

State of Wisconsin



2009 Senate Bill 524

Date of enactment: **May 13, 2010**
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2009 WISCONSIN ACT 349

AN ACT *to amend* 911.01 (4) (c), 968.27 (intro.), 968.27 (17) and 968.30 (10); and *to create* 968.27 (14g) and 968.375 of the statutes; **relating to:** subpoenas and warrants requiring providers of electronic communications services or of remote computing services to provide customer information or disclose contents of wire or electronic communications.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 911.01 (4) (c) of the statutes, as affected by 2009 Wisconsin Act 28, is amended to read:

911.01 (4) (c) *Miscellaneous proceedings.* Proceedings for extradition or rendition; sentencing, granting or revoking probation, modification of a sentence under s. 302.1135, adjustment of a bifurcated sentence under s. 973.195 (1r), release to extended supervision under s. 302.113 (2) (b) or 304.06 (1) or discharge under s. 973.01 (4m); issuance of subpoenas or warrants under s. 968.375, arrest warrants, criminal summonses, and search warrant; hearings under s. 980.09 (2); proceedings under s. 971.14 (1) (c); proceedings with respect to pre-trial release under ch. 969 except where habeas corpus is utilized with respect to release on bail or as otherwise provided in ch. 969.

SECTION 2. 968.27 (intro.) of the statutes is amended to read:

968.27 Definitions. (intro.) In ss. 968.28 to ~~968.37~~ 968.375:

SECTION 3. 968.27 (14g) of the statutes is created to read:

968.27 (14g) "Remote computing service" means computer storage or processing that is provided to the

public by means of an electronic communications system.

SECTION 4. 968.27 (17) of the statutes is amended to read:

968.27 (17) "Wire communication" means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, ~~microwave~~ or other like connection between the point of origin and the point of reception, including the use of the connection in any switching station, furnished or operated by any person ~~engaged as a public utility~~ in providing or operating the facilities for the transmission of intrastate, interstate or foreign communications. "Wire communication" includes the electronic storage of any such aural transfer, ~~but does not include the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit.~~

SECTION 5. 968.30 (10) of the statutes is amended to read:

968.30 (10) Nothing in ss. 968.28 to ~~968.37~~ 968.375 shall be construed to allow the interception of any wire, electronic, or oral communication between an attorney and a client.

SECTION 6. 968.375 of the statutes is created to read:

* Section 991.11, WISCONSIN STATUTES 2007-08 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

968.375 Subpoenas and warrants for records or communications of customers of an electronic communication service or remote computing service provider.

(2) JURISDICTION. For purposes of this section, a person is considered to be doing business in this state and is subject to service and execution of process from this state, if the person makes a contract with or engages in a terms of service agreement with any other person, whether or not the other person is a resident of this state, and any part of the performance of the contract or provision of service takes place within this state on any occasion.

(3) SUBPOENA. (a) Upon the request of the attorney general or a district attorney and upon a showing of probable cause, a judge may issue a subpoena requiring a person who provides electronic communication service or remote computing service to disclose within a reasonable time that is established in the subpoena a record or other information pertaining to a subscriber or customer of the service, including any of the following relating to the subscriber or customer:

1. Name.
2. Address.
3. Local and long distance telephone connection records, or records of session times and durations.
4. Length of service, including start date, and types of service utilized.
5. Telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address.
6. Means and source of payment for the electronic communication service or remote computing service, including any credit card or bank account number.

(b) A subpoena under this subsection may not require disclosure of the contents of communications.

(4) WARRANT. Upon the request of the attorney general or a district attorney and upon a showing of probable cause, a judge may issue a warrant requiring a person who provides electronic communication service or remote computing service to disclose within a reasonable time that is established in the warrant any of the following:

(a) The content of a wire or electronic communication that is in electronic storage in an electronic communications system or held or maintained by a provider of remote computing service.

(b) A record or information described under sub. (3) (a).

(5) BASIS, APPLICATION FOR, AND ISSUANCE OF SUBPOENA OR WARRANT. Section 968.12 (2) and (3) applies to the basis and application for, and issuance of, a subpoena under sub. (3) or a warrant under sub. (4) as it applies to the basis and application for, and issuance of, a search warrant under s. 968.12.

(6) MANNER OF SERVICE. A subpoena or warrant issued under this section may be served in the manner

provided for serving a summons under s. 801.11 (5) or, if delivery can reasonably be proved, by United States mail, delivery service, telephone facsimile, or electronic transmission.

(7) TIME FOR SERVICE. A subpoena or warrant issued under this section shall be served not more than 5 days after the date of issuance.

(9) MOTION TO QUASH. The person on whom a subpoena or warrant issued under this section is served may file a motion to quash the subpoena or warrant with the judge who issued the subpoena or warrant. If the person files the motion within the time for production of records or information, the judge shall hear and decide the motion within 8 days after the motion is filed.

(10) LAW ENFORCEMENT PRESENCE NOT REQUIRED. The presence of a law enforcement officer is not required for service or execution of a subpoena or warrant issued under this section.

(11) RETURN. A subpoena or warrant issued under this section shall be returned to the court not later than 5 days after the records or information described in the subpoena or warrant are received by the attorney general, district attorney, or law enforcement agency, whichever is designated in the subpoena or warrant.

(12) SECRECY. A subpoena or warrant issued under this section shall be issued with all practicable secrecy and the request, complaint, affidavit, or testimony upon which it is based may not be filed with the clerk or made public until the subpoena or warrant has been executed and returned to the court. The judge may issue an order sealing the subpoena or warrant and the request, complaint, affidavit, or testimony upon which it is based. The judge may issue an order prohibiting the person on whom the subpoena or warrant is served from disclosing the existence of the subpoena or warrant to the customer or subscriber unless the judge subsequently authorizes such disclosure.

(13) IMMUNITY. A person on whom a subpoena or warrant issued under this section is served is immune from civil liability for acts or omissions in providing records or information, facilities, or assistance in accordance with the terms of the subpoena or warrant.

(14) TECHNICAL IRREGULARITIES. Evidence disclosed under a subpoena or warrant issued under this section shall not be suppressed because of technical irregularities or errors not affecting the substantial rights of the defendant.

(15) DISCLOSURE WITHOUT SUBPOENA OR WARRANT. A provider of electronic communication or remote computing service may disclose records or information described under sub. (3) (a) of a customer or subscriber or the content of communications of a customer or subscriber described under sub. (4) without a subpoena or warrant if any of the following applies:

(a) The customer or subscriber provides consent for the particular disclosure.

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(b) The provider of electronic communication or remote computing service believes in good faith that an emergency involving the danger of death or serious

physical injury to any person exists and that disclosure of the information is required to prevent the death or injury or to mitigate the injury.
