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AN ACT

RELATING TO ELECTRONIC COMMUNICATIONS; AMENDING THE
ELECTRONIC COMMUNICATIONS PRIVACY ACT; ADDRESSING THE
REQUIREMENTS AND PROCEDURES FOR A WARRANT FOR THE SEARCH AND
SEIZURE OF ELECTRONIC INFORMATION; PROVIDING FOR THE
DESTRUCTION OR SEALING OF INFORMATION IN CERTAIN SITUATIONS;
AMENDING REQUIREMENTS FOR REPORTING ACTIONS TO THE ATTORNEY
GENERAL; DECLARING AN EMERGENCY.

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

SECTION 1. Section 10-16F-3 NMSA 1978 (being Laws 2019,
Chapter 39, Section 3) is amended to read:

"10-16F-3. GOVERNMENT ENTITY--PROSCRIBED ACTS--
PERMITTED ACTS--WARRANTS--INFORMATION RETENTION--EMERGENCY.--

A. Except as otherwise provided in this section, a
government entity shall not:

(1) compel or incentivize the production of
or access to electronic communication information from a
service provider;

(2) compel the production of or access to
electronic device information from a person other than the
device's authorized possessor; or

(3) access electronic device information by
means of physical interaction or electronic communication
with the electronic device.

1 B. A government entity may compel the production
2 of or access to electronic communication information from a
3 service provider or compel the production of or access to
4 electronic device information from a person other than the
5 authorized possessor of the device only if the production or
6 access is made under a:

7 (1) warrant that complies with the
8 requirements in Subsection D of this section; or

9 (2) wiretap order.

10 C. A government entity may access electronic
11 device information by means of physical interaction or
12 electronic communication with the device only if that access
13 is made:

14 (1) under a warrant that complies with the
15 requirements in Subsection D of this section;

16 (2) under a wiretap order;

17 (3) with the specific consent of the
18 device's authorized possessor;

19 (4) with the specific consent of the
20 device's owner if the device has been reported as lost or
21 stolen;

22 (5) because the government entity believes
23 in good faith that the device is lost, stolen or abandoned,
24 in which case, the government entity may access that
25 information only as necessary and for the purpose of

1 attempting to identify, verify or contact the device's
2 authorized possessor; or

3 (6) because the government entity believes
4 in good faith that an emergency involving danger of death or
5 serious physical injury to a natural person requires access
6 to the electronic device information.

7 D. A warrant for the search and seizure of
8 electronic information shall:

9 (1) describe with particularity the
10 information to be seized by specifying the time periods
11 covered and, as appropriate and reasonable, the natural
12 persons or accounts targeted, the applications or services
13 covered and the types of information sought;

14 (2) require that information obtained
15 through the execution of the warrant that is unrelated to the
16 objective of the warrant or is not exculpatory to the target
17 of the warrant shall be sealed and shall not be subject to
18 further review, use or disclosure except pursuant to a court
19 order or to comply with discovery as required. A court shall
20 issue such an order upon a finding that there is probable
21 cause to believe that the information is relevant to an
22 active investigation or review, use or disclosure is required
23 by state or federal law; and

24 (3) comply with all New Mexico and federal
25 laws, including laws prohibiting, limiting or imposing

1 additional requirements on the use of search warrants.

2 E. When issuing a warrant or order for electronic
3 information or upon a petition of the target or recipient of
4 the warrant or order, a court may appoint a special master
5 charged with ensuring that only the information necessary to
6 achieve the objective of the warrant or order is produced or
7 accessed.

8 F. A service provider may voluntarily disclose
9 electronic communication information or subscriber
10 information if the law otherwise permits that disclosure.

11 G. Information obtained through the execution of a
12 warrant or order that is unrelated to the objective of the
13 warrant shall be destroyed as soon as feasible after the
14 termination of the current investigation and related
15 investigations or proceedings.

16 H. If a government entity receives electronic
17 communication information as provided in Subsection F of this
18 section, the government entity shall seal that information,
19 which shall not be subject to further review, use or
20 disclosure except pursuant to a court order upon a finding
21 that there is probable cause to believe that the information
22 is relevant to an active investigation or review, use or
23 disclosure is required by state or federal law or to comply
24 with discovery as required, within ninety days after the
25 disclosure unless the government entity:

1 (1) has or obtains the specific consent of
2 the sender or recipient of the electronic communication about
3 which information was disclosed; or

4 (2) obtains a court order under Subsection I
5 of this section.

6 I. A court may issue an order authorizing the
7 retention of electronic communication information:

8 (1) only upon a finding that the conditions
9 justifying the initial voluntary disclosure persist; and

10 (2) lasting only for the time those
11 conditions persist or there is probable cause to believe that
12 the information constitutes criminal evidence.

13 J. Information retained as provided in Subsection
14 I of this section shall be shared only with a person that
15 agrees to limit the person's use of the information to the
16 purposes identified in the court order and that:

17 (1) is legally obligated to destroy the
18 information upon the expiration or rescindment of the court
19 order; or

20 (2) voluntarily agrees to destroy the
21 information upon the expiration or rescindment of the court
22 order.

23 K. If a government entity obtains electronic
24 information because of an emergency that involves danger of
25 death or serious physical injury to a natural person and that

1 requires access to the electronic information without delay,
2 the government entity shall file with the appropriate court
3 within three days after obtaining the electronic information:

4 (1) an application for a warrant or order
5 authorizing the production of electronic information and, if
6 applicable, a request supported by a sworn affidavit for an
7 order delaying notification as provided in Subsection B of
8 Section 10-16F-4 NMSA 1978; or

9 (2) a motion seeking approval of the
10 emergency disclosures that sets forth the facts giving rise
11 to the emergency and, if applicable, a request supported by a
12 sworn affidavit for an order delaying notification as
13 provided in Subsection B of Section 10-16F-4 NMSA 1978.

14 L. A court that receives an application or motion
15 as provided in Subsection K of this section shall promptly
16 rule on the application or motion. If the court finds that
17 the facts did not give rise to an emergency or if the court
18 rejects the application for a warrant or order on any other
19 ground, the court shall order:

20 (1) the immediate sealing of all information
21 obtained, which shall not be subject to further review, use
22 or disclosure except pursuant to a court order upon a finding
23 that there is probable cause to believe that the information
24 is relevant to an active investigation or review, use or
25 disclosure is required by state or federal law or to comply

1 with discovery as required; and

2 (2) the immediate notification provided in
3 Subsection A of Section 10-16F-4 NMSA 1978 if that notice has
4 not already been given.

5 M. This section does not limit the authority of a
6 government entity to use an administrative, grand jury, trial
7 or civil discovery subpoena to require:

8 (1) an originator, addressee or intended
9 recipient of an electronic communication to disclose any
10 electronic communication information associated with that
11 communication;

12 (2) when a person that provides electronic
13 communications services to its officers, directors, employees
14 or agents for those officers, directors, employees or agents
15 to carry out their duties, the person to disclose the
16 electronic communication information associated with an
17 electronic communication to or from the officer, director,
18 employee or agent; or

19 (3) a service provider to provide subscriber
20 information.

21 N. This section does not prohibit the intended
22 recipient of an electronic communication from voluntarily
23 disclosing electronic communication information concerning
24 that communication to a government entity.

25 O. Nothing in this section shall be construed to

1 expand any authority under New Mexico law to compel the
2 production of or access to electronic information.

3 P. This section shall not be construed to alter
4 the authority of a government entity that owns an electronic
5 device to compel an employee who is authorized to possess the
6 device to return the device to the government entity's
7 possession."

8 SECTION 2. Section 10-16F-4 NMSA 1978 (being Laws 2019,
9 Chapter 39, Section 4) is amended to read:

10 "10-16F-4. WARRANT--EMERGENCY--GOVERNMENT DUTIES--
11 NOTIFICATION.--

12 A. Except as otherwise provided in this section, a
13 government entity that executes a warrant or obtains
14 electronic information in an emergency as provided in Section
15 10-16F-3 NMSA 1978 shall:

16 (1) serve upon or deliver, by registered or
17 first-class mail, electronic mail or other means reasonably
18 calculated to be effective, to the identified targets of the
19 warrant or emergency request, a notice that informs the
20 recipient that information about the recipient has been
21 compelled or requested and that states with reasonable
22 specificity the nature of the government investigation under
23 which the information is sought;

24 (2) serve or deliver the notice:

25 (a) contemporaneously with the

1 execution of a warrant; or

2 (b) in the case of an emergency, within
3 three days after obtaining the electronic information; and

4 (3) include with the notice:

5 (a) a copy of the warrant; or

6 (b) a written statement setting forth
7 the facts giving rise to the emergency.

8 B. When a government entity seeks a warrant or
9 obtains electronic information in an emergency as provided in
10 Section 10-16F-3 NMSA 1978, the government entity may request
11 from a court an order delaying notification and prohibiting
12 any party providing information from notifying any other
13 party that information has been sought. The government
14 entity shall support the request with a sworn affidavit. The
15 court:

16 (1) shall issue the order if the court
17 determines that there is reason to believe that notification
18 may have an adverse result, but for no more than ninety days
19 and only for the period that the court finds there is reason
20 to believe that the notification may have that adverse
21 result; and

22 (2) may grant one or more extensions of the
23 delay of up to ninety days each on the grounds provided in
24 Paragraph (1) of this subsection.

25 C. When the period of delay of a notification

1 ordered by a court as provided in Subsection B of this
2 section expires, the government entity that requested the
3 order shall serve upon or deliver, by registered or
4 first-class mail, electronic mail or other means reasonably
5 calculated to be effective, as specified by the court issuing
6 the order, to the identified targets of the warrant:

7 (1) a document that includes the information
8 described in Subsection A of this section; and

9 (2) a copy of all electronic information
10 obtained or a summary of that information, including, at a
11 minimum:

12 (a) the number and types of records
13 disclosed; and

14 (b) a statement of the grounds for the
15 court's determination to grant a delay in notifying the
16 targeted person.

17 D. If there is no identified target of a warrant
18 or emergency request at the time of the warrant's or
19 request's issuance, the government entity shall submit to the
20 attorney general within three days after the execution of the
21 warrant or request issuance the information described in
22 Paragraph (1) of Subsection A of this section. If an order
23 delaying notice is obtained under Subsection B of this
24 section, the government entity shall submit to the attorney
25 general when the period of delay of the notification expires

1 the information described in Paragraph (2) of Subsection C of
2 this section and the information required by this subsection.
3 The attorney general shall publish all those reports on the
4 attorney general's website as provided in Section 10-16F-6
5 NMSA 1978.

6 E. Except as otherwise provided in this section,
7 nothing in the Electronic Communications Privacy Act
8 prohibits or limits a service provider or any other party
9 from disclosing information about a request or demand for
10 electronic information."

11 SECTION 3. Section 10-16F-6 NMSA 1978 (being Laws 2019,
12 Chapter 39, Section 6) is amended to read:

13 "10-16F-6. ANNUAL REPORTING.--

14 A. A government entity that obtains electronic
15 communication information under the Electronic Communications
16 Privacy Act shall report to the attorney general beginning in
17 2021 and every year thereafter on or before February 1. The
18 report shall include, to the extent it reasonably can be
19 determined:

20 (1) the number of times electronic
21 information was sought or obtained under the Electronic
22 Communications Privacy Act;

23 (2) the number of times each of the
24 following were sought and, for each, the number of records
25 obtained:

- 1 (a) electronic communication content;
2 (b) location information;
3 (c) electronic device information,
4 excluding location information; and
5 (d) other electronic communication
6 information; and

7 (3) for each type of information listed in
8 Paragraph (2) of this subsection:

9 (a) the number of times that type of
10 information was sought or obtained under: 1) a wiretap order
11 issued under the Electronic Communications Privacy Act; 2) a
12 search warrant issued under the Electronic Communications
13 Privacy Act; and 3) an emergency request as provided in
14 Subsection K of Section 10-16F-3 NMSA 1978;

15 (b) the number of instances in which
16 information sought or obtained did not specify a target
17 natural person; and

18 (c) the number of times notice to
19 targeted persons was delayed.

20 B. Beginning in 2021 and every year thereafter, on
21 or before April 1, the attorney general shall publish on the
22 attorney general's website a summary aggregating each of the
23 items in Subsection A of this section.

24 C. Nothing in the Electronic Communications
25 Privacy Act prohibits or restricts a service provider from

1 producing an annual report summarizing the demands or
2 requests it receives under the Electronic Communications
3 Privacy Act."

4 SECTION 4. EMERGENCY.--It is necessary for the public
5 peace, health and safety that this act take effect
6 immediately. _____

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