

Bill No. CS/HB 1123

Amendment No.

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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11	Senator Brown-Waite moved the following amendment to amendment		
12	(733266):		
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14	Senate Amendment (with title amendment)		
15	On page 3, line 18, through		
16	page 4, line 13, delete those lines		
17			
18	and insert:		
19	Section 5. Subsections (1), (4), and (12) of section		
20	934.02, Florida Statutes, are amended to read:		
21	934.02 Definitions.--As used in this chapter:		
22	(1) "Wire communication" means any aural transfer made		
23	in whole or in part through the use of facilities for the		
24	transmission of communications by the aid of wire, cable, or		
25	other like connection between the point of origin and the		
26	point of reception including the use of such connection in a		
27	switching station furnished or operated by any person engaged		
28	in providing or operating such facilities for the transmission		
29	of intrastate, interstate, or foreign communications or		
30	communications affecting intrastate, interstate, or foreign		
31	commerce. Such term includes any electronic storage of such		

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1 ~~communication but does not include the radio portion of a~~
2 ~~cordless telephone communication that is transmitted between~~
3 ~~the cordless telephone handset and the base unit.~~

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

7 (a) Any telephone or telegraph instrument, equipment,
8 or facility, or any component thereof:

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

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

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

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

29 ~~(a) The radio portion of a cordless telephone~~
30 ~~communication that is transmitted between the cordless~~
31 ~~telephone handset and the base unit;~~

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- 1 ~~(a)(b)~~ Any wire or oral communication;
2 ~~(b)(c)~~ Any communication made through a tone-only
3 paging device; ~~or~~
4 ~~(c)(d)~~ Any communication from an electronic or
5 mechanical device which permits the tracking of the movement
6 of a person or an object; ~~or-~~
7 (d) Electronic funds transfer information stored by a
8 financial institution in a communications system used for the
9 electronic storage and transfer of funds.

10 Section 6. Subsection (1), paragraphs (a), (e), and
11 (g) of subsection (2), and subsection (4) of section 934.03,
12 Florida Statutes, are amended to read:

13 934.03 Interception and disclosure of wire, oral, or
14 electronic communications prohibited.--

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

17 (a) Intentionally intercepts, endeavors to intercept,
18 or procures any other person to intercept or endeavor to
19 intercept any wire, oral, or electronic communication;

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

24 1. Such device is affixed to, or otherwise transmits a
25 signal through, a wire, cable, or other like connection used
26 in wire communication; or

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

29 (c) Intentionally discloses, or endeavors to disclose,
30 to any other person the contents of any wire, oral, or
31 electronic communication, knowing or having reason to know

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1 that the information was obtained through the interception of
2 a wire, oral, or electronic communication in violation of this
3 subsection; ~~or~~

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

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

20
21 shall be punished as provided in subsection (4).

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

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1 shall not utilize service observing or random monitoring
2 except for mechanical or service quality control checks.

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

11 a. A court order directing such assistance signed by
12 the authorizing judge; or

13 b. A certification in writing by a person specified in
14 s. 934.09(7) that no warrant or court order is required by
15 law, that all statutory requirements have been met, and that
16 the specified assistance is required, setting forth the period
17 of time during which the provision of the information,
18 facilities, or technical assistance is authorized and
19 specifying the information, facilities, or technical
20 assistance required.

21 3. A provider of wire, oral, or electronic
22 communication service, or an officer, employee, or agent
23 thereof, or landlord, custodian, or other person may not
24 disclose the existence of any interception or the device used
25 to accomplish the interception with respect to which the
26 person has been furnished an order under ss. 934.03-934.09,
27 except as may otherwise be required by legal process and then
28 only after prior notice to the Governor, the Attorney General,
29 the statewide prosecutor, or a state attorney, as may be
30 appropriate. Any such disclosure renders such person liable
31 for the civil damages provided under s. 934.10 and such person

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1 may be prosecuted under s. 934.43. An action may not be
2 brought against any provider of wire, oral, or electronic
3 communication service, or an officer, employee, or agent
4 thereof, or landlord, custodian, or other person for providing
5 information, facilities, or assistance in accordance with the
6 terms of a court order under ss. 934.03-934.09.

7 (e) It is unlawful to intercept any wire, oral, or
8 electronic communication for the purpose of committing any
9 criminal act.

10 (g) It is lawful under ss. 934.03-934.09 for an
11 employee of:

12 1. An ambulance service licensed pursuant to s.
13 401.25, a fire station employing firefighters as defined by s.
14 633.30, a public utility as defined by ss. 365.01 and 366.02,
15 a law enforcement agency as defined by s. 934.02(10), or any
16 other entity with published emergency telephone numbers;

17 2. An agency operating an emergency telephone number
18 "911" system established pursuant to s. 365.171; or

19 3. The central abuse hotline operated pursuant to s.
20 39.201,

21
22 to intercept and record incoming wire communications; however,
23 such employee may intercept and record incoming wire
24 communications on designated "911" telephone numbers and
25 published nonemergency ~~emergency~~ telephone numbers staffed by
26 trained dispatchers at public safety answering points only.

27 It is also lawful for such employee to intercept and record
28 outgoing wire communications to the numbers from which such
29 incoming wire communications were placed when necessary to
30 obtain information required to provide the emergency services
31 being requested.

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

5 (b) If the offense is a first offense under paragraph
6 (a) and is not for any tortious or illegal purpose or for
7 purposes of direct or indirect commercial advantage or private
8 commercial gain, and the wire or electronic communication with
9 respect to which the offense under paragraph (a) was committed
10 is a radio communication that is not scrambled, encrypted or,
11 or transmitted using modulation techniques the essential
12 parameters of which have been withheld from the public with
13 the intention of preserving the privacy of such communication,
14 then:

15 1. If the communication is not the radio portion of a
16 cellular telephone communication, a cordless telephone
17 communication that is transmitted between the cordless
18 telephone handset and the base unit, a public land mobile
19 radio service communication, or a paging service
20 communication, and the conduct is not that described in
21 subparagraph (2)(h)7., the person committing the offense is
22 guilty of a misdemeanor of the first degree, punishable as
23 provided in s. 775.082 or s. 775.083.

24 2. If the communication is the radio portion of a
25 cellular telephone communication, a cordless telephone
26 communication that is transmitted between the cordless
27 telephone handset and the base unit, a public land mobile
28 radio service communication, or a paging service
29 communication, the person committing the offense is guilty of
30 a misdemeanor of the second degree, punishable as provided in
31 s. 775.082 or s. 775.083.

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1 Section 7. Section 934.07, Florida Statutes, is
2 amended to read:

3 934.07 Authorization for interception of wire, oral,
4 or electronic communications.--The Governor, the Attorney
5 General, the statewide prosecutor, or any state attorney may
6 authorize an application to a judge of competent jurisdiction
7 for, and such judge may grant in conformity with ss.
8 934.03-934.09, an order authorizing or approving the
9 interception of wire, oral, or electronic communications by
10 the Department of Law Enforcement or any law enforcement
11 agency as defined in s. 934.02 having responsibility for the
12 investigation of the offense as to which the application is
13 made when such interception may provide or has provided
14 evidence of the commission of the offense of murder,
15 kidnapping, arson, gambling, robbery, burglary, theft, dealing
16 in stolen property, ~~prostitution~~, criminal usury, bribery, or
17 extortion; any violation of chapter 893; any violation of the
18 provisions of the Florida Anti-Fencing Act; any violation of
19 chapter 895; any violation of chapter 896; any violation of
20 chapter 815; any violation of chapter 847; any violation of s.
21 827.071; any violation of s. 944.40; or any conspiracy to
22 commit any violation of the laws of this state relating to the
23 crimes specifically enumerated above.

24 Section 8. Paragraph (b) of subsection (1) and
25 paragraph (d) of subsection (3) of section 934.09, Florida
26 Statutes, are amended, present subsections (7) through (11) of
27 that section are renumbered subsections (8) through (12),
28 respectively, and amended, and a new subsection (7) is added
29 to that section, to read:

30 934.09 Procedure for interception of wire, oral, or
31 electronic communications.--

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1 (1) Each application for an order authorizing or
2 approving the interception of a wire, oral, or electronic
3 communication under ss. 934.03-934.09 shall be made in writing
4 upon oath or affirmation to a judge of competent jurisdiction
5 and shall state the applicant's authority to make such
6 application. Each application shall include the following
7 information:

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

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

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

17 3. A particular description of the type of
18 communications sought to be intercepted.

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

21 (3) Upon such application, the judge may enter an ex
22 parte order, as requested or as modified, authorizing or
23 approving interception of wire, oral, or electronic
24 communications within the territorial jurisdiction of the
25 court in which the judge is sitting, and outside such
26 jurisdiction but within the State of Florida in the case of a
27 mobile interception device authorized by the judge within such
28 jurisdiction, if the judge determines on the basis of the
29 facts submitted by the applicant that:

30 (d) Except as provided in subsection ~~(11)(10)~~, there
31 is probable cause for belief that the facilities from which,

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1 or the place where, the wire, oral, or electronic
2 communications are to be intercepted are being used, or are
3 about to be used, in connection with the commission of such
4 offense, or are leased to, listed in the name of, or commonly
5 used by such person.

6 (7) Notwithstanding any other provision of this
7 chapter, any investigative or law enforcement officer
8 specially designated by the Governor, the Attorney General,
9 the statewide prosecutor, or a state attorney acting under
10 this chapter, who reasonably determines that:

11 (a) An emergency exists that:

12 1. Involves immediate danger of death or serious
13 physical injury to any person or the danger of escape of a
14 prisoner; and

15 2. Requires that a wire, oral, or electronic
16 communication be intercepted before an order authorizing such
17 interception can, with due diligence, be obtained; and

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

20
21 may intercept such wire, oral, or electronic communication if
22 an application for an order approving the interception is made
23 in accordance with this section within 48 hours after the
24 interception has occurred or begins to occur. In the absence
25 of an order, such interception shall immediately terminate
26 when the communication sought is obtained or when the
27 application for the order is denied, whichever is earlier. If
28 such application for approval is denied, or in any other case
29 in which the interception is terminated without an order
30 having been issued, the contents of any wire, oral, or
31 electronic communication intercepted shall be treated as

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1 having been obtained in violation of s. 934.03(4), and an
2 inventory shall be served as provided for in paragraph (8)(e)
3 on the person named in the application.

4 (8)(a)(7)(a) The contents of any wire, oral, or
5 electronic communication intercepted by any means authorized
6 by ss. 934.03-934.09 shall, if possible, be recorded on tape
7 or wire or other comparable device. The recording of the
8 contents of any wire, oral, or electronic communication under
9 this subsection shall be kept in such a way as will protect
10 the recording from editing or other alterations. Immediately
11 upon the expiration of the period of the order, or extensions
12 thereof, such recordings shall be made available to the judge
13 issuing such order and sealed under his or her directions.
14 Custody of the recordings shall be wherever the judge orders.
15 They shall not be destroyed except upon an order of the
16 issuing or denying judge, or that judge's successor in office,
17 and in any event shall be kept for 10 years. Duplicate
18 recordings may be made for use or disclosure pursuant to the
19 provisions of s. 934.08(1) and (2) for investigations.

20 (b) The presence of the seal provided for by this
21 subsection, or a satisfactory explanation for the absence
22 thereof, shall be a prerequisite for the use or disclosure of
23 the contents of any wire, oral, or electronic communication or
24 evidence derived therefrom under s. 934.08(3), as required by
25 federal law.

26 (c) Applications made and orders granted under ss.
27 934.03-934.09 shall be sealed by the judge. Custody of the
28 applications and orders shall be wherever the judge directs.
29 As required by federal law, such applications and orders shall
30 be disclosed only upon a showing of good cause before a judge
31 of competent jurisdiction and shall not be destroyed except on

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1 order of the issuing or denying judge, or that judge's
2 successor in office, and in any event shall be kept for 10
3 years.

4 (d) Any violation of the provisions of this subsection
5 may be punished as contempt of the issuing or denying judge.

6 (e) Within a reasonable time but not later than 90
7 days after the termination of the period of an order or
8 extensions thereof, the issuing or denying judge shall cause
9 to be served on the persons named in the order or the
10 application, and such other parties to intercepted
11 communications as the judge may determine in his or her
12 discretion to be in the interest of justice, an inventory
13 which shall include notice of:

14 1. The fact of the entry of the order or the
15 application.

16 2. The date of the entry and the period of authorized,
17 approved, or disapproved interception, or the denial of the
18 application.

19 3. The fact that during the period wire, oral, or
20 electronic communications were or were not intercepted.

21

22 The judge, upon the filing of a motion, may make available to
23 such person or the person's counsel for inspection such
24 portions of the intercepted communications, applications, and
25 orders as the judge determines to be in the interest of
26 justice. On an ex parte showing of good cause to a judge of
27 competent jurisdiction, the serving of the inventory required
28 by this paragraph may be postponed.

29 ~~(9)(8)~~ As required by federal law, the contents of any
30 intercepted wire, oral, or electronic communication or
31 evidence derived therefrom shall not be received in evidence

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1 or otherwise disclosed in any trial, hearing, or other
2 proceeding unless each party, not less than 10 days before the
3 trial, hearing, or proceeding, has been furnished with a copy
4 of the court order and accompanying application under which
5 the interception was authorized or approved. This 10-day
6 period may be waived by the judge if he or she finds that it
7 was not possible to furnish the party with the above
8 information 10 days before the trial, hearing, or proceeding
9 and that the party will not be prejudiced by the delay in
10 receiving such information.

11 (10)(a)~~(9)(a)~~ Any aggrieved person in any trial,
12 hearing, or proceeding in or before any court, department,
13 officer, agency, regulatory body, or other authority may move
14 to suppress the contents of any intercepted wire, oral, or
15 electronic communication, or evidence derived therefrom, on
16 the grounds that:

- 17 1. The communication was unlawfully intercepted;
- 18 2. The order of authorization or approval under which
19 it was intercepted is insufficient on its face; or
- 20 3. The interception was not made in conformity with
21 the order of authorization or approval.

22
23 Such motion shall be made before the trial, hearing, or
24 proceeding unless there was no opportunity to make such motion
25 or the person was not aware of the grounds of the motion. If
26 the motion is granted, the contents of the intercepted wire or
27 oral communication, or evidence derived therefrom, shall be
28 treated as having been obtained in violation of ss.
29 934.03-934.09. The judge, upon the filing of such motion by
30 the aggrieved person, may make available to the aggrieved
31 person or his or her counsel for inspection such portions of

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1 the intercepted communication or evidence derived therefrom as
2 the judge determines to be in the interest of justice.

3 (b) In addition to any other right to appeal, the
4 state shall have the right to appeal from an order granting a
5 motion to suppress made under paragraph (a) or the denial of
6 an application for an order of approval if the attorney shall
7 certify to the judge or other official granting such motion or
8 denying such application that the appeal is not taken for
9 purposes of delay. Such appeal shall be taken within 30 days
10 after the date the order was entered and shall be diligently
11 prosecuted.

12 (c) The remedies and sanctions described in ss.
13 934.03-934.10 with respect to the interception of electronic
14 communications are the only judicial remedies and sanctions
15 for violations of those sections involving such
16 communications.

17 ~~(11)(10)~~ The requirements of subparagraph (1)(b)2. and
18 paragraph (3)(d) relating to the specification of the
19 facilities from which, or the place where, the communication
20 is to be intercepted do not apply if:

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

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

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

31 3. The judge finds that such specification is not

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1 practical.

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

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

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

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

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

22 (12)~~(11)~~ If an interception of a communication is to
23 be carried out pursuant to subsection(11)~~(10)~~, such
24 interception may not begin until the facilities from which, or
25 the place where, the communication is to be intercepted is
26 ascertained by the person implementing the interception order.
27 A provider of wire or electronic communications service that
28 has received an order as provided under paragraph(11)(b)
29 ~~(10)(b)~~ may petition the court to modify or quash the order on
30 the ground that the interception cannot be performed in a
31 timely or reasonable fashion. The court, upon notice to the

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1 state, shall decide such a petition expeditiously.

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

4 934.10 Civil remedies.--

5 (2) A good faith reliance on:

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

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

10 (c) ~~(b)~~ A good faith determination that ~~federal or~~
11 Florida or federal law, other than 18 U.S.C. s. 2511(2)(d),
12 permitted the conduct complained of

13
14 shall constitute a complete defense to any civil or criminal,
15 or administrative action arising out of such conduct under the
16 laws of this state.

17 Section 10. Subsections (4) and (5) of section 934.23,
18 Florida Statutes, are amended, and subsections (7) and (8) are
19 added to that section, to read:

20 934.23 Requirements for governmental access.--

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

28 (b) A provider of electronic communication service or
29 remote computing service shall disclose a record or other
30 information pertaining to a subscriber to or customer of such
31 service, not including the contents of communications covered

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1 by subsection (1) or subsection (2), to an investigative or
2 law enforcement officer only when the investigative or law
3 enforcement officer:

4 ~~1. Uses a subpoena;~~

5 1.2. Obtains a warrant issued by the judge of a court
6 of competent jurisdiction;

7 2.3. Obtains a court order for such disclosure under
8 subsection (5); or

9 3.4. Has the consent of the subscriber or customer to
10 such disclosure.

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

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

21 (5) A court order for disclosure under subsection (2),
22 subsection (3), or subsection (4) shall issue only if the
23 investigative or law enforcement officer offers specific and
24 articulable facts showing that there are reasonable grounds
25 ~~shows that there is reason~~ to believe the contents of a wire
26 or electronic communication or the records of other
27 information sought are relevant and material to an ongoing
28 criminal investigation to a legitimate law enforcement
29 inquiry. A court issuing an order pursuant to this section,
30 on a motion made promptly by the service provider, may quash
31 or modify such order ~~on motion made promptly by the service~~

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1 ~~provider~~ if the information or records requested are unusually
2 voluminous in nature or compliance with such order otherwise
3 would cause an undue burden on such provider.

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

10 (b) Records referred to in paragraph (a) shall be
11 retained for a period of 90 days, which shall be extended for
12 an additional 90 days upon a renewed request by an
13 investigative or law enforcement officer.

14 (8) A provider of electronic communication service, a
15 remote computing service, or any other person who furnished
16 assistance pursuant to this section shall be held harmless
17 from any claim and civil liability resulting from the
18 disclosure of information pursuant to this section and shall
19 be reasonably compensated for reasonable expenses incurred in
20 providing such assistance.

21 Section 11. Subsection (4) of section 934.27, Florida
22 Statutes, is amended to read:

23 934.27 Civil action: relief; damages; defenses.--

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

27 (a) A court warrant or order, a subpoena, or a
28 statutory authorization.

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

31 (c)~~(b)~~ A good faith determination that s. 934.03(3)

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1 permitted the conduct complained of.

2 Section 12. Present subsection (3) of section 934.31,
3 Florida Statutes, is renumbered as subsection (5), and new
4 subsections (3) and (4) are added to that section, to read:

5 934.31 General prohibition on pen register and trap
6 and trace device use; exception.--

7 (3) An investigative or law enforcement officer
8 authorized to install and use a pen register under ss.
9 934.31-934.34 shall use technology reasonably available to him
10 or her which restricts the recording or decoding of electronic
11 or other impulses to the dialing and signaling information
12 used in call processing.

13 (4)(a) Notwithstanding any other provision of this
14 chapter, any investigative or law enforcement officer
15 specially designated by the Governor, the Attorney General,
16 the statewide prosecutor, or a state attorney acting pursuant
17 to this chapter, who reasonably determines that:

18 1. An emergency exists which:

19 a. Involves immediate danger of death or serious
20 physical injury to any person or the danger of escape of a
21 prisoner; and

22 b. Requires the installation and use of a pen register
23 or a trap and trace device before an order authorizing such
24 installation and use can, with due diligence, be obtained; and

25 2. There are grounds upon which an order could be
26 entered under this chapter to authorize such installation and
27 use,

28
29 may have installed and use a pen register or trap and trace
30 device if, within 48 hours after the installation has occurred
31 or begins to occur, an order approving the installation or use

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1 is issued in accordance with s. 934.33.

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

7 (c) The knowing installation or use by any
8 investigative or law enforcement officer of a pen register or
9 trap and trace device pursuant to paragraph (a) without
10 application for the authorizing order within 48 hours after
11 the installation constitutes a violation of s. 934.31.

12 (d) A provider of wire or electronic service,
13 landlord, custodian, or other person who has furnished
14 facilities or technical assistance pursuant to this subsection
15 shall be held harmless from any claims and civil liability
16 resulting from the disclosure of information pursuant to this
17 subsection and shall be reasonably compensated for reasonable
18 expenses incurred in providing such facilities and assistance.

19 Section 13. Subsection (2) of section 934.34, Florida
20 Statutes, is amended to read:

21 934.34 Assistance in installation and use of a pen
22 register or a trap and trace device.--

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

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1 accords the party with respect to whom the installation and
2 use is to take place if such installation and assistance is
3 directed by a court order as provided in s. 934.33(2)(b).
4 Unless otherwise ordered by the court, the results of the trap
5 and trace device shall be furnished, pursuant to s.
6 934.33(2)(b) or s. 934.31(4), to an officer of the law
7 enforcement agency designated in the court order at reasonable
8 intervals during regular business hours for the duration of
9 the order. The obligation of a provider of electronic
10 communication service under such an order or under such
11 emergency pen register or trap and trace device installation
12 may include, but is not limited to, conducting an in-progress
13 trace, or providing other assistance to support the
14 investigation as may be specified in the order.

15 Section 14. This act shall take effect October 1,
16 2000.

17
18

19 ===== T I T L E A M E N D M E N T =====

20 And the title is amended as follows:

21 On page 5, lines 3-6, delete those lines

22

23 and insert:

24 circumstances; amending s. 934.02, F.S. ;
25 redefining the terms "wire communication,"
26 "electronic, mechanical, or other device," and
27 "electronic communication"; amending s. 934.03,
28 F.S. ; prohibiting certain disclosure or
29 attempted disclosure of intercepted
30 communications; providing penalties; revising
31 limited authorization for certain personnel to

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1 intercept and record specified incoming wire
2 communications; amending s. 934.07, F.S.;
3 deleting prostitution as an offense for which
4 interception of communications may be
5 authorized; amending s. 934.09, F.S.; providing
6 for emergency interception of certain
7 communications; providing exemptions from
8 requirements for specification of facilities
9 for certain interceptions; amending s. 934.10,
10 F.S.; providing additional defense to civil
11 liability; amending s. 934.23, F.S.; requiring
12 a provider of electronic or remote computer
13 service to provide certain information when
14 subpoenaed; revising grounds for issuance of a
15 court order for disclosure; requiring
16 preservation of records; providing immunity
17 from civil liability; providing for
18 compensation; amending s. 934.27, F.S.;
19 providing additional grounds for immunity from
20 civil liability; amending s. 934.31, F.S.;
21 requiring certain technology to be used in
22 installation of pen registers and trap and
23 trace devices; amending s. 934.34, F.S.;
24 revising conditions under which assistance in
25 installing or using pen registers or trap and
26 trace devices must be provided; providing for
27 emergency pen register and trap and trace
28 device installation; providing an

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