

119TH CONGRESS
2D SESSION

S. _____

To amend section 2703 of title 18, United States Code, to prohibit certain use of administrative subpoenas with respect to customer communications and records, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. WYDEN introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To amend section 2703 of title 18, United States Code, to prohibit certain use of administrative subpoenas with respect to customer communications and records, 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 “Subpoena Abuse Pre-
5 vention Act”.

1 **SEC. 2. REFORMING SUBPOENAS.**

2 (a) CONSISTENT PROTECTIONS FOR PHONE AND
3 APP-BASED CALL AND TEXTING RECORDS.—Section
4 2703(c)(2) of title 18, United States Code, is amended—

5 (1) by striking subparagraph (C); and

6 (2) by redesignating subparagraphs (D), (E),
7 and (F) as subparagraphs (C), (D), and (E), respec-
8 tively.

9 (b) PROHIBITING THE USE OF SUBPOENAS FOR
10 BULK COLLECTION OF CERTAIN SUBSCRIBER INFORMA-
11 TION.—Section 2703(c)(2) of title 18, United States Code,
12 as amended by subsection (a), is further amended in the
13 matter following subparagraph (E), as so redesignated, by
14 inserting “, provided that for any administrative, grand
15 jury, or trial subpoena, the governmental entity identifies
16 the subscriber or customer by name, address, temporarily
17 assigned network address, or account identifier (such as
18 a username)” before the period at the end.

19 (c) PROHIBITING THE USE OF SUBPOENAS WITH A
20 PURPOSE TO INVESTIGATE CONSTITUTIONALLY PRO-
21 TECTED ACTIVITIES.—Section 2703(c) of title 18, United
22 States Code, is further amended by adding at the end the
23 following:

24 “(4) PROTECTIONS FOR CONSTITUTIONALLY
25 PROTECTED ACTIVITIES.—

1 and lawful purpose, and not with a pur-
2 pose described in subparagraph (A)—

3 “(I) to the service provider; and

4 “(II) when applying for a pre-
5 clusion of notice order under section
6 2705(b), to the court in such applica-
7 tion.

8 “(ii) ABSENCE OF CERTIFICATION.—

9 A subpoena to require the disclosures de-
10 scribed in paragraph (2) from a service
11 provider shall not be valid, and a pre-
12 clusion of notice order under section
13 2705(b) for such subpoena shall not issue,
14 unless the subpoena includes the certifi-
15 cation described in clause (i).”.

16 (d) REQUIRED DISCLOSURES.—Section 2703(c) of
17 title 18, United States Code, is further amended by adding
18 at the end the following:

19 “(5) REQUIRED DISCLOSURES TO SERVICE PRO-
20 VIDER.—

21 “(A) IN GENERAL.—Except as provided in
22 subparagraph (B)—

23 “(i) the service provider—

1 “(I) may notify a customer or
2 subscriber of the receipt of the sub-
3 poena; and

4 “(II) may consult with an attor-
5 ney in order to obtain legal advice or
6 assistance regarding the subpoena;
7 and

8 “(ii) the government entity shall in-
9 form the service provider that it—

10 “(I) is not being directed to not
11 notify any other person of the exist-
12 ence of the subpoena;

13 “(II) may notify the customer or
14 subscriber of the receipt of the sub-
15 poena; and

16 “(III) may consult with an attor-
17 ney in order to obtain legal advice or
18 assistance regarding the subpoena.

19 “(B) EXCEPTION FOR NONDISCLOSURE
20 ORDERS.—If a governmental entity described in
21 subparagraph (A) obtains a preclusion of notice
22 order under section 2705(b)—

23 “(i) such order may limit the right of
24 the service provider described in subpara-
25 graph (A)(i)(I); and

1 “(ii) the governmental entity shall
2 modify the required disclosures described
3 in subclauses (I) and (II) of subparagraph
4 (A)(ii) to be consistent with the terms of
5 the order.”.

6 (e) PUBLIC REPORTING OF USE OF ADMINISTRATIVE
7 SUBPOENAS.—Section 2703(c) of title 18, United States
8 Code, is further amended by adding at the end the fol-
9 lowing:

10 “(6) REPORTING OF FEDERAL USE OF ADMIN-
11 ISTRATIVE SUBPOENAS.—Each Federal govern-
12 mental entity that uses an administrative subpoena
13 to require the disclosure of information under this
14 subsection shall annually publicly publish a report
15 containing, for the 1-year period preceding the date
16 of the report—

17 “(A) the number of administrative sub-
18 poenas issued by the governmental entity,
19 disaggregated by the statutory authority under
20 which the administrative subpoenas were issued;
21 and

22 “(B) the number of accounts for which the
23 governmental entity received information
24 through an administrative subpoena,
25 disaggregated by the statutory authority under

1 which the administrative subpoenas were
2 issued.”.