

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  
4

*As Engrossed: H4/1/03 S4/11/03*

# A Bill

HOUSE BILL 2503

5 By: Representatives Sullivan, Childers, Adams  
6  
7

## For An Act To Be Entitled

9 AN ACT CONCERNING PEN REGISTERS, TRAP AND TRACE  
10 DEVICES, ACCESS TO STORED COMMUNICATIONS, AND  
11 MOBILE TRACKING DEVICES; AND FOR OTHER PURPOSES.  
12

## Subtitle

13 AN ACT CONCERNING PEN REGISTERS, TRAP  
14 AND TRACE DEVICES, ACCESS TO STORED  
15 COMMUNICATIONS, AND MOBILE TRACKING  
16 DEVICES.  
17  
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20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
21

22 SECTION 1. Definitions. As used in this act:

23 (1) "Adverse result" means:

24 (A) Endangering the life or physical safety of an individual;

25 (B) Flight from prosecution;

26 (C) Destruction of or tampering with evidence;

27 (D) Intimidation of a potential witness; or

28 (E) Otherwise seriously jeopardizing an investigation or unduly  
29 delaying a trial.

30 (2) "Aural transfer" means a transfer containing the human voice at  
31 any point between and including the point of origin and the point of  
32 reception;

33 (3) "Authorized law enforcement officer" means:

34 (A) A sheriff or a sheriff's deputy;

35 (B) A marshal or police officer of an incorporated city, town,  
36 or village;



1           (C) A law enforcement officer commissioned by the Department of  
2 the Arkansas State Police;

3           (D) An investigator commissioned by the prosecuting attorney;

4           (E) A law enforcement officer commissioned by the Arkansas  
5 Highway Police;

6           (F) A law enforcement agent of the Alcoholic Beverage Control  
7 Board;

8           (G) A law enforcement officer commissioned by the Arkansas Game  
9 and Fish Commission.

10          (4) "Communication common carrier" means a person engaged as a common  
11 carrier for hire in the transmission of wire or electronic communications;

12          (5) "Department" means the Department of Arkansas State Police;

13          (6) "Electronic communications service" means a service offered to the  
14 public that provides to users of the service the ability to send or receive  
15 wire or electronic communications;

16          (7) "Electronic communications system" means a wire, radio,  
17 electromagnetic, photo-optical or photoelectronic facility for the  
18 transmission of wire or electronic communications, and any computer facility  
19 or related electronic equipment for the electronic storage of those  
20 communications;

21          (8) "Electronic storage" means:

22               (A) A temporary, intermediate storage of a wire or electronic  
23 communication that is incidental to the electronic transmission of the  
24 communication; or

25               (B) Storage of a wire or electronic communication by an  
26 electronic communications service for purposes of backup protection of the  
27 communication;

28          (9)(A) "Pen register" means a device that attaches to a telephone line  
29 and records or decodes electronic or other impulses to identify numbers  
30 dialed or otherwise transmitted on the telephone line.

31               (B) "Pen register" does not include a device used by a provider  
32 or customer of:

33                       (i) A wire or electronic communication service for purposes  
34 of charging a fee for the service; or

35                       (ii) A wire or electronic communication service during the  
36 ordinary course of the provider's or customer's business, including cost

1 accounting and security control;

2 (10) "Readily accessible to the general public" means, with respect to  
3 a radio communication, a communication that is not:

4 (A) Scrambled or encrypted;

5 (B) Transmitted using modulation techniques whose essential  
6 parameters have been withheld from the public with the intention of  
7 preserving the privacy of the communication;

8 (C) Carried on a subcarrier or other signal subsidiary to a  
9 radio transmission;

10 (D) Transmitted over a communication system provided by a common  
11 carrier, unless the communication is a tone only paging system communication;

12 (E) Transmitted on frequencies allocated under Part 25, Subpart  
13 D, E, or F of Part 74, or Part 94 of the rules of the Federal Communications  
14 Commission as they existed on January 1, 2003, unless, in the case of a  
15 communication transmitted on a frequency allocated under Part 74 that is not  
16 exclusively allocated to broadcast auxiliary services, the communication is a  
17 two way voice communication by radio; or

18 (F) An electronic communication;

19 (11) "Remote computing service" means the provision to the public of  
20 computer storage or processing services by means of an electronic  
21 communications system;

22 (12) "Supervisory official" means:

23 (A) An investigative agent or an assistant investigative agent  
24 who is in charge of an investigation;

25 (B) An equivalent person at an investigating agency's  
26 headquarters or regional office; and

27 (C) The prosecuting attorney for a judicial district or chief  
28 deputy prosecuting attorney;

29 (13) "Tracking device" means an electronic or mechanical device that  
30 permits only tracking the movement of a person or object;

31 (14)(A) "Trap and trace device" means a device that records an  
32 incoming electronic signal or other impulse that identifies the originating  
33 number of an instrument or device from which a wire or electronic  
34 communication was transmitted.

35 (B) "Trap and trace device" does not include a device or  
36 telecommunications network used in providing:

1                   (i) A caller identification service authorized by or contained  
2 in tariffs filed with the Arkansas Public Service Commission; or

3                   (ii) A caller identification service provided by a commercial  
4 mobile radio service provider licensed by the Federal Communications  
5 Commission; and

6                   (15) "User" means a person who uses an electronic communications  
7 service and is authorized by the provider of the service to use the service.

8  
9                   SECTION 2. Application and order of pen registers or trap and trace  
10 devices.

11                   (a)(1) A certified law enforcement officer authorized by the  
12 department may request the prosecuting attorney to file an application with a  
13 circuit judge of the judicial district in which the proposed installation  
14 will be made for the installation and use of a pen register to obtain  
15 information material to the investigation of any criminal offense defined by  
16 the Arkansas Criminal Code, § 5-1-101 et seq.

17                   (2)(A) A prosecuting attorney may on his or her own motion file  
18 an application under this section.

19                   (B) The prosecuting attorney who is acting on his or her  
20 own motion must make the application personally and may not do so through a  
21 deputy prosecuting attorney or some other person acting on his or her behalf.

22                   (b)(1) An authorized law enforcement officer may request the  
23 prosecuting attorney to file an application with a circuit judge of the  
24 judicial district in which the proposed installation will be made for the  
25 installation and utilization of a trap and trace device to obtain information  
26 material to the investigation of any criminal offense defined by the Arkansas  
27 Criminal Code, § 5-1-101 et seq.

28                   (2)(A) A prosecuting attorney may on his or her own motion file  
29 an application under this section.

30                   (B) The prosecuting attorney who is acting on his or her  
31 own motion must make the application personally and may not do so through  
32 a deputy prosecuting attorney or some other person acting on his or her  
33 behalf.

34                   (c)(1) An application under this section must be made in writing under  
35 oath and must include the name of the subscriber, the telephone number or  
36 numbers, and the location of the telephone instrument or instruments on which

1 the pen register or trap and trace device will be utilized.

2 (2) The application must also state that the installation and  
3 utilization of the pen register or trap and trace device will be material to  
4 the investigation of a criminal offense.

5 (d) On presentation of the application, the circuit judge may order  
6 the installation and utilization of the pen register by a certified law  
7 enforcement officer authorized by the department. On request of the  
8 applicant, the circuit judge shall direct in the order that a communications  
9 common carrier or a provider of electronic communications service furnish all  
10 information, facilities, and technical assistance necessary to facilitate the  
11 installation and utilization of the pen register by the department  
12 unobtrusively and with a minimum of interference to the services provided by  
13 the carrier unless otherwise ordered by the court, the results of the pen  
14 register shall be furnished to the applicant at reasonable intervals during  
15 regular business hours, for the duration of the order. The carrier is  
16 entitled to compensation at the prevailing rates for the facilities and  
17 assistance provided to the department.

18 (e)(1) On presentation of the application, the circuit judge may order  
19 the installation and operation of the trap and trace device by the  
20 communications common carrier or other person on the appropriate line. In the  
21 order the circuit judge shall direct the communications common carrier or  
22 other person and any landlord or other custodian of equipment to furnish all  
23 information, facilities, and technical assistance necessary to install and  
24 operate the device unobtrusively and with a minimum of interference to the  
25 services provided by the communications common carrier, landlord, custodian,  
26 or other person.

27 (2) Unless otherwise ordered by the court, the results of the  
28 trap and trace device shall be furnished to the applicant at reasonable  
29 intervals during regular business hours, for the duration of the order.

30 (3) The carrier is entitled to compensation at the prevailing  
31 rates for the facilities and assistance provided to the law enforcement  
32 agency.

33 (f)(1) An order for the installation and utilization of a pen register  
34 or trap and trace device is valid for not more than sixty (60) days after the  
35 date the device is installed or ten (10) days after the date the order is  
36 entered, whichever occurs first, unless before the expiration of the order

1 the attorney for the state applies for and obtains from the court an  
2 extension of the order.

3 (2) The period of extension may not exceed sixty (60) days for  
4 each extension granted, except that with the consent of the subscriber or  
5 customer of the service on which the pen register or trap and trace device is  
6 utilized, the circuit court may extend an order for a period not to exceed  
7 one (1) year.

8 (g)(1) The circuit court shall seal an application and order for the  
9 installation and utilization of a pen register or trap and trace device  
10 granted under this act.

11 (2) The contents of an application or order may not be disclosed  
12 except in the course of a judicial proceeding and an unauthorized disclosure  
13 is punishable as contempt of court.

14 (h) A law enforcement officer is not required to file an application  
15 or obtain an order under this section before the officer makes an otherwise  
16 lawful search, with or without a warrant, to determine the contents of a  
17 caller identification message, pager message, or voice message that is  
18 contained within the memory of an end-user's identification, paging, or  
19 answering device.

20 SECTION 3. Emergency pen register and trap and trace device  
21 installation.

22 (a) An authorized law enforcement officer, designated by the  
23 prosecuting attorney or circuit judge of the county where the installation will be  
24 used, may install and use a pen register or trap and trace device if the law  
25 enforcement officer reasonably believes that:

26 (1) An emergency requiring the installation of a pen register or  
27 trap and trace device before an order authorizing the installation and use  
28 can, with due diligence, be obtained, exist involving immediate danger of  
29 death or serious injury to any person; and

30 (2) No circuit judge with jurisdiction is available, and there are grounds under this  
31 act on which an order could be entered to authorize the installation and use  
32 of a pen register or trap and trace device.

33 (b)(1) If an authorized law enforcement officer installs a pen  
34 register or trap and trace device under subsection (a) of this section, the  
35 prosecuting attorney shall obtain an order from a circuit judge with  
36 jurisdiction approving installation immediately upon availability of the

1 circuit judge, but in no instance more than forty-eight (48) hours after the  
2 installation begins.

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

6 (c) The state may not use as evidence in a criminal proceeding any information gained, or any information  
7 derived from the information so gained, through the use of a pen register or trap and trace device installed under this  
8 section if authorization for the pen register or trap and trace device is denied, unless the information would have  
9 been inevitably discovered through other lawful investigation or by other constitutionally permissible investigation.

10 (d) The information gained or derived through the emergency pen register or trap and trace shall not be  
11 considered in any judicial determination as to whether grounds existed under subdivision (a)(1) of this section.  
12

13 SECTION 4. Requirements for government access to stored communications will  
14 be governed by the Electronics Communications Privacy Act, 18 U.S.C. 2701 et seq.

15 (a) An authorized law enforcement officer may require a provider of  
16 electronic communications service to disclose the contents of an electronic  
17 communication that has been in electronic storage for not longer than one  
18 hundred eighty (180) days by obtaining a warrant.

19 (b) An authorized law enforcement officer may require a provider of  
20 electronic communications service to disclose the contents of an electronic  
21 communication that has been in electronic storage for longer than one hundred  
22 eighty (180) days:

23 (1) If notice is not being given to the subscriber or customer,  
24 by obtaining a warrant;

25 (2) If notice is being given to the subscriber or customer, by  
26 obtaining:

27 (A) A prosecuting attorney's subpoena authorized by  
28 statute;

29 (B) A grand jury subpoena; or

30 (C) A court order issued under section 5 of this act; or

31 (3) As otherwise permitted by applicable federal law.

32 (c)(1) An authorized law enforcement officer may require a provider of  
33 a remote computing service to disclose the contents of an electronic  
34 communication as described in subdivision (b)(2) of this section:

35 (A) If notice is not being given to the subscriber or  
36 customer, by obtaining a warrant issued under this section;

1                   (B) If notice is being given to the subscriber or  
2 customer, by:

3                   (i) A prosecuting attorney's subpoena authorized by  
4 statute;

5                   (ii) A grand jury subpoena; or

6                   (iii) A court order issued under section 5 of this  
7 act; or

8                   (C) As otherwise permitted by applicable federal law.

9                   (2) Subdivision (c)(1) of this section applies only to an  
10 electronic communication that is in electronic storage:

11                   (A) On behalf of a subscriber or customer of the service,  
12 and is received by means of electronic transmission from or created by means  
13 of computer processing of communications received by means of electronic  
14 transmission from the subscriber or customer; and

15                   (B) Solely for the purpose of providing storage or  
16 computer processing services to the subscriber or customer if the provider of  
17 the service is not authorized to obtain access to the contents of those  
18 communications for purposes of providing any service other than storage or  
19 computer processing.

20                   (d) An authorized law enforcement officer may require a provider of  
21 remote computing service to disclose records or other information pertaining  
22 to a subscriber or customer of the service, other than communications  
23 described in subsection (c) of this section, without giving the subscriber or  
24 customer notice:

25                   (1) By obtaining a prosecuting attorney's subpoena authorized by  
26 state law;

27                   (2) By obtaining a grand jury subpoena;

28                   (3) By obtaining a warrant;

29                   (4) By obtaining the consent of the subscriber or customer to  
30 the disclosure of the records or information;

31                   (5) By obtaining a court order under section 5 of this act; or

32                   (6) As otherwise permitted by applicable federal law.

33                   (e) A provider of telephonic communications service shall disclose to  
34 an authorized law enforcement officer, without any form of legal process,  
35 subscriber listing information, including name, address, and telephone number  
36 or similar access code that:

1           (1) The service provides to others in the course of providing  
2 publicly available directory or similar assistance; or

3           (2) Is solely for use in the dispatch of emergency vehicles and  
4 personnel responding to a distress call directed to an emergency dispatch  
5 system, or if the information is reasonably necessary to aid in the  
6 dispatching of emergency vehicles and personnel for the immediate prevention  
7 of death, personal injury, or destruction of property.

8           (f) A provider of telephonic communications service shall provide an  
9 authorized law enforcement officer with the name of the subscriber of record  
10 whose published telephone number is provided to the service by an authorized  
11 law enforcement officer.

12  
13           SECTION 5. Court order to obtain access to stored communications.

14           (a) A court shall issue an order authorizing disclosure of contents,  
15 records, or other information of a wire or electronic communication held in  
16 electronic storage if the court determines that there is reasonable belief  
17 that the information sought is relevant to a legitimate law enforcement  
18 inquiry.

19           (b) A court may grant a motion by the service provider to quash or  
20 modify the order issued under subsection (a) of this section if the court  
21 determines that the information or records requested are unusually voluminous  
22 in nature or that compliance with the order would cause an undue burden on  
23 the provider.

24  
25           SECTION 6. Backup preservation.

26           (a)(1) A subpoena or court order for disclosure of the contents of an  
27 electronic communication in a remote computing service under section 4(c) of  
28 this act may require that the service provider to whom the request is  
29 directed create a copy of the contents of the electronic communications  
30 sought by the subpoena or court order for the purpose of preserving those  
31 contents.

32           (2) The service provider may not inform the subscriber or  
33 customer whose communications are being sought that the subpoena or court  
34 order has been issued.

35           (3) The service provider shall expeditiously create the copy after the date of the receipt by the  
36 service provider of the subpoena or court order.

1           (b) The service provider shall immediately notify the authorized law  
2 enforcement officer who presented the subpoena or court order requesting the  
3 copy when the copy has been created.

4           (c) Except as provided by section 7 of this act, the authorized law  
5 enforcement officer shall notify the subscriber or customer whose  
6 communications are the subject of the subpoena or court order of the creation  
7 of the copy not later than three (3) days after the date of the receipt of  
8 the notification from the service provider that the copy was created.

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

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

16           (e) The service provider shall release the copy to the requesting authorized law enforcement  
17 officer not earlier than the fourteenth day or later than the eighteenth day after the date  
18 of the officer's notice to the subscriber or customer, if the service  
19 provider has not:

20           (1) Initiated proceedings to challenge the request of the law  
21 enforcement officer for the copy; or

22           (2) Received notice from the subscriber or customer that the  
23 subscriber or customer has initiated proceedings to challenge the request.

24           (f) The service provider may not destroy or permit the destruction of  
25 the copy until the information has been delivered to the law enforcement  
26 agency or until the resolution of any court proceedings, including appeals of  
27 any proceedings, relating to the subpoena or court order requesting the  
28 creation of the copy, whichever occurs last.

29           (g)(1) An authorized law enforcement officer who reasonably believes  
30 that notification to the subscriber or customer of the subpoena or court  
31 order would result in the destruction of or tampering with information sought  
32 may request the creation of a copy of the information.

33           (2) The law enforcement officer's belief is not subject to  
34 challenge by the subscriber, customer, or service provider.

35           (h)(1) A subscriber or customer who receives notification as described  
36 in subsection (c) of this section may file a written motion to quash the

1 subpoena or vacate the court order in the court that issued the subpoena or  
2 court order not later than the fourteenth day after the date of the receipt  
3 of the notice.

4 (2) The motion must contain an affidavit or sworn statement  
5 stating that:

6 (A) The applicant is a subscriber or customer of the  
7 service from which the contents of electronic communications stored for the  
8 subscriber or customer have been sought; and

9 (B) The applicant's reasons for believing that the  
10 information sought is not relevant to a legitimate law enforcement inquiry or  
11 that there has not been substantial compliance with this act in some other  
12 respect.

13 (3)(A) The subscriber or customer shall give written notice to  
14 the service provider of the challenge to the subpoena or court order.

15 (B) The authorized law enforcement officer or law  
16 enforcement agency requesting the subpoena or court order shall be served a  
17 copy of the papers filed, by personal delivery or by registered or certified  
18 mail.

19 (i)(1) The court shall order the authorized law enforcement officer to  
20 file a sworn response to the motion filed by the subscriber or customer if  
21 the court determines that the subscriber or customer has complied with the  
22 requirements of subsection (h) of this section.

23 (2) On request of the law enforcement officer, the court may  
24 permit the response to be filed *in camera*.

25 (3) The court may conduct any additional proceedings the court  
26 considers appropriate, if the court is unable to make a determination on the  
27 motion on the basis of the parties' initial allegation and response.

28 (4) The court shall rule on the motion as soon after the filing  
29 of the officer's response as practicable.

30 (5) The court shall deny the motion if the court finds that the  
31 applicant is not the subscriber or customer whose stored communications are  
32 the subject of the subpoena or court order, or that there is reason to  
33 believe that the law enforcement officer's inquiry is legitimate and that the  
34 communications sought are relevant to that inquiry.

35 (6) The court shall quash the subpoena or vacate the order if  
36 the court finds that the applicant is the subscriber or customer whose stored

1 communications are the subject of the subpoena or court order and that there  
2 is not a reason to believe that the communications sought are relevant to a  
3 legitimate law enforcement inquiry or that there has not been substantial  
4 compliance with this act.

5 (7) A court order denying a motion or application under this  
6 section is not a final order and no interlocutory appeal may be taken from  
7 the denial.

8  
9 SECTION 7. Delay of notification.

10 (a)(1) An authorized law enforcement officer seeking a court order to  
11 obtain information under section 4(c) of this act may include a request for  
12 an order delaying the notification required under section 4(c) of this act  
13 for a period not to exceed ninety (90) days.

14 (2) The court shall grant the request if the court determines  
15 that there is reason to believe that notification of the existence of the  
16 court order may have an adverse result.

17 (b)(1) An authorized law enforcement officer who has obtained a  
18 subpoena authorized by statute or a grand jury subpoena to seek information  
19 under section 4(c) of this act may delay the notification required under that  
20 section for a period not to exceed ninety (90) days on the execution of a  
21 written certification of a supervisory official that there is reason to  
22 believe that notification of the existence of the subpoena may have an  
23 adverse result.

24 (2) The law enforcement officer shall maintain a true copy of  
25 the certification.

26 (c) A court may grant one or more extensions of the delay of  
27 notification provided by this section of up to ninety (90) days on request or  
28 by certification by a supervisory official if the original requirements under  
29 subsection (a) or (b) of this section are met for each extension.

30 (d) When the delay of notification under this section expires, the  
31 authorized law enforcement officer shall serve, by personal delivery or  
32 registered or certified mail, the subscriber or customer a copy of the  
33 process or request together with notice that:

34 (1) States with reasonable specificity the nature of the law  
35 enforcement inquiry; and

36 (2) Informs the subscriber or customer:

1                   (A) That information stored for the subscriber or customer  
2 by the service provider named in the process or request was supplied to or  
3 requested by the law enforcement officer and the date on which the  
4 information was supplied or requested;

5                   (B) That notification to the subscriber or customer was  
6 delayed;

7                   (C) Of the name of the supervisory official who made the  
8 certification or the court that granted the request for the delay of  
9 notification; and

10                   (D) Of which provision of this act permitted the delay of  
11 notification.

12  
13           SECTION 8. Preclusion of notification.

14           (a) When an authorized law enforcement officer seeking information  
15 under section (4) of this act is not required to give notice to the  
16 subscriber or customer, or is delaying notification under section (7) of this  
17 act, the law enforcement officer may apply to the court for an order  
18 commanding the service provider to whom a warrant, subpoena, or court order  
19 is directed not to disclose to any other person the existence of the warrant,  
20 subpoena, or  
21 court order.

22           (b) The order is effective for the period the court considers  
23 appropriate.

24           (c) The court shall enter the order if the court determines that there  
25 is reason to believe that notification of the existence of the warrant,  
26 subpoena, or court order will have an adverse result as described in section  
27 7(c) of this act.

28  
29           SECTION 9. Reimbursement of costs.

30           (a)(1) Except as provided by subsection (c) of this section, an  
31 authorized law enforcement officer who obtains information under this act  
32 shall reimburse the person assembling or providing the information for all  
33 costs that are reasonably necessary and that have been directly incurred in  
34 searching for, assembling, reproducing, or otherwise providing the  
35 information.

36           (2) These costs include costs arising from necessary disruption

1 of normal operations of an electronic communications service or remote  
2 computing service in which the information may be stored.

3 (b)(1) The authorized law enforcement officer and the person providing  
4 the information may agree on the amount of reimbursement.

5 (2) If there is no agreement, the court that issued the order  
6 for production of the information shall determine a reasonable amount.

7 (3) If no court order was issued for production of the  
8 information, the court before which the criminal prosecution relating to the  
9 information would be brought shall determine a reasonable amount.

10 (c) Subsection (a) of this section does not apply to records or other  
11 information maintained by a communications common carrier that relate to  
12 telephone toll records or telephone listings obtained under section 4(e) of  
13 this act, unless the court determines that the amount of information required  
14 was unusually voluminous, or that an undue burden was imposed on the  
15 provider.

16  
17 SECTION 10. No cause of action.

18 A subscriber or customer of a wire or electronic communications or  
19 remote computing service does not have a cause of action against a wire or  
20 electronic communications or remote computing service, its officers,  
21 employees, agents, or other specified persons for providing information,  
22 facilities, or assistance as required by a court order, warrant, subpoena, or  
23 certification under this act.

24  
25 SECTION 11. Disclosure of stored communications.

26 (a) Except as provided by subsection (c) of this section, a provider  
27 of an electronic communications service may not knowingly divulge the  
28 contents of a communication that is in electronic storage.

29 (b) Except as provided by subsection (c) of this section, a provider  
30 of remote computing service may not knowingly divulge the contents of any  
31 communication that is:

32 (1) In electronic storage;

33 (2) Stored on behalf of a subscriber or customer of the service  
34 and is received by means of electronic transmission from or created by means  
35 of computer processing of communications received by means of electronic  
36 transmission from the subscriber or customer; and

1           (3) Solely for the purpose of providing storage or computer  
2 processing services to the subscriber or customer if the provider of the  
3 service is not authorized to obtain access to the contents of those  
4 communications for purposes of providing any service other than storage or  
5 computer processing.

6           (c) A provider of an electronic communications or remote computing  
7 service may divulge the contents of an electronically stored communication:

8           (1) To an intended recipient of the communication or that  
9 person's agent;

10           (2) To the addressee or that person's agent;

11           (3) With the consent of the originator, to the addressee or the  
12 intended recipient of the communication, or the subscriber of a remote  
13 computing service;

14           (4) To a person whose facilities are used to transmit the  
15 communication to its destination or the person's employee or authorized  
16 representative;

17           (5) As may be necessary to provide the service or to protect the  
18 property or rights of the provider of the service;

19           (6) To a law enforcement agency if the contents were obtained  
20 inadvertently by the service provider and the contents appear to pertain to  
21 the commission of a crime; or

22           (7) As authorized under federal or other state law.

23  
24           SECTION 12. Cause of action.

25           (a) Except as provided by section 10 of this act, a provider of  
26 electronic communications service, subscriber, or customer of an electronic  
27 communications service aggrieved by a violation of this act has a civil cause  
28 of action if the conduct constituting the violation was committed knowingly  
29 or intentionally and is entitled to:

30           (1) Injunctive relief;

31           (2) A reasonable attorney's fee and other litigation costs  
32 reasonably incurred; and

33           (3) The sum of the actual damages suffered and any profits made  
34 by the violator as a result of the violation or \$1,000, whichever is more.

35           (b) The reliance in good faith on a court order, warrant, subpoena, or  
36 legislative authorization is a complete defense to any civil action brought

1 under this act.

2 (c) A civil action under this section shall be presented within two  
3 (2) years after the date the claimant first discovered or had reasonable  
4 opportunity to discover the violation.

5  
6 SECTION 13. Exclusivity of remedies.

7 The remedies and sanctions described in this act are the exclusive  
8 judicial remedies and sanctions for a violation of this act other than a  
9 violation that infringes on a right of a party guaranteed by a state or  
10 federal constitution.

11  
12 SECTION 14. Mobile tracking devices.

13 (a) A circuit judge may issue an order for the installation within the  
14 judge's judicial district of one or more mobile tracking devices and for the  
15 use of mobile tracking devices.

16 (b) The order may authorize the use of mobile tracking devices outside  
17 the judicial district but within the state if the device is installed within  
18 the judicial district.

19 (c)(1) A circuit judge may issue the order only on the application of  
20 an authorized law enforcement officer or prosecuting attorney.

21 (2) An application must be written, signed, and sworn to or  
22 affirmed before the judge. The affidavit must:

23 (A) State the name, department, agency, and address of the  
24 applicant;

25 (B) Identify the vehicle, container, or item to which, in  
26 which, or on which the mobile tracking device is to be attached or placed,  
27 and state the name of the owner or possessor of that vehicle, container, or  
28 item;

29 (C) State the jurisdictional area in which the vehicle,  
30 container, or item is expected to be found; and

31 (D) State the facts and circumstances that provide the  
32 applicant with a reasonable suspicion that criminal activity has been, is, or  
33 will be in progress, and that the use of a mobile tracking device is  
34 reasonably likely to yield information relevant to the investigation of  
35 criminal activity.

36 (d) The circuit judge that issued an order shall be notified by the

1 law enforcement officer or prosecuting attorney in writing within seventy-two  
2 (72) hours after the time the mobile tracking device has been activated in  
3 place on or within the vehicle, container, or item.

4 (e)(1) An order authorizing the use of a mobile tracking device  
5 expires not later than the ninetieth day after the date that the device has  
6 been activated in place on or within the vehicle, container, or item.

7 (2) For good cause shown, the judge may grant an extension for  
8 an additional ninety (90) day period.

9 (f)(1) A mobile tracking device shall be removed as soon as is  
10 practicable after the authorization period expires.

11 (2) If removal is not practicable, monitoring of the device  
12 shall cease on expiration of the authorization order.

13 (g)(1) This section does not apply to a global positioning device or  
14 similar device installed in or on an item or property by the owner or with  
15 the consent of the owner of the property.

16 (2) A device described by this subsection (g) may be monitored  
17 by a private entity in an emergency.

18 SECTION 15. Subpoena authority.

19 The prosecuting attorney may issue a subpoena to a communications  
20 common carrier or an electronic communications service to compel the  
21 production of the carrier's or service's business records that disclose  
22 information about:

23 (1) The carrier's or service's customers; or

24 (2) Users of the services offered by the carrier or service; and

25 (3) Are material to a criminal investigation.

26  
27 SECTION 16. Limitation.

28 A governmental agency authorized to install and use a pen register  
29 under this act or other law must use reasonably available technology to only  
30 record and decode electronic or other impulses used to identify the numbers  
31 dialed or otherwise transmitted.

32  
33 SECTION 17. Communication common carrier exception.

34 Notwithstanding any other provision in this act to the contrary, it  
35 shall not be unlawful for a wire or electronic communication service provider  
36 or any communication common carrier, or a switchboard operator, officer,

1 employee, or agent thereof, whose facilities are used in the transmission of  
2 a wire or electronic communication, to intercept, disclose, store, or use  
3 that communication in the normal course of its employment or business while  
4 engaged in any activity which is a necessary incident to the rendition of its  
5 service or to the protection of its rights or property, except that a  
6 provider of wire communication service to the public shall not utilize  
7 service observing or random monitoring except for mechanical or service  
8 quality control checks.

9  
10 SECTION 18. Nothing in this act shall restrict or prohibit  
11 interception and recording of communications not otherwise prohibited by  
12 Arkansas Code § 5-60-120.

13  
14 SECTION 19. (a) It shall be unlawful for any person who knows or  
15 learns of the existence of a pen register, tracking device, trap and trace  
16 device, or any other kind of electronic intercept, to disclose that fact to  
17 the person who is the target of the investigation, or to any other person.

18 (b) Any person violating the provisions of this section shall be  
19 guilty of a Class A misdemeanor.

20 /s/ Sullivan  
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