

HOUSE BILL No. 2791

By Committee on Federal and State Affairs

2-1

9 AN ACT concerning criminal procedure; relating to search warrants;
10 amending K.S.A. 22-2503 and 22-2506 and repealing the existing
11 sections.
12

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

14 New Section 1. (a) The following provisions shall apply to any search
15 warrant issued pursuant to article 25 of chapter 22 of the Kansas Statutes
16 Annotated, and amendments thereto, allowing a search for records that
17 are in the actual or constructive possession of a foreign corporation that
18 provides electronic communication services or remote computing services
19 to the general public, where those records would reveal the identity of
20 the customers using those services, data stored by, or on behalf of, the
21 customer, the customer's usage of those services, the recipient or desti-
22 nation of communications sent to or from those customers, or the content
23 of those communications. This section shall not apply to foreign corpo-
24 rations that do not provide such services to the general public.

25 (1) When properly served with a search warrant issued by a magis-
26 trate, a foreign corporation subject to this section shall provide to the
27 applicant, all records sought pursuant to such warrant within five business
28 days of receipt, including those records maintained or located outside this
29 state.

30 (2) Where the applicant makes a showing and the magistrate finds
31 that failure to produce records within less than five business days would
32 cause an adverse result, the warrant may require production of records
33 within less than five business days. A magistrate may reasonably extend
34 the time required for production of the records upon finding that the
35 foreign corporation has shown good cause for that extension and that an
36 extension of time would not cause an adverse result.

37 (3) A foreign corporation seeking to quash the warrant shall seek
38 relief from the magistrate who issued the warrant within the time re-
39 quired for production of records pursuant to this section. The magistrate
40 shall hear and decide such motion no later than five days after the motion
41 is filed.

42 (4) The records provided to the applicant shall be accompanied by
43 the affidavit of the custodian or other qualified witness, stating in sub-

1 stance each of the following:

2 (A) The affiant is the duly authorized custodian of the records or
3 other qualified witness and has authority to certify the records.

4 (B) The copy is a true copy of all the records described in the search
5 warrant.

6 (C) The records were prepared by the personnel of the business in
7 the ordinary course of business at or near the time of the act, condition
8 or event.

9 (D) The identity of the records.

10 (E) A description of the mode of preparation of the records.

11 (5) If the business has none of the records described, or only part
12 thereof, the custodian or other qualified witness shall so state in the
13 affidavit.

14 (6) If the original records would be admissible in evidence if the
15 custodian or other qualified witness had been present and testified to the
16 matters stated in the affidavit, and if the requirement above have been
17 met, the copy of the records is admissible in evidence. The affidavit is
18 admissible as evidence of the matters stated and the matters so stated are
19 presumed true. When more than one person has knowledge of the facts,
20 more than one affidavit may be made. The presumption established by
21 this section is a presumption affecting the burden of producing evidence.

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

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

34 (e) As used in this section:

35 (1) An "adverse result" occurs when notification of the existence of
36 a search warrant results in:

37 (A) Danger to the life or physical safety of an individual.

38 (B) A flight from prosecution.

39 (C) The destruction of or tampering with evidence.

40 (D) The intimidation of potential witnesses.

41 (E) Serious jeopardy to an investigation or undue delay of a trial.

42 (2) "Applicant" refers to the law enforcement officer to whom a
43 search warrant is issued pursuant to K.S.A. 22-2505, and amendments

1 thereto.

2 (3) “Electronic communication service” and “electronic communi-
3 cation system” have the meaning ascribed thereto in K.S.A. 22-2514, and
4 amendments thereto.

5 (4) “Foreign corporation” refers to any corporation that is qualified
6 to do business in this state pursuant to K.S.A. 17-7301 et seq., and amend-
7 ments thereto.

8 (5) “Kansas corporation” refers to any corporation or other business
9 entity that is organized under the laws of this state.

10 (6) “Properly served” means that a search warrant has been delivered
11 by hand, or in a manner reasonably allowing for proof of delivery if de-
12 livered by United States mail or overnight delivery service, or transmittal
13 by telefacsimile communication, as defined in K.S.A. 22-2502, and
14 amendments thereto, to a person or entity listed pursuant to K.S.A. 17-
15 7301, and amendments thereto.

16 (7) “Remote computing services” means the provision to the public
17 of computer storage or processing services by means of an electronic
18 communications system.

19 (f) This section shall be a part of and supplemental to article 25 of
20 chapter 22 of the Kansas Statutes Annotated, and amendments thereto.

21 Sec. 2. K.S.A. 22-2503 is hereby amended to read as follows: 22-
22 2503. *Except as authorized in section 1, and amendments thereto*, search
23 warrants issued by a district magistrate judge may be executed only within
24 the judicial district in which ~~said~~ *the* judge resides or within the judicial
25 district to which ~~said~~ *the* judge has been assigned pursuant to K.S.A. 20-
26 319, *and amendments thereto*.

27 Sec. 3. K.S.A. 22-2506 is hereby amended to read as follows: 22-
28 2506. *Except as authorized in section 1, and amendments thereto*, a search
29 warrant shall be executed within ~~ninety-six~~ 96 hours from the time of
30 issuance. If the warrant is executed the duplicate copy shall be left with
31 any person from whom any things are seized or if no person is available
32 the copy shall be left at the place from which the things were seized. Any
33 warrant not executed within such time shall be void and shall be returned
34 to the court of the magistrate issuing the same as “not executed.”

35 Sec. 4. K.S.A. 22-2503 and 22-2506 are hereby repealed.

36 Sec. 5. This act shall take effect and be in force from and after its
37 publication in the statute book.