MAINE STATE LEGISLATURE

The following document is provided by the LAW AND LEGISLATIVE DIGITAL LIBRARY at the Maine State Law and Legislative Reference Library http://legislature.maine.gov/lawlib



Reproduced from electronic originals (may include minor formatting differences from printed original)



131st MAINE LEGISLATURE

FIRST SPECIAL SESSION-2023

Legislative Document

No. 1883

H.P. 1208

House of Representatives, May 3, 2023

An Act to Enact the Protection of Shared Physical and Digital Property from Warrantless Searches Act

(AFTER DEADLINE)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed.

ROBERT B. HUNT

R(+ B. Hunt

Clerk

Presented by Representative FAULKINGHAM of Winter Harbor.

Cosponsored by Representatives: ANDREWS of Paris, BAGSHAW of Windham, BOYER of Poland, LYMAN of Livermore Falls, SAMPSON of Alfred, Speaker TALBOT ROSS of Portland, THORNE of Carmel, WILLIAMS of Bar Harbor.

\$58. The Protection of Shared Physical and Digital Property from Warrant! Searches Act 1. Short title. This section may be known and cited as "the Protection of Sha Physical and Digital Property from Warrantless Searches Act." 2. Definitions. As used in this section, unless the context otherwise indicates, following terms have the following meanings. A. "Digital property" means information that a person creates that: (1) Is stored in digital form and includes the information necessary to access digital property; or (2) The person has shared with a 3rd party in connection to the provision of go or services to the person and is recorded in digital form and includes digital recordation in the information. "Digital property" does not include information a person voluntarily shares with public or with a 3rd party with the understanding that the 3rd party will share information with the public. B. "Government agent" means an individual who is employed by or contracted to federal, state or local governmental entity. C. "Physical property" means all real and personal property that a person owns possesses, including: (1) All real and personal property that a person shares with a 3rd party connection to the provision of goods or services to that person; and (2) Information a person shares with a 3rd party in connection to the provision goods or services to that person that is recorded in physical form, including physical records containing the information.
1. Short title. This section may be known and cited as "the Protection of Sha Physical and Digital Property from Warrantless Searches Act." 2. Definitions. As used in this section, unless the context otherwise indicates, following terms have the following meanings. A. "Digital property" means information that a person creates that: (1) Is stored in digital form and includes the information necessary to access digital property; or (2) The person has shared with a 3rd party in connection to the provision of go or services to the person and is recorded in digital form and includes digital recordation in the information. "Digital property" does not include information a person voluntarily shares with public or with a 3rd party with the understanding that the 3rd party will share to information with the public. B. "Government agent" means an individual who is employed by or contracted to federal, state or local governmental entity. C. "Physical property" means all real and personal property that a person owns possesses, including: (1) All real and personal property that a person shares with a 3rd party connection to the provision of goods or services to that person; and (2) Information a person shares with a 3rd party in connection to the provision goods or services to that person that is recorded in physical form, including physical records containing the information.
6 following terms have the following meanings. A. "Digital property" means information that a person creates that: (1) Is stored in digital form and includes the information necessary to access digital property; or (2) The person has shared with a 3rd party in connection to the provision of go or services to the person and is recorded in digital form and includes digital recordationing the information. "Digital property" does not include information a person voluntarily shares with public or with a 3rd party with the understanding that the 3rd party will share to information with the public. B. "Government agent" means an individual who is employed by or contracted to federal, state or local governmental entity. C. "Physical property" means all real and personal property that a person owns possesses, including: (1) All real and personal property that a person shares with a 3rd party connection to the provision of goods or services to that person; and (2) Information a person shares with a 3rd party in connection to the provision goods or services to that person that is recorded in physical form, including physical records containing the information.
(1) Is stored in digital form and includes the information necessary to access digital property; or (2) The person has shared with a 3rd party in connection to the provision of go or services to the person and is recorded in digital form and includes digital recorded in formation in formation in formation in formation in the provision of goods or services to that person shares with a 3rd party inconnection to the provision goods or services to that person; and (2) Information a person shares with a 3rd party in connection to the provision goods or services to that person; and that person that is recorded in physical form, including physical records containing the information.
digital property; or (2) The person has shared with a 3rd party in connection to the provision of go or services to the person and is recorded in digital form and includes digital recorded in feet and party with a 3rd party with the understanding that the 3rd party will share the information and party with the understanding that the 3rd party will share the information and party with the understanding that the 3rd party will share the information and party will be information to the provision of goods or services to that person shares with a 3rd party in connection to the provision goods or services to that person shares with a 3rd party in connection to the provision goods or services to that person shares with a 3rd party in connection to the provision goods or services to that person that is recorded in physical form, including the information.
or services to the person and is recorded in digital form and includes digital recorded in digital rec
public or with a 3rd party with the understanding that the 3rd party will share to information with the public. B. "Government agent" means an individual who is employed by or contracted to federal, state or local governmental entity. C. "Physical property" means all real and personal property that a person owns possesses, including: (1) All real and personal property that a person shares with a 3rd party connection to the provision of goods or services to that person; and (2) Information a person shares with a 3rd party in connection to the provision goods or services to that person that is recorded in physical form, including physical records containing the information.
federal, state or local governmental entity. C. "Physical property" means all real and personal property that a person owns possesses, including: (1) All real and personal property that a person shares with a 3rd party connection to the provision of goods or services to that person; and (2) Information a person shares with a 3rd party in connection to the provision goods or services to that person that is recorded in physical form, including physical records containing the information.
21 possesses, including: 22 (1) All real and personal property that a person shares with a 3rd party 23 connection to the provision of goods or services to that person; and 24 (2) Information a person shares with a 3rd party in connection to the provision 25 goods or services to that person that is recorded in physical form, including 26 physical records containing the information.
23 connection to the provision of goods or services to that person; and 24 (2) Information a person shares with a 3rd party in connection to the provision 25 goods or services to that person that is recorded in physical form, including 26 physical records containing the information.
25 goods or services to that person that is recorded in physical form, including physical records containing the information.
27 "Physical property" does not include information a person voluntarily shares with public or with a 3rd party with the understanding that the 3rd party will share to information with the public.
D. "Third party" means a party different from a person or government agent, to maintains physical property or digital property about the person as part of provide that person goods or services.
33 3. Prohibition. A government agent may not search or seize physical property 34 digital property of a person that is held by a 3rd party without first obtaining a sea 35 warrant based on probable cause, except:
A. After receiving the permission of the owner of the digital property or physical property; or
B. To respond to an imminent threat to a person's life, safety or property or a sime exigent circumstance.

Be it enacted by the People of the State of Maine as follows:

1

- **4. Notice.** A government agent, when executing a search warrant, shall provide notice and a copy of the warrant authorizing the search to the owner of the digital property or physical property as well as any 3rd party whose property has been searched or from whom property has been seized. A court, upon a showing by the government agent that providing the search warrant to the owner of the digital property or physical property would impede or otherwise jeopardize an ongoing investigation, may delay the giving of such notice for a reasonable period not to exceed 30 days after the date of the execution of the warrant or on a later date certain if the facts of the case justify a longer period of delay.
- 5. Remedies. A person aggrieved by a search or seizure of the person's physical property or digital property possessed by a 3rd party may challenge the search or seizure as if the property had been searched in the person's possession or seized directly from the person, including by pursuing a civil action under the Maine Civil Rights Act. In an action under this subsection, a prevailing plaintiff may recover declaratory relief, injunctive relief, compensatory damages, nominal damages and attorney's fees. Any evidence obtained pursuant to a search or seizure conducted in violation of this section is inadmissible in any administrative, civil or criminal proceeding.

17 SUMMARY

This bill requires a search warrant for physical property and digital property held by a 3rd party in the same manner as required for property held by the person against whom a warrant is executed.