

1 **SENATE FLOOR VERSION**

2 February 13, 2018

3 SENATE BILL NO. 1274

By: Dahm

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6 An Act relating to electronic data; defining terms;
7 prohibiting obtaining of certain data without a
8 search warrant; prohibiting use or disclosure of
9 certain data; requiring destruction of certain data;
10 providing exceptions; requiring certain notice;
11 providing for codification; and providing an
12 effective date.

13 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

14 SECTION 1. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 178 of Title 13, unless there is
16 created a duplication in numbering, reads as follows:

17 As used in this act:

18 1. "Electronic communication service" means a service that
19 provides to users of the service the ability to send or receive wire
20 or electronic communications;

21 2. "Electronic device" means a device that enables access to or
22 use of an electronic communication service or remote computing
23 service;

24 3. "Government entity" means the state, a county, a
municipality, a higher education institution, a local district, a

1 special service district or any other political subdivision of the
2 state or an administrative subunit of any political subdivision,
3 including a law enforcement entity or any other investigative
4 entity, agency, department, division, bureau, board or commission,
5 or an individual acting or purporting to act for or on behalf of a
6 state or local agency;

7 4. "Metadata" means the structural information of an electronic
8 file that contains data about the file itself rather than the
9 content of the file. The term includes, but is not limited to,
10 hidden text, formatting codes and formulae, and includes all
11 contextual, processing and use information necessary to identify and
12 certify the scope, authenticity and integrity of active or archival
13 electronic information or records;

14 5. "Remote computing service" means the provision of computer
15 storage or processing services by means of an electronic
16 communications system;

17 6. "Stored data" means data or records that are stored on an
18 electronic device that contains:

- 19 a. information revealing the identity of users of the
20 applicable service, device or program,
21 b. information about a user's use of the applicable
22 service, device or program,
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- c. information that identifies the recipient or destination of a wire communication or electronic communication sent to or by the user,
- d. the content of a wire communication or electronic communication sent to or by the user, or
- e. any data, documents, files, or communications stored by or on behalf of the user with the applicable service provider or on the user's electronic device; and

7. "Transmitted data" means data or records that are in the possession, care, custody or control of a provider of an electronic communications service or a remote computing service, which contains:

- a. information revealing the identity of users of the applicable service, device or program,
- b. information about a user's use of the applicable service, device or program,
- c. information that identifies the recipient or destination of a wire communication or electronic communication sent to or by the user,
- d. the content of a wire communication or electronic communication sent to or by the user, or

1 e. any data, documents, files or communications stored by
2 or on behalf of the user with the applicable service
3 provider or on the user's electronic device.

4 SECTION 2. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 179 of Title 13, unless there is
6 created a duplication in numbering, reads as follows:

7 A. Except as provided in subsection B of this section, a
8 government entity may not obtain the metadata, stored data or
9 transmitted data of an electronic device without a search warrant
10 issued by a court upon probable cause. A government entity may not
11 use, copy or disclose for any purpose the metadata, stored data or
12 transmitted data of an electronic device that is not the subject of
13 the warrant that is collected as part of an effort to obtain the
14 metadata, stored data or transmitted data of the electronic device
15 that is the subject of the warrant. Such data shall be destroyed in
16 an unrecoverable manner by the government entity no later than
17 twenty-four (24) hours after the data is collected.

18 B. A government entity may obtain the metadata, stored data or
19 transmitted data of an electronic device without a search warrant:

20 1. With the informed and affirmative consent of the owner or
21 user of the electronic device;

22 2. In accordance with judicially recognized exceptions to
23 warrant requirements; or
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1 3. If the owner has voluntarily and publicly disclosed
2 metadata, stored data or transmitted data.

3 C. Notice shall be given to the user whose metadata, stored
4 data, transmitted data or electronic device was searched or obtained
5 by a government entity.

6 SECTION 3. This act shall become effective November 1, 2018.

7 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
8 February 13, 2018 - DO PASS

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