

SENATE BILL No. 249

By Committee on Judiciary

2-10

9 AN ACT concerning criminal procedure; relating to search warrants.
10
11 *Be it enacted by the Legislature of the State of Kansas:*
12 Section 1. (a) As used in this section:
13 (1) “Electronic communication services” and “remote computing
14 services” shall be construed in accordance with the electronic commu-
15 nications privacy act in chapter 121 (commencing with Section 2701) of
16 Part 1 of Title 18 of the United States Code Annotated, as in effect on
17 the effective date of this act. This section shall not apply to corporations
18 that do not provide those services to the general public.
19 (2) An “adverse result” occurs when notification of the existence of
20 a search warrant results in:
21 (A) Danger to the life or physical safety of an individual.
22 (B) A flight from prosecution.
23 (C) The destruction of or tampering with evidence.
24 (D) The intimidation of potential witnesses.
25 (E) Serious jeopardy to an investigation or undue delay of a trial.
26 (3) “Applicant” means the law enforcement officer to whom a search
27 warrant is issued for execution pursuant to K.S.A. 22-2505, and amend-
28 ments thereto.
29 (4) “Kansas corporation” refers to any corporation or other business
30 entity that is subject to Kansas general corporation code, excluding for-
31 eign corporations.
32 (5) “Foreign corporation” means any corporation organized under
33 the laws of any jurisdiction other than this state that is qualified to do
34 business in this state pursuant to K.S.A. 17-7301 et seq., and amendments
35 thereto.
36 (6) “Properly served” means that a search warrant has been delivered
37 by hand, or in a manner reasonably allowing for proof of delivery if de-
38 livered by United States mail, overnight delivery service, or facsimile to
39 a person or entity who is a foreign corporation.
40 (b) The following provisions shall apply to any search warrant issued
41 pursuant to article 25 of chapter 22 of the Kansas Statutes Annotated,
42 and amendments thereto, allowing a search for records that are in the
43 actual or constructive possession of a foreign corporation that provides

1 electronic communication services or remote computing services to the
2 general public, where those records would reveal the identity of the cus-
3 tomers using those services, data stored by, or on behalf of, the customer,
4 the customer's usage of those services, the recipient or destination of
5 communications sent to or from those customers or the content of those
6 communications.

7 (1) When properly served with a search warrant issued by the court,
8 a foreign corporation subject to this section shall provide to the applicant,
9 all records sought pursuant to that warrant within five business days of
10 receipt, including those records maintained or located outside this state.

11 (2) Where the applicant makes a showing and the court finds that
12 failure to produce records within less than five business days would cause
13 an adverse result, the warrant may require production of records within
14 less than five business days. A court may reasonably extend the time
15 required for production of the records upon finding that the foreign cor-
16 poration has shown good cause for that extension and that an extension
17 of time would not cause an adverse result.

18 (3) A foreign corporation seeking to quash the warrant must seek
19 relief from the court that issued the warrant within the time required for
20 production of records pursuant to this section. The issuing court shall
21 hear and decide that motion no later than five days after the motion is
22 filed.

23 (4) The foreign corporation shall verify the authenticity of copies of
24 records that it produces by complying with the requirements set forth in
25 K.S.A. 60-465, and amendments thereto. Those records shall be admis-
26 sible in evidence as set forth in the rules of evidence of the code of civil
27 procedure.

28 (c) A Kansas corporation that provides electronic communication
29 services or remote computing services to the general public, when served
30 with a warrant issued by another state to produce records that would
31 reveal the identity of the customers using those services, data stored by,
32 or on behalf of, the customer, the customer's usage of those services, the
33 recipient or destination of communications sent to or from those custom-
34 ers, or the content of those communications, shall produce those records
35 as if that warrant had been issued by a Kansas court.

36 (d) No cause of action shall lie against any foreign or Kansas corpo-
37 ration subject to this section, its officers, employees, agents or other spec-
38 ified persons for providing records, information, facilities or assistance in
39 accordance with the terms of a warrant issued pursuant to this section.

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