

STORAGE NAME: h0949.cj

DATE: April 18, 2000

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
CRIMINAL JUSTICE APPROPRIATIONS
ANALYSIS**

BILL #: HB 949

RELATING TO: Criminal Investigation/ Communication

SPONSOR(S): Representative Ball

TIED BILL(S): SB 1924(s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) LAW ENFORCEMENT AND CRIME PREVENTION YEAS 9 NAYS 0
 - (2) UTILITIES AND COMMUNICATIONS YEAS 10 NAYS 0
 - (3) CRIMINAL JUSTICE APPROPRIATIONS (W/D)
 - (4)
 - (5)
-

I. SUMMARY:

HB 949 is a law enforcement bill which is designed to update Florida's Communication Security Laws, and bring them into line with the Federal Laws. The bill makes several technical changes to the definitions of "wire communication" and "electronic communication." These changes make it clear that cordless telephones are entitled to Chapter 934 protection. The bill makes numerous other technical changes in the law. All of these changes are designed to make the Florida Law conform with the current Federal laws dealing with communications security.

The bill clarifies some misdemeanor and felony offenses dealing with the interception and disclosure of electronic communications. Once again, these changes parallel federal law. Another thing this bill does, which is already in federal law, is to allow investigators or law enforcement officers to intercept communications in emergency situations--before they get a court order. This could only be done in cases involving immediate danger of death or serious physical injury or escape of a prisoner, when a court order cannot be obtained in time. The officer would still have to get court-approval for the intercept within 48 hours. Once again, this emergency intercept provision is almost identical to current federal law.

The bill also specifies the type of information a communication service provider must disclose when law enforcement officers obtain a subpoena, like the name, address, telephone number, and length of service for a subscriber or client. This provision is also identical to the current federal law. In summary, the proposed changes to Chapter 934 will bring Florida's statutes into line with current federal laws, in matters dealing with the security of wire, oral, and electronic communications. The bill clarifies police procedures to be used in the interception of communications, and the procedures for obtaining court authorization to intercept these communications.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Chapter 934, F.S., deals with the security of both wire and oral communications. It is designed to protect the privacy of these communications, as well as to define the circumstances and conditions under which the interception of communications may be utilized. Section 934.03, F.S., generally prohibits the interception and disclosure of wire, oral, or electronic communications, and provides penalties for violations of the statute.

Sections 934.08 and 934.09, F.S., provide the authorization and procedures for investigative or law enforcement officers to obtain and use intercepted wire, oral, or electronic communications.

Sections 934.10 and 934.27, F.S., set forth a civil cause of action for any person who intercepts, discloses, uses, or procures any wire, oral, or electronic communications. The provisions also set forth defenses and exceptions to any civil, criminal, or administrative action arising out of such conduct.

Section 934.31, F.S., provides a general prohibition on pen registers and trap and trace devices, which record the fact that a wire or electronic communication was initiated or completed. The statute provides an exception for the providers of electronic or wire communications services. Section 934.33, F.S., provides for court orders authorizing the installation and use of such devices.

C. EFFECT OF PROPOSED CHANGES:

The proposed bill makes revisions to Chapter 934, F.S., to bring Florida's statutory language into harmony with federal provisions (18 USC Sections 2510, et. seq.) and to reflect statutory changes necessitated by Florida Supreme Court opinions and appellate case law. Several modifications are made to the definitions section. The definition of "wire communication" is modified to remove an exemption from Chapter 934 that previously existed for cordless telephones. This is consistent with federal law and the Florida Supreme Court's ruling that such phones are entitled to full Chapter 934 protection. The bill substitutes the term "service provider," for the previously-used term "communications common carrier." Identical to federal law. [18 USC 2510 (5) (a) (ii)]. It also amends the definition of "electronic communication" to add an exemption for electronic funds transfer

information stored by a financial institution. Identical to federal law. [18 USC 2510 (12) (A-D)]

The bill creates a new third degree felony offense for intentional disclosure of the contents of a legally authorized communications interception to an unauthorized party. Identical to federal law. [18 USC 2511 (1) (e)]. The bill adds "electronic communications" to the section allowing service providers to intercept communications for quality control and repair purposes. Identical to federal law. [18 USC 2511 (2) (a) (I)]. The bill clarifies misdemeanor offenses relating to interception of cordless telephone conversations, when communications are not transmitted through the use of certain modulation techniques that promote privacy. Identical to federal law. [18 USC 2511 (4) (b) & (4) (b) (I) & (4) (b) (ii)]. The bill removes the offense of prostitution from list of offenses which may be investigated through use of court-ordered intercepts, pursuant to the Florida Supreme Court decision in State v. Rivers, 660 So. 2d 1360 (1995).

The bill sets forth a new "emergency intercept" procedure which allows specified investigative or law enforcement officers to intercept communications, prior to obtaining a court order, in emergency situations. This procedure would allow an intercept and after the fact obtaining of court-ordered intercept authorization, in cases involving immediate danger of death or serious physical injury or escape of a prisoner. This is similar to federal law, but deletes "national security reasons" justifying an emergency intercept, and clarifies that it applies to escape offenses. [18 USC 2518 (7)] When "emergency intercept" procedures are used pursuant to new s. 934.09(7), the bill requires service providers to assist law enforcement in interception activities. Identical to federal law. [18 USC 2511 (2) (a) (ii) (B)]. The bill also exempts officers from civil liability when they have complied with "emergency intercept" provisions in new s. 934.09(7). Identical to federal law. [18 USC 2520(d)(2)].

The bill specifies the types of information a service provider must disclose when investigative or law enforcement officers obtain a subpoena, such as the name, address, telephone billing records, telephone number, and length of service as a subscriber to or customer of such service, and the types of services the subscriber or customer utilized. The bill also modifies the means by which law enforcement agencies may obtain stored electronic communications. Identical to federal law. [18 USC 2703 (c) (1) (B) & (C) & 18 USC 2703 (c) (2) & 18 USC 2703 (d) & 18 USC 2703 (f) (1) & (2)]

Changes to 943.27, F.S., establish the ability of law enforcement officers to obtain information when involved in an "emergency intercept" under proposed s. 934.09 (7). Identical to federal law. [18 USC 2707 (e) (2) & (3)] These amendments also establish that law enforcement officers are responsible for using technology reasonably available to them. Identical to federal law. Officers need not obtain or use the most advanced or sophisticated technology. [18 USC 3121 (c)]

Amendments to section 934.34(2), F.S., establish the duty of service providers to assist officers involved in "emergency intercept" cases under new s. 934.09(7), or "emergency pen register" cases under new s. 934.35. Similar to federal law. [18 USC 3124 (b)]

The bill creates a new section 934.35, F.S., which provides "emergency pen register/trap and trace device" procedures. These are devices that monitor and record the telephone numbers of outgoing and incoming calls. The bill authorizes the use of pen register/trap and trace devices as well as after the fact obtaining of court-ordered authorization in cases involving immediate danger of death or serious physical injury or escape of a prisoner. Almost identical to federal law, but deletes national security reasons and clarifies that it applies to escape offenses. [18 USC 3125]

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

N/A

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

This analysis is transmitted without revision by the Committee on Utilities and Communications staff.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

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