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1ST SESSION

S. 2576

To amend section 2702 of title 18, United States Code, to prevent law enforcement and intelligence agencies from obtaining subscriber or customer records in exchange for anything of value, to address communications and records in the possession of intermediary internet service providers, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 27, 2023

Mr. WYDEN (for himself, Mr. PAUL, Mr. SCHATZ, Mr. LEE, Ms. BALDWIN, Mrs. MURRAY, and Mr. TESTER) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend section 2702 of title 18, United States Code, to prevent law enforcement and intelligence agencies from obtaining subscriber or customer records in exchange for anything of value, to address communications and records in the possession of intermediary internet service providers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fourth Amendment
5 Is Not For Sale Act”.

1 **SEC. 2. PROTECTION OF RECORDS HELD BY DATA BRO-**
2 **KERS.**

3 Section 2702 of title 18, United States Code, is
4 amended by adding at the end the following:

5 “(e) PROHIBITION ON OBTAINING IN EXCHANGE FOR
6 ANYTHING OF VALUE CERTAIN RECORDS AND INFORMA-
7 TION BY LAW ENFORCEMENT AND INTELLIGENCE AGEN-
8 CIES.—

9 “(1) DEFINITIONS.—In this subsection—

10 “(A) the term ‘covered customer or sub-
11 scriber record’ means a covered record that is—

12 “(i) disclosed to a third party by—

13 “(I) a provider of an electronic
14 communication service to the public or
15 a provider of a remote computing
16 service of which the covered person
17 with respect to the covered record is a
18 subscriber or customer; or

19 “(II) an intermediary service pro-
20 vider that delivers, stores, or proc-
21 esses communications of such covered
22 person;

23 “(ii) collected by a third party from
24 an online account of a covered person; or

1 “(iii) collected by a third party from
2 or about an electronic device of a covered
3 person;

4 “(B) the term ‘covered person’ means—

5 “(i) a person who is located inside the
6 United States; or

7 “(ii) a person—

8 “(I) who is located outside the
9 United States or whose location can-
10 not be determined; and

11 “(II) who is a United States per-
12 son, as defined in section 101 of the
13 Foreign Intelligence Surveillance Act
14 of 1978 (50 U.S.C. 1801);

15 “(C) the term ‘covered record’ means a
16 record or other information that—

17 “(i) pertains to a covered person; and

18 “(ii) is—

19 “(I) a record or other informa-
20 tion described in the matter preceding
21 paragraph (1) of subsection (c);

22 “(II) the contents of a commu-
23 nication; or

24 “(III) location information;

1 “(D) the term ‘electronic device’ has the
2 meaning given the term ‘computer’ in section
3 1030(e);

4 “(E) the term ‘illegitimately obtained in-
5 formation’ means a covered record that—

6 “(i) was obtained—

7 “(I) from a provider of an elec-
8 tronic communication service to the
9 public or a provider of a remote com-
10 puting service in a manner that—

11 “(aa) violates the service
12 agreement between the provider
13 and customers or subscribers of
14 the provider; or

15 “(bb) is inconsistent with
16 the privacy policy of the provider;

17 “(II) by deceiving the covered
18 person whose covered record was ob-
19 tained; or

20 “(III) through the unauthorized
21 accessing of an electronic device or
22 online account; or

23 “(ii) was—

24 “(I) obtained from a provider of
25 an electronic communication service to

1 the public, a provider of a remote
2 computing service, or an intermediary
3 service provider; and

4 “(II) collected, processed, or
5 shared in violation of a contract relat-
6 ing to the covered record;

7 “(F) the term ‘intelligence community’ has
8 the meaning given that term in section 3 of the
9 National Security Act of 1947 (50 U.S.C.
10 3003);

11 “(G) the term ‘location information’ means
12 information derived or otherwise calculated
13 from the transmission or reception of a radio
14 signal that reveals the approximate or actual
15 geographic location of a customer, subscriber,
16 or device;

17 “(H) the term ‘obtain in exchange for any-
18 thing of value’ means to obtain by purchasing,
19 to receive in connection with services being pro-
20 vided for consideration, or to otherwise obtain
21 in exchange for consideration, including an ac-
22 cess fee, service fee, maintenance fee, or licens-
23 ing fee;

24 “(I) the term ‘online account’ means an
25 online account with an electronic communica-

1 tion service to the public or remote computing
2 service;

3 “(J) the term ‘pertain’, with respect to a
4 person, means—

5 “(i) information that is linked to the
6 identity of a person; or

7 “(ii) information—

8 “(I) that has been anonymized to
9 remove links to the identity of a per-
10 son; and

11 “(II) that, if combined with other
12 information, could be used to identify
13 a person; and

14 “(K) the term ‘third party’ means a person
15 who—

16 “(i) is not a governmental entity; and

17 “(ii) in connection with the collection,
18 disclosure, obtaining, processing, or shar-
19 ing of the covered record at issue, was not
20 acting as—

21 “(I) a provider of an electronic
22 communication service to the public;
23 or

24 “(II) a provider of a remote com-
25 puting service.

1 “(2) LIMITATION.—

2 “(A) IN GENERAL.—A law enforcement
3 agency of a governmental entity and an element
4 of the intelligence community may not obtain
5 from a third party in exchange for anything of
6 value a covered customer or subscriber record
7 or any illegitimately obtained information.

8 “(B) INDIRECTLY ACQUIRED RECORDS
9 AND INFORMATION.—The limitation under sub-
10 paragraph (A) shall apply without regard to
11 whether the third party possessing the covered
12 customer or subscriber record or illegitimately
13 obtained information is the third party that ini-
14 tially obtained or collected, or is the third party
15 that initially received the disclosure of, the cov-
16 ered customer or subscriber record or illegiti-
17 mately obtained information.

18 “(3) LIMIT ON SHARING BETWEEN AGEN-
19 CIES.—An agency of a governmental entity that is
20 not a law enforcement agency or an element of the
21 intelligence community may not provide to a law en-
22 forcement agency of a governmental entity or an ele-
23 ment of the intelligence community a covered cus-
24 tomer or subscriber record or illegitimately obtained

1 information that was obtained from a third party in
2 exchange for anything of value.

3 “(4) PROHIBITION ON USE AS EVIDENCE.—A
4 covered customer or subscriber record or illegit-
5 imately obtained information obtained by or pro-
6 vided to a law enforcement agency of a governmental
7 entity or an element of the intelligence community in
8 violation of paragraph (2) or (3), and any evidence
9 derived therefrom, may not be received in evidence
10 in any trial, hearing, or other proceeding in or be-
11 fore any court, grand jury, department, officer,
12 agency, regulatory body, legislative committee, or
13 other authority of the United States, a State, or a
14 political subdivision thereof.

15 “(5) MINIMIZATION PROCEDURES.—

16 “(A) IN GENERAL.—The Attorney General
17 shall adopt specific procedures that are reason-
18 ably designed to minimize the acquisition and
19 retention, and prohibit the dissemination, of in-
20 formation pertaining to a covered person that is
21 acquired in violation of paragraph (2) or (3).

22 “(B) USE BY AGENCIES.—If a law enforce-
23 ment agency of a governmental entity or ele-
24 ment of the intelligence community acquires in-
25 formation pertaining to a covered person in vio-

1 lation of paragraph (2) or (3), the law enforce-
2 ment agency of a governmental entity or ele-
3 ment of the intelligence community shall mini-
4 mize the acquisition and retention, and prohibit
5 the dissemination, of the information in accord-
6 ance with the procedures adopted under sub-
7 paragraph (A).”.

8 **SEC. 3. REQUIRED DISCLOSURE.**

9 Section 2703 of title 18, United States Code, is
10 amended by adding at the end the following:

11 “(i) COVERED CUSTOMER OR SUBSCRIBER RECORDS
12 AND ILLEGITIMATELY OBTAINED INFORMATION.—

13 “(1) DEFINITIONS.—In this subsection, the
14 terms ‘covered customer or subscriber record’, ‘ille-
15 gitimately obtained information’, and ‘third party’
16 have the meanings given such terms in section
17 2702(e).

18 “(2) LIMITATION.—Unless a governmental enti-
19 ty obtains an order in accordance with paragraph
20 (3), the governmental entity may not require a third
21 party to disclose a covered customer or subscriber
22 record or any illegitimately obtained information if a
23 court order would be required for the governmental
24 entity to require a provider of remote computing
25 service or a provider of electronic communication

1 service to the public to disclose such a covered cus-
2 tomer or subscriber record or illegitimately obtained
3 information that is a record of a customer or sub-
4 scriber of the provider.

5 “(3) ORDERS.—

6 “(A) IN GENERAL.—A court may only
7 issue an order requiring a third party to dis-
8 close a covered customer or subscriber record or
9 any illegitimately obtained information on the
10 same basis and subject to the same limitations
11 as would apply to a court order to require dis-
12 closure by a provider of remote computing serv-
13 ice or a provider of electronic communication
14 service to the public of a record of a customer
15 or subscriber of the provider.

16 “(B) STANDARD.—For purposes of sub-
17 paragraph (A), a court shall apply the most
18 stringent standard under Federal statute or the
19 Constitution of the United States that would be
20 applicable to a request for a court order to re-
21 quire a comparable disclosure by a provider of
22 remote computing service or a provider of elec-
23 tronic communication service to the public of a
24 record of a customer or subscriber of the pro-
25 vider.”.

1 **SEC. 4. INTERMEDIARY SERVICE PROVIDERS.**

2 (a) DEFINITION.—Section 2711 of title 18, United
3 States Code, is amended—

4 (1) in paragraph (3), by striking “and” at the
5 end;

6 (2) in paragraph (4), by striking the period at
7 the end and inserting “; and”; and

8 (3) by adding at the end the following:

9 “(5) the term ‘intermediary service provider’
10 means an entity or facilities owner or operator that
11 directly or indirectly delivers, stores, or processes
12 communications for or on behalf of a provider of
13 electronic communication service to the public or a
14 provider of remote computing service.”.

15 (b) PROHIBITION.—Section 2702(a) of title 18,
16 United States Code, is amended—

17 (1) in paragraph (1), by striking “and” at the
18 end;

19 (2) in paragraph (2), by striking “and” at the
20 end;

21 (3) in paragraph (3), by striking the period at
22 the end and inserting “; and”; and

23 (4) by adding at the end the following:

24 “(4) an intermediary service provider shall not
25 knowingly divulge—

1 “(A) to any person or entity the contents
2 of a communication while in electronic storage
3 by that provider; or

4 “(B) to any governmental entity a record
5 or other information pertaining to a subscriber
6 to or customer of, a recipient of a communica-
7 tion from a subscriber to or customer of, or the
8 sender of a communication to a subscriber to or
9 customer of, the provider of electronic commu-
10 nication service to the public or the provider of
11 remote computing service for, or on behalf of,
12 which the intermediary service provider directly
13 or indirectly delivers, transmits, stores, or proc-
14 esses communications.”.

15 **SEC. 5. LIMITS ON SURVEILLANCE CONDUCTED FOR FOR-**
16 **EIGN INTELLIGENCE PURPOSES OTHER**
17 **THAN UNDER THE FOREIGN INTELLIGENCE**
18 **SURVEILLANCE ACT OF 1978.**

19 (a) IN GENERAL.—Section 2511(2)(f) of title 18,
20 United States Code, is amended to read as follows:

21 “(f)(i)(A) Nothing contained in this chapter, chapter
22 121 or 206 of this title, or section 705 of the Communica-
23 tions Act of 1934 (47 U.S.C. 151 et seq.) shall be deemed
24 to affect an acquisition or activity described in clause (B)
25 that is carried out utilizing a means other than electronic

1 surveillance, as defined in section 101 of the Foreign In-
2 telligence Surveillance Act of 1978 (50 U.S.C. 1801).

3 “(B) An acquisition or activity described in this
4 clause is—

5 “(I) an acquisition by the United States Gov-
6 ernment of foreign intelligence information from
7 international or foreign communications that—

8 “(aa) is acquired pursuant to express stat-
9 utory authority; or

10 “(bb) only includes information of persons
11 who are not United States persons and are lo-
12 cated outside the United States; or

13 “(II) a foreign intelligence activity involving a
14 foreign electronic communications system that—

15 “(aa) is conducted pursuant to express
16 statutory authority; or

17 “(bb) only involves the acquisition by the
18 United States Government of information of
19 persons who are not United States persons and
20 are located outside the United States.

21 “(ii) The procedures in this chapter, chapter 121,
22 and the Foreign Intelligence Surveillance Act of 1978 (50
23 U.S.C. 1801 et seq.) shall be the exclusive means by which
24 electronic surveillance, as defined in section 101 of such

1 Act, and the interception of domestic wire, oral, and elec-
2 tronic communications may be conducted.”.

3 (b) EXCLUSIVE MEANS RELATED TO COMMUNICA-
4 TIONS RECORDS.—The Foreign Intelligence Surveillance
5 Act of 1978 (50 U.S.C. 1801 et seq.) shall be the exclusive
6 means by which electronic communications transactions
7 records, call detail records, or other information from com-
8 munications of United States persons or persons inside the
9 United States are acquired for foreign intelligence pur-
10 poses inside the United States or from a person or entity
11 located in the United States that provides telecommuni-
12 cations, electronic communication, or remote computing
13 services.

14 (c) EXCLUSIVE MEANS RELATED TO LOCATION IN-
15 FORMATION, WEB BROWSING HISTORY, AND INTERNET
16 SEARCH HISTORY.—

17 (1) DEFINITION.—In this subsection, the term
18 “location information” has the meaning given that
19 term in subsection (e) of section 2702 of title 18,
20 United States Code, as added by section 2 of this
21 Act.

22 (2) EXCLUSIVE MEANS.—Title I and sections
23 303, 304, 703, 704, and 705 of the Foreign Intel-
24 ligence Surveillance Act of 1978 (50 U.S.C. 1801 et
25 seq., 1823, 1824, 1881b, 1881c, 1881d) shall be the

1 exclusive means by which location information, web
2 browsing history, and internet search history of
3 United States persons or persons inside the United
4 States are acquired for foreign intelligence purposes
5 inside the United States or from a person or entity
6 located in the United States.

7 (d) EXCLUSIVE MEANS RELATED TO FOURTH
8 AMENDMENT-PROTECTED INFORMATION.—Title I and
9 sections 303, 304, 703, 704, and 705 of the Foreign Intel-
10 ligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.,
11 1823, 1824, 1881b, 1881c, 1881d) shall be the exclusive
12 means by which any information, records, data, or tangible
13 things are acquired for foreign intelligence purposes from
14 a person or entity located in the United States if the com-
15 pelled production of such information, records, data, or
16 tangible things would require a warrant for law enforce-
17 ment purposes.

18 (e) DEFINITION.—In this section, the term “United
19 States person” has the meaning given that term in section
20 101 of the Foreign Intelligence Surveillance Act of 1978
21 (50 U.S.C. 1801).

1 **SEC. 6. LIMIT ON CIVIL IMMUNITY FOR PROVIDING INFOR-**
2 **MATION, FACILITIES, OR TECHNICAL ASSIST-**
3 **ANCE TO THE GOVERNMENT ABSENT A**
4 **COURT ORDER.**

5 Section 2511(2)(a) of title 18, United States Code,
6 is amended—

7 (1) in subparagraph (ii), by striking clause (B)
8 and inserting the following:

9 “(B) a certification in writing—

10 “(I) by a person specified in section
11 2518(7) or the Attorney General of the United
12 States;

13 “(II) that the requirements for an emer-
14 gency authorization to intercept a wire, oral, or
15 electronic communication under section 2518(7)
16 have been met; and

17 “(III) that the specified assistance is re-
18 quired,”; and

19 (2) by striking subparagraph (iii) and inserting
20 the following:

21 “(iii) For assistance provided pursuant to a certifi-
22 cation under subparagraph (ii)(B), the limitation on
23 causes of action under the last sentence of the matter fol-
24 lowing subparagraph (ii)(B) shall only apply to the extent
25 that the assistance ceased at the earliest of the time the
26 application for a court order was denied, the time the com-

1 munication sought was obtained, or 48 hours after the
2 interception began.”.

○