAS SENATE
84th General Assembly - Regular Session, 2003
Amendment Form

Subtitle of House Bill No. 2503

"AN ACT CONCERNING PEN REGISTERS, TRAP AND TRACE DEVICES, ACCESS TO
STORED COMMUNICATIONS, AND MOBILE TRACKING DEVICES."

Amendment No. 1 to House Bill No. 2503.

Amend House Bill No. 2503 as engrossed, H4/1/03:

Page 2, line 13, delete "service that" and substitute "service offered to the public that"

AND

Page 2, line 35, delete "wire communication" and substitute "wire or electronic communication"

AND

Page 4, line 1, delete "by the" and substitute "by or contained in tariffs filed with the"

AND

Page 6, line 23, delete "attorney of" and substitute "attorney or circuit judge of"

AND

Page 6, line 30, delete "There" and substitute "No circuit judge with jurisdiction is available, and there"

AND

Page 6, delete lines 33 through 36 and Page 7, delete lines 1 through 3 and substitute the following:

"(b)(1) If an authorized law enforcement officer installs a pen register or trap and trace device under subsection (a) of this section, the prosecuting attorney shall obtain an order from a circuit judge with jurisdiction approving installation immediately upon availability of the circuit judge, but in no instance more than forty-eight (48) hours after the



installation begins.

(2) If authorization is not obtained within forty-eight (48) hours, the officer shall terminate use of the pen register or trap and trace device on the expiration of the forty-eight (48) hours or at the time the application for the order is denied, whichever is earlier.

AND

Page 7 line 5, delete "gained through" and substitute "gained, or any information derived from the information so gained, through"

AND

Page 7, delete line 7, and substitute the following:

"and trace device is denied, unless the information would have been inevitably discovered through other lawful investigation or by other constitutionally permissible investigation.

(d) The information gained or derived through the emergency pen register or trap and trace shall not be considered in any judicial determination as to whether grounds existed under subdivision (a)(1) of this section.

AND

Page 7, delete line 10 and substitute "communications will be governed by the Electronics Communications Privacy Act, 18 U.S.C. 2701 et seq."

AND

Page 9, delete lines 31 and 32, and substitute the following:

"(3) The service provider shall expeditiously create the copy after the date of the receipt by the service provider"

AND

Page 10, delete line 6 and substitute the following:

"(d)(1) Except as provided by section 7 of this act, the authorized law enforcement officer who presented the subpoena or court order shall immediately notify the service provider that the subscriber or customer has been informed that he, she, or it is the subject of a subpoena.

(2) The notification to the service provider shall take the form of an affidavit or sworn certification, noting the date, time, and manner in which the subscriber or customer was notified.

(e) The service provider shall release the copy to the requesting"

AND

Page 10, line 7, delete "day after" and substitute "day or later than the eighteenth day after"

AND

Page 10, line 14, delete “(e)” and substitute “(f)”

AND

Page 10, line 19, delete “(f)(1)” and substitute “(g)(1)”

AND

Page 10, line 25, delete “(g)(1)” and substitute “(h)(1)”

AND

Page 11, line 9, delete “(h)(1)” and substitute “(i)(1)”

AND

Page 11, line 12, delete “subsection (g)” and substitute “subsection (h)”

AND

Page 13, line 32, delete “determine the” and substitute “determine a reasonable”

AND

Page 13, line 35, delete “determine the” and substitute “determine a reasonable”

AND

Page 17, delete line 23, and substitute the following:

“SECTION 17. Communication common carrier exception.

Notwithstanding any other provision in this act to the contrary, it shall not be unlawful for a wire or electronic communication service provider or any communication common carrier, or a switchboard operator, officer, employee, or agent thereof, whose facilities are used in the transmission of a wire or electronic communication, to intercept, disclose, store, or use that communication in the normal course of its employment or business while engaged in any activity which is a necessary incident to the rendition of its service or to the protection of its rights or property, except that a provider of wire communication service to the public shall not utilize service observing or random monitoring except for mechanical or service quality control checks.

SECTION 18. Nothing in this act shall restrict or prohibit”

AND

Appropriately renumber the subsequent section

The Amendment was read the first time, rules suspended and read the second time and _____

By: Senator Horn

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Secretary