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Date: 5/30/17

L.D. 332 (Filing No. H-**339**)

3	CRIMINAL JUSTICE AND PUBLIC SAFETY
4	Reproduced and distributed under the direction of the Clerk of the House.
5	STATE OF MAINE
6	HOUSE OF REPRESENTATIVES
7	128TH LEGISLATURE
8	FIRST REGULAR SESSION
9 10 11	COMMITTEE AMENDMENT " $A$ " to H.P. 246, L.D. 332, Bill, "An Act Regarding Service of Criminal Process on Electronic Communication Service Providers and Remote Computing Service Providers"
12 13	Amend the bill in section 1 in subsection 6 in the 2nd line (page 1, line 18 in L.D.) by striking out the following: " <u>A clerk</u> " and inserting the following: ' <u>A commercial clerk</u> '
14 15	Amend the bill in section 1 in subsection 6 by striking out all of paragraph C (page 2, lines 7 to 15 in L.D.) and inserting the following:
16	C. For purposes of this subsection, criminal process is properly served if it is:
17 18 19 20	(1) Delivered by hand, or in a manner reasonably allowing for proof of delivery if delivered by United States mail, overnight delivery service or facsimile to a commercial clerk or commercial registered agent as provided in section 106; section 107, subsection 4; or this section;
21 22 23	(2) Delivered by specific means identified by the provider for service of criminal process, including, but not limited to, e-mail, facsimile or submission via an Internet web portal; or
24	(3) Delivered to the provider's place of business within the State.
25 26 27 28	If service is made pursuant to subparagraph (1) or (3) and the provider promptly notifies the law enforcement agency of the specific means of service identified by the provider pursuant to subparagraph (2) for criminal process, service must be made by the means of service specified by the provider if possible.'
29 30	Amend the bill in section 3 in §56 in subsection 1 by striking out all of paragraph L (page 3, line 37 and page 4, lines 1 to 8 in L.D.) and inserting the following:
31	L. "Properly served" means that a search warrant or grand jury subpoena has been:
32 33	(1) Delivered by hand, or in a manner reasonably allowing for proof of delivery if delivered by United States mail, overnight delivery service or facsimile to a

Page 1 - 128LR0507(04)-1

#### COMMITTEE AMENDMENT "/" to H.P. 246, L.D. 332

1 2	commercial clerk or commercial registered agent as provided in Title 5, section 106; Title 5, section 107, subsection 4; or this section;
3 4 5	(2) Delivered by specific means identified by the provider for service of criminal process, including, but not limited to, e-mail, facsimile or submission via an Internet web portal; or
6	(3) Delivered to the provider's place of business within the State.
7 8 9 10	If service is made pursuant to subparagraph (1) or (3) and the provider promptly notifies the law enforcement agency of the specific means of service identified by the provider pursuant to subparagraph (2) for criminal process, service must be made by the means of service specified by the provider if possible.'
11 12	Amend the bill in section 3 in §56 by striking out all of subsections 2, 3 and 4 and inserting the following:
13 14 15 16 17 18	'2. Requirements applicable to a foreign entity provider. The following provisions apply to criminal process issued pursuant to this section that requires a search for records that are in the possession or control of a foreign entity provider when those records would reveal the identity of a customer using services, data stored by or on behalf of a customer, a customer's usage of the service, the recipient or destination of communications sent to or from a customer, content information or location information.
19 20 21 22	A. A foreign entity provider served with a search warrant pursuant to this section shall produce to the applicant all records sought, including those records maintained or located outside this State, within 14 days of service. The 14 days may be extended by the court as follows:
23 24 25 26 27	(1) By the 10th day following service, the foreign entity provider in writing or electronically must notify the law enforcement officer who served the warrant that producing all the records within 14 days is not practicable, the reasons why compliance is not practicable and the date by which the foreign entity provider will complete the production; and
28 29	(2) The law enforcement officer shall file a notice with the court of the reasons under subparagraph (1).
30 31 32 33 34 35	If the court finds that good cause exists for the delay, the court may extend the 14-day period to the date of production specified by the foreign entity provider and the provider is prohibited from asserting that the warrant has expired. For purposes of this paragraph, good cause includes, but is not limited to, impracticability of timely response, difficulty of identifying and retrieving the data requested and the volume of data or number of sources sought.
36 37 38 39 40	B. A foreign entity provider served with a grand jury subpoena pursuant to this section shall produce to the prosecutor or grand jury all records sought, including those records maintained or located outside this State, by or at the time of the grand jury appearance. The grand jury subpoena must include the address of the prosecutor or grand jury to which the provider must produce the records.

Page 2 - 128LR0507(04)-1

COMMITTEE AMENDMENT "A" to H.P. 246, L.D. 332

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C. A foreign entity provider shall verify the authenticity of records that it produces by providing an affidavit that complies with the requirements set forth in the Maine Rules of Evidence, Rule 902(12). Admissibility of these records in a court in this State is governed by the Maine Rules of Evidence, Rule 803(6).

D. A foreign entity provider that produces records or testifies pursuant to this subsection is immune from criminal or civil liability for the release of the requested information to the court, attorney for the State or law enforcement agency involved in the investigation.

3. Requirements applicable to a domestic entity provider. The following provisions apply to criminal process issued pursuant to this section that requires a search for records that are in the possession or control of a domestic entity provider when those records would reveal the identity of a customer using services, data stored by or on behalf of a customer, a customer's usage of the service, the recipient or destination of communications sent to or from a customer, content information or location information.

A. A domestic entity provider, when served with criminal process issued by another state to produce records that would reveal the identity of a customer using services, data stored by or on behalf of a customer, a customer's usage of the service, the recipient or destination of communications sent to or from a customer, content information or location information, shall produce those records as if that criminal process had been issued by a court in this State.

B. A domestic entity provider served with a search warrant pursuant to this section shall produce to the applicant all records sought, including those records maintained or located outside this State, within 14 days of service. The 14-day period may be extended by the court as follows:

(1) By the 10th day following service, the domestic entity provider in writing or electronically must notify the law enforcement officer who served the warrant that producing all the records within 14 days is not practicable, the reasons why compliance is not practicable and the date by which the domestic entity provider will complete the production; and

(2) The law enforcement officer shall file a notice with the court of the reasons under subparagraph (1).

32If the court finds that good cause exists for the delay, the court may extend the 14-day33period to the date of production specified by the domestic entity provider and the34provider is prohibited from asserting that the warrant has expired. For purposes of35this paragraph, good cause includes, but is not limited to, impracticability of timely36response, difficulty of identifying and retrieving the data requested and the volume of37data or number of sources sought.

C. A domestic entity provider served with a grand jury subpoena pursuant to this
section shall produce to the prosecutor or grand jury all records sought, including
those records maintained or located outside this State, by or at the time of the grand
jury appearance. The grand jury subpoena must include the address of the prosecutor
or grand jury to which the provider must produce the records.

Page 3 - 128LR0507(04)-1

	COMMITTEE AMENDMENT "A" to H.P. 246, L.D. 332
1 2 3 4 5	D. A domestic entity provider shall verify the authenticity of records that it produces by providing an affidavit that complies with the requirements set forth in the Maine Rules of Evidence, Rule 902(11) or on a form provided by the requesting jurisdiction. Admissibility of these records in a court in this State is governed by the Maine Rules of Evidence, Rule 803(6).
6 7 8 9	E. A domestic entity provider that produces records or testifies pursuant to this subsection is immune from criminal or civil liability for the release of the requested information to the court, attorney for the State or law enforcement agency involved in the investigation.
10 11 12 13 14	4. Application for expedited production of records. Notwithstanding the 14-day period specified in subsection 2 or 3 for production of the records, if an applicant for a search warrant believes that delaying production is reasonably likely to cause an adverse result, the applicant may request that the court require the production of the records sooner than 14 days after service pursuant to this subsection.
15 16 17	A. The applicant shall demonstrate to the court the specific adverse result or results, as specified in subsection 1, paragraph A, subparagraphs (1) to (7), that delaying production for 14 days is reasonably likely to cause.
18 19 20	B. If the court finds that the delay may cause an adverse result, the court shall state the adverse result specified in subsection 1, paragraph A, subparagraphs (1) to (7) and may require the provider to produce the records in a specified number of days.
21 22 23	C. If the court specifies that the provider has less than 14 days to produce the record and the adverse result finding is listed in subsection 1, paragraph A, subparagraphs (1) to (4), the provider must respond within the time specified by the court.
24 25 26 27 28 29 30 31 32 33 34	D. If the court specifies that the provider has less than 14 days to produce the record and the only adverse result findings are results listed in subsection 1, paragraph A, subparagraphs (5) to (7), the provider must notify the law enforcement officer serving the warrant that compliance within that period specified by the court is not practicable and must state the date within 14 days from service by which the provider will respond. The law enforcement officer shall file the provider's response with the court, and, upon a demonstration of good cause by the provider, the response period may be extended by the court to no more than 14 days from the date of service of the warrant. As used in this paragraph, good cause includes, but is not limited to, impracticability of timely response, difficulty of identifying and retrieving the data requested and the volume of data or number of sources sought.'
35	SUMMARY
36	This amendment makes the following changes to the bill.
37 38	1. It specifies that the clerk who is authorized to receive service of a grand jury subpoena or search warrant is the commercial clerk.
39 40 41	2. It prioritizes the method of service of criminal process, specifying first priority as through the specific means identified by the electronic service provider or remote computing service provider.

Page 4 - 128LR0507(04)-1

COMMITTEE AMENDMENT " R " to H.P. 246, L.D. 332

3. It specifies that the provisions applicable to a search for records from a foreign entity provider apply to records that are in the possession or control of the foreign entity provider.

4. It provides a mechanism for a foreign entity provider or a domestic entity provider to obtain an extension beyond 14 days to reply to a search warrant through notice to the law enforcement officer who served the warrant. It strikes from the procedure the requirement that the foreign entity provider file a request for relief with the court.

5. It provides for production of the requested grand jury documents to the grand jury and provides that the prosecutor's or the grand jury's address must be included in the subpoena.

6. It provides in the mechanism for expedited production of records a way for the provider to request a 14-day period for return of the information if the only adverse result finding is for the reason of jeopardizing the investigation, undue delay of trial or a significantly detrimental consequence that is not immediate danger of death or serious physical injury, flight from prosecution, destruction of or tampering with evidence or intimidation of a potential witness.

FISCAL NOTE REQUIRED

(See attached)

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Page 5 - 128LR0507(04)-1



#### **128th MAINE LEGISLATURE**

LD 332

LR 507(04)

An Act Regarding Service of Criminal Process on Electronic Communication Service Providers and Remote Computing Service Providers

Fiscal Note for Bill as Amended by Committee Amendment 'A' (H-339) Committee: Criminal Justice and Public Safety Fiscal Note Required: Yes

**Fiscal Note** 

Minor cost increase - General Fund

#### Fiscal Detail and Notes

Additional costs to the Department of Public Safety associated with this legislation can be absorbed within existing budgeted resources.