

HOUSE BILL No. 2677

By Committee on Judiciary

2-13

1 AN ACT concerning electronic communications; relating to the provision
2 of electronic communications services and remote computing services.

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4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. (a) Except as provided in subsection (c), a person or entity
6 providing an electronic communications service or remote computing
7 service to the public, or a third-party provider with whom such person or
8 entity has contracted, shall not knowingly divulge to any person or entity
9 the contents of an electronic communication or electronic storage provided
10 or maintained by that service, except for the purposes of providing such
11 electronic communications or remote computing services to the subscriber
12 or customer, that is received by means of an electronic communications
13 system from a subscriber or customer of the service.

14 (b) (1) (A) The contents of any electronic communications service or
15 remote computing service that are divulged in violation of subsection (a)
16 shall not be subject to discovery, subpoena or other means of legal
17 compulsion to any person or entity and shall not be admissible in evidence
18 in any judicial or administrative proceeding solely due to the release of
19 such electronic communications or electronic storage.

20 (B) The contents of any electronic communications service or remote
21 computing service shall, for reasons other than the prior divulgence of
22 such communications or storage, remain subject to legal means of
23 discovery, subpoena or other means of legal compulsion in a civil action.

24 (2) If any contents of an electronic communication or electronic
25 storage held by a person or entity providing an electronic communications
26 service or a remote computing service to the public are protected by
27 attorney-client privilege:

28 (A) Use of such electronic communications service or a remote
29 computing service shall not constitute a waiver of such attorney-client
30 privilege;

31 (B) any terms of use of such electronic communications or remote
32 computing service waiving the attorney-client privilege are declared to be
33 against the public policy of the state and are null and void in this state; and

34 (C) inadvertent disclosure of the contents of any such electronic
35 communication or electronic storage shall not constitute a waiver of such
36 attorney-client privilege.

1 (c) A person or entity may divulge the contents of an electronic
2 communication or electronic storage:

3 (1) To an addressee or intended recipient of the electronic
4 communication or an agent of the addressee or intended recipient;

5 (2) as otherwise authorized by a search warrant;

6 (3) with the lawful consent of the originator, addressee or intended
7 recipient of the electronic communication, or the subscriber in the case of
8 a remote computing service;

9 (4) to a person employed or authorized or whose facilities are used to
10 forward the electronic communication to its destination or maintain such
11 electronic storage; or

12 (5) as may be necessarily incidental to the rendering of the service or
13 other services provided by the person or entity, or to the protection of the
14 rights or property of the provider of that service.

15 (d) The provisions of this section shall apply to any individual located
16 in this state or accessing an electronic communications service or remote
17 computing service from within the state regardless of the route or physical
18 location of any such electronic communications or remote computing
19 service.

20 (e) As used in this section:

21 (1) "Electronic communication" means a transfer of signs, signals,
22 writing, images, sounds, data or intelligence of any nature transmitted in
23 whole or in part by a wire, radio, electromagnetic, photo-electronic or
24 photo-optical system. The term does not include: (A) A wire or oral
25 communication; (B) a communication made through a tone-only paging
26 device; or (C) a communication from a tracking device.

27 (2) "Electronic communications system" means a wire, radio,
28 electromagnetic, photo-optical or photo-electronic facility for the
29 transmission of wire or electronic communications, and any computer
30 facility or related electronic equipment for the electronic storage of those
31 communications.

32 (3) "Electronic communications service" means a service that
33 provides to users of the service the ability to send or receive wire or
34 electronic communications.

35 (4) "Electronic storage" means any storage of electronic customer
36 data in a computer, computer network or computer system, regardless of
37 whether the data is subject to recall, further manipulation, deletion or
38 transmission, and includes any storage of a wire or electronic
39 communication by an electronic communications service.

40 (5) "Remote computing service" means the provision to the public of
41 electronic storage or processing services of electronic communications or
42 electronic customer data by means of an electronic communications
43 system.

1 Sec. 2. This act shall take effect and be in force from and after its
2 publication in the statute book.