

By Senator Brown-Waite

10-955-00

1                                   A bill to be entitled  
2           An act relating to security of communications;  
3           amending s. 934.02, F.S.; redefining the terms  
4           "wire communication," "electronic, mechanical,  
5           or other device," and "electronic  
6           communication"; amending s. 934.03, F.S.;  
7           prohibiting certain disclosure or attempted  
8           disclosure of intercepted communications;  
9           providing penalties; amending s. 934.07, F.S.;  
10          deleting prostitution as an offense for which  
11          interception of communications may be  
12          authorized; amending s. 934.09, F.S.; providing  
13          for emergency interception of certain  
14          communications; providing exemptions from  
15          requirements for specification of facilities  
16          for certain interceptions; amending s. 934.10,  
17          F.S.; providing additional defense to civil  
18          liability; amending s. 934.23, F.S.; requiring  
19          a provider of electronic or remote computer  
20          service to provide certain information when  
21          subpoenaed; revising grounds for issuance of a  
22          court order for disclosure; requiring  
23          preservation of records; providing immunity  
24          from civil liability; providing for  
25          compensation; amending s. 934.27, F.S.;  
26          providing additional grounds for immunity from  
27          civil liability; amending s. 934.31, F.S.;  
28          requiring certain technology to be used in  
29          installation of pen registers and trap and  
30          trace devices; amending s. 934.34, F.S.;  
31          revising conditions under which assistance in

1 installing or using pen registers or trap and  
2 trace devices must be provided; creating s.  
3 934.35, F.S.; providing for emergency pen  
4 register and trap and trace device  
5 installation; providing an effective date.  
6

7 Be It Enacted by the Legislature of the State of Florida:  
8

9 Section 1. Subsections (1), (4), and (12) of section  
10 934.02, Florida Statutes, are amended to read:

11 934.02 Definitions.--As used in this chapter:

12 (1) "Wire communication" means any aural transfer made  
13 in whole or in part through the use of facilities for the  
14 transmission of communications by the aid of wire, cable, or  
15 other like connection between the point of origin and the  
16 point of reception including the use of such connection in a  
17 switching station furnished or operated by any person engaged  
18 in providing or operating such facilities for the transmission  
19 of intrastate, interstate, or foreign communications or  
20 communications affecting intrastate, interstate, or foreign  
21 commerce. Such term includes any electronic storage of such  
22 communication ~~but does not include the radio portion of a~~  
23 ~~cordless telephone communication that is transmitted between~~  
24 ~~the cordless telephone handset and the base unit.~~

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

28 (a) Any telephone or telegraph instrument, equipment,  
29 or facility, or any component thereof:

30 1. Furnished to the subscriber or user by a provider  
31 of wire or electronic communication service in the ordinary

1 course of its business and being used by the subscriber or  
2 user in the ordinary course of its business or furnished by  
3 such subscriber or user for connection to the facilities of  
4 such service and used in the ordinary course of its business;  
5 or

6 2. Being used by a provider of wire or electronic  
7 communications service ~~communications common carrier~~ in the  
8 ordinary course of its business or by an investigative or law  
9 enforcement officer in the ordinary course of her or his  
10 duties.

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

13 (12) "Electronic communication" means any transfer of  
14 signs, signals, writing, images, sounds, data, or intelligence  
15 of any nature transmitted in whole or in part by a wire,  
16 radio, electromagnetic, photoelectronic, or photooptical  
17 system that affects intrastate, interstate, or foreign  
18 commerce, but does not include:

19 ~~(a) The radio portion of a cordless telephone~~  
20 ~~communication that is transmitted between the cordless~~  
21 ~~telephone handset and the base unit;~~

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

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

25 (c)~~(d)~~ Any communication from an electronic or  
26 mechanical device which permits the tracking of the movement  
27 of a person or an object; ~~or~~

28 (d) Electronic funds transfer information stored by a  
29 financial institution in a communications system used for the  
30 electronic storage and transfer of funds.

31

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

4           934.03 Interception and disclosure of wire, oral, or  
5 electronic communications prohibited.--

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

8           (a) Intentionally intercepts, endeavors to intercept,  
9 or procures any other person to intercept or endeavor to  
10 intercept any wire, oral, or electronic communication;

11           (b) Intentionally uses, endeavors to use, or procures  
12 any other person to use or endeavor to use any electronic,  
13 mechanical, or other device to intercept any oral  
14 communication when:

15           1. Such device is affixed to, or otherwise transmits a  
16 signal through, a wire, cable, or other like connection used  
17 in wire communication; or

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

20           (c) Intentionally discloses, or endeavors to disclose,  
21 to any other person the contents of any wire, oral, or  
22 electronic communication, knowing or having reason to know  
23 that the information was obtained through the interception of  
24 a wire, oral, or electronic communication in violation of this  
25 subsection; ~~or~~

26           (d) Intentionally uses, or endeavors to use, the  
27 contents of any wire, oral, or electronic communication,  
28 knowing or having reason to know that the information was  
29 obtained through the interception of a wire, oral, or  
30 electronic communication in violation of this subsection; or  
31

1           (e) Intentionally discloses, or endeavors to disclose,  
2 to any other person the contents of any wire, oral, or  
3 electronic communication intercepted by means authorized by  
4 subparagraph (2)(a)2., paragraph (2)(b), paragraph (2)(c), s.  
5 934.07, or s. 934.09 when that person knows or has reason to  
6 know that the information was obtained through the  
7 interception of such a communication in connection with a  
8 criminal investigation, has obtained or received the  
9 information in connection with a criminal investigation, and  
10 intends to improperly obstruct, impede, or interfere with a  
11 duly authorized criminal investigation;

12

13 shall be punished as provided in subsection (4).

14           (2)(a)1. It is lawful under ss. 934.03-934.09 for an  
15 operator of a switchboard, or an officer, employee, or agent  
16 of a provider of wire or electronic communication service  
17 whose facilities are used in the transmission of a wire or  
18 electronic communication, to intercept, disclose, or use that  
19 communication in the normal course of his or her employment  
20 while engaged in any activity which is a necessary incident to  
21 the rendition of his or her service or to the protection of  
22 the rights or property of the provider of that service, except  
23 that a provider of wire communication service to the public  
24 shall not utilize service observing or random monitoring  
25 except for mechanical or service quality control checks.

26           2. Notwithstanding any other law, a provider of wire,  
27 oral, or electronic communication service, or an officer,  
28 employee, or agent thereof, or landlord, custodian, or other  
29 person, may provide information, facilities, or technical  
30 assistance to a person authorized by law to intercept wire,  
31 oral, or electronic communications if such provider, or an

1 officer, employee, or agent thereof, or landlord, custodian,  
2 or other person, has been provided with:  
3       a. A court order directing such assistance signed by  
4 the authorizing judge; or  
5       b. A certification in writing by a person specified in  
6 s. 934.09(7) that no warrant or court order is required by  
7 law, that all statutory requirements have been met, and that  
8 the specified assistance is required, setting forth the period  
9 of time during which the provision of the information,  
10 facilities, or technical assistance is authorized and  
11 specifying the information, facilities, or technical  
12 assistance required.  
13       3. A provider of wire, oral, or electronic  
14 communication service, or an officer, employee, or agent  
15 thereof, or landlord, custodian, or other person may not  
16 disclose the existence of any interception or the device used  
17 to accomplish the interception with respect to which the  
18 person has been furnished an order under ss. 934.03-934.09,  
19 except as may otherwise be required by legal process and then  
20 only after prior notice to the Governor, the Attorney General,  
21 the statewide prosecutor, or a state attorney, as may be  
22 appropriate. Any such disclosure renders such person liable  
23 for the civil damages provided under s. 934.10 and such person  
24 may be prosecuted under s. 934.43. An action may not be  
25 brought against any provider of wire, oral, or electronic  
26 communication service, or an officer, employee, or agent  
27 thereof, or landlord, custodian, or other person for providing  
28 information, facilities, or assistance in accordance with the  
29 terms of a court order under ss. 934.03-934.09.  
30  
31

1 (e) It is unlawful to intercept any wire, oral, or  
2 electronic communication for the purpose of committing any  
3 criminal act.

4 (4)(a) Except as provided in paragraph (b), whoever  
5 violates subsection (1) is guilty of a felony of the third  
6 degree, punishable as provided in s. 775.082, s. 775.083, s.  
7 775.084, or s. 934.41.

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

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

27 2. If the communication is 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, the person committing the offense is guilty of  
2 a misdemeanor of the second degree, punishable as provided in  
3 s. 775.082 or s. 775.083.

4 Section 3. Section 934.07, Florida Statutes, is  
5 amended to read:

6 934.07 Authorization for interception of wire, oral,  
7 or electronic communications.--The Governor, the Attorney  
8 General, the statewide prosecutor, or any state attorney may  
9 authorize an application to a judge of competent jurisdiction  
10 for, and such judge may grant in conformity with ss.  
11 934.03-934.09, an order authorizing or approving the  
12 interception of wire, oral, or electronic communications by  
13 the Department of Law Enforcement or any law enforcement  
14 agency as defined in s. 934.02 having responsibility for the  
15 investigation of the offense as to which the application is  
16 made when such interception may provide or has provided  
17 evidence of the commission of the offense of murder,  
18 kidnapping, arson, gambling, robbery, burglary, theft, dealing  
19 in stolen property, ~~prostitution~~, criminal usury, bribery, or  
20 extortion; any violation of chapter 893; any violation of the  
21 provisions of the Florida Anti-Fencing Act; any violation of  
22 chapter 895; any violation of chapter 896; any violation of  
23 chapter 815; any violation of chapter 847; any violation of s.  
24 827.071; any violation of s. 944.40; or any conspiracy to  
25 commit any violation of the laws of this state relating to the  
26 crimes specifically enumerated above.

27 Section 4. Paragraph (b) of subsection (1) and  
28 paragraph (d) of subsection (3) of section 934.09, Florida  
29 Statutes, are amended, present subsections (7) through (11) of  
30 that section are renumbered subsections (8) through (12),  
31



1 respectively, and amended, and a new subsection (7) is added  
2 to that section, to read:

3           934.09 Procedure for interception of wire, oral, or  
4 electronic communications.--

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

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

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

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

21           3. A particular description of the type of  
22 communications sought to be intercepted.

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

25           (3) Upon such application, the judge may enter an ex  
26 parte order, as requested or as modified, authorizing or  
27 approving interception of wire, oral, or electronic  
28 communications within the territorial jurisdiction of the  
29 court in which the judge is sitting, and outside such  
30 jurisdiction but within the State of Florida in the case of a  
31 mobile interception device authorized by the judge within such

1 jurisdiction, if the judge determines on the basis of the  
2 facts submitted by the applicant that:

3 (d) Except as provided in subsection (11)~~(10)~~, there  
4 is probable cause for belief that the facilities from which,  
5 or the place where, the wire, oral, or electronic  
6 communications are to be intercepted are being used, or are  
7 about to be used, in connection with the commission of such  
8 offense, or are leased to, listed in the name of, or commonly  
9 used by such person.

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

15 (a) An emergency exists that:

16 1. Involves immediate danger of death or serious  
17 physical injury to any person or the danger of escape of a  
18 prisoner; and

19 2. Requires that a wire, oral, or electronic  
20 communication be intercepted before an order authorizing such  
21 interception can, with due diligence, 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 intercept such wire, oral, or electronic communication if  
26 an application for an order approving the interception is made  
27 in accordance with this section within 48 hours after the  
28 interception has occurred or begins to occur. In the absence  
29 of an order, such interception shall immediately terminate  
30 when the communication sought is obtained or when the  
31 application for the order is denied, whichever is earlier. If

1 such application for approval is denied, or in any other case  
2 in which the interception is terminated without an order  
3 having been issued, the contents of any wire, oral, or  
4 electronic communication intercepted shall be treated as  
5 having been obtained in violation of s. 934.03(4), and an  
6 inventory shall be served as provided for in paragraph (8)(e)  
7 on the person named in the application.

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

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

30       (c) Applications made and orders granted under ss.  
31 934.03-934.09 shall be sealed by the judge. Custody of the

1 applications and orders shall be wherever the judge directs.  
2 As required by federal law, such applications and orders shall  
3 be disclosed only upon a showing of good cause before a judge  
4 of competent jurisdiction and shall not be destroyed except on  
5 order of the issuing or denying judge, or that judge's  
6 successor in office, and in any event shall be kept for 10  
7 years.

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

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

18 1. The fact of the entry of the order or the  
19 application.

20 2. The date of the entry and the period of authorized,  
21 approved, or disapproved interception, or the denial of the  
22 application.

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

25  
26 The judge, upon the filing of a motion, may make available to  
27 such person or the person's counsel for inspection such  
28 portions of the intercepted communications, applications, and  
29 orders as the judge determines to be in the interest of  
30 justice. On an ex parte showing of good cause to a judge of  
31

1 competent jurisdiction, the serving of the inventory required  
2 by this paragraph may be postponed.

3 (9)~~(8)~~ As required by federal law, the contents of any  
4 intercepted wire, oral, or electronic communication or  
5 evidence derived therefrom shall not be received in evidence  
6 or otherwise disclosed in any trial, hearing, or other  
7 proceeding unless each party, not less than 10 days before the  
8 trial, hearing, or proceeding, has been furnished with a copy  
9 of the court order and accompanying application under which  
10 the interception was authorized or approved. This 10-day  
11 period may be waived by the judge if he or she finds that it  
12 was not possible to furnish the party with the above  
13 information 10 days before the trial, hearing, or proceeding  
14 and that the party will not be prejudiced by the delay in  
15 receiving such information.

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

- 22 1. The communication was unlawfully intercepted;
- 23 2. The order of authorization or approval under which  
24 it was intercepted is insufficient on its face; or
- 25 3. The interception was not made in conformity with  
26 the order of authorization or approval.

27  
28 Such motion shall be made before the trial, hearing, or  
29 proceeding unless there was no opportunity to make such motion  
30 or the person was not aware of the grounds of the motion. If  
31 the motion is granted, the contents of the intercepted wire or

1 oral communication, or evidence derived therefrom, shall be  
2 treated as having been obtained in violation of ss.  
3 934.03-934.09. The judge, upon the filing of such motion by  
4 the aggrieved person, may make available to the aggrieved  
5 person or his or her counsel for inspection such portions of  
6 the intercepted communication or evidence derived therefrom as  
7 the judge determines to be in the interest of justice.

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

17 (c) The remedies and sanctions described in ss.  
18 934.03-934.10 with respect to the interception of electronic  
19 communications are the only judicial remedies and sanctions  
20 for violations of those sections involving such  
21 communications.

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

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

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

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 ~~of a purpose, on the part of that person, to thwart~~  
19 ~~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 subsection ~~(11)(10)~~, such  
29 interception may not begin until the facilities from which, or  
30 the place where, the communication is to be intercepted is  
31 ascertained by the person implementing the interception order.

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

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

9 934.10 Civil remedies.--

10 (2) A good faith reliance on:

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

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

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

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

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

25 934.23 Requirements for governmental access.--

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

31



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 or identity, and length of service as a subscriber or customer  
22 of such service and the types of services the subscriber or  
23 customer used when the governmental entity uses a subpoena.

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

27 (5) A court order for disclosure under subsection (2),  
28 subsection (3), or subsection (4) shall issue only if the  
29 investigative or law enforcement officer offers specific and  
30 articulable facts showing that there are reasonable grounds  
31 ~~shows that there is reason~~ to believe the contents of a wire

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

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

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

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

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

29 934.27 Civil action: relief; damages; defenses.--  
30  
31

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. Present subsection (3) of section 934.31,  
11 Florida Statutes, is renumbered as subsection (4), and a new  
12 subsection (3) is added to that section, to read:

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

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

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

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

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

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

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

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

21 (1) 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 a state attorney acting pursuant  
25 to this chapter, who reasonably determines that:

26 (a) An emergency exists which:

27 1. Involves immediate danger of death or serious  
28 physical injury to any person or the danger of escape of a  
29 prisoner; and  
30  
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 application for the authorizing order within 48 hours after  
20 the installation constitutes a violation of s. 934.31.

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

28           Section 11. This act shall take effect October 1,  
29 2000.

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SENATE SUMMARY

Revises provisions relating to security of communications to bring state laws into closer conformity with federal law on that subject. (See bill for details.)