
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair
2023 - 2024 Regular Session

AB 522 (Kalra) - State departments: investigations and hearings: administrative subpoenas

Version: February 7, 2023

Urgency: No

Hearing Date: August 14, 2023

Policy Vote: JUD. 11 - 0, PUB. S. 4 - 0

Mandate: No

Consultant: Matthew Fleming

Bill Summary: AB 522 would require administrative subpoenas seeking to obtain a customer's electronic communication information from a service provider to meet certain conditions, including that notice and a right to object be provided to the customer.

Fiscal Impact:

- The Department of Justice (DOJ) reports costs of approximately \$1.7 million in 2023-24 and \$3 million annually thereafter for additional staff and resources to effectively perform consumer and privacy protection investigations, including additional investigative work to obtain the information necessary to satisfy the proposed notice requirements in the bill (General Fund). See Staff Comments for additional detail.
- The California Privacy Protection Agency (CPPA) and the Civil Rights Department (CRD) reports absorbable costs.

Background: A subpoena is a writ or order directed to a person and requiring the person's attendance at a particular time and place to testify as a witness. It may also require a witness to bring any books, documents, electronically stored information, or other things under the witness's control which the witness is bound by law to produce in evidence. The heads of state departments are authorized to issue subpoenas in connection with investigations and the prosecution of actions within their jurisdiction.

The California Electronic Communications Privacy Act (CalECPA) generally prohibits a government entity from compelling the production of or access to electronic communication information from a service provider or to electronic device information, as defined, from any person or entity other than the authorized possessor of the device, absent a search warrant, wiretap order, order for electronic reader records, or subpoena issued pursuant to specified conditions. Concerns have arisen that the protections afforded by CalECPA do not sufficiently protect electronic communication information when sought by an administrative subpoena that is served on a service provider.

Proposed Law:

- Provides that, in addition to any other requirements that govern the use of an administrative subpoena, an administrative subpoena may be used to obtain a customer's electronic communication information from a service provider only if

specified conditions are satisfied, including that the department has served notice of the administrative subpoena on the customer.

- Requires the service provider to produce the electronic communication information specified in the subpoena, as provided, unless the customer has notified the service provider that a motion to quash or modify the subpoena has been filed.
- Requires the relevant proceeding to be afforded priority if a customer files a motion to quash or modify an administrative subpoena issued pursuant hereto. The matter shall be heard within 10 days from the filing of the motion to quash or modify.
- Provides that a service provider is not required to inquire whether, or to determine that, the department has complied with these requirements if the documents served on the service provider facially show compliance. However, the service provider is not precluded from notifying a customer of the receipt of the administrative subpoena.
- Requires a service provider to maintain, for a period of five years, a record of any disclosure of its customers' electronic communication information pursuant hereto, including a copy of the administrative subpoena.
- Requires a service provider to provide to the customer any part of the record maintained pursuant hereto that relates to the customer, upon customer request and the payment of the reasonable cost of reproduction and delivery.
- Provides that if an administrative subpoena is served on a service provider pursuant hereto, the service provider shall promptly make a copy of any electronic communication information that is within the scope of the subpoena and within the possession of the service provider at the time that the subpoena was served. The copy shall be preserved only until it is disclosed pursuant to the subpoena or the subpoena is quashed or modified.

Related Legislation:

- SB 178 (Leno, Ch. 651, Stats. 2015) established CalECPA.
- SCR 54 (Padilla, Ch. 115, Stats. 2013) directed the California Law Review Commission to recommend to the Legislature how best to "revise statutes governing access by state and local government agencies to customer information from communications service providers" so that these statutes met specified requirements, including safeguarding customers' constitutional rights, accommodating mobile and Internet-based technologies, and enabling state and local government agencies to protect public safety.

Staff Comments: Among other requirements, AB 522 would authorize a department to use an administrative subpoena to obtain electronic communication information from a service provider only if certain conditions are met. Existing law provides the attorney general with the authority to issue subpoenas to advance consumer and privacy protection investigations. AB 522 would significantly restrict that authority, as applied to electronic communications, requiring additional staff and resources. The DOJ

anticipates needing 4.0 Deputy Attorneys General, 4.0 senior Legal Analysts, 2.0 investigators, and 5.0 legal secretaries, as well as \$200,000 per year in expert consulting fees. These additional staff would be placed within the Public Rights Division, in the Consumer Protection Section.

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