

**Senate Bill No. 662**

CHAPTER 896

An act to amend Section 2105 of the Corporations Code and to add Section 1524.2 to the Penal Code, relating to search warrants.

[Approved by Governor October 9, 1999. Filed  
with Secretary of State October 10, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

SB 662, Figueroa. Search warrants: foreign corporations.

(1) Existing law authorizes a court or magistrate to issue a search warrant for the search of a place and the seizure of property or things identified in the warrant where there is probable cause to believe that specified grounds exist. Federal law requires disclosure to a governmental entity by a provider of electronic communication service or a remote computing service of the contents of an electronic communication that is in storage, as specified, only pursuant to a warrant issued according to law.

This bill would apply to any search warrant issued by a court or magistrate allowing a search for records in the actual or constructive possession of a foreign corporation that provides electronic communication services or remote computing services to the general public, where those records would reveal specified information about a customer of that corporation. The bill would require such a foreign corporation to provide to a peace officer who has a search warrant issued by a California court, all records identified in the warrant within 5 business days of receipt, or within less time upon specified conditions. The bill would provide procedures for the foreign corporation to verify the authenticity of the records and to avoid production of the record. In addition, the bill would prohibit a cause of action against any foreign or California corporation or its officers, employees, or other specified persons for providing records in accordance with a search warrant issued pursuant to the bill. By increasing the duties of local officials, this bill would impose a state-mandated local program.

(2) Existing law prohibits a foreign corporation from transacting intrastate business without first obtaining a certificate of qualification from the Secretary of State. To obtain that certificate, the foreign corporation must file a signed statement with specified information regarding the corporation, including the name of an agent who may be served with process within this state, and an irrevocable consent to service of process as specified.

This bill would amend the provision governing irrevocable consent to service of process to include service of a search warrant issued



pursuant to the provision summarized in (1) for records or documents that are located outside of this state whether or not the foreign corporation is a party or a nonparty to the matter in which the search warrant is sought.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

*The people of the State of California do enact as follows:*

SECTION 1. Section 2105 of the Corporations Code is amended to read:

2105. (a) A foreign corporation shall not transact intrastate business without having first obtained from the Secretary of State a certificate of qualification. To obtain that certificate it shall file, on a form prescribed by the Secretary of State, a statement and designation signed by a corporate officer stating:

(1) Its name and the state or place of its incorporation or organization.

(2) The address of its principal executive office.

(3) The address of its principal office within this state, if any.

(4) The name of an agent upon whom process directed to the corporation may be served within this state. Such designation shall comply with the provisions of subdivision (b) of Section 1502.

(5) (A) Its irrevocable consent to service of process directed to it upon the agent designated and to service of process on the Secretary of State if the agent so designated or the agent's successor is no longer authorized to act or cannot be found at the address given.

(B) Consent under this paragraph extends to service of process directed to the foreign corporation's agent in California for a search warrant issued pursuant to Section 1524.2 of the Penal Code, for records or documents that are in the possession of the foreign corporation and are located outside of this state. This subparagraph shall apply to a foreign corporation that is a party or a nonparty to the matter for which the search warrant is sought.

(6) If it is a corporation which will be subject to the Insurance Code as an insurer, it shall so state that fact.

(b) Annexed to that statement and designation shall be a certificate by an authorized public official of the state or place of



incorporation of the corporation to the effect that such corporation is an existing corporation in good standing in that state or place or, in the case of an association, an officers' certificate stating that it is a validly organized and existing business association under the laws of a specified foreign jurisdiction.

(c) Before it may be designated by any foreign corporation as its agent for service of process, any corporate agent must comply with Section 1505.

SEC. 2. Section 1524.2 is added to the Penal Code, to read:

1524.2. (a) As used in this section, the following terms have the following meanings:

(1) The terms "electronic communication services" and "remote computing services" shall be construed in accordance with the Electronic Communications Privacy Act in Chapter 121 (commencing with Section 2701) of Part I of Title 18 of the United State Code Annotated. This section shall not apply to corporations that do not provide those services to the general public.

(2) An "adverse result" occurs when notification of the existence of a search warrant results in:

- (A) Danger to the life or physical safety of an individual.
- (B) A flight from prosecution.
- (C) The destruction of or tampering with evidence.
- (D) The intimidation of potential witnesses.
- (E) Serious jeopardy to an investigation or undue delay of a trial.

(3) "Applicant" refers to the peace officer to whom a search warrant is issued pursuant to subdivision (a) of Section 1528.

(4) "California corporation" refers to any corporation or other entity that is subject to Section 102 of the Corporations Code, excluding foreign corporations.

(5) "Foreign corporation" refers to any corporation that is qualified to do business in this state pursuant to Section 2105 of the Corporations Code.

(6) "Properly served" means that a search warrant has been delivered by hand, or in a manner reasonably allowing for proof of delivery if delivered by United States mail, overnight delivery service, or facsimile to a person or entity listed in Section 2110 of the Corporations Code.

(b) The following provisions shall apply to any search warrant issued pursuant to this chapter allowing a search for records that are in the actual or constructive possession of a foreign corporation that provides electronic communication services or remote computing services to the general public, where those records would reveal the identity of the customers using those services, data stored by, or on behalf of, the customer, the customer's usage of those services, the recipient or destination of communications sent to or from those customers, or the content of those communications.



(1) When properly served with a search warrant issued by the California court, a foreign corporation subject to this section shall provide to the applicant, all records sought pursuant to that warrant within five business days of receipt, including those records maintained or located outside this state.

(2) Where the applicant makes a showing and the magistrate finds that failure to produce records within less than five business days would cause an adverse result, the warrant may require production of records within less than five business days. A court may reasonably extend the time required for production of the records upon finding that the foreign corporation has shown good cause for that extension and that an extension of time would not cause an adverse result.

(3) A foreign corporation seeking to quash the warrant must seek relief from the court that issued the warrant within the time required for production of records pursuant to this section. The issuing court shall hear and decide that motion no later than five court days after the motion is filed.

(4) The foreign corporation shall verify the authenticity of records that it produces by providing an affidavit that complies with the requirements set forth in Section 1561 of the Evidence Code. Those records shall be admissible in evidence as set forth in Section 1562 of the Evidence Code.

(c) A California corporation that provides electronic communication services or remote computing services to the general public, when served with a warrant issued by another state to produce records that would reveal the identity of the customers using those services, data stored by, or on behalf of, the customer, the customer's usage of those services, the recipient or destination of communications sent to or from those customers, or the content of those communications, shall produce those records as if that warrant had been issued by a California court.

(d) No cause of action shall lie against any foreign or California corporation subject to this section, its officers, employees, agents, or other specified persons for providing records, information, facilities, or assistance in accordance with the terms of a warrant issued pursuant to this chapter.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

