

Bill No. SB 2252, 1st Eng.

Amendment No. \_\_\_\_

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Senator Brown-Waite moved the following amendment:

**Senate Amendment (with title amendment)**

On page 4, between lines 20 and 21,

insert:

Section 3. Subsections (1), (4), and (12) of section 934.02, Florida Statutes, are amended to read:

934.02 Definitions.--As used in this chapter:

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

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1 ~~the cordless telephone handset and the base unit.~~

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

5 (a) Any telephone or telegraph instrument, equipment,  
6 or facility, or any component thereof:

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

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

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

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

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

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

31 (b)~~(c)~~ Any communication made through a tone-only

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1 paging device; ~~or~~

2 ~~(c)(d)~~ Any communication from an electronic or  
3 mechanical device which permits the tracking of the movement  
4 of a person or an object; ~~or~~

5 (d) Electronic funds transfer information stored by a  
6 financial institution in a communications system used for the  
7 electronic storage and transfer of funds.

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

11 934.03 Interception and disclosure of wire, oral, or  
12 electronic communications prohibited.--

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

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

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

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

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

27 (c) Intentionally discloses, or endeavors to disclose,  
28 to any other person the contents of any wire, oral, or  
29 electronic communication, knowing or having reason to know  
30 that the information was obtained through the interception of  
31 a wire, oral, or electronic communication in violation of this

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1 subsection; ~~or~~2 (d) Intentionally uses, or endeavors to use, the  
3 contents of any wire, oral, or electronic communication,  
4 knowing or having reason to know that the information was  
5 obtained through the interception of a wire, oral, or  
6 electronic communication in violation of this subsection; or7 (e) Intentionally discloses, or endeavors to disclose,  
8 to any other person the contents of any wire, oral, or  
9 electronic communication intercepted by means authorized by  
10 subparagraph (2)(a)2., paragraph (2)(b), paragraph (2)(c), s.  
11 934.07, or s. 934.09 when that person knows or has reason to  
12 know that the information was obtained through the  
13 interception of such a communication in connection with a  
14 criminal investigation, has obtained or received the  
15 information in connection with a criminal investigation, and  
16 intends to improperly obstruct, impede, or interfere with a  
17 duly authorized criminal investigation;

18

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

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

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

9           a. A court order directing such assistance signed by  
10 the authorizing judge; or

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

19           3. A provider of wire, oral, or electronic  
20 communication service, or an officer, employee, or agent  
21 thereof, or landlord, custodian, or other person may not  
22 disclose the existence of any interception or the device used  
23 to accomplish the interception with respect to which the  
24 person has been furnished an order under ss. 934.03-934.09,  
25 except as may otherwise be required by legal process and then  
26 only after prior notice to the Governor, the Attorney General,  
27 the statewide prosecutor, or a state attorney, as may be  
28 appropriate. Any such disclosure renders such person liable  
29 for the civil damages provided under s. 934.10 and such person  
30 may be prosecuted under s. 934.43. An action may not be  
31 brought against any provider of wire, oral, or electronic

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1 communication service, or an officer, employee, or agent  
2 thereof, or landlord, custodian, or other person for providing  
3 information, facilities, or assistance in accordance with the  
4 terms of a court order under ss. 934.03-934.09.

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

8 (4)(a) Except as provided in paragraph (b), whoever  
9 violates subsection (1) is guilty of a felony of the third  
10 degree, punishable as provided in s. 775.082, s. 775.083, s.  
11 775.084, or s. 934.41.

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

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

31 2. If the communication is the radio portion of a

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

8 Section 5. Section 934.07, Florida Statutes, is  
9 amended to read:

10 934.07 Authorization for interception of wire, oral,  
11 or electronic communications.--The Governor, the Attorney  
12 General, the statewide prosecutor, or any state attorney may  
13 authorize an application to a judge of competent jurisdiction  
14 for, and such judge may grant in conformity with ss.  
15 934.03-934.09, an order authorizing or approving the  
16 interception of wire, oral, or electronic communications by  
17 the Department of Law Enforcement or any law enforcement  
18 agency as defined in s. 934.02 having responsibility for the  
19 investigation of the offense as to which the application is  
20 made when such interception may provide or has provided  
21 evidence of the commission of the offense of murder,  
22 kidnapping, arson, gambling, robbery, burglary, theft, dealing  
23 in stolen property, ~~prostitution~~, criminal usury, bribery, or  
24 extortion; any violation of chapter 893; any violation of the  
25 provisions of the Florida Anti-Fencing Act; any violation of  
26 chapter 895; any violation of chapter 896; any violation of  
27 chapter 815; any violation of chapter 847; any violation of s.  
28 827.071; any violation of s. 944.40; or any conspiracy to  
29 commit any violation of the laws of this state relating to the  
30 crimes specifically enumerated above.

31 Section 6. Paragraph (b) of subsection (1) and

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1 paragraph (d) of subsection (3) of section 934.09, Florida  
2 Statutes, are amended, present subsections (7) through (11) of  
3 that section are renumbered subsections (8) through (12),  
4 respectively, and amended, and a new subsection (7) is added  
5 to that section, to read:

6           934.09 Procedure for interception of wire, oral, or  
7 electronic communications.--

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

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

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

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

24           3. A particular description of the type of  
25 communications sought to be intercepted.

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

28           (3) Upon such application, the judge may enter an ex  
29 parte order, as requested or as modified, authorizing or  
30 approving interception of wire, oral, or electronic  
31 communications within the territorial jurisdiction of the



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1 court in which the judge is sitting, and outside such  
 2 jurisdiction but within the State of Florida in the case of a  
 3 mobile interception device authorized by the judge within such  
 4 jurisdiction, if the judge determines on the basis of the  
 5 facts submitted by the applicant that:

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

13 (7) 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 under  
 17 this chapter, who reasonably determines that:

18 (a) An emergency exists that:

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

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

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

27  
 28 may intercept such wire, oral, or electronic communication if  
 29 an application for an order approving the interception is made  
 30 in accordance with this section within 48 hours after the  
 31 interception has occurred or begins to occur. In the absence

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

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

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

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1 federal law.

2 (c) Applications made and orders granted under ss.  
3 934.03-934.09 shall be sealed by the judge. Custody of the  
4 applications and orders shall be wherever the judge directs.  
5 As required by federal law, such applications and orders shall  
6 be disclosed only upon a showing of good cause before a judge  
7 of competent jurisdiction and shall not be destroyed except on  
8 order of the issuing or denying judge, or that judge's  
9 successor in office, and in any event shall be kept for 10  
10 years.

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

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

21 1. The fact of the entry of the order or the  
22 application.

23 2. The date of the entry and the period of authorized,  
24 approved, or disapproved interception, or the denial of the  
25 application.

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

28

29 The judge, upon the filing of a motion, may make available to  
30 such person or the person's counsel for inspection such  
31 portions of the intercepted communications, applications, and

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1 orders as the judge determines to be in the interest of  
2 justice. On an ex parte showing of good cause to a judge of  
3 competent jurisdiction, the serving of the inventory required  
4 by this paragraph may be postponed.

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

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

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

29  
30 Such motion shall be made before the trial, hearing, or  
31 proceeding unless there was no opportunity to make such motion

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1 or the person was not aware of the grounds of the motion. If  
2 the motion is granted, the contents of the intercepted wire or  
3 oral communication, or evidence derived therefrom, shall be  
4 treated as having been obtained in violation of ss.  
5 934.03-934.09. The judge, upon the filing of such motion by  
6 the aggrieved person, may make available to the aggrieved  
7 person or his or her counsel for inspection such portions of  
8 the intercepted communication or evidence derived therefrom as  
9 the judge determines to be in the interest of justice.

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

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

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

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

30 1. The application is by an agent or officer of a law  
31 enforcement agency and is approved by the Governor, the

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1 Attorney General, the statewide prosecutor, or a state  
2 attorney.

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

7 3. The judge finds that such specification is not  
8 practical.

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

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

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

22 3. The judge finds that such showing purpose has been  
23 adequately made shown.

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

29 (12)(11) If an interception of a communication is to  
30 be carried out pursuant to subsection(11)(10), such  
31 interception may not begin until the facilities from which, or

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

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

11 934.10 Civil remedies.--

12 (2) A good faith reliance on:

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

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

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

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

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

27 934.23 Requirements for governmental access.--

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

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1 contents of communication covered by subsection (1) or  
2 subsection (2), to any person other than an investigative or  
3 law enforcement officer.

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

11 ~~1. Uses a subpoena;~~

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

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

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

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

25 ~~(d)(c)~~ 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



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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 ~~to a legitimate law enforcement~~  
5 ~~inquiry~~. A court issuing an order pursuant to this section,  
6 on a motion made promptly by the service provider, may quash  
7 or modify such order ~~on motion made promptly by the service~~  
8 ~~provider~~ if the information or records requested are unusually  
9 voluminous in nature or compliance with such order otherwise  
10 would cause 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 its  
15 possession pending the issuance of a court order or other  
16 process.

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

21 (8) A provider of electronic communication service, a  
22 remote computing service, or any other person who furnished  
23 assistance pursuant to this section shall be held harmless  
24 from any claim 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 9. Subsection (4) of section 934.27, Florida  
29 Statutes, is amended to read:

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

31 (4) A good faith reliance on any of the following is a

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1 complete defense to any civil or criminal action brought under  
2 ss. 934.21-934.28:

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

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

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

9 Section 10. Present subsection (3) of section 934.31,  
10 Florida Statutes, is renumbered as subsection (5), and new  
11 subsections (3) and (4) are added to that section, to read:

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

14 (3) 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 him  
17 or her which restricts the recording or decoding of electronic  
18 or other impulses to the dialing and signaling information  
19 used in call processing.

20 (4)(a) 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 a state attorney acting pursuant  
24 to this chapter, who reasonably determines that:

25 1. An emergency exists which:

26 a. Involves immediate danger of death or serious  
27 physical injury to any person or the danger of escape of a  
28 prisoner; and

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

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

4  
5 may have installed and use a pen register or trap and trace  
6 device if, within 48 hours after the installation has occurred  
7 or begins to occur, an order approving the installation or use  
8 is issued in accordance with s. 934.33.

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

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

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

26           Section 11. Subsection (2) of section 934.34, Florida  
27 Statutes, is amended to read:

28           934.34 Assistance in installation and use of a pen  
29 register or a trap and trace device.--

30           (2) Upon the request of the applicant specified in s.  
31 934.32(1), a provider of a wire or electronic communication

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1 service, landlord, custodian, or other person shall install a  
 2 trap and trace device forthwith on the appropriate line and  
 3 shall furnish such investigative or law enforcement officer or  
 4 other applicant all additional information, facilities, and  
 5 technical assistance, including installation and operation of  
 6 the device unobtrusively and with a minimum of interference  
 7 with the services that the person so ordered by the court  
 8 accords the party with respect to whom the installation and  
 9 use is to take place if such installation and assistance is  
 10 directed by a court order as provided in s. 934.33(2)(b).  
 11 Unless otherwise ordered by the court, the results of the trap  
 12 and trace device shall be furnished, pursuant to s.  
 13 934.33(2)(b) or s. 934.31(4), to an officer of the law  
 14 enforcement agency designated in the court order at reasonable  
 15 intervals during regular business hours for the duration of  
 16 the order. The obligation of a provider of electronic  
 17 communication service under such an order or under such  
 18 emergency pen register or trap and trace device installation  
 19 may include, but is not limited to, conducting an in-progress  
 20 trace, or providing other assistance to support the  
 21 investigation as may be specified in the order.

22  
 23 (Redesignate subsequent sections.)

24  
 25  
 26 ===== T I T L E A M E N D M E N T =====

27 And the title is amended as follows:

28 On page 1, line 10, after the semicolon,

29  
 30 insert:

31 amending s. 934.02, F.S.; redefining the terms

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

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1           device installation;  
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