

HOUSE BILL NO. 2332

By Committee on Government, Technology and Security

2-9

1 AN ACT concerning disclosure of electronic communications; relating to
2 civil procedure; discovery of electronic communications and
3 electronically stored data.
4

5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. (a) Except as provided in subsection (c), a person or entity
7 providing an electronic communications service or remote computing
8 service to the public, or a third-party provider with whom such person or
9 entity has contracted, shall not knowingly divulge to any person or entity
10 the contents of an electronic communication or electronic storage provided
11 or maintained by that service, except for the purposes of providing such
12 electronic communications or remote computing services to the subscriber
13 or customer, that is received by means of an electronic communications
14 system from a subscriber or customer of the service.

15 (b) (1) (A) The contents of any electronic communications service or
16 remote computing service that are divulged in violation of subsection (a)
17 shall not be subject to discovery, subpoena or other means of legal
18 compulsion to any person or entity and shall not be admissible in evidence
19 in any judicial or administrative proceeding solely due to the release of
20 such electronic communications or electronic storage.

21 (B) The contents of any electronic communications service or remote
22 computing service, for reasons other than the prior divulgence of such
23 communications or storage in violation of subsection (a), shall remain
24 subject to legal means of discovery, subpoena or other means of legal
25 compulsion in a civil action.

26 (2) If any contents of an electronic communication or electronic
27 storage held by a person or entity providing an electronic communications
28 service or a remote computing service to the public are protected by
29 attorney-client privilege:

30 (A) Use of such electronic communications service or a remote
31 computing service shall not constitute a waiver of such attorney-client
32 privilege;

33 (B) any terms of use of such electronic communications or remote
34 computing service waiving the attorney-client privilege are declared to be
35 against the public policy of the state and are null and void in this state; and

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1 (C) inadvertent disclosure of the contents of any such electronic
2 communication or electronic storage shall not constitute a waiver of such
3 attorney-client privilege.

4 (c) A person or entity may divulge the contents of an electronic
5 communication or electronic storage:

6 (1) To an addressee or intended recipient of the electronic
7 communication or an agent of the addressee or intended recipient;

8 (2) as otherwise authorized by a search warrant;

9 (3) with the lawful consent of the originator, addressee or intended
10 recipient of the electronic communication, or the subscriber in the case of
11 a remote computing service;

12 (4) to a person employed or authorized or whose facilities are used to
13 forward the electronic communication to its destination or maintain such
14 | electronic storage; ~~or~~

15 (5) as may be necessarily incidental to the rendering of the service or
16 other services provided by the person or entity, or to the protection of the
17 | rights or property of the provider of that service;:-

18 | (6) to the National Center for Missing and Exploited Children, in
19 | connection with a report submitted thereto under section 2258A;

20 | (7) to a law enforcement agency

21 | (A) if the contents were inadvertently obtained by the service
22 | provider and appear to pertain to the commission of a crime; or

23 | (8) to a governmental entity, if the provider, in good faith, believes that
24 | an emergency involving danger of death or serious physical injury to any
25 | person requires disclosure without delay of communications relating to the
26 | emergency.¹

27 (d) The provisions of this section shall apply to any individual located
28 in this state or accessing an electronic communications service or remote
29 computing service from within the state regardless of the route or physical
30 location of any such electronic communications or remote computing
31 service.

32 (e) As used in this section:

33 (1) "Electronic communication" means a transfer of signs, signals,
34 writing, images, sounds, data or intelligence of any nature transmitted in
35 whole or in part by wire, radio, electromagnetic, photo-electronic or photo-
36 optical system. The term does not include communications made orally,
37 through a tone-only paging device or from a tracking device.

38 (2) "Electronic communications service" means a service that
39 provides to users of the service the ability to send or receive wire or

¹ The proposed language is from the Stored Communications Act, 18 U.S.C. § 2702(b)(6)-(8). It includes the other instances in which a person or entity may divulge the contents of an electronic communication or electronic storage. Without these exceptions, the person or entity could be in violation of other laws.

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1 electronic communications.

2 (3) "Electronic communications system" means a wire, radio,
3 electromagnetic, photo-optical or photo-electronic facility for the
4 transmission of wire or electronic communications, and any computer
5 facility or related electronic equipment for the electronic storage of those
6 communications.

7 (4) "Electronic storage" means any storage of electronic customer
8 data in a computer, computer network or computer system, regardless of
9 whether the data is subject to recall, further manipulation, deletion or
10 transmission, and includes any storage of a wire or electronic
11 communication by an electronic communications service.

12 (5) "Remote computing service" means the provision to the public of
13 electronic storage or processing services of electronic communications or
14 electronic customer data by means of an electronic communications
15 service.

16 Sec. 2. This act shall take effect and be in force from and after its
17 publication in the statute book.