

# Senate Bill 316

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## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Prohibits service provider from disclosing contents of communication and certain other information except in certain circumstances.

Prohibits public body from obtaining contents of communication and certain other information without search warrant except in certain circumstances.

Requires that public body provide notice to person if contents of communication or certain other information is obtained. Provides for delay of notification and prohibition on disclosure of warrant when ordered by court.

Provides that contents of communication and certain other information obtained in violation of Act are inadmissible in adjudicative proceeding. Requires that parties be provided with warrant and application when lawfully obtained contents or information is used in adjudicative proceeding.

Requires public body to issue annual report to Legislative Assembly if public body requests or obtains contents of communication or certain other information.

Creates cause of action for person harmed as result of violation of certain sections of Act.

Prohibits public body from obtaining customer information from pawnbroker without search warrant.

## A BILL FOR AN ACT

Relating to privacy; creating new provisions; and amending ORS 726.280 and 726.285.

**Be It Enacted by the People of the State of Oregon:**

### **SECTION 1. As used in sections 1 to 7 of this 2015 Act:**

(1) **"Adverse result" means:**

(a) **Endangering the life or physical safety of a person;**

(b) **Fleeing from prosecution;**

(c) **Destroying or tampering with evidence of an offense;**

(d) **Intimidating potential witnesses to an offense; or**

(e) **Seriously jeopardizing an investigation or unduly delaying a trial.**

(2) **"Contents of a communication" means all information regarding the substance, meaning or purpose of a wire or electronic communication.**

(3) **"Electronic communication service" has the meaning given that term in 18 U.S.C. 2510.**

(4) **"Public body" has the meaning given that term in ORS 174.109.**

(5) **"Remote computing service" has the meaning given that term in 18 U.S.C. 2711.**

(6) **"Service provider" means the provider of an electronic communication service or a remote computing service.**

**SECTION 2. (1) Except as provided in subsection (2) of this section, a service provider may not knowingly disclose to any individual or entity:**

(a) **The contents of a communication stored, maintained or transmitted by the service provider; or**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (b) Any record or other information pertaining to a subscriber or customer of the service  
 2 provider.

3 (2) A service provider may disclose the contents of a communication or the records or  
 4 other information pertaining to a subscriber or customer of the service provider in any of  
 5 the following circumstances:

6 (a) To the addressee or intended recipient of the communication or to an agent of the  
 7 addressee or intended recipient;

8 (b) Pursuant to a warrant issued as described in section 3 of this 2015 Act;

9 (c) With the consent of the author, originator, addressee or intended recipient of the  
 10 communication or of the subscriber or customer of the service provider;

11 (d) To a person employed or authorized by an entity whose facilities are used to transmit  
 12 the communication to the addressee or recipient of the communication;

13 (e) As necessary for the rendition of the electronic communication service or remote  
 14 computing service or for the protection of the rights or property of the service provider;

15 (f) In accordance with 18 U.S.C. 2258a; or

16 (g) To a public body, in response to a request by the public body, if:

17 (A) The public body reasonably believes that an emergency involving imminent danger  
 18 of death or serious physical injury to a person requires disclosure without delay of the con-  
 19 tents of a communication relating to the emergency;

20 (B) Only the contents of the communication are disclosed; and

21 (C) The request is in writing and documents the factual basis for the belief that the  
 22 emergency exists and requires the disclosure without delay.

23 (3) No later than 48 hours after the public body obtains the contents of the communi-  
 24 cation or the records or other information pertaining to a subscriber or customer of the  
 25 service provider under subsection (2)(g) of this section, the public body shall file with the  
 26 appropriate court a sworn affidavit signed by a supervisory official of the public body setting  
 27 forth the reasons for obtaining the contents, records or information and the circumstances  
 28 of the emergency.

29 **SECTION 3.** Except as provided in section 2 (2)(g) of this 2015 Act, a public body may not  
 30 obtain from a service provider the contents of a communication stored, maintained or  
 31 transmitted by the service provider, or any record or other information pertaining to a  
 32 subscriber or customer of the service provider, without a search warrant issued under ORS  
 33 133.525 to 133.703.

34 **SECTION 4.** (1) The court shall indicate in a warrant issued as described in section 3 of  
 35 this 2015 Act a deadline for compliance by the service provider.

36 (2) A warrant issued as described in section 3 of this 2015 Act may be served only on a  
 37 service provider that is doing business in this state under a contract or under a terms-of-  
 38 service agreement with a resident of this state, if any part of that contract or agreement is  
 39 to be performed in this state. The service provider shall produce all information described  
 40 in the warrant, regardless of whether the information is held at a location within or outside  
 41 of this state, and shall produce the information by the compliance deadline described in  
 42 subsection (1) of this section.

43 (3) A service provider responding to a warrant issued as described in section 3 of this  
 44 2015 Act may request an extension of the compliance deadline. The court shall grant a re-  
 45 quest for an extension if the court determines that circumstances justify the extension and:

1 (a) The person who applied for the warrant agrees to the extension; or

2 (b) The court finds that the need for the extension outweighs the likelihood that the ex-  
3 tension will cause an adverse result.

4 (4) A service provider within this state shall comply with a warrant issued in another  
5 state seeking the contents of a communication stored, maintained or transmitted by the  
6 service provider or the records or other information pertaining to a subscriber or customer  
7 of the service provider if the warrant is lawful and is issued and served on the service pro-  
8 vider in a manner consistent with ORS 133.525 to 133.703.

9 (5) The service provider shall provide only the information described in the warrant.

10 **SECTION 5.** (1) If a public body obtains the contents of a communication or the records  
11 or other information pertaining to a subscriber or customer of a service provider under  
12 section 2 or 3 of this 2015 Act, the public body shall serve upon the subscriber or customer,  
13 deliver by registered, first class or electronic mail to the subscriber or customer or, by some  
14 other means reasonably calculated to notify the subscriber or customer, provide:

15 (a) A copy of the warrant, if applicable; and

16 (b) Notice that informs the subscriber or customer:

17 (A) Of the nature of the public body inquiry with reasonable specificity;

18 (B) That the contents of a communication, or records or other information, were pro-  
19 vided to a public body and the date on which the contents, records or information were  
20 provided;

21 (C) Of the contents of any communication provided;

22 (D) Of the nature of any records or other information provided;

23 (E) Of the identity of the service provider or other entity from which the contents of a  
24 communication, or records or other information, were obtained, if applicable; and

25 (F) Whether delayed notification was ordered under subsection (3) of this section and, if  
26 applicable, the court that entered the order and the justification for the delay.

27 (2) The public body shall provide, or shall make a good faith effort to provide, the infor-  
28 mation required by subsection (1) of this section no later than three days after obtaining the  
29 contents of a communication or the records or other information pertaining to a subscriber  
30 or a customer of a service provider, unless a court orders delayed notification under sub-  
31 section (3) of this section.

32 (3)(a) A public body seeking to obtain the contents of a communication or the records  
33 or other information pertaining to a subscriber or a customer of a service provider under  
34 section 3 of this 2015 Act may include in the warrant application a request for an order de-  
35 laying the notification required by subsection (1) of this section by a period of time not to  
36 exceed 90 days. The court shall issue a delayed notification order if the court determines that  
37 there is reason to believe that immediate notification of the warrant may have an adverse  
38 result.

39 (b) The court may, upon application by the public body, grant one or more extensions of  
40 up to 90 days each of the 90-day time period described in paragraph (a) of this subsection.

41 (c) Upon expiration of the period of delay ordered under this subsection, the public body  
42 shall provide the copy of the warrant and the notice, as described in subsection (1) of this  
43 section.

44 (4)(a) A public body seeking to obtain the contents of a communication or the records  
45 or other information pertaining to a subscriber or a customer of a service provider under

1 section 3 of this 2015 Act may include in the warrant application a request for an order di-  
2 recting the service provider or other entity named in the warrant not to disclose to any  
3 person the existence of the warrant for a period of time not to exceed 90 days. The court  
4 shall issue an order prohibiting disclosure if the court determines that there is reason to  
5 believe that disclosure of the existence of the warrant may have an adverse result.

6 (b) The court may, upon application by the public body, grant one or more extensions of  
7 up to 90 days each of the 90-day time period described in paragraph (a) of this subsection.

8 **SECTION 6.** (1) Except in a judicial proceeding alleging a violation of sections 1 to 7 of  
9 this 2015 Act, the contents of a communication or the records or other information per-  
10 taining to a subscriber or a customer of a service provider obtained in violation of sections  
11 1 to 7 of this 2015 Act are not admissible in, and may not be disclosed in, a judicial proceed-  
12 ing, administrative proceeding, arbitration proceeding or other adjudicatory proceeding, and  
13 the contents, records or information may not be used to establish reasonable suspicion or  
14 probable cause to believe that an offense has been committed.

15 (2) The contents of a communication, and the records or other information pertaining  
16 to a subscriber or a customer of a service provider, obtained pursuant to section 3 of this  
17 2015 Act, and evidence derived from the contents, records or information, are not admissible  
18 as evidence in any trial, hearing or other proceeding unless, at least 10 days before the trial,  
19 hearing or proceeding, each party has been provided with a copy of the warrant and warrant  
20 application by which the contents, records or information was obtained. The 10-day require-  
21 ment may be waived by the court if the court finds that it was not possible to provide a party  
22 with the warrant and application within the required time period and that the party is not  
23 prejudiced by the delay.

24 **SECTION 7.** By January 31 of each calendar year, a public body that applies for a warrant  
25 for the contents of a communication or the records or other information pertaining to a  
26 subscriber or a customer of a service provider under section 3 of this 2015 Act, or otherwise  
27 obtains the contents, records or information under section 2 of this 2015 Act, during the  
28 preceding calendar year shall provide to the Legislative Assembly a report containing:

29 (1) A list of applications for warrants for the contents, records or information, the dates  
30 on which the applications were made and whether the warrants were issued or denied;

31 (2) A list of circumstances in which the public body obtained the contents, records or  
32 information without a warrant, the dates that the contents, records or information were  
33 obtained and whether a warrant was eventually issued;

34 (3) A list of warrants that were accompanied by an order delaying notification or an or-  
35 der prohibiting disclosure as described in section 5 of this 2015 Act;

36 (4) The offense specified in each warrant application, if applicable;

37 (5) The method by which the contents of each communication were obtained, if applica-  
38 ble;

39 (6) The identities of the service providers and other entities from which the contents,  
40 records or information were or would have been obtained;

41 (7) An assessment of the number of arrests and convictions that result from obtaining  
42 the contents, records and information; and

43 (8) An estimate of the cost of requesting and obtaining the contents, records and infor-  
44 mation from service providers and other entities.

45 **SECTION 8.** A person that is harmed by a violation of sections 1 to 7 of this 2015 Act has

1 a cause of action if the conduct constituting the violation was committed knowingly or in-  
 2 tentiously. The person shall be entitled to:

3 (1) Injunctive relief;

4 (2) Reasonable attorney fees and costs; and

5 (3) An amount equal to \$1,000 or the sum of the actual damages suffered and any mone-  
 6 tary profit resulting from the violation, whichever is greater.

7 **SECTION 9.** Section 10 of this 2015 Act is added to and made a part of ORS chapter 726.

8 **SECTION 10.** (1) A public body may not obtain from a pawnbroker licensed under this  
 9 chapter any information relating to a pledgor, agent of a pledgor or other customer of the  
 10 pawnbroker without a search warrant issued under ORS 133.525 to 133.703.

11 (2) As used in this section, “public body” has the meaning given that term in ORS 174.109.

12 **SECTION 11.** ORS 726.280 is amended to read:

13 726.280. (1) Every pawnbroker shall keep a register in which the pawnbroker records in ink or  
 14 in electronic form:

15 (a) The date of the transaction.

16 (b) The serial number of the pledge loan.

17 (c) The name and address of the pledgor, or if a person acting as agent for a disclosed principal  
 18 makes a pledge, the name and address of the principal and the agent.

19 (d) An identifying description of the pledge.

20 (e) The amount of the pledge loan.

21 (f) The date on which the pledge loan was canceled.

22 (g) A notation as to whether the pledge was redeemed or renewed, or whether the pledge was  
 23 forfeited.

24 (h) A notation that indicates that a lien search of the pledge has been conducted in the pledgor’s  
 25 county of residence or with the state agency that is responsible for recording liens on the category  
 26 of property to which the pledge belongs.

27 (2) All entries in the register must be made in the English language[ *and must be open to the*  
 28 *inspection of any public official, police officer or any other person who is duly authorized or em-*  
 29 *powered by the laws of this state to make an inspection].*

30 (3) Every pawnbroker shall maintain an alphabetical file from which can be determined the total  
 31 obligations of any one pledgor.

32 (4) Subject to the provisions of this chapter, the Director of the Department of Consumer and  
 33 Business Services may prescribe the form of other books and records the pawnbroker must keep.  
 34 All records shall be preserved and available for at least two years after making the final entry on  
 35 any pledge loan recorded in the books or records.

36 **SECTION 12.** ORS 726.285 is amended to read:

37 726.285. [(1)] In addition to the register required under ORS 726.280, a pawnbroker shall record,  
 38 for each transaction, the date, the name and address of the pledgor, the type and number of any  
 39 proof of identification presented by the pledgor, a physical description of the pledgor and an iden-  
 40 tifying description of the article pledged.

41 [(2) *The pawnbroker shall deliver each record, or a copy thereof, made under this section, within*  
 42 *three days after the date of the transaction, to the local police agency that has jurisdiction over the*  
 43 *location at which the pawnbroker has a place of business.]*