

117TH CONGRESS
2D SESSION

H. R. 7072

IN THE SENATE OF THE UNITED STATES

JUNE 22, 2022

Received; read twice and referred to the Committee on the Judiciary

AN ACT

To amend title 18, United States Code, to modify delayed
notice requirements, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “NDO Fairness Act”.

3 **SEC. 2. DELAY OF NOTIFICATION.**

4 Section 2705(a) of title 18, United States Code, is
5 amended to read as follows:

6 “(a) DELAY OF NOTIFICATION.—

7 “(1) APPLICATION.—A governmental entity
8 that is seeking a warrant, order, or subpoena under
9 section 2703 may include in the application (or mo-
10 tion in the case of an administrative subpoena au-
11 thorized by a Federal or State statute or a Federal
12 or State grand jury or trial subpoena) a request to
13 a court of competent jurisdiction for an order delay-
14 ing the notification under section 2703 for a period
15 of not more than 60 days.

16 “(2) DETERMINATION.—The court may not
17 grant a request for delayed notification to a cus-
18 tomer or subscriber made under paragraph (1), or
19 an extension of such delayed notification requested
20 by the governmental entity pursuant to paragraph
21 (3), unless the court issues a written determination,
22 based on specific and articulable facts, and including
23 written findings of fact and conclusions of law, that
24 it is substantially likely that the notification of the
25 customer or subscriber of the existence of the war-
26 rant, order, or subpoena will result in—

1 “(A) endangering the life or physical safety
2 of an individual;

3 “(B) flight from prosecution;

4 “(C) destruction of or tampering with evi-
5 dence;

6 “(D) intimidation of potential witnesses; or

7 “(E) otherwise seriously jeopardizing an
8 investigation or unduly delaying a trial.

9 “(3) EXTENSION.—The governmental entity
10 may request one or more extensions of the delay of
11 notification granted under paragraph (2) for a pe-
12 riod of not more than 60 days for each such exten-
13 sion. The court may only grant such an extension if
14 the court makes a written determination required
15 under paragraph (2) and the extension is in accord-
16 ance with the requirements of such paragraph.

17 “(4) EXPIRATION OF DELAY OF NOTIFICA-
18 TION.—Upon expiration of the period of delay of no-
19 tification and all extensions thereof under para-
20 graphs (2) and (3) of this subsection, the govern-
21 mental entity shall deliver to the customer or sub-
22 scriber by at least 2 methods, which shall be per-
23 sonal service, registered or first-class mail, electronic
24 mail, or other means approved by the court, as rea-
25 sonably calculated to reach the customer or sub-

1 subscriber within 72 hours of the expiration of the
2 delay—

3 “(A) a copy of the warrant, order, or sub-
4 poena; and

5 “(B) notice that informs such customer or
6 subscriber—

7 “(i) of the nature of the inquiry made
8 by the governmental entity, with reason-
9 able specificity;

10 “(ii) that information maintained for
11 such customer or subscriber by the pro-
12 vider of electronic communications service
13 or remote computing service to which the
14 warrant, order, or subpoena under section
15 2703 was directed, was supplied to or re-
16 quested by the governmental entity;

17 “(iii) that notification of such cus-
18 tomer or subscriber was delayed by court
19 order;

20 “(iv) the identity of the court that
21 issued such order;

22 “(v) the provision of law under which
23 the order delaying notification was author-
24 ized; and

1 “(vi) that the governmental entity
2 will, upon request by the customer or sub-
3 scriber made within 180 days after receiv-
4 ing notification under this paragraph, pro-
5 vide the customer or subscriber with a
6 copy of the information that was disclosed
7 in response to the warrant, order, or sub-
8 poena, or in the event that no information
9 was disclosed, a written certification that
10 no information was disclosed.

11 “(5) COPY OF INFORMATION DISCLOSED.—
12 Upon expiration of the period of delay of notification
13 under paragraph (2) or (3) of this subsection, and
14 at the request of the customer or subscriber made
15 within 180 days of receiving notification under para-
16 graph (4), the governmental entity shall promptly
17 provide the customer or subscriber—

18 “(A) with a description of the information
19 disclosed and a copy of the information that
20 was disclosed in response to the warrant, order,
21 or subpoena; or

22 “(B) in the event that no information was
23 disclosed, with a written certification that no in-
24 formation was disclosed.”.

1 **SEC. 3. PRECLUSION OF NOTICE.**

2 Section 2705(b) of title 18, United States Code, is
3 amended to read as follows:

4 “(b) PRECLUSION OF NOTICE.—

5 “(1) APPLICATION.—A governmental entity
6 that is seeking a warrant, order, or subpoena under
7 section 2703, when it is not required to notify the
8 customer or subscriber, or to the extent that it may
9 delay such notice pursuant to subsection (a), may
10 apply to a court for an order, subject to paragraph
11 (6), directing a provider of electronic communica-
12 tions service or remote computing service to which a
13 warrant, order, or subpoena under section 2703 is
14 directed not to notify any other person of the exist-
15 ence of the warrant, order, or subpoena for a period
16 of not more than either 60 days or the period of
17 delay of notice provided under subsection (a), if any.

18 “(2) DETERMINATION.—The court may not
19 grant a request for an order made under paragraph
20 (1), or an extension of such order requested by the
21 governmental entity pursuant to paragraph (3), un-
22 less—

23 “(A) the court issues a written determina-
24 tion, based on specific and articulable facts, and
25 including written findings of fact and conclu-

1 sions of law, that it is substantially likely that
2 not granting the request will result in—

3 “(i) endangering the life or physical
4 safety of an individual;

5 “(ii) flight from prosecution;

6 “(iii) destruction of or tampering with
7 evidence;

8 “(iv) intimidation of potential wit-
9 nesses; or

10 “(v) otherwise seriously jeopardizing
11 an investigation or unduly delaying a trial;
12 and

13 “(B) the order is narrowly tailored and
14 there is no less restrictive alternative, including
15 notification to an individual or organization
16 within or providing legal representation to the
17 customer or subscriber, to avoid an adverse re-
18 sult as described in clause (i) through (v) of
19 subparagraph (A).

20 “(3) EXTENSION.—A governmental entity may
21 request one or more extensions of an order granted
22 under paragraph (2) of not more than 60 days for
23 each such extension. The court may only grant such
24 an extension if the court makes a written determina-
25 tion required under paragraph (2)(A) and the exten-

1 sion is in accordance with the requirements of
2 (2)(B).

3 “(4) NOTIFICATION OF CHANGED CIR-
4 CUMSTANCES.—If the need for the order issued
5 under paragraph (2) changes materially, the govern-
6 mental entity that requested the order shall notify
7 the court within 72 hours of the changed cir-
8 cumstances, and the court shall reassess the order
9 and modify or vacate as appropriate.

10 “(5) OPPORTUNITY TO BE HEARD.—

11 “(A) IN GENERAL.—Upon an application,
12 petition, or motion by a provider of electronic
13 communications service or remote computing
14 service or person acting on behalf of the pro-
15 vider to which an order under paragraph (2)
16 (or an extension under paragraph (3)) has been
17 issued, the court may modify or vacate the
18 order if—

19 “(i) the order does not meet require-
20 ments provided in paragraph (2); or

21 “(ii) compliance with the order is un-
22 reasonable or otherwise unlawful.

23 “(B) STAY OF DISCLOSURE OF CUSTOMER
24 OR SUBSCRIBER COMMUNICATIONS OR
25 RECORDS.—A provider’s obligation to disclose

1 the information requested in the warrant, order,
2 or subpoena to which the order in paragraph
3 (1) applies is stayed upon the filing of the ap-
4 plication, petition, or motion under this para-
5 graph pending resolution of the application, pe-
6 tition, or motion, unless the court with jurisdic-
7 tion over the challenge determines based on a
8 showing by the governmental entity that the
9 stay should be lifted in whole or in part prior
10 to resolution.

11 “(C) FINALITY OF ORDER.—The decision
12 of the court resolving an application, petition,
13 or motion under this paragraph shall constitute
14 a final, appealable order.

15 “(6) EXCEPTION.—A provider of electronic
16 communications service or remote computing service
17 to which an order under paragraph (2) applies, or
18 an officer, employee, or agent thereof, may disclose
19 information otherwise subject to any applicable non-
20 disclosure requirement to—

21 “(A) those persons to whom disclosure is
22 necessary in order to comply with the warrant,
23 order, or subpoena;

1 “(B) an attorney in order to obtain legal
2 advice or assistance regarding the warrant,
3 order, or subpoena; and

4 “(C) any person the court determines can
5 be notified of the warrant, order, or subpoena.

6 “(7) SCOPE OF NONDISCLOSURE.—Any person
7 to whom disclosure is made under paragraph (6)
8 (other than the governmental entity) shall be subject
9 to the nondisclosure requirements applicable to the
10 person to whom the order is issued. Any recipient
11 authorized under this subsection to disclose to a per-
12 son information otherwise subject to a nondisclosure
13 requirement shall notify the person of the applicable
14 nondisclosure requirement.

15 “(8) SUPPORTING DOCUMENTATION.—Upon
16 serving a provider of electronic communications serv-
17 ice or remote computing service with an order grant-
18 ed under paragraph (2), or an extension of such
19 order granted under paragraph (3), the govern-
20 mental entity shall include a copy of the warrant,
21 order, or subpoena to which the nondisclosure order
22 applies.

23 “(9) EXPIRATION OF ORDER PRECLUDING NO-
24 TICE.—Upon expiration of an order issued under
25 paragraph (2) or, if an extension has been granted

1 under paragraph (3), expiration of the extension, the
2 governmental entity shall deliver to the customer or
3 subscriber, by at least 2 methods, which shall be
4 personal service, registered or first-class mail, elec-
5 tronic mail, or other means approved by the court as
6 reasonably calculated to reach the customer or sub-
7 scriber within 72 hours of the expiration of the
8 order—

9 “(A) a copy of the warrant, order, or sub-
10 poena; and

11 “(B) notice that informs the customer or
12 subscriber—

13 “(i) of the nature of the law enforce-
14 ment inquiry with reasonable specificity;

15 “(ii) that information maintained for
16 such customer or subscriber by the pro-
17 vider of electronic communications service
18 or remote computing service to which the
19 warrant, order, or subpoena under section
20 2703, was directed was supplied to or re-
21 quested by the government entity;

22 “(iii) that notification of such cus-
23 tomer or subscriber was precluded by court
24 order;

1 “(iv) of the identity of the court au-
2 thorizing the preclusion of notice;

3 “(v) of the provision of this chapter
4 under which the preclusion of notice was
5 authorized; and

6 “(vi) that the government will, upon
7 request by the customer or subscriber
8 made within 180 days after receiving noti-
9 fication under this paragraph, provide the
10 customer or subscriber with a copy of the
11 information that was disclosed in response
12 to the warrant, order or subpoena, or in
13 the event that no information was dis-
14 closed, a written certification that no infor-
15 mation was disclosed.

16 “(10) COPY OF INFORMATION DISCLOSED.—
17 Upon expiration of the order precluding notice
18 issued under paragraph (2) or (3) of this subsection,
19 and at the request of the customer or subscriber
20 made within 180 days of receiving notification under
21 paragraph (9), the governmental entity shall
22 promptly provide the customer or subscriber—

23 “(A) with a copy of the information that
24 was disclosed in response to the warrant, order
25 or subpoena; or

1 “(B) in the event that no information was
2 disclosed, a written certification that no infor-
3 mation was disclosed.”.

4 **SEC. 4. ADDITIONAL PROVISIONS REGARDING DELAYED**
5 **NOTICE.**

6 Section 2705 of title 18, United States Code, is
7 amended by adding at the end the following:

8 “(c) ANNUAL REPORT.—On an annual basis, the At-
9 torney General shall provide to the Committees on the Ju-
10 diciary of the House of Representatives and the Senate,
11 in a manner consistent with protection of national secu-
12 rity, a report setting forth with respect to the preceding
13 calendar year, for each Federal judicial district—

14 “(1) the number of customers or subscribers
15 with respect to whom, in that calendar year, a war-
16 rant, subpoena, or court order was issued pursuant
17 to section 2703;

18 “(2) the aggregate number of applications re-
19 questing delay of notification pursuant to sub-
20 sections (a)(1) and (b)(1);

21 “(3) the aggregate number of orders under this
22 section either granting, extending, or denying a re-
23 quest for delay of notification;

24 “(4) the aggregate number of orders under this
25 section affecting a member of the news media, in-

1 including any conduct related to activities protected
2 under the First Amendment; and

3 “(5) the aggregate number of arrests, trials,
4 and convictions, resulting from investigations in
5 which orders under this section were obtained, in-
6 cluding the offenses for which individuals were ar-
7 rested, tried, or convicted.

8 The Attorney General shall include in the report under
9 this subsection a description of the process and the infor-
10 mation used to determine the numbers for each of para-
11 graphs (1) through (5).”.

Passed the House of Representatives June 21, 2022.

Attest: CHERYL L. JOHNSON,
Clerk.

By KEVIN McCUMBER,
Deputy Clerk.