

Amendment No. 3 (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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ORIGINAL STAMP BELOW

The Committee on Criminal Justice Appropriations offered the following:

Amendment (with title amendment)

On page 4, between lines 10 and 11 of the bill

insert:

(6) SEARCHES AND SEIZURES BY LAW ENFORCEMENT OFFICERS AND EMPLOYEES IN CONNECTION WITH INVESTIGATION OR PROSECUTION--Notwithstanding any other law, it shall be unlawful for a government officer or employee, in connection with the investigation or prosecution of a criminal offense under this section, to search for or seize any materials reasonably believed to be possessed by a person for the lawful purpose of disseminating to the public, a newspaper, book, broadcast, or other similar form of public communication, but this provision shall not impair or affect the ability of any government officer or employee, if:

(a) The materials in question constitute child pornography or are obscene; or

(b) There is probable cause to believe that a person

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1 possessing such materials has committed or is committing a
2 criminal offense and the materials are evidence of said
3 offense; or

4 (c) There is reason to believe that the immediate
5 seizure of such materials is necessary to prevent the death
6 of, or serious injury to, a human being; or

7 (d) There is a reason to believe that the giving of
8 notice pursuant to a subpoena duces tecum would result in the
9 destruction, alteration, or concealment of such materials; or

10 (e) Such materials have not been produced in response
11 to a court order directing compliance with a subpoena duces
12 tecum, and

13 1. All appellate remedies have been exhausted; or

14 2. There is reason to believe that the delay in an
15 investigation or trial occasioned by further proceedings
16 relating to the subpoena would threaten the interests of
17 justice.

18 (7) ACTIONS ARISING UNDER THIS SECTION--

19 (a) The sole and exclusive right of action for the
20 willful and knowing failure to make a report pursuant to the
21 requirements of this section is a criminal prosecution
22 pursuant to subsection (5).

23 (b) A person aggrieved by a search for or seizure of
24 materials in violation of subsection (6) of this section shall
25 have a civil cause of action for damages for such search for
26 or seizure against:

27 1. Any governmental unit, which shall be liable for
28 violations of this section by their officers or employees
29 while acting within the scope or under color of their office
30 or employment; and

31 2. Against an officer or employee of a governmental

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1 unit who has violated this section while acting within the
2 scope or under color of his office or employment.

3
4 The remedy provided in this paragraph is exclusive of any
5 other civil action or proceeding for conduct constituting a
6 violation of this section, against the officer or employee
7 whose violation gave rise to the claim, against the estate of
8 such officer or employee, or against the governmental unit
9 employing such officer or employee.

10 (c) It shall be a complete defense to a civil action
11 brought under paragraph (b) of this subsection that the
12 officer or employee had a reasonable good faith belief in the
13 lawfulness of his or her conduct.

14 (d) A governmental unit liable for violations of this
15 section may not assert as a defense to a claim arising under
16 this section the immunity of the officer or employee whose
17 violation is complained of or his or her reasonably-good faith
18 belief in the lawfulness of his or her conduct, except that
19 such a defense may be asserted if the violation complained of
20 is that of a judicial officer.

21 (e) Evidence otherwise admissible in a proceeding
22 shall not be excluded on the basis of a violation of this
23 section.

24 (f) A person having a cause of action under this
25 subsection shall be entitled to recover actual damages but not
26 less than liquidated damages of \$1,000, and such reasonable
27 attorneys' fees and other litigation costs reasonably incurred
28 as the court, in its discretion, may award, however there
29 shall be no liability for interest prior to judgment.

30 (g) The Florida Department of Law Enforcement, in
31 cooperation with the Office of the Statewide Prosecutor, shall

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1 publish recommended regulations and procedures for the
2 investigation and prosecution of offenses arising under this
3 section.

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

7 And the title is amended as follows:

8 On page 1, line 19

9

10 after the word "rules" insert:

11 relating to documenting reports; limiting
12 searches and seizures by law enforcement
13 officers and government employees in connection
14 with investigation or prosecution; providing
15 actions and remedies pursuant to a violation of
16 this act; requiring the Florida Department of
17 Law Enforcement, in cooperation with the Office
18 of the Statewide Prosecutor, to publish
19 recommended regulations and procedures for
20 investigation and prosecution of offenses
21 arising under this act

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