

By the Committee on Law Enforcement & Crime Prevention and
Representative Futch

1 A bill to be entitled
2 An act relating to communications security;
3 amending s. 934.02, F.S.; revising definitions;
4 amending s. 934.03, F.S.; prohibiting
5 intentional disclosure of certain authorized
6 interceptions of certain communications;
7 providing a penalty; authorizing certain
8 providers to intercept "electronic"
9 communications for quality control purposes;
10 authorizing service providers to provide
11 technical assistance in emergency
12 interceptions; revising misdemeanor
13 interception offenses; amending s. 934.07,
14 F.S.; removing prostitution from offenses which
15 may be investigated using court-ordered
16 intercepts; amending s. 934.09, F.S.; providing
17 for emergency interceptions under specified
18 circumstances; revising requirements for
19 applications to intercept wire or electronic
20 communications; amending s. 934.10, F.S.;
21 including reliance on investigative or law
22 enforcement officer requests for emergency
23 intercepts as a complete defense to civil,
24 criminal, or administrative liability; amending
25 s. 934.23, F.S.; specifying required
26 disclosures by service providers to
27 investigative or law enforcement officers under
28 certain circumstances; amending criteria for
29 obtaining a court-order for disclosure;
30 requiring service providers to preserve records
31 and evidence; amending s. 934.27, F.S.;

1 including reliance on investigative or law
2 enforcement officer requests for emergency
3 intercepts as a complete defense to civil or
4 criminal liability; amending s. 934.31, F.S.;
5 requiring investigative or law enforcement
6 officers to use reasonably available
7 restrictive technology to limit access to
8 certain information in processing calls;
9 amending s. 934.34, F.S.; requiring assistance
10 of service providers in installing emergency
11 pen register or trap and trace devices;
12 creating s. 934.35, F.S.; providing for
13 installation of emergency pen register and trap
14 and trace devices; providing requirements;
15 providing limitations; providing for
16 compensation for such installations; providing
17 an effective date.

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19 Be It Enacted by the Legislature of the State of Florida:

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21 Section 1. Subsections (1), (4), and (12) of section
22 934.02, Florida Statutes, are amended to read:

23 934.02 Definitions.--As used in this chapter:

24 (1) "Wire communication" means any aural transfer made
25 in whole or in part through the use of facilities for the
26 transmission of communications by the aid of wire, cable, or
27 other like connection between the point of origin and the
28 point of reception including the use of such connection in a
29 switching station furnished or operated by any person engaged
30 in providing or operating such facilities for the transmission
31 of intrastate, interstate, or foreign communications or

1 communications affecting intrastate, interstate, or foreign
2 commerce. Such term includes any electronic storage of such
3 communication ~~but does not include the radio portion of a~~
4 ~~cordless telephone communication that is transmitted between~~
5 ~~the cordless telephone handset and the base unit.~~

6 (4) "Electronic, mechanical, or other device" means
7 any device or apparatus which can be used to intercept a wire,
8 electronic, or oral communication other than:

9 (a) Any telephone or telegraph instrument, equipment,
10 or facility, or any component thereof:

11 1. Furnished to the subscriber or user by a provider
12 of wire or electronic communication service in the ordinary
13 course of its business and being used by the subscriber or
14 user in the ordinary course of its business or furnished by
15 such subscriber or user for connection to the facilities of
16 such service and used in the ordinary course of its business;
17 or

18 2. Being used by a provider of wire or electronic
19 communications service ~~common carrier~~ in the ordinary course
20 of its business or by an investigative or law enforcement
21 officer in the ordinary course of her or his duties.

22 (b) A hearing aid or similar device being used to
23 correct subnormal hearing to not better than normal.

24 (12) "Electronic communication" means any transfer of
25 signs, signals, writing, images, sounds, data, or intelligence
26 of any nature transmitted in whole or in part by a wire,
27 radio, electromagnetic, photoelectronic, or photooptical
28 system that affects intrastate, interstate, or foreign
29 commerce, but does not include:

30
31

1 ~~(a) The radio portion of a cordless telephone~~
2 ~~communication that is transmitted between the cordless~~
3 ~~telephone handset and the base unit;~~

4 (a)~~(b)~~ Any wire or oral communication;

5 (b)~~(c)~~ Any communication made through a tone-only
6 paging device; ~~or~~

7 (c)~~(d)~~ Any communication from an electronic or
8 mechanical device which permits the tracking of the movement
9 of a person or an object; or

10 (d) Electronic funds transfer information stored by a
11 financial institution in a communications system used for the
12 electronic storage and transfer of funds.

13 Section 2. Subsection (1), paragraphs (a) and (e) of
14 subsection (2), and paragraph (b) of subsection (4) of section
15 934.03, Florida Statutes, are amended to read:

16 934.03 Interception and disclosure of wire, oral, or
17 electronic communications prohibited.--

18 (1) Except as otherwise specifically provided in this
19 chapter, any person who:

20 (a) Intentionally intercepts, endeavors to intercept,
21 or procures any other person to intercept or endeavor to
22 intercept any wire, oral, or electronic communication;

23 (b) Intentionally uses, endeavors to use, or procures
24 any other person to use or endeavor to use any electronic,
25 mechanical, or other device to intercept any oral
26 communication when:

27 1. Such device is affixed to, or otherwise transmits a
28 signal through, a wire, cable, or other like connection used
29 in wire communication; or

30 2. Such device transmits communications by radio or
31 interferes with the transmission of such communication;

1 (c) Intentionally discloses, or endeavors to disclose,
2 to any other person the contents of any wire, oral, or
3 electronic communication, knowing or having reason to know
4 that the information was obtained through the interception of
5 a wire, oral, or electronic communication in violation of this
6 subsection; ~~or~~

7 (d) Intentionally uses, or endeavors to use, the
8 contents of any wire, oral, or electronic communication,
9 knowing or having reason to know that the information was
10 obtained through the interception of a wire, oral, or
11 electronic communication in violation of this subsection; or

12 (e) Intentionally discloses, or endeavors to disclose,
13 to any other person the contents of any wire, oral, or
14 electronic communication, intercepted by means authorized by
15 subparagraph (2)(a)2., paragraph (2)(b), paragraph (2)(c), s.
16 934.07, or s. 934.09, knowing or having reason to know that
17 the information was obtained through the interception of such
18 a communication in connection with a criminal investigation,
19 having obtained or received the information in connection with
20 a criminal investigation, and with intent to improperly
21 obstruct, impede, or interfere with a duly authorized criminal
22 investigation,

23
24 shall be punished as provided in subsection (4).

25 (2)(a)1. It is lawful under ss. 934.03-934.09 for an
26 operator of a switchboard, or an officer, employee, or agent
27 of a provider of wire or electronic communication service
28 whose facilities are used in the transmission of a wire or
29 electronic communication, to intercept, disclose, or use that
30 communication in the normal course of his or her employment
31 while engaged in any activity which is a necessary incident to

1 the rendition of his or her service or to the protection of
2 the rights or property of the provider of that service, except
3 that a provider of wire communication service to the public
4 shall not utilize service observing or random monitoring
5 except for mechanical or service quality control checks.

6 2. Notwithstanding any other law, a provider of wire,
7 oral, or electronic communication service, or an officer,
8 employee, or agent thereof, or landlord, custodian, or other
9 person, may provide information, facilities, or technical
10 assistance to a person authorized by law to intercept wire,
11 oral, or electronic communications if such provider, or an
12 officer, employee, or agent thereof, or landlord, custodian,
13 or other person, has been provided with:

14 a. A court order directing such assistance signed by
15 the authorizing judge; or

16 b. A certification in writing by a person specified in
17 s. 934.09(7) that no warrant or court order is required by
18 law, that all statutory requirements have been met, and that
19 the specified assistance is required,

20
21 setting forth the period of time during which the provision of
22 the information, facilities, or technical assistance is
23 authorized and specifying the information, facilities, or
24 technical assistance required.

25 3. A provider of wire, oral, or electronic
26 communication service, or an officer, employee, or agent
27 thereof, or landlord, custodian, or other person may not
28 disclose the existence of any interception or the device used
29 to accomplish the interception with respect to which the
30 person has been furnished an order under ss. 934.03-934.09,
31 except as may otherwise be required by legal process and then

1 only after prior notice to the Governor, the Attorney General,
2 the statewide prosecutor, or a state attorney, as may be
3 appropriate. Any such disclosure renders such person liable
4 for the civil damages provided under s. 934.10 and such person
5 may be prosecuted under s. 934.43. An action may not be
6 brought against any provider of wire, oral, or electronic
7 communication service, or an officer, employee, or agent
8 thereof, or landlord, custodian, or other person for providing
9 information, facilities, or assistance in accordance with the
10 terms of a court order under ss. 934.03-934.09.

11 (e) It is unlawful to intercept any wire, oral, or
12 electronic communication for the purpose of committing any
13 criminal act.

14 (4)(a) Except as provided in paragraph (b), whoever
15 violates subsection (1) is guilty of a felony of the third
16 degree, punishable as provided in s. 775.082, s. 775.083, s.
17 775.084, or s. 934.41.

18 (b) If the offense is a first offense under paragraph
19 (a) and is not for any tortious or illegal purpose or for
20 purposes of direct or indirect commercial advantage or private
21 commercial gain, and the wire or electronic communication with
22 respect to which the offense under paragraph (a) was committed
23 is a radio communication that is not scrambled,~~or~~ encrypted,
24 or transmitted using modulation techniques the essential
25 parameters of which have been withheld from the public with
26 the intention of preserving the privacy of such communication:

27 1. If the communication is not the radio portion of a
28 cellular telephone communication, a cordless telephone
29 communication that is transmitted between the cordless
30 telephone handset and the base unit,a public land mobile
31 radio service communication, or a paging service

1 communication, and the conduct is not that described in
2 subparagraph (2)(h)7., the person committing the offense is
3 guilty of a misdemeanor of the first degree, punishable as
4 provided in s. 775.082 or s. 775.083.

5 2. If the communication is the radio portion of a
6 cellular telephone communication, a cordless telephone
7 communication that is transmitted between the cordless
8 telephone handset and the base unit,a public land mobile
9 radio service communication, or a paging service
10 communication, the person committing the offense is guilty of
11 a misdemeanor of the second degree, punishable as provided in
12 s. 775.082 or s. 775.083.

13 Section 3. Section 934.07, Florida Statutes, is
14 amended to read:

15 934.07 Authorization for interception of wire, oral,
16 or electronic communications.--The Governor, the Attorney
17 General, the statewide prosecutor, or any state attorney may
18 authorize an application to a judge of competent jurisdiction
19 for, and such judge may grant in conformity with ss.
20 934.03-934.09, an order authorizing or approving the
21 interception of wire, oral, or electronic communications by
22 the Department of Law Enforcement or any law enforcement
23 agency as defined in s. 934.02 having responsibility for the
24 investigation of the offense as to which the application is
25 made when such interception may provide or has provided
26 evidence of the commission of the offense of murder,
27 kidnapping, arson, gambling, robbery, burglary, theft, dealing
28 in stolen property, ~~prostitution~~, criminal usury, bribery, or
29 extortion; any violation of chapter 893; any violation of the
30 provisions of the Florida Anti-Fencing Act; any violation of
31 chapter 895; any violation of chapter 896; any violation of

1 chapter 815; any violation of chapter 847; any violation of s.
2 827.071; any violation of s. 944.40; or any conspiracy to
3 commit any violation of the laws of this state relating to the
4 crimes specifically enumerated above.

5 Section 4. Paragraph (b) of subsection (1) and
6 paragraph (d) of subsection (3) of section 943.09, Florida
7 Statutes, are amended, subsections (7), (8), (9), (10), and
8 (11) of said section are renumbered as subsections (8), (9),
9 (10), (11), and (12), respectively, new subsection (7) is
10 added to said section, and renumbered subsections (11) and
11 (12) are amended, to read:

12 934.09 Procedure for interception of wire, oral, or
13 electronic communications.--

14 (1) Each application for an order authorizing or
15 approving the interception of a wire, oral, or electronic
16 communication under ss. 934.03-934.09 shall be made in writing
17 upon oath or affirmation to a judge of competent jurisdiction
18 and shall state the applicant's authority to make such
19 application. Each application shall include the following
20 information:

21 (b) A full and complete statement of the facts and
22 circumstances relied upon by the applicant to justify his or
23 her belief that an order should be issued, including:

24 1. Details as to the particular offense that has been,
25 is being, or is about to be committed.

26 2. Except as provided in subsection (11)~~(10)~~, a
27 particular description of the nature and location of the
28 facilities from which, or the place where, the communications
29 are to be intercepted.

30 3. A particular description of the type of
31 communications sought to be intercepted.

1 4. The identity of the person, if known, committing
2 the offense and whose communications are to be intercepted.

3 (3) Upon such application, the judge may enter an ex
4 parte order, as requested or as modified, authorizing or
5 approving interception of wire, oral, or electronic
6 communications within the territorial jurisdiction of the
7 court in which the judge is sitting, and outside such
8 jurisdiction but within the State of Florida in the case of a
9 mobile interception device authorized by the judge within such
10 jurisdiction, if the judge determines on the basis of the
11 facts submitted by the applicant that:

12 (d) Except as provided in subsection ~~(11)~~(10), there
13 is probable cause for belief that the facilities from which,
14 or the place where, the wire, oral, or electronic
15 communications are to be intercepted are being used, or are
16 about to be used, in connection with the commission of such
17 offense, or are leased to, listed in the name of, or commonly
18 used by such person.

19 (7) Notwithstanding any other provision of this
20 chapter, any investigative or law enforcement officer
21 specially designated by the Governor, the Attorney General,
22 the statewide prosecutor, or any state attorney acting
23 pursuant to this chapter, who reasonably determines that:

24 (a) Any emergency situation exists that involves
25 immediate danger of death or serious physical injury to any
26 person; involves conspiratorial activities characteristic of
27 organized crime; or involves the danger of escape of a
28 prisoner that requires a wire, oral, or electronic
29 communication to be intercepted before an order authorizing
30 such interception can, with due diligence, be obtained; and
31

1 (b) There are grounds upon which an order could be
2 entered under this chapter to authorize such interception,
3
4 may intercept such wire, oral, or electronic communication if
5 an application for an order approving the interception is made
6 in accordance with this section within 48 hours after the
7 interception has occurred or begins to occur. In the absence
8 of an order, such interception shall immediately terminate
9 when the communication sought is obtained or when the
10 application for the order is denied, whichever is earliest.
11 If such application for approval is denied, or in any other
12 case in which the interception is terminated without an order
13 having been issued, the contents of any wire, oral, or
14 electronic communication intercepted shall be treated as
15 having been obtained in violation of s. 934.03(4), and an
16 inventory shall be served, as provided for in paragraph
17 (8)(e), on the person named in the application.

18 ~~(11)(10)~~ The requirements of subparagraph (1)(b)2. and
19 paragraph (3)(d) relating to the specification of the
20 facilities from which, or the place where, the communication
21 is to be intercepted do not apply if:

22 (a) In the case of an application with respect to the
23 interception of an oral communication:

24 1. The application is by an agent or officer of a law
25 enforcement agency and is approved by the Governor, the
26 Attorney General, the statewide prosecutor, or a state
27 attorney.

28 2. The application contains a full and complete
29 statement as to why such specification is not practical and
30 identifies the person committing the offense and whose
31 communications are to be intercepted.

1 3. The judge finds that such specification is not
2 practical.

3 (b) In the case of an application with respect to a
4 wire or electronic communication:

5 1. The application is by an agent or officer of a law
6 enforcement agency and is approved by the Governor, the
7 Attorney General, the statewide prosecutor, or a state
8 attorney.

9 2. The application identifies the person believed to
10 be committing the offense and whose communications are to be
11 intercepted and the applicant makes a showing that there is
12 probable cause to believe that the person's actions could have
13 the effect of thwarting interception from a specified facility
14 ~~and the applicant makes a showing of a purpose, on the part of~~
15 ~~that person, to thwart interception by changing facilities.~~

16 3. The judge finds that such showing ~~purpose~~ has been
17 adequately made ~~shown~~.

18 4. The order authorizing or approving the interception
19 is limited to interception only for such time as it is
20 reasonable to presume that the person identified in the
21 application is or was reasonably proximate to the instrument
22 through which such communication will be or was transmitted.

23 ~~(12)(11)~~ If an interception of a communication is to
24 be carried out pursuant to paragraph (11)(a)~~subsection (10)~~,
25 such interception may not begin until the ~~facilities from~~
26 ~~which, or the place where,~~the communication is to be
27 intercepted is ascertained by the person implementing the
28 interception order. A provider of wire or electronic
29 communications service that has received an order as provided
30 under paragraph(11)(10)~~(b)~~ may petition the court to modify
31 or quash the order on the ground that the interception cannot

1 be performed in a timely or reasonable fashion. The court,
2 upon notice to the state, shall decide such a petition
3 expeditiously.

4 Section 5. Subsection (2) of section 934.10, Florida
5 Statutes, is amended to read:

6 934.10 Civil remedies.--

7 (2) A good faith reliance on:

8 (a) A court order, subpoena, or legislative
9 authorization as provided in ss. 934.03-934.09, ~~or~~

10 (b) A request of an investigative or law enforcement
11 officer under s. 934.09(7), or

12 (c)~~(b)~~ A good faith determination that federal or
13 Florida law, or s. 2511(3) of Title 18 U.S.C., permitted the
14 conduct complained of

15
16 shall constitute a complete defense to any civil or criminal,
17 or administrative action arising out of such conduct under the
18 laws of this state.

19 Section 6. Subsections (4) and (5) of section 934.23,
20 Florida Statutes, are amended, and subsection (7) is added to
21 said section, to read:

22 934.23 Requirements for governmental access.--

23 (4)(a) Except as provided in paragraph (b), a provider
24 of electronic communication service or remote computing
25 service may disclose a record or other information pertaining
26 to a subscriber or customer of such service, not including the
27 contents of communication covered by subsection (1) or
28 subsection (2), to any person other than an investigative or
29 law enforcement officer.

30 (b) A provider of electronic communication service or
31 remote computing service shall disclose a record or other

1 information pertaining to a subscriber to or customer of such
2 service, not including the contents of communications covered
3 by subsection (1) or subsection (2), to an investigative or
4 law enforcement officer only when the investigative or law
5 enforcement officer:

- 6 ~~1. Uses a subpoena;~~
7 1.2. Obtains a warrant issued by the judge of a court
8 of competent jurisdiction;
9 ~~2.3.~~ Obtains a court order for such disclosure under
10 subsection (5); or
11 ~~3.4.~~ Has the consent of the subscriber or customer to
12 such disclosure.

13 (c) A provider of electronic communication service or
14 remote computing service shall disclose to an investigative or
15 law enforcement officer the name, address, telephone toll
16 billing records, telephone number or other subscriber number
17 of identity, length of service as a subscriber to or customer
18 of such service, and the types of services the subscriber or
19 customer used, whenever the governmental entity uses a
20 subpoena.

21 (d)~~(c)~~ An investigative or law enforcement officer who
22 receives records or information under this subsection is not
23 required to provide notice to a subscriber or customer.

24 (5) A court order for disclosure under subsection (2),
25 subsection (3), or subsection (4) shall issue only if the
26 investigative or law enforcement officer offers specific and
27 articulable facts showing that there are reasonable grounds
28 ~~shows that there is reason~~ to believe the contents of a wire
29 or electronic communication or the records of other
30 information sought are relevant and material to an ongoing
31 criminal investigation ~~a legitimate law enforcement inquiry.~~

1 A court issuing an order pursuant to this section, on a motion
2 made promptly by the service provider, may quash or modify
3 such order ~~on motion made promptly by the service provider~~ if
4 the information or records requested are unusually voluminous
5 in nature or compliance with such order otherwise would cause
6 an undue burden on such provider.

7 (7)(a) A provider of wire or electronic communication
8 services or a remote computing service, upon the request of an
9 investigative or law enforcement officer, shall take all
10 necessary steps to preserve records and other evidence in the
11 provider's possession pending the issuance of a court order or
12 other process.

13 (b) Records described in paragraph (a) shall be
14 retained for a period of 90 days, which shall be extended for
15 an additional 90 day period upon a renewed request by an
16 investigative or law enforcement officer.

17 Section 7. Subsection (4) of section 934.27, Florida
18 Statutes, is amended to read:

19 934.27 Civil action: relief; damages; defenses.--

20 (4) A good faith reliance on any of the following is a
21 complete defense to any civil or criminal action brought under
22 ss. 934.21-934.28:

23 (a) A court warrant or order, a subpoena, or a
24 statutory authorization.

25 (b) A request of an investigative or law enforcement
26 officer under s. 934.09(7).

27 (c)~~(b)~~ A good faith determination that s. 934.03(3)
28 permitted the conduct complained of.

29 Section 8. Subsection (4) is added to section 934.31,
30 Florida Statutes, to read:

31

1 934.31 General prohibition on pen register and trap
2 and trace device use; exception.--

3 (4) An investigative or law enforcement officer
4 authorized to install and use a pen register under ss.
5 934.31-934.34 shall use technology reasonably available to the
6 officer that restricts the recording or decoding of electronic
7 or other impulses to the dialing and signaling information
8 used in call processing.

9 Section 9. Subsection (2) of section 934.34, Florida
10 Statutes, is amended to read:

11 934.34 Assistance in installation and use of a pen
12 register or a trap and trace device.--

13 (2) Upon the request of the applicant specified in s.
14 934.32(1), a provider of a wire or electronic communication
15 service, landlord, custodian, or other person shall install a
16 trap and trace device forthwith on the appropriate line and
17 shall furnish such investigative or law enforcement officer or
18 other applicant all additional information, facilities, and
19 technical assistance, including installation and operation of
20 the device unobtrusively and with a minimum of interference
21 with the services that the person so ordered by the court
22 accords the party with respect to whom the installation and
23 use is to take place if such installation and assistance is
24 directed by a court order as provided in s. 934.33(2)(b).
25 Unless otherwise ordered by the court, the results of the trap
26 and trace device shall be furnished, pursuant to s.
27 934.33(2)(b) or s. 934.35, to an officer of the law
28 enforcement agency designated in the court order at reasonable
29 intervals during regular business hours for the duration of
30 the order. The obligation of a provider of electronic
31 communication service under such an order, or under such

1 emergency pen register or trap and trace device installation,
2 may include, but is not limited to, conducting an in-progress
3 trace, or providing other assistance to support the
4 investigation as may be specified in the order.

5 Section 10. Section 934.35, Florida Statutes, is
6 created to read:

7 934.35 Emergency pen register and trap and trace device
8 installation.--

9 (1) Notwithstanding any other provision of this
10 chapter, any investigative or law enforcement officer
11 specially designated by the Governor, the Attorney General,
12 the statewide prosecutor, or any state attorney acting
13 pursuant to this chapter, who reasonably determines that:

14 (a) An emergency situation exists that involves
15 immediate danger of death or serious physical injury to any
16 person, involves conspiratorial activities characteristic of
17 organized crime, or involves the danger of escape of a
18 prisoner that requires the installation and use of a pen
19 register or a trap and trace device before an order
20 authorizing such installation and use can, with due diligence,
21 be obtained; and

22 (b) There are grounds upon which an order could be
23 entered under this chapter to authorize such interception,
24
25 may have installed and use a pen register or trap and trace
26 device if, within 48 hours after the installation has occurred
27 or begins to occur, an order approving the installation or use
28 is issued in accordance with s. 934.33.

29 (2) In the absence of an authorizing order, such use
30 shall immediately terminate when the information sought is
31 obtained, when the application for the order is denied, or

1 when 48 hours have lapsed since the installation of the pen
2 register or trap and trace device, whichever is earlier.

3 (3) The knowing installation or use by any
4 investigative or law enforcement officer of a pen register or
5 trap and trace device pursuant to subsection (1) without
6 applying for an authorizing order within 48 hours after such
7 installation is a violation of s. 934.31.

8 (4) A provider of wire or electronic service, a
9 landlord, a custodian, or any other person who furnished
10 facilities or technical assistance pursuant to this section
11 shall be reasonably compensated for such reasonable expenses
12 incurred in providing such facilities and assistance.

13 Section 11. This act shall take effect October 1,
14 1999.

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17 HOUSE SUMMARY

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19 Revises communications security provisions relating to
20 prohibitions of intentional disclosure of authorized
21 intercepts to unauthorized parties; authorizations to
22 intercept electronic communications for quality control
23 purposes; authorizations to provide technical assistance
24 in emergency interceptions; emergency interceptions;
25 requirements for applications to intercept wire or
26 electronic communications; defenses to civil, criminal,
27 or administrative liability; required disclosures by
28 service providers to investigative or law enforcement
29 officers; criteria for obtaining a court-order for
30 disclosure; preservation of records and evidence by
31 service providers; installation of emergency pen register
and trap and trace devices. See bill for details.