

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 3005

BY DELEGATES YOUNG, THOMPSON, WORRELL, PAYNTER

AND DEAN

[Introduced March 09, 2021; Referred to the Committee on
the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
 2 designated §62-1A-12, relating to requiring a warrant for the disclosure of certain third-
 3 party information.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1A. SEARCH AND SEIZURE.

§62-1A-12. Warrant required for disclosure of certain third-party information.

1 (a) As used in this section, “subscriber record” means a record or information of a provider
 2 of an electronic communication service or remote computing service that reveals the subscriber’s
 3 or customer’s:

4 (1) Name;

5 (2) Address;

6 (3) Local and long distance telephone connection record, or record of session time and
 7 duration;

8 (4) Length of service, including the start date;

9 (5) Type of service used;

10 (6) Telephone number, instrument number, or other subscriber or customer number or
 11 identification, including a temporarily assigned network address; and

12 (7) Means and source of payment for the service, including a credit card or bank account
 13 number.

14 (b) Except as otherwise provided, a law enforcement agency may not obtain, use, copy,
 15 or disclose a subscriber record.

16 (c) A law enforcement agency may not obtain, use, copy, or disclose, for a criminal
 17 investigation or prosecution, any record or information, other than a subscriber record, of a
 18 provider of an electronic communication service or remote computing service related to a
 19 subscriber or customer without a warrant.

20 (d) Notwithstanding Subsections (b) and (c), a law-enforcement agency may obtain, use,

21 copy, or disclose a subscriber record, or other record or information related to a subscriber or
22 customer, without a warrant:

23 (1) With the informed, affirmed consent of the subscriber or customer;

24 (2) In accordance with a judicially recognized exception to warrant requirements;

25 (3) If the subscriber or customer voluntarily discloses the record in a manner that is publicly
26 accessible; or

27 (4) If the provider of an electronic communication service or remote computing service
28 voluntarily discloses the record:

29 (A) Under a belief that an emergency exists involving the imminent risk to an individual of:

30 (i) Death;

31 (ii) Serious physical injury;

32 (iii) Sexual abuse;

33 (iv) Live-streamed sexual exploitation;

34 (v) Kidnapping; or

35 (vi) Human trafficking;

36 (B) That is inadvertently discovered by the provider, if the record appears to pertain to the
37 commission of:

38 (i) A felony; or

39 (ii) A misdemeanor involving physical violence, or sexual abuse; or

40 (C) As otherwise permitted under 18 U.S.C. Sec. 2702.

41 (e) A provider of an electronic communication service or remote computing service, or the
42 provider's officers, employees, agents, or other specified persons may not be held liable for
43 providing information, facilities, or assistance in good faith reliance on the terms of a warrant
44 issued under this section, or without a warrant in accordance with Subsection (c).

NOTE: The purpose of this bill is to require a warrant for the disclosure of certain third party

information.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.