

Protection of Shared Physical and Digital Property from Warrantless Searches Act

January 5, 2023

Section 1. Title. This Act may be cited as “The Protection of Shared Physical and Digital Property from Warrantless Searches Act.”

Section 2. Definitions. For purposes of this Act:

1. “Digital property” means:
 - a. Information that a person creates that exists in digital form, either online or on an electronic storage device. It includes information necessary to access the digital property; and
 - b. Information that a person shares with a third party in connection to the provision of goods or services to that person and is recorded in digital form. This includes all digital records containing such information.
 - c. This definition does not include information a person voluntarily shares with the public or a third party with the understanding that the third party will share that information with the public.
2. “Government agent” means any official who is employed or contracted by any level of government in this state.
3. “Physical property” means:
 - a. All real and personal property that a person owns or possesses;
 - b. All real and personal property that a person shares with a third party in connection to the provision of goods or services to that person; and
 - c. Information a person shares with a third party in connection to the provision of goods or services to that person that is recorded in physical form, including all physical records containing such information.
 - d. This definition does not include information a person voluntarily shares with the public or a third party with the understanding that the third party will share that information with the public.

4. "Probable cause" means the presence of facts and circumstances within the government agent's knowledge that would warrant a person of reasonable caution to believe that an offense has been or is being committed.
5. "Search or seizure warrant" means a warrant that is supported by individualized probable cause and authorized by a magistrate or judge.
6. "Third party" means a party, different from the person or government, who maintains physical or digital property about the person as part of providing that person goods or services.

Section 3. Conditions for Government to Search or Seize Physical or Digital Property from a Third Party.

1. No government agent shall search or seize physical or digital property of any person that is held by a third party without first obtaining a search or seizure warrant based on probable cause, except:
 - a. After receiving the permission of the property owner; or
 - b. To respond to an imminent threat to a person's life, safety, or property, or a similar exigent circumstance.
2. Unless searching or seizing property under an exception in subsection (1), a government agent must, upon execution of a search or seizure warrant, provide notice and a copy of said warrant authorizing the search or seizure to the property owner as well as any third party from whom the property has been searched or seized.
 - a. A court, upon a showing by the government that providing the search or seizure warrant to the property owner would impede or otherwise jeopardize an ongoing investigation, may delay the giving of such notice for a reasonable period not to exceed 30 days after the date of its execution, or on a later date certain if the facts of the case justify a longer period of delay.
3. A person aggrieved by a search or seizure of their physical or digital property possessed by a third party may challenge the search or seizure as if the property had been searched or seized directly from the person.

Section 4. Illegal Searches and Seizures.

1. Any evidence obtained pursuant to a search or seizure conducted in violation of this Act is inadmissible in any administrative, civil, or criminal proceeding.
2. If a government agent searches or seizes physical or digital property in violation of this Act, a person who believes her rights have been violated may pursue an action under [insert the state’s civil rights act].
3. In an action under subsection (2), a prevailing plaintiff may recover declaratory relief, injunctive relief, compensatory damages, nominal damages, and attorney’s fees.

Section 5. Legislative Findings.

[OPTIONAL]

1. The people of this State have the right to be secure in their persons and property.
2. A person’s right to be secure in property extends to all forms of property, including physical and digital in nature. The person has a property interest and a reasonable expectation of privacy in the person’s physical and digital property.
3. A person who holds a property interest or reasonable expectation of privacy in physical or digital property, including information, may share that property by contract or other legal means with others for the purpose of obtaining goods and services without impairing or abridging the person’s right to be secure in that property.
4. Misguided judicial decisions have established a rule called the “Third Party Doctrine.” It states a person lacks any constitutional protections as to information the person shares with another party. This exception applies to all information shared even when the receiving party is contractually obligated to keep the shared information private.
5. The “Third Party Doctrine” is inconsistent with the right to be secure in property. It forces a person to sacrifice constitutional protection to obtain goods and services.
6. The rapid technological advancement that has facilitated Internet access, communications and commerce is a welcomed development. But it has exacerbated the impact of the “Third Party Doctrine.” Virtually all such access, communications and commerce depend on the sharing of a person’s information with third parties.
7. This Act protects a resident from warrantless searches of information shared with third parties when obtaining goods and services by requiring government officials to obtain a person’s consent or a judicial warrant based on probable cause prior to accessing that person’s shared information.

For more information, please contact the Institute for Justice.

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