

By the Committees on Utilities & Communications, 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; holding providers harmless in

1 certain circumstances; providing for
2 compensation for expenses; amending s. 934.27,
3 F.S.; including reliance on investigative or
4 law enforcement officer requests for emergency
5 intercepts as a complete defense to civil or
6 criminal liability; amending s. 934.31, F.S.;
7 requiring investigative or law enforcement
8 officers to use reasonably available
9 restrictive technology to limit access to
10 certain information in processing calls;
11 amending s. 934.34, F.S.; requiring assistance
12 of service providers in installing emergency
13 pen register or trap and trace devices;
14 creating s. 934.35, F.S.; providing for
15 installation of emergency pen register and trap
16 and trace devices; providing requirements;
17 providing limitations; holding providers
18 harmless under certain circumstances; providing
19 for compensation for expenses; providing an
20 effective date.

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22 Be It Enacted by the Legislature of the State of Florida:
23

24 Section 1. Subsections (1), (4), and (12) of section
25 934.02, Florida Statutes, are amended to read:

26 934.02 Definitions.--As used in this chapter:

27 (1) "Wire communication" means any aural transfer made
28 in whole or in part through the use of facilities for the
29 transmission of communications by the aid of wire, cable, or
30 other like connection between the point of origin and the
31 point of reception including the use of such connection in a

1 switching station furnished or operated by any person engaged
2 in providing or operating such facilities for the transmission
3 of intrastate, interstate, or foreign communications or
4 communications affecting intrastate, interstate, or foreign
5 commerce. Such term includes any electronic storage of such
6 communication ~~but does not include the radio portion of a~~
7 ~~cordless telephone communication that is transmitted between~~
8 ~~the cordless telephone handset and the base unit.~~

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

12 (a) Any telephone or telegraph instrument, equipment,
13 or facility, or any component thereof:

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

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

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

27 (12) "Electronic communication" means any transfer of
28 signs, signals, writing, images, sounds, data, or intelligence
29 of any nature transmitted in whole or in part by a wire,
30 radio, electromagnetic, photoelectronic, or photooptical

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1 system that affects intrastate, interstate, or foreign
2 commerce, but does not include:
3 ~~(a) The radio portion of a cordless telephone~~
4 ~~communication that is transmitted between the cordless~~
5 ~~telephone handset and the base unit;~~
6 (a)(b) Any wire or oral communication;
7 (b)(c) Any communication made through a tone-only
8 paging device; ~~or~~
9 (c)(d) Any communication from an electronic or
10 mechanical device which permits the tracking of the movement
11 of a person or an object; or
12 (d) Electronic funds transfer information stored by a
13 financial institution in a communications system used for the
14 electronic storage and transfer of funds.

15 Section 2. Subsection (1), paragraphs (a) and (e) of
16 subsection (2), and paragraph (b) of subsection (4) of section
17 934.03, Florida Statutes, are amended to read:

18 934.03 Interception and disclosure of wire, oral, or
19 electronic communications prohibited.--

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

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

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

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

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

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

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

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

25
26 shall be punished as provided in subsection (4).

27 (2)(a)1. It is lawful under ss. 934.03-934.09 for an
28 operator of a switchboard, or an officer, employee, or agent
29 of a provider of wire or electronic communication service
30 whose facilities are used in the transmission of a wire or
31 electronic communication, to intercept, disclose, or use that

1 communication in the normal course of his or her employment
2 while engaged in any activity which is a necessary incident to
3 the rendition of his or her service or to the protection of
4 the rights or property of the provider of that service, except
5 that a provider of wire communication service to the public
6 shall not utilize service observing or random monitoring
7 except for mechanical or service quality control checks.

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

16 a. A court order directing such assistance signed by
17 the authorizing judge; or

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

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

27 3. A provider of wire, oral, or electronic
28 communication service, or an officer, employee, or agent
29 thereof, or landlord, custodian, or other person may not
30 disclose the existence of any interception or the device used
31 to accomplish the interception with respect to which the

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

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

16 (4)(a) Except as provided in paragraph (b), whoever
17 violates subsection (1) is guilty of a felony of the third
18 degree, punishable as provided in s. 775.082, s. 775.083, s.
19 775.084, or s. 934.41.

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

29 1. If the communication is not the radio portion of a
30 cellular telephone communication, a cordless telephone
31 communication that is transmitted between the cordless

1 telephone handset and the base unit,a public land mobile
2 radio service communication, or a paging service
3 communication, and the conduct is not that described in
4 subparagraph (2)(h)7., the person committing the offense is
5 guilty of a misdemeanor of the first degree, punishable as
6 provided in s. 775.082 or s. 775.083.

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

15 Section 3. Section 934.07, Florida Statutes, is
16 amended to read:

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

1 provisions of the Florida Anti-Fencing Act; any violation of
2 chapter 895; any violation of chapter 896; any violation of
3 chapter 815; any violation of chapter 847; any violation of s.
4 827.071; any violation of s. 944.40; or any conspiracy to
5 commit any violation of the laws of this state relating to the
6 crimes specifically enumerated above.

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

14 934.09 Procedure for interception of wire, oral, or
15 electronic communications.--

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

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

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

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

1 3. A particular description of the type of
2 communications sought to be intercepted.

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

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

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

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

26 (a)1. An emergency situation exists that involves:

27 a. Immediate danger of death or serious physical
28 injury to any person;

29 b. Conspiratorial activities characteristic of
30 organized crime; or

31 c. The danger of escape of a prisoner; and

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

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

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

27 1. The application is by an agent or officer of a law
28 enforcement agency and is approved by the Governor, the
29 Attorney General, the statewide prosecutor, or a state
30 attorney.
31

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

5 3. The judge finds that such specification is not
6 practical.

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

9 1. The application is by an agent or officer of a law
10 enforcement agency and is approved by the Governor, the
11 Attorney General, the statewide prosecutor, or a state
12 attorney.

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

20 3. The judge finds that such showing ~~purpose~~ has been
21 adequately made ~~shown~~.

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

27 ~~(12)(11)~~ If an interception of a communication is to
28 be carried out pursuant to paragraph (11)(a)~~subsection (10)~~,
29 such interception may not begin until the ~~facilities from~~
30 ~~which, or the place where,~~ the communication is to be
31 intercepted is ascertained by the person implementing the

1 interception order. A provider of wire or electronic
2 communications service that has received an order as provided
3 under paragraph (11)~~(10)~~(b) may petition the court to modify
4 or quash the order on the ground that the interception cannot
5 be performed in a timely or reasonable fashion. The court,
6 upon notice to the state, shall decide such a petition
7 expeditiously.

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

10 934.10 Civil remedies.--

11 (2) A good faith reliance on:

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

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

16 (c)~~(b)~~ A good faith determination that federal or
17 Florida law, or federal law other than 18 U.S.C. s.

18 2511(2)(d),permitted the conduct complained of

19
20 shall constitute a complete defense to any civil or criminal,
21 or administrative action arising out of such conduct under the
22 laws of this state.

23 Section 6. Subsections (4) and (5) of section 934.23,
24 Florida Statutes, are amended, and subsections (7) and (8) are
25 added to said section, to read:

26 934.23 Requirements for governmental access.--

27 (4)(a) Except as provided in paragraph (b), a provider
28 of electronic communication service or remote computing
29 service may disclose a record or other information pertaining
30 to a subscriber or customer of such service, not including the
31 contents of communication covered by subsection (1) or

1 subsection (2), to any person other than an investigative or
2 law enforcement officer.

3 (b) A provider of electronic communication service or
4 remote computing service shall disclose a record or other
5 information pertaining to a subscriber to or customer of such
6 service, not including the contents of communications covered
7 by subsection (1) or subsection (2), to an investigative or
8 law enforcement officer only when the investigative or law
9 enforcement officer:

10 ~~1. Uses a subpoena;~~

11 ~~1.2.~~ Obtains a warrant issued by the judge of a court
12 of competent jurisdiction;

13 ~~2.3.~~ Obtains a court order for such disclosure under
14 subsection (5); or

15 ~~3.4.~~ Has the consent of the subscriber or customer to
16 such disclosure.

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

25 ~~(d)(e)~~ An investigative or law enforcement officer who
26 receives records or information under this subsection is not
27 required to provide notice to a subscriber or customer.

28 (5) A court order for disclosure under subsection (2),
29 subsection (3), or subsection (4) shall issue only if the
30 investigative or law enforcement officer offers specific and
31 articulable facts showing that there are reasonable grounds

1 ~~shows that there is reason~~ to believe the contents of a wire
2 or electronic communication or the records of other
3 information sought are relevant and material to an ongoing
4 criminal investigation ~~a legitimate law enforcement inquiry~~.
5 A court issuing an order pursuant to this section, on a motion
6 made promptly by the service provider, may quash or modify
7 such order ~~on motion made promptly by the service provider~~ if
8 the information or records requested are unusually voluminous
9 in nature or compliance with such order otherwise would cause
10 an undue burden on such provider.

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

17 (b) Records described in paragraph (a) shall be
18 retained for a period of 90 days, which shall be extended for
19 an additional 90-day period upon a renewed request by an
20 investigative or law enforcement officer.

21 (8) A provider of electronic communication service or
22 remote computing service or any other person who furnished
23 assistance pursuant to this section shall be held harmless
24 from any claims and civil liability resulting from the
25 disclosure of information pursuant to this section and shall
26 be reasonably compensated for reasonable expenses incurred in
27 providing such assistance.

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

30 934.27 Civil action: relief; damages; defenses.--
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1 (4) A good faith reliance on any of the following is a
2 complete defense to any civil or criminal action brought under
3 ss. 934.21-934.28:

4 (a) A court warrant or order, a subpoena, or a
5 statutory authorization.

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

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

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

12 934.31 General prohibition on pen register and trap
13 and trace device use; exception.--

14 **(4) An investigative or law enforcement officer**
15 **authorized to install and use a pen register under ss.**
16 **934.31-934.34 shall use technology reasonably available to the**
17 **officer that restricts the recording or decoding of electronic**
18 **or other impulses to the dialing and signaling information**
19 **used in call processing.**

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

22 934.34 Assistance in installation and use of a pen
23 register or a trap and trace device.--

24 (2) Upon the request of the applicant specified in s.
25 934.32(1), a provider of a wire or electronic communication
26 service, landlord, custodian, or other person shall install a
27 trap and trace device forthwith on the appropriate line and
28 shall furnish such investigative or law enforcement officer or
29 other applicant all additional information, facilities, and
30 technical assistance, including installation and operation of
31 the device unobtrusively and with a minimum of interference

1 with the services that the person so ordered by the court
2 accords the party with respect to whom the installation and
3 use is to take place if such installation and assistance is
4 directed by a court order as provided in s. 934.33(2)(b).
5 Unless otherwise ordered by the court, the results of the trap
6 and trace device shall be furnished, pursuant to s.
7 934.33(2)(b) or s. 934.35, to an officer of the law
8 enforcement agency designated in the court order at reasonable
9 intervals during regular business hours for the duration of
10 the order. The obligation of a provider of electronic
11 communication service under such an order, or under such
12 emergency pen register or trap and trace device installation,
13 may include, but is not limited to, conducting an in-progress
14 trace, or providing other assistance to support the
15 investigation as may be specified in the order.

16 Section 10. Section 934.35, Florida Statutes, is
17 created to read:

18 934.35 Emergency pen register and trap and trace
19 device installation.--

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

25 (a)1. An emergency situation exists that involves:

26 a. Immediate danger of death or serious physical
27 injury to any person;

28 b. Conspiratorial activities characteristic of
29 organized crime; or

30 c. The danger of escape of a prisoner; and
31

1 2. Requires the installation and use of a pen register
2 or a trap and trace device before an order authorizing such
3 installation and use can, with due diligence, be obtained; and

4 (b) There are grounds upon which an order could be
5 entered under this chapter to authorize such interception,

6
7 may have installed and use a pen register or trap and trace
8 device if, within 48 hours after the installation has occurred
9 or begins to occur, an order approving the installation or use
10 is issued in accordance with s. 934.33.

11 (2) In the absence of an authorizing order, such use
12 shall immediately terminate when the information sought is
13 obtained, when the application for the order is denied, or
14 when 48 hours have lapsed since the installation of the pen
15 register or trap and trace device, whichever is earlier.

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

21 (4) A provider of wire or electronic service, a
22 landlord, a custodian, or any other person who furnished
23 facilities or technical assistance pursuant to this section
24 shall be held harmless from any claims and civil liability
25 resulting from the disclosure of information pursuant to this
26 section and shall be reasonably compensated for reasonable
27 expenses incurred in providing such facilities and assistance.

28 Section 11. This act shall take effect October 1,
29 1999.

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