

1 HOUSE BILL 457

2 **50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

3 INTRODUCED BY

4 Rhonda S. King

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10 AN ACT

11 RELATING TO CRIMINAL INVESTIGATIONS; PROVIDING FOR
12 ADMINISTRATIVE SUBPOENAS FOR INVESTIGATIONS INVOLVING AN
13 ELECTRONIC COMMUNICATION SYSTEM OR SERVICE OR A REMOTE
14 COMPUTING SERVICE; PROVIDING FOR ADMINISTRATIVE SUBPOENAS TO
15 FINANCIAL INSTITUTIONS.

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17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

18 SECTION 1. [NEW MATERIAL] ADMINISTRATIVE SUBPOENAS FOR
19 CRIMINAL INVESTIGATIONS CONCERNING AN ELECTRONIC COMMUNICATION
20 SYSTEM OR SERVICE OR REMOTE COMPUTING SERVICE.--

21 A. When a law enforcement agency is investigating a
22 violation of the Sexual Exploitation of Children Act, the
23 Computer Crimes Act, the Money Laundering Act, child
24 solicitation by computer, as provided in Section 30-37-3.2 NMSA
25 1978 or obtaining identity by electronic fraud, as provided in

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1 Subsection B of Section 30-16-24.1 NMSA 1978, and has
2 reasonable suspicion that an electronic communication system or
3 service or remote computing service has been used in the
4 commission of the criminal offense, the prosecutor may issue an
5 administrative subpoena, consistent with 18 U.S.C. 2703 and 18
6 U.S.C. 2702, to the electronic communication system or service
7 or remote computing service provider that owns or controls the
8 internet protocol address, web site, email address or service
9 to a specific telephone number, requiring the production of the
10 following information, if available, upon providing in the
11 subpoena the internet protocol address, email address,
12 telephone number or other identifier and the dates and times
13 the address, telephone number or other identifier was suspected
14 of being used in the commission of the offense:

15 (1) names;

16 (2) addresses;

17 (3) local and long-distance telephone
18 connections;

19 (4) records of session times and durations;

20 (5) length of service, including the start
21 date and types of service utilized;

22 (6) telephone or other instrument subscriber
23 numbers or other subscriber identifiers, including any
24 temporarily assigned network address; and

25 (7) means and sources of payment for the

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1 service, including any credit card or bank account numbers.

2 B. A subpoena issued under this section shall state
3 that the electronic communication system or service or remote
4 computing service provider shall produce any records listed in
5 Paragraphs (1) through (7) of Subsection A of this section that
6 are reasonably relevant to the investigation of the suspected
7 criminal activity or offense as described in the subpoena.

8 C. An electronic communication system or service or
9 remote computing service provider that provides information in
10 response to a subpoena issued pursuant to this section may
11 charge a fee, not to exceed the actual cost, for providing the
12 information. The law enforcement agency conducting the
13 investigation shall pay the fee.

14 D. The electronic communication system or service
15 or remote computing service provider served with or responding
16 to the subpoena shall not disclose the subpoena to the account
17 holder identified pursuant to the subpoena.

18 E. If the electronic communication system or
19 service or remote computing service provider served with the
20 subpoena does not own or control the internet protocol address,
21 web sites or email address or provide service for the telephone
22 number that is the subject of the subpoena, the provider shall:

23 (1) notify the investigating law enforcement
24 agency that it does not have the information; and

25 (2) provide to the investigating law

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1 enforcement agency any information the provider knows, through
2 reasonable effort, that it has regarding how to locate the
3 internet service provider that does own or control the internet
4 protocol address, web sites or email address or provide service
5 for the telephone number.

6 F. There is no cause of action against any provider
7 or wire or electronic communication service, or its officers,
8 employees, agents or other specified persons for providing
9 information, facilities or assistance in accordance with the
10 terms of an administrative subpoena issued pursuant to this
11 section.

12 SECTION 2. [NEW MATERIAL] ADMINISTRATIVE SUBPOENAS FOR
13 BANK RECORDS--AFFIDAVIT OF DISHONOR.--

14 A. A prosecutor may issue a subpoena duces tecum to
15 a financial institution to obtain account records or affidavits
16 of dishonor in an investigation or prosecution of any violation
17 of Chapter 30, Article 16 NMSA 1978, the Controlled Substances
18 Act, the Racketeering Act or the Money Laundering Act. This
19 section does not prevent a prosecutor from obtaining a grand
20 jury subpoena duces tecum for any records that are held by a
21 New Mexico bank, savings and loan association or credit union
22 or money transmitter.

23 B. The subpoena shall identify the subject of the
24 investigation, the account or accounts under investigation and
25 a specific time period that is relevant to the investigation or

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1 prosecution.

2 C. Account records may include copies of any
3 account agreement between the drawee financial institution and
4 the subject of the investigation, signature cards, monthly
5 statements, correspondence or other records of communication
6 between the financial institution and the subject of the
7 investigation.

8 D. An authorized representative of a drawee
9 financial institution may certify bank records that are
10 obtained by subpoena if all of the following apply:

11 (1) the bank records are the regular account
12 records that are used and kept by the drawee financial
13 institution;

14 (2) the bank records are made at or near the
15 time the underlying transactions occur in the ordinary course
16 of business; and

17 (3) the bank records are made from information
18 that is transmitted by a person who has firsthand knowledge
19 acquired in the course of the drawee financial institution's
20 regular course of business.

21 E. At a trial for a violation of a crime listed in
22 Subsection A of this section, bank records that are obtained by
23 subpoena may be introduced in evidence and constitute prima
24 facie evidence of the facts contained in the records.

25 F. At a trial for a violation of a crime listed in

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1 Subsection A of this section, evidence of dishonor, as provided
2 in Section 55-3-505 NMSA 1978, may be introduced in evidence
3 and constitutes prima facie evidence of either:

4 (1) the refusal of a drawee financial
5 institution to pay a check because the drawer had no account or
6 a closed account with the drawee at the time a check was issued
7 or passed; or

8 (2) the refusal of a drawee financial
9 institution to pay a check because of insufficiency of the
10 drawer's funds at the time a check was issued or passed.

11 SECTION 3. EFFECTIVE DATE.--The effective date of the
12 provisions of this act is July 1, 2011.