



SPONSOR: Rep. Wilson-Anton & Sen. Gay

HOUSE OF REPRESENTATIVES
152nd GENERAL ASSEMBLY

HOUSE BILL NO. 445

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO REVERSE KEYWORD SEARCHES AND COURT ORDERS.

1 WHEREAS, since our Nation's founding, general warrants, which permit government officials to conduct broad
2 searches without identifying a specific crime or specific suspect that is being investigated, have been deemed a significant
3 threat to personal freedom, privacy, and liberty; and

4 WHEREAS, reverse-keyword court orders enable the government to precisely identify an unspecified and
5 unlimited number of persons who have sought information about a specific word or phrase, without identifying any specific
6 person as to which there is probable cause to believe they have committed or will imminently commit a crime; and

7 WHEREAS, the mass surveillance that is effectuated by reverse-keyword court orders severely undermines the
8 right to privacy and can adversely impact and chill the exercise of the freedom of speech, association, religion, assembly,
9 movement, and the press; and

10 WHEREAS, the government's ability to obtain the same mass surveillance information that can be obtained using
11 reverse-keyword court orders through voluntary compliance-based reverse-keyword requests can produce the same adverse
12 impacts and chilling effects upon personal freedom, privacy, and liberty as their court-ordered counterparts.

13 NOW, THEREFORE:

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

15 Section 1. Amend Chapter 23, Title 11 of the Delaware Code by making deletions as shown by strike through and
16 insertions as shown by underline as follows:

17 § 2312. Reverse-keyword searches.

18 (a) For purposes of this section:

19 (1) "Government entity" means any department or agency of the State or any political subdivision thereof, or
20 any individual acting for or on behalf of the State or a political subdivision thereof.

21 (2) "Reverse-keyword court order" means any court order, including a search warrant or subpoena,
22 compelling the disclosure of records or information identifying any unnamed persons, by name or other unique
23 identifier, who electronically searched for a particular word, phrase, or website, or who visited a particular website

24 through a link generated by such a search, regardless of whether or not the order is limited to a specific geographic area
25 or time frame.

26 (3) “Reverse-keyword request” means any request, in the absence of a court order, by any government entity
27 for the voluntary provision of records or information identifying any unnamed persons, by name or other unique
28 identifier, who electronically searched for a particular word, phrase, or website, or who visited a particular website
29 through a link generated by such a search, regardless of whether or not the request is limited to a specific geographic
30 area or time frame. Such requests shall include offers to purchase such records or information.

31 (b) Reverse-keyword court orders prohibited.

32 (1) A government entity may not seek, from any court, a reverse-keyword court order.

33 (2) A government entity may not seek, secure, obtain, borrow, purchase, or review any information or data
34 obtained through a reverse-keyword court order.

35 (3) No court of this State may issue a reverse-keyword court order.

36 (4) No court or government entity of the State or a political subdivision thereof, shall support, assist, or
37 enforce a reverse-keyword court order issued by the State of Delaware or a political subdivision thereof, or any other
38 state or a political subdivision thereof, including the domestication of any such court order.

39 (c) Reverse-keyword requests prohibited.

40 (1) A government entity may not make a reverse-keyword request.

41 (2) A government entity may not seek, secure, obtain, borrow, purchase, or review any information or data
42 obtained through a reverse-keyword request.

43 (d) A government entity may not seek the assistance of any agency of the federal government or any agency of the
44 government of another state or subdivision thereof in obtaining information or data from a reverse-keyword court order or a
45 reverse-keyword request if the government entity would be barred from directly seeking such information under this
46 section.

47 (e) Suppression of evidence.

48 (1) Except as proof of a violation of this section, no record or information obtained, accessed, or otherwise
49 secured in violation of this section, nor any evidence derived therefrom, shall be admissible in any criminal, civil,
50 administrative, or other proceeding.

51 (2) For the purposes of this subsection, a record, information, or evidence is “derived from” a reverse-
52 keyword court order or reverse-keyword request where the government entity would not have originally possessed the
53 information or evidence but for the violative court order or request, and regardless of any claim that the record,

54 information, or evidence is attenuated from the unlawful order or request, would inevitably have been discovered, or
55 was subsequently reobtained through other means.

56 § 2313. Private right of action for reverse-keyword court orders and requests.

57 (a) A person whose name or other identifying information was obtained by a government entity in violation of §
58 2312 of this title must be notified of the violation, in writing, by the government entity who committed the violation and of
59 the legal recourse available to that person pursuant to this section.

60 (b) A person whose name or other identifying information was obtained by a government entity in violation of §
61 2312 of this title may institute a civil action against such governmental entity.

62 (c) A court may award one or more of the following in a civil action under this section:

63 (1) \$1,000 per violation or actual damages, whichever is greater.

64 (2) Punitive damages.

65 (3) Injunctive or declaratory relief.

66 (4) Any other relief the court deems proper.

67 (d) In determining the amount of punitive damages, the court shall consider all of the following:

68 (1) The number of people whose information was disclosed.

69 (2) Whether the violation directly or indirectly targeted persons engaged in the exercise of activities protected
70 by the Constitution of the United States of America or of this State.

71 (3) The persistence of violations by the particular government entity.

72 (e) In a successful action brought under this section, the court shall award reasonable attorneys' fees to a
73 prevailing plaintiff.

SYNOPSIS

Reverse keyword court orders enable the government to obtain technology search data without identifying any specific person as to which there is probable cause to believe they have committed or will imminently commit a crime. The profusion of electronic devices and apps in recent years has allowed recordation of numerous details of citizen's everyday lives, that the government should not be permitted to collect and review at will. Such general searches allow the government to sweep in personal information about hundreds or thousands of people who are not suspected of having committed any crime. These searches are an invasion of privacy, have a potentially chilling effect on civil liberties, and sidestep requirements for individualized suspicion that are otherwise required for a lawful search. This Act would prohibit law enforcement and courts from requesting, issuing, or enforcing reverse-keyword court orders and reverse keyword requests. It also creates a private right of action for an individual whose personal information was obtained in violation of this Act and requires the suppression of evidence derived from an unlawful or reverse-keyword search.