

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 84th General Assembly  
3 Regular Session, 2003

# A Bill

HOUSE BILL 2203

4  
5 By: Representative Lendall  
6  
7

## For An Act To Be Entitled

8  
9 AN ACT CREATING A PRESUMPTION OF CONFIDENTIALITY  
10 OF IDENTITY OF ANONYMOUS INTERNET COMMUNICATORS;  
11 AND FOR OTHER PURPOSES.  
12  
13  
14

## Subtitle

15  
16 AN ACT CREATING A PRESUMPTION OF  
17 CONFIDENTIALITY OF IDENTITY OF ANONYMOUS  
18 INTERNET COMMUNICATORS.  
19  
20

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
22

23 SECTION 1. Arkansas Code Title 4, Chapter 88, Subchapter 1 is amended  
24 by adding an additional section to read as follows:

25 4-88-116. Identity of persons communicating anonymously over the  
26 Internet.

27 (a) In civil proceedings in which it is alleged that an anonymous  
28 individual has engaged in Internet communications that are tortious, any  
29 subpoena seeking information held by a nongovernmental person or entity that  
30 would identify the tortfeasor shall be governed by the following procedure  
31 unless more expedited scheduling directions have been ordered by the court  
32 upon consideration of the interests of each person affected by the order:

33 (1) At least thirty (30) days before the date on which  
34 disclosure is sought, a party seeking information identifying an anonymous  
35 communicator shall file with the appropriate circuit court, a complete copy  
36 of the subpoena and all items annexed to or incorporated in the subpoena,



1 along with supporting material showing:

2 (A)(i) That one (1) or more communications that are or may  
 3 be tortious or illegal have been made by the anonymous communicator, or that  
 4 the party requesting the subpoena has a legitimate, good faith basis, to  
 5 contend that the party is the victim of conduct actionable in the  
 6 jurisdiction where the suit was filed.

7 (ii) A copy of the communications that are the  
 8 subject of the action or subpoena shall be submitted to the court;

9 (B) That other reasonable efforts to identify the  
 10 anonymous communicator have proven fruitless;

11 (C) That the identity of the anonymous communicator is  
 12 important, is centrally needed to advance the claim, relates to a core claim  
 13 or defense, or is directly and materially relevant to that claim or defense;

14 (D)(i) That no motion to dismiss, motion for judgment on  
 15 the pleadings, or judgment as a matter of law, demurrer, or summary judgment  
 16 type motion challenging the viability of the lawsuit of the underlying  
 17 plaintiff is pending.

18 (ii) The pendency of a motion may be considered by  
 19 the court in determining whether to enforce, suspend, or strike the proposed  
 20 disclosure obligation under the subpoena;

21 (E) That the individuals or entities to whom the subpoena  
 22 is addressed are likely to have responsive information; and

23 (F) If the subpoena sought relates to an action pending in  
 24 another jurisdiction, the application shall contain a copy of the pleadings  
 25 in the action, along with the mandate, writ, or order of the court where the  
 26 action is pending that authorizes the discovery of the information sought;

27 (2) Two (2) copies of the subpoena and supporting materials set  
 28 forth in subdivisions (a)(1)(A) through (a)(1)(F) of this section shall be  
 29 served upon the person to whom it is addressed along with payment sufficient  
 30 to cover postage for mailing one (1) copy of the application within the  
 31 United States by registered mail, return receipt requested;

32 (3) Unless the anonymous communicator has consented to  
 33 disclosure in advance, within five (5) business days after receipt of a  
 34 subpoena and supporting materials calling for disclosure of identifying  
 35 information concerning an anonymous communicator, the individual or entity to  
 36 whom the subpoena is addressed shall:

1                   (A) Send an electronic mail notification to the anonymous  
 2 communicator reporting that the subpoena has been received if an email  
 3 address is available; and

4                   (B) Dispatch one (1) copy, by registered mail or  
 5 commercial delivery service, return receipt requested, to the anonymous  
 6 communicator at his or her last known address, if any is on file with the  
 7 person to whom the subpoena is addressed;

8                   (4)(A) At least seven (7) business days prior to the date on  
 9 which disclosure is sought under the subpoena, any interested person may file  
 10 a detailed written objection, motion to quash, or motion for protective  
 11 order.

12                   (B) Any papers filed by the anonymous communicator shall  
 13 be served by the date of filing upon the party seeking the subpoena and the  
 14 party to whom the subpoena is addressed.

15                   (C) Any papers filed by the party to whom the subpoena is  
 16 addressed shall be served by the date of filing upon the party seeking the  
 17 subpoena and the anonymous communicator whose identifying information is  
 18 sought.

19                   (D) Service is effective when it has been mailed,  
 20 dispatched by commercial delivery service, transmitted by facsimile, or  
 21 delivered to counsel of record and to parties having no counsel;

22                   (5) Any written objection, motion to quash, or motion for  
 23 protective order shall set forth all grounds relied upon for denying the  
 24 disclosure sought in the subpoena and shall also address to the extent  
 25 feasible:

26                   (A) Whether the identity of the anonymous communicator has  
 27 been disclosed in any way beyond its recordation in the account records of  
 28 the party to whom the subpoena is addressed;

29                   (B) Whether the subpoena fails to allow a reasonable time  
 30 for compliance;

31                   (C) Whether it requires disclosure of privileged or other  
 32 protected matter and no exception or waiver applies; and

33                   (D) Whether it subjects a person to undue burden;

34                   (6)(A) The party to whom the subpoena is addressed shall not  
 35 comply with the subpoena earlier than three (3) business days before the date  
 36 on which disclosure is due, to allow the anonymous communicator the

1 opportunity to object.

2 (B) If any person files a written objection, motion to  
 3 quash, or motion for protective order, compliance with the subpoena shall be  
 4 deferred until the appropriate court rules on the obligation to comply.

5 (C) If an objection or motion is made, the party serving  
 6 the subpoena shall not be entitled to inspect or copy the materials except  
 7 pursuant to an order of the court on behalf of which the subpoena was issued.

8 (D) If an objection or motion has been filed, any  
 9 interested person may request a hearing on the matter and if so, shall serve  
 10 two (2) copies of the request of hearing upon the subpoenaed party, who shall  
 11 mail one (1) copy, by registered mail or commercial delivery service, return  
 12 receipt requested, to the anonymous communicator, whose identifying  
 13 information is the subject of the subpoena, at that person's last known  
 14 address.

15 (b)(1) The party requesting or issuing a subpoena for information  
 16 identifying an anonymous Internet communicator shall serve along with each  
 17 copy of the subpoena notices in boldface capital letters.

18 (2) The notice to Internet service providers shall be in  
 19 substantially the following form:

20  
 21 NOTICE TO INTERNET SERVICE PROVIDER

22  
 23 WITHIN FIVE (5) BUSINESS DAYS AFTER RECEIPT OF THIS SUBPOENA CALLING FOR  
 24 IDENTIFYING INFORMATION CONCERNING YOUR CLIENT, SUBSCRIBER, OR CUSTOMER,  
 25 EXCEPT WHERE CONSENT TO DISCLOSURE HAS BEEN GIVEN IN ADVANCE, YOU ARE  
 26 REQUIRED BY ARKANSAS CODE § 4-88-116 TO MAIL ONE (1) COPY, BY REGISTERED MAIL  
 27 OR COMMERCIAL DELIVERY SERVICE, RETURN RECEIPT REQUESTED, TO THE CLIENT,  
 28 SUBSCRIBER, OR CUSTOMER WHOSE IDENTIFYING INFORMATION IS THE SUBJECT OF THE  
 29 SUBPOENA. AT LEAST SEVEN (7) BUSINESS DAYS PRIOR TO THE DATE ON WHICH  
 30 DISCLOSURE IS SOUGHT YOU MAY, BUT ARE NOT REQUIRED TO, FILE A DETAILED  
 31 WRITTEN OBJECTION, MOTION TO QUASH, OR MOTION FOR PROTECTIVE ORDER. ANY SUCH  
 32 OBJECTION OR MOTION SHALL BE SERVED UPON THE PARTY INITIATING THE SUBPOENA  
 33 AND UPON THE CLIENT, SUBSCRIBER, OR CUSTOMER WHOSE IDENTIFYING INFORMATION IS  
 34 SOUGHT. IF YOU CHOOSE NOT TO OBJECT TO THE SUBPOENA, YOU MUST ALLOW TIME FOR  
 35 YOUR CLIENT, SUBSCRIBER, OR CUSTOMER TO FILE HIS OR HER OWN OBJECTION.  
 36 THEREFORE, YOU MUST NOT RESPOND TO THE SUBPOENA ANY EARLIER THAN THREE (3)

1 BUSINESS DAYS BEFORE THE DISCLOSURE IS DUE. IF YOU RECEIVE NOTICE THAT YOUR  
2 CLIENT, SUBSCRIBER, OR CUSTOMER HAS FILED A WRITTEN OBJECTION, MOTION TO  
3 QUASH, OR MOTION FOR PROTECTIVE ORDER REGARDING THIS SUBPOENA, OR IF YOU FILE  
4 A MOTION TO QUASH THIS SUBPOENA, NO DISCLOSURE PURSUANT TO THE SUBPOENA SHALL  
5 BE MADE EXCEPT PURSUANT TO AN ORDER OF THE COURT ON BEHALF OF WHICH THE  
6 SUBPOENA WAS ISSUED.

7 (3) The notice to Internet users shall be in substantially the  
8 following form:

9  
10 NOTICE TO INTERNET USER

11  
12 THE ATTACHED PAPERS MEAN THAT  
13 [INSERT NAME OF PARTY REQUESTING OR CAUSING ISSUANCE OF THE SUBPOENA]  
14 HAS EITHER ASKED THE COURT TO ISSUE A SUBPOENA, OR A SUBPOENA HAS BEEN  
15 ISSUED, TO YOUR INTERNET SERVICE PROVIDER

16  
17 [INSERT NAME OF INTERNET SERVICE PROVIDER]  
18 REQUIRING PRODUCTION OF INFORMATION REGARDING YOUR IDENTITY. UNLESS A  
19 DETAILED WRITTEN OBJECTION IS FILED WITH THE COURT, THE SERVICE PROVIDER WILL  
20 BE REQUIRED BY LAW TO RESPOND BY PROVIDING THE REQUIRED INFORMATION. IF YOU  
21 BELIEVE YOUR IDENTIFYING INFORMATION SHOULD NOT BE DISCLOSED AND OBJECT TO  
22 THE DISCLOSURE, YOU HAVE THE RIGHT TO FILE WITH THE CLERK OF COURT A DETAILED  
23 WRITTEN OBJECTION, MOTION TO QUASH THE SUBPOENA, OR MOTION TO OBTAIN A  
24 PROTECTIVE ORDER. YOU MAY ELECT TO CONTACT AN ATTORNEY TO REPRESENT YOUR  
25 INTERESTS. IF YOU ELECT TO FILE A WRITTEN OBJECTION, MOTION TO QUASH, OR  
26 MOTION FOR PROTECTIVE ORDER, IT SHOULD BE FILED AS SOON AS POSSIBLE, AND MUST  
27 IN ALL INSTANCES BE FILED NO LESS THAN SEVEN (7) BUSINESS DAYS BEFORE THE  
28 DATE ON WHICH DISCLOSURE IS DUE (LISTED IN THE SUBPOENA). IF YOU ELECT TO  
29 FILE A WRITTEN OBJECTION OR MOTION AGAINST THIS SUBPOENA, YOU MUST AT THE  
30 SAME TIME SEND A COPY OF THAT OBJECTION OR MOTION TO BOTH YOUR INTERNET  
31 SERVICE PROVIDER AND THE PARTY WHO REQUESTED THE SUBPOENA. IF YOU WISH TO  
32 OPPOSE THE ATTACHED SUBPOENA, IN WHOLE OR IN PART, YOU OR YOUR ATTORNEY MAY  
33 FILE A WRITTEN OBJECTION, A MOTION TO QUASH THE SUBPOENA, OR A MOTION FOR A  
34 PROTECTIVE ORDER, OR YOU MAY USE THE FORM BELOW, WHICH MUST BE FILED WITH THE  
35 COURT AND SERVED UPON THE PARTY REQUESTING THE SUBPOENA AND THE INTERNET  
36 SERVICE PROVIDER BY MAILING AT LEAST SEVEN (7) BUSINESS DAYS PRIOR TO THE

1 DATE SET IN THE SUBPOENA FOR DISCLOSURE:

2  
3 \_\_\_\_\_  
4 [Name of Court Listed on Subpoena]

5  
6 \_\_\_\_\_  
7 [Name of Party Seeking Information]

8 Case No. \_\_\_\_\_

9 (c) The form for an objection to the subpoena shall be substantially  
10 as follows:

11 OBJECTION TO SUBPOENA DUCES TECUM

12 I object to the Subpoena Duces Tecum addressed

13 to \_\_\_\_\_

14 [Name of Internet Service Provider to Whom the Subpoena is Addressed]

15  
16 (Please PRINT. Set forth, in detail, all reasons why the subpoena  
17 should not be complied with, and in addition, state:

18 (1) Whether the identity of the anonymous communicator has been  
19 disclosed in any fashion;

20 (2) Whether the subpoena fails to allow a reasonable time for  
21 compliance;

22 (3) Whether it requires disclosure of privileged or other protected  
23 matter and no exception or waiver applies; or

24 (5) Whether it subjects a person to undue burden.)

25 \_\_\_\_\_  
26 \_\_\_\_\_  
27 \_\_\_\_\_  
28 \_\_\_\_\_  
29 \_\_\_\_\_  
30 \_\_\_\_\_  
31 [Attach additional sheets if needed]

32  
33 Respectfully Submitted,

34 \_\_\_\_\_  
35 [Name of person objecting to subpoena]

36

1 \_\_\_\_\_  
2 [Email nickname or other alias used in communicating via the Internet service  
3 provider to whom the subpoena is addressed]

4  
5 CERTIFICATE

6 I hereby certify that a true copy of the above Objection to Subpoena  
7 Duces Tecum was mailed this \_\_\_\_\_ day of \_\_\_\_\_, (month, year),  
8 to \_\_\_\_\_

9 [Name and address of party seeking information] and

10  
11 \_\_\_\_\_  
12 [Name and address of Internet Service Provider]

13  
14 \_\_\_\_\_  
15 [Name of person objecting to subpoena]

16  
17 \_\_\_\_\_  
18 [Email nickname or other alias used in communicating via the Internet service  
19 provider to whom the subpoena is addressed]