

SENATE BILL NO. 82—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE ATTORNEY GENERAL)

PREFILED DECEMBER 15, 2008

Referred to Committee on Judiciary

SUMMARY—Makes various changes relating to technological crime. (BDR 14-266)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to crimes; revising the provisions relating to the disclosure of certain electronic information by certain providers of certain technological services during investigations involving technological crimes; revising the provisions relating to the forfeiture of property and proceeds attributable to technological crimes; making technical corrections to provisions relating to disclosure of financial transactions; authorizing suspension or revocation of a license to operate a financial institution in certain circumstances; making various other changes relating to technological crimes; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Sections 1 and 7 of this bill repeal the existing provisions of Nevada law pertaining to the disclosure of certain information by a provider of Internet service and replace those existing provisions with new provisions authorizing the disclosure of certain information under certain circumstances by a provider of electronic communication service or a remote computing service which conform with, and which are closely patterned after, the requirements of applicable federal law. (NRS 193.340, 18 U.S.C. § 2703)

Section 3 of this bill revises the provisions relating to the forfeiture of property and proceeds attributable to technological crimes to include, specifically, reference to a “prepaid or stored value card” as property that is subject to forfeiture. (NRS 179.1215)



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Section 4 of this bill makes a technical correction to include a necessary reference to the provisions relating to forfeiture of property and proceeds attributable to technological crimes. (NRS 179.1211-179.1235)

Section 5 of this bill makes a technical correction to a provision relating to disclosure of certain financial information to reflect that the provision applies to all financial institutions, not merely banks. (NRS 239A.150)

Section 6 of this bill authorizes the Commissioner of Financial Institutions to suspend or revoke a license to operate a financial institution for failure to comply with a request for certain financial information made by a district attorney, sheriff or police department pursuant to NRS 239A.150. (NRS 657.190)

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 179 of NRS is hereby amended by adding thereto a new section to read as follows:

1. In investigating criminal activity that involves or may involve a technological crime, a governmental entity may require the disclosure by a provider of electronic communication service of the contents of a wire or electronic communication that has been in electronic storage in an electronic communications system:

(a) For 180 days or less, only by a search warrant issued pursuant to NRS 179.015 to 179.115, inclusive.

(b) For more than 180 days, by any means available pursuant to subsection 2.

2. A governmental entity may require a provider of remote computing service to disclose the contents of any wire or electronic communication to which this subsection applies:

(a) Without prior notice to the subscriber or customer from the governmental entity, by obtaining a search warrant pursuant to NRS 179.015 to 179.115, inclusive; or

(b) With prior notice to the subscriber or customer from the governmental entity:

(1) By serving a subpoena; or

(2) By obtaining a court order for such disclosure pursuant to subsection 7, except that delayed notice may be given pursuant to subsection 11.

3. Subsection 2 applies with respect to any wire or electronic communication that is held or maintained on that remote computing service:

(a) On behalf of, and received by means of electronic transmission from, or created by means of computer processing of communications received by means of electronic transmission from, a subscriber or customer of such remote computing service; and



(b) Solely for the purpose of providing storage or computer processing services to such subscriber or customer, if such remote computing service is not authorized to access the contents of any such communications for purposes of providing any services other than storage or computer processing.

4. A governmental entity may require a provider of electronic communication service or a remote computing service to disclose a record or other information pertaining to a subscriber to or customer of such service, not including the contents of communications, only when the governmental entity:

(a) Obtains a search warrant pursuant to NRS 179.015 to 179.115, inclusive;

(b) Obtains a court order for such disclosure pursuant to subsection 7;

(c) Has the consent of the subscriber or customer to such disclosure; or

(d) Seeks information pursuant to subsection 5.

5. A provider of electronic communication service or remote computing service shall disclose to a governmental entity the:

(a) Name;

(b) Address;

(c) Local and long distance telephone connection records, or records of session times and durations;

(d) Length of service, including start date, and types of service utilized;

(e) Telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and

(f) Means and source of payment for such service, including any credit card or bank account number,

↳ of a subscriber to or customer of such service when the governmental entity obtains a subpoena or uses any means available pursuant to subsection 4.

6. A governmental entity receiving records or information pursuant to subsection 4 or 5 is not required to provide notice to a subscriber or customer.

7. A court order for disclosure pursuant to subsection 2, 4 or 5 may be issued by any court of competent jurisdiction only if the governmental entity offers specific and articulable facts showing that there are reasonable grounds to believe that the contents of a wire or electronic communication, or the records or other information sought, are relevant and material to an ongoing criminal investigation that involves or may involve a technological crime. A court issuing an order pursuant to this subsection, on a motion made promptly by the provider of wire or electronic



1 *communication service or a remote computing service, may quash*
2 *or modify such order if the information or records requested are*
3 *unusually voluminous in nature or compliance with such order*
4 *otherwise would cause an undue burden on the provider of wire or*
5 *electronic communication service or remote computing service.*

6 8. *If a person who has been issued a subpoena pursuant to*
7 *this section:*

8 (a) *Charges a fee for providing the information, the fee must*
9 *not exceed the actual costs for providing the information.*

10 (b) *Refuses to produce any information that the subpoena*
11 *requires, the person who issued the subpoena may apply to the*
12 *district court for the judicial district in which the investigation is*
13 *being carried out for the enforcement of the subpoena in the*
14 *manner provided by law for the enforcement of a subpoena in a*
15 *civil action.*

16 9. *A provider of wire or electronic communication service or*
17 *a remote computing service, upon the request of a governmental*
18 *entity, shall take all necessary steps to preserve records and other*
19 *evidence in its possession pending the issuance of a court order or*
20 *other process. Such records and other evidence must be retained*
21 *for a period of 90 days, which may be extended for an additional*
22 *90-day period upon request by the governmental entity.*

23 10. *Notwithstanding the provisions of NRS 179.015 to*
24 *179.115, inclusive, the presence of a peace officer is not required*
25 *for service or execution of a search warrant requiring disclosure*
26 *by a provider of electronic communication service or remote*
27 *computing service of the contents of communications or records*
28 *or other information pertaining to a subscriber to or customer of*
29 *such service.*

30 11. *The notice to a subscriber or customer required by this*
31 *section may be delayed for a period not to exceed 90 days under*
32 *any of the following circumstances:*

33 (a) *If the applicant for a search warrant or court order*
34 *requests a delay of notification and the court finds that delay is*
35 *necessary to protect the safety of any person or to prevent flight*
36 *from prosecution, tampering with evidence, intimidation of*
37 *witnesses or jeopardizing an investigation.*

38 (b) *If the investigator or prosecuting attorney proceeding by*
39 *subpoena executes a written certification that there is reason to*
40 *believe that notice to the subscriber or party may result in danger*
41 *to the safety of any person, flight from prosecution, tampering*
42 *with evidence, intimidation of witnesses or jeopardizing an*
43 *investigation. A true copy of the certification must be retained with*
44 *the subpoena.*



1 *↪ If further delay of notification is necessary, an extension not to*
2 *exceed 90 days may be obtained by application to the court.*

3 12. *No cause of action may lie in any court against any*
4 *provider of wire or electronic communication service or remote*
5 *computing service, its officers, employees, agents or other*
6 *specified persons for providing information, facilities or assistance*
7 *in accordance with the terms of a court order, search warrant,*
8 *subpoena or other process pursuant to this section.*

9 13. *For the purposes of this section:*

10 (a) *The terms “contents,” “electronic communication,”*
11 *“electronic communication service,” “electronic communications*
12 *system,” “electronic storage,” “oral communication” and “wire*
13 *communication” have the meanings ascribed to them in 18 U.S.C.*
14 *§ 2510.*

15 (b) *“Governmental entity” includes the following law*
16 *enforcement officials, and any authorized representative thereof:*

17 (1) *The Attorney General;*

18 (2) *A district attorney;*

19 (3) *A sheriff in this State;*

20 (4) *Any organized police department of any municipality in*
21 *this State; and*

22 (5) *Any department of this State engaged in the*
23 *enforcement of any criminal law of this State.*

24 (c) *“Remote computing service” has the meaning ascribed to it*
25 *in 18 U.S.C. § 2711.*

26 **Sec. 2.** *NRS 179.1211 is hereby amended to read as follows:*

27 179.1211 *As used in NRS 179.1211 to 179.1235, inclusive,*
28 *and section 1 of this act, unless the context otherwise requires, the*
29 *words and terms defined in NRS 179.1213, 179.1215 and 179.1217*
30 *have the meanings ascribed to them in those sections.*

31 **Sec. 3.** *NRS 179.1215 is hereby amended to read as follows:*

32 179.1215 *“Property” includes, without limitation, any:*

33 1. *Real property or interest in real property.*

34 2. *Fixture or improvement to real property.*

35 3. *Personal property, whether tangible or intangible, or interest*
36 *in personal property.*

37 4. *Conveyance, including, without limitation, any aircraft,*
38 *vehicle or vessel.*

39 5. *Money, security or negotiable instrument.*

40 6. *Proceeds.*

41 7. *Prepaid or stored value card. As used in this subsection,*
42 *“prepaid or stored value card” means any instrument or device*
43 *used to access funds or monetary value represented in digital*
44 *electronic format, whether or not specially encrypted, and stored*



or capable of storage on electronic media in such a way as to be retrievable and transferable electronically.

Sec. 4. NRS 200.760 is hereby amended to read as follows:

200.760 All assets derived from or relating to any violation of NRS 200.366, 200.710 to 200.730, inclusive, or 201.230 are subject to forfeiture. A proceeding for their forfeiture may be brought pursuant to NRS 179.1156 to 179.119, inclusive ~~H~~, *or 179.1211 to 179.1235, inclusive and section 1 of this act.*

Sec. 5. NRS 239A.150 is hereby amended to read as follows:

239A.150 **1.** When a district attorney, sheriff or police department in this State certifies to a ~~bank~~ *financial institution* in writing that a crime report has been filed which involves the alleged fraudulent use of drafts, checks or other orders drawn upon any ~~bank~~ *financial institution* in this State, the district attorney, sheriff or police department may request the ~~bank~~ *financial institution* to furnish , and the ~~bank~~ *financial institution* shall supply , a statement setting forth the following information with respect to the account of a customer named in the certification and covering a period 30 days prior to and up to 30 days following the date of occurrence of the alleged illegal act involving the account:

~~1-1~~ **(a)** The number of items dishonored;

~~1-2~~ **(b)** The number of items paid which created overdrafts;

~~1-3~~ **(c)** The dollar volume of the dishonored items and items paid which created overdrafts and a statement explaining any credit arrangement between the bank and the customer to pay overdrafts;

~~1-4~~ **(d)** The dates and amounts of deposits and debits and the account balance on those dates;

~~1-5~~ **(e)** A copy of the signature and any addresses appearing on the customer's signature card; and

~~1-6~~ **(f)** The date the account opened and, if applicable, the date the account closed.

2. *Failure to supply the information requested pursuant to subsection 1 may result in the suspension or revocation of a license to operate the financial institution pursuant to NRS 657.190.*

Sec. 6. NRS 657.190 is hereby amended to read as follows:

657.190 In addition to any other lawful reasons, the Commissioner may suspend or revoke a license to operate a financial institution if the person who holds the license or any person who serves as a director, officer, manager or member acting in a managerial capacity for the financial institution has ~~engaged~~ :

1. *Engaged* in any act that would be grounds for denying a license pursuant to NRS 657.180 ~~H~~; *or*

2. *Refused to comply with a request by a district attorney, sheriff or police department pursuant to NRS 239A.150.*



- 1 **Sec. 7.** NRS 193.340 is hereby repealed.
- 2 **Sec. 8.** This act becomes effective on July 1, 2009.

TEXT OF REPEALED SECTION

193.340 Required disclosure of certain information by provider of Internet service; penalty; issuance and enforcement of administrative subpoena; fee for information.

1. A provider of Internet service who violates the provisions of 18 U.S.C. § 2703 is guilty of a misdemeanor and shall be punished by a fine of not less than \$50 or more than \$500 for each violation.

2. In investigating criminal activity that involves or may involve the use of a computer, the Attorney General, a district attorney, the sheriff of any county in this State, the head of any organized police department of any municipality in this State, the head of any department of this State engaged in the enforcement of any criminal law of this State and any sheriff or chief of police of a municipality may, if there is reasonable cause to believe that an individual subscriber or customer of a provider of Internet service has committed an offense through the use of the services of the provider of Internet service, issue a subpoena to carry out the procedure set forth in 18 U.S.C. § 2703 to compel the provider of Internet service to provide information concerning the individual subscriber or customer that the provider of Internet service is required to disclose pursuant to 18 U.S.C. § 2703.

3. If a person who has been issued a subpoena pursuant to subsection 2 charges a fee for providing the information, the fee must not exceed the actual cost for providing the information.

4. If a person who has been issued a subpoena pursuant to subsection 2 refuses to produce any information that the subpoena requires, the person who issued the subpoena may apply to the district court for the judicial district in which the investigation is being carried out for the enforcement of the subpoena in the manner provided by law for the enforcement of a subpoena in a civil action.

5. As used in this section, "provider of Internet service" has the meaning ascribed to it in NRS 205.4758, but does not include a public library when it is engaged in providing access to the Internet.

