

By Representative Ball

1 A bill to be entitled
2 An act relating to security of communications;
3 amending s. 934.02, F.S.; revising certain
4 definitions; amending s. 934.03, F.S.;
5 prohibiting disclosure of certain information
6 relating to criminal investigations; providing
7 penalties; clarifying an exception; clarifying
8 application of penalties; amending s. 934.07,
9 F.S.; deleting prostitution from a list of
10 committed offenses for which lawful
11 interception of communications is permitted;
12 amending s. 934.09, F.S.; providing for
13 emergency interceptions of communications under
14 certain circumstances; clarifying certain
15 exceptions to applications of certain
16 facilities descriptions requirements for
17 communications interceptions; amending ss.
18 934.10 and 934.27, F.S.; providing an
19 additional defense to certain actions arising
20 out of communication interceptions; amending s.
21 934.23, F.S.; providing for disclosure of
22 certain information to governmental entities
23 under certain circumstances; requiring
24 preservation of certain records; providing for
25 absence of liability for certain actions;
26 providing for compensation of certain expenses
27 under certain circumstances; amending s.
28 934.31, F.S.; requiring certain officers to use
29 certain restrictive technology in installing
30 and using certain equipment; amending s.
31 934.34, F.S.; clarifying provisions providing

1 for assistance in installing and using certain
2 equipment; creating s. 934.35, F.S.; providing
3 for emergency installation of pen register and
4 trap and trace devices; providing criteria and
5 requirements; requiring termination;
6 prohibiting certain activities; providing
7 penalties; providing for absence of liability
8 for certain actions under certain
9 circumstances; providing an effective date.

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11 Be It Enacted by the Legislature of the State of Florida:

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13 Section 1. Subsections (1), (4), and (12) of section
14 934.02, Florida Statutes, are amended to read:

15 934.02 Definitions.--As used in this chapter:

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

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

1 (a) Any telephone or telegraph instrument, equipment,
2 or facility, or any component thereof:

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

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

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

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

22 ~~(a) The radio portion of a cordless telephone~~
23 ~~communication that is transmitted between the cordless~~
24 ~~telephone handset and the base unit;~~

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

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

28 (c)~~(d)~~ Any communication from an electronic or
29 mechanical device which permits the tracking of the movement
30 of a person or an object; or~~.~~

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1 (d) Electronic funds transfer information stored by a
2 financial institution in a communications system used for the
3 electronic storage or transfer of funds.

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

7 934.03 Interception and disclosure of wire, oral, or
8 electronic communications prohibited.--

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

11 (a) Intentionally intercepts, endeavors to intercept,
12 or procures any other person to intercept or endeavor to
13 intercept any wire, oral, or electronic communication;

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

18 1. Such device is affixed to, or otherwise transmits a
19 signal through, a wire, cable, or other like connection used
20 in wire communication; or

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

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

29 (d) Intentionally uses, or endeavors to use, the
30 contents of any wire, oral, or electronic communication,
31 knowing or having reason to know that the information was

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

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

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

29 2. Notwithstanding any other law, a provider of wire,
30 oral, or electronic communication service, or an officer,
31 employee, or agent thereof, or landlord, custodian, or other

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

6 a. A court order directing such assistance signed by
7 the authorizing judge; or

8 b. A certification in writing by a person specified in
9 s. 934.09(7) that no warrant or court order is required by
10 law, all statutory requirements have been met, and the
11 specified assistance is required

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13 setting forth the period of time during which the provision of
14 the information, facilities, or technical assistance is
15 authorized and specifying the information, facilities, or
16 technical assistance required.

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

1 information, facilities, or assistance in accordance with the
2 terms of a court order under ss. 934.03-934.09.

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

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

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

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

28 2. If the communication is the radio portion of a
29 cellular telephone communication, a cordless telephone
30 communication that is transmitted between the cordless
31 telephone handset and the base unit,a public land mobile

1 radio service communication, or a paging service
2 communication, the person committing the offense is guilty of
3 a misdemeanor of the second degree, punishable as provided in
4 s. 775.082 or s. 775.083.

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

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

28 Section 4. Section 934.09, Florida Statutes, is
29 amended to read:

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

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 (a) The identity of the investigative or law
9 enforcement officer making the application and the officer
10 authorizing the application.

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

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

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

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

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

24 (c) A full and complete statement as to whether or not
25 other investigative procedures have been tried and failed or
26 why they reasonably appear to be unlikely to succeed if tried
27 or to be too dangerous.

28 (d) A statement of the period of time for which the
29 interception is required to be maintained and, if the nature
30 of the investigation is such that the authorization for
31 interception should not automatically terminate when the

1 described type of communication has been first obtained, a
2 particular description of facts establishing probable cause to
3 believe that additional communications of the same type will
4 occur thereafter.

5 (e) A full and complete statement of the facts
6 concerning all previous applications known to the individual
7 authorizing and making the application, made to any judge for
8 authorization to intercept, or for approval of interceptions
9 of, wire, oral, or electronic communications involving any of
10 the same persons, facilities, or places specified in the
11 application, and the action taken by the judge on each such
12 application.

13 (f) When the application is for the extension of an
14 order, a statement setting forth the results thus far obtained
15 from the interception or a reasonable explanation of the
16 failure to obtain such results.

17 (2) The judge may require the applicant to furnish
18 additional testimony or documentary evidence in support of the
19 application.

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

29 (a) There is probable cause for belief that an
30 individual is committing, has committed, or is about to commit
31 an offense as provided in s. 934.07.

1 (b) There is probable cause for belief that particular
2 communications concerning that offense will be obtained
3 through such interception.

4 (c) Normal investigative procedures have been tried
5 and have failed or reasonably appear to be unlikely to succeed
6 if tried or to be too dangerous.

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

14 (4) Each order authorizing or approving the
15 interception of any wire, oral, or electronic communication
16 shall specify:

17 (a) The identity of the person, if known, whose
18 communications are to be intercepted.

19 (b) The nature and location of the communications
20 facilities as to which, or the place where, authority to
21 intercept is granted.

22 (c) A particular description of the type of
23 communication sought to be intercepted and a statement of the
24 particular offense to which it relates.

25 (d) The identity of the agency authorized to intercept
26 the communications and of the person authorizing the
27 application.

28 (e) The period of time during which such interception
29 is authorized, including a statement as to whether or not the
30 interception shall automatically terminate when the described
31 communication has been first obtained.

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2 An order authorizing the interception of a wire, oral, or
3 electronic communication shall, upon the request of the
4 applicant, direct that a provider of wire or electronic
5 communication service, landlord, custodian, or other person
6 shall furnish the applicant forthwith all information,
7 facilities, and technical assistance necessary to accomplish
8 the interception unobtrusively and with a minimum of
9 interference with the services that such service provider,
10 landlord, custodian, or person is according the person whose
11 communications are to be intercepted. The obligation of a
12 provider of wire, oral, or electronic communication service
13 under such an order may include, but is not limited to,
14 conducting an in-progress trace during an interception, or
15 providing other assistance to support the investigation as may
16 be specified in the order. Any provider of wire or electronic
17 communication service, landlord, custodian, or other person
18 furnishing such facilities or technical assistance shall be
19 compensated therefor by the applicant for reasonable expenses
20 incurred in providing such facilities or assistance.

21 (5) No order entered under this section may authorize
22 or approve the interception of any wire, oral, or electronic
23 communication for any period longer than is necessary to
24 achieve the objective of the authorization or in any event
25 longer than 30 days. Such 30-day period begins on the day on
26 which the agent or officer of the law enforcement agency first
27 begins to conduct an interception under the order or 10 days
28 after the order is entered, whichever occurs earlier.
29 Extensions of an order may be granted but only upon
30 application for an extension made in accordance with
31 subsection (1) and upon the court making the findings required

1 by subsection (3). The period of extension shall be no longer
2 than the authorizing judge deems necessary to achieve the
3 purposes for which it was granted and in no event for longer
4 than 30 days. Every order and extension thereof shall contain
5 a provision that the authorization to intercept shall be
6 executed as soon as practicable, shall be conducted in such a
7 way as to minimize the interception of communications not
8 otherwise subject to interception under ss. 934.03-934.09, and
9 must terminate upon attainment of the authorized objective or
10 in any event in 30 days. If the intercepted communication is
11 in code or foreign language and an expert in that foreign
12 language or code is not reasonably available during the
13 interception period, minimization may be accomplished as soon
14 as practicable after such interception. An interception under
15 ss. 934.03-934.09 may be conducted in whole or in part by
16 government personnel or by an individual operating under a
17 contract with the government, acting under the supervision of
18 an agent or officer of the law enforcement agency authorized
19 to conduct the interception.

20 (6) Whenever an order authorizing interception is
21 entered pursuant to ss. 934.03-934.09, the order may require
22 reports to be made to the judge who issued the order showing
23 what progress has been made toward achievement of the
24 authorized objective and the need for continued interception.
25 Such reports shall be made at such intervals as the judge may
26 require.

27 (7)(a) Notwithstanding any other provision of this
28 chapter, any investigative or law enforcement officer
29 specially designated by the Governor, the Attorney General,
30 the statewide prosecutor, or a state attorney acting under
31 this chapter, who reasonably determines that:

1 1. An emergency exists which:
2 a. Involves immediate danger of death or serious
3 physical injury to any person or the danger of escape of a
4 prisoner; and
5 b. Requires that a wire, oral, or electronic
6 communication be intercepted before an order authorizing such
7 interception can, with due diligence, be obtained; and
8 2. There are grounds upon which an order could be
9 entered under this chapter to authorize such interception
10
11 may intercept such wire, oral, or electronic communication if
12 an application for an order approving the interception is made
13 in accordance with this section within 48 hours after the
14 interception has occurred or begins to occur.
15 (b) In the absence of an order, such interception
16 shall immediately terminate when the communication sought is
17 obtained or when the application for the order is denied,
18 whichever is earlier.
19 (c) If such application for approval is denied, or in
20 any other case in which the interception is terminated without
21 an order having been issued, the contents of any wire, oral,
22 or electronic communication intercepted shall be treated as
23 having been obtained in violation of s. 934.03(4), and an
24 inventory shall be served as provided for in paragraph (8)(e)
25 on the person named in the application.
26 (8)(7)(a) The contents of any wire, oral, or
27 electronic communication intercepted by any means authorized
28 by ss. 934.03-934.09 shall, if possible, be recorded on tape
29 or wire or other comparable device. The recording of the
30 contents of any wire, oral, or electronic communication under
31 this subsection shall be kept in such a way as will protect

1 the recording from editing or other alterations. Immediately
2 upon the expiration of the period of the order, or extensions
3 thereof, such recordings shall be made available to the judge
4 issuing such order and sealed under his or her directions.
5 Custody of the recordings shall be wherever the judge orders.
6 They shall not be destroyed except upon an order of the
7 issuing or denying judge, or that judge's successor in office,
8 and in any event shall be kept for 10 years. Duplicate
9 recordings may be made for use or disclosure pursuant to the
10 provisions of s. 934.08(1) and (2) for investigations.

11 (b) The presence of the seal provided for by this
12 subsection, or a satisfactory explanation for the absence
13 thereof, shall be a prerequisite for the use or disclosure of
14 the contents of any wire, oral, or electronic communication or
15 evidence derived therefrom under s. 934.08(3), as required by
16 federal law.

17 (c) Applications made and orders granted under ss.
18 934.03-934.09 shall be sealed by the judge. Custody of the
19 applications and orders shall be wherever the judge directs.
20 As required by federal law, such applications and orders shall
21 be disclosed only upon a showing of good cause before a judge
22 of competent jurisdiction and shall not be destroyed except on
23 order of the issuing or denying judge, or that judge's
24 successor in office, and in any event shall be kept for 10
25 years.

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

28 (e) Within a reasonable time but not later than 90
29 days after the termination of the period of an order or
30 extensions thereof, the issuing or denying judge shall cause
31 to be served on the persons named in the order or the

1 application, and such other parties to intercepted
2 communications as the judge may determine in his or her
3 discretion to be in the interest of justice, an inventory
4 which shall include notice of:
5 1. The fact of the entry of the order or the
6 application.
7 2. The date of the entry and the period of authorized,
8 approved, or disapproved interception, or the denial of the
9 application.
10 3. The fact that during the period wire, oral, or
11 electronic communications were or were not intercepted.
12
13 The judge, upon the filing of a motion, may make available to
14 such person or the person's counsel for inspection such
15 portions of the intercepted communications, applications, and
16 orders as the judge determines to be in the interest of
17 justice. On an ex parte showing of good cause to a judge of
18 competent jurisdiction, the serving of the inventory required
19 by this paragraph may be postponed.
20 (9)~~(8)~~ As required by federal law, the contents of any
21 intercepted wire, oral, or electronic communication or
22 evidence derived therefrom shall not be received in evidence
23 or otherwise disclosed in any trial, hearing, or other
24 proceeding unless each party, not less than 10 days before the
25 trial, hearing, or proceeding, has been furnished with a copy
26 of the court order and accompanying application under which
27 the interception was authorized or approved. This 10-day
28 period may be waived by the judge if he or she finds that it
29 was not possible to furnish the party with the above
30 information 10 days before the trial, hearing, or proceeding
31

1 and that the party will not be prejudiced by the delay in
2 receiving such information.

3 (10)~~(9)~~(a) Any aggrieved person in any trial, hearing,
4 or proceeding in or before any court, department, officer,
5 agency, regulatory body, or other authority may move to
6 suppress the contents of any intercepted wire, oral, or
7 electronic communication, or evidence derived therefrom, on
8 the grounds that:

- 9 1. The communication was unlawfully intercepted;
- 10 2. The order of authorization or approval under which
11 it was intercepted is insufficient on its face; or
- 12 3. The interception was not made in conformity with
13 the order of authorization or approval.

14
15 Such motion shall be made before the trial, hearing, or
16 proceeding unless there was no opportunity to make such motion
17 or the person was not aware of the grounds of the motion. If
18 the motion is granted, the contents of the intercepted wire or
19 oral communication, or evidence derived therefrom, shall be
20 treated as having been obtained in violation of ss.
21 934.03-934.09. The judge, upon the filing of such motion by
22 the aggrieved person, may make available to the aggrieved
23 person or his or her counsel for inspection such portions of
24 the intercepted communication or evidence derived therefrom as
25 the judge determines to be in the interest of justice.

26 (b) In addition to any other right to appeal, the
27 state shall have the right to appeal from an order granting a
28 motion to suppress made under paragraph (a) or the denial of
29 an application for an order of approval if the attorney shall
30 certify to the judge or other official granting such motion or
31 denying such application that the appeal is not taken for

1 purposes of delay. Such appeal shall be taken within 30 days
2 after the date the order was entered and shall be diligently
3 prosecuted.

4 (c) The remedies and sanctions described in ss.
5 934.03-934.10 with respect to the interception of electronic
6 communications are the only judicial remedies and sanctions
7 for violations of those sections involving such
8 communications.

9 (11)~~(10)~~ The requirements of subparagraph (1)(b)2. and
10 paragraph (3)(d) relating to the specification of the
11 facilities from which, or the place where, the communication
12 is to be intercepted do not apply if:

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

15 1. The application is by an agent or officer of a law
16 enforcement agency and is approved by the Governor, the
17 Attorney General, the statewide prosecutor, or a state
18 attorney.

19 2. The application contains a full and complete
20 statement as to why such specification is not practical and
21 identifies the person committing the offense and whose
22 communications are to be intercepted.

23 3. The judge finds that such specification is not
24 practical.

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

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

31

1 2. The application identifies the person believed to
2 be committing the offense and whose communications are to be
3 intercepted and the applicant makes a showing that there is
4 probable cause to believe that the person's actions could have
5 the effect of thwarting interception from a specified facility
6 ~~of a purpose, on the part of that person, to thwart~~
7 ~~interception by changing facilities.~~

8 3. The judge finds that such showing has been
9 adequately made ~~purpose has been adequately shown.~~

10 4. The order authorizing or approving the interception
11 is limited to interception for only such time as it is
12 reasonable to presume that the person identified in the
13 application is or was reasonably proximate to the instrument
14 through which such communication will be or was transmitted.

15 ~~(12)(11)~~ If an interception of a communication is to
16 be carried out pursuant to subsection ~~(11)(10)~~, such
17 interception may not begin until the facilities from which, or
18 the place where, the communication is to be intercepted is
19 ascertained by the person implementing the interception order.
20 A provider of wire or electronic communications service that
21 has received an order as provided under paragraph ~~(11)(10)(b)~~
22 may petition the court to modify or quash the order on the
23 ground that the interception cannot be performed in a timely
24 or reasonable fashion. The court, upon notice to the state,
25 shall decide such a petition expeditiously.

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

28 934.10 Civil remedies.--

29 (2) A good faith reliance on:

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

1 (b) A request of an investigative or law enforcement
2 officer under s. 934.09(7); or

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

6
7 shall constitute a complete defense to any civil or criminal,
8 or administrative action arising out of such conduct under the
9 laws of this state.

10 Section 6. Subsections (4) and (5) of section 934.23,
11 Florida Statutes, are amended, and subsections (7) and (8) are
12 added to said section, to read:

13 934.23 Requirements for governmental access.--

14 (4)(a) Except as provided in paragraph (b), a provider
15 of electronic communication service or remote computing
16 service may disclose a record or other information pertaining
17 to a subscriber or customer of such service, not including the
18 contents of communication covered by subsection (1) or
19 subsection (2), to any person other than an investigative or
20 law enforcement officer.

21 (b) A provider of electronic communication service or
22 remote computing service shall disclose a record or other
23 information pertaining to a subscriber to or customer of such
24 service, not including the contents of communications covered
25 by subsection (1) or subsection (2), to an investigative or
26 law enforcement officer only when the investigative or law
27 enforcement officer:

28 ~~1. Uses a subpoena;~~

29 1.2. Obtains a warrant issued by the judge of a court
30 of competent jurisdiction;

31

1 ~~2.3.~~ Obtains a court order for such disclosure under
2 subsection (5); or
3 ~~3.4.~~ Has the consent of the subscriber or customer to
4 such disclosure.
5 (c) Whenever a governmental entity uses a subpoena, a
6 provider of electronic communication service or remote
7 computing service shall disclose to an investigative or law
8 enforcement officer the name, address, telephone toll billing
9 records, telephone number or other subscriber number or
10 identity, length of service as a subscriber or customer of
11 such service, and the types of services the subscriber or
12 customer used.
13 ~~(d)(e)~~ An investigative or law enforcement officer who
14 receives records or information under this subsection is not
15 required to provide notice to a subscriber or customer.
16 (5) A court order for disclosure under subsection (2),
17 subsection (3), or subsection (4) shall issue only if the
18 investigative or law enforcement officer offers specific and
19 articulable facts showing that there are reasonable grounds
20 ~~shows that there is reason~~ to believe the contents of a wire
21 or electronic communication or the records of other
22 information sought are relevant and material to an ongoing
23 criminal investigation to a legitimate law enforcement
24 inquiry. A court issuing an order pursuant to this section,
25 on a motion made promptly by the service provider, may quash
26 or modify such order ~~on motion made promptly by the service~~
27 ~~provider~~ if the information or records requested are unusually
28 voluminous in nature or compliance with such order otherwise
29 would cause an undue burden on such provider.
30 (7)(a) A provider of wire or electronic communication
31 services or a remote computing service, upon the request of an

1 investigative or law enforcement officer, shall take all
2 necessary steps to preserve records and other evidence in its
3 possession pending the issuance of a court order or other
4 process.

5 (b) Records referred to in paragraph (a) shall be
6 retained for a period of 90 days, which shall be extended for
7 an additional 90-day period upon a renewed request by an
8 investigative or law enforcement officer.

9 (8) A provider of electronic communication service or
10 remote computing service or any other person who furnished
11 assistance pursuant to this section shall be held harmless
12 from any claims and civil liability resulting from the
13 disclosure of information pursuant to this section and shall
14 be reasonably compensated for reasonable expenses incurred in
15 providing such assistance.

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

18 934.27 Civil action: relief; damages; defenses.--

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

22 (a) A court warrant or order, a subpoena, or a
23 statutory authorization.

24 (b) A request of an investigative or law enforcement
25 officer under s. 943.09(7).

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

28 Section 8. Present subsection (3) of section 934.31,
29 Florida Statutes, is renumbered as subsection (4) and new
30 subsection (3) is added to said section to read:

31

1 934.31 General prohibition on pen register and trap
2 and trace device use; exception.--

3 (3) An investigative or law enforcement officer
4 authorized to install and use a pen register under ss.
5 934.31-934.34 shall use technology reasonably available to him
6 or her which restricts the recording or decoding of electronic
7 or other impulses to the dialing and signaling information
8 used in call processing.

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

11 934.34 Assistance in installation and use of a pen
12 register or a trap and trace device.--

13 (2) Upon the request of the applicant specified in s.
14 934.32(1), a provider of a wire or electronic communication
15 service, landlord, custodian, or other person shall install a
16 trap and trace device forthwith on the appropriate line and
17 shall furnish such investigative or law enforcement officer or
18 other applicant all additional information, facilities, and
19 technical assistance, including installation and operation of
20 the device unobtrusively and with a minimum of interference
21 with the services that the person so ordered by the court
22 accords the party with respect to whom the installation and
23 use is to take place if such installation and assistance is
24 directed by a court order as provided in s. 934.33(2)(b).
25 Unless otherwise ordered by the court, the results of the trap
26 and trace device shall be furnished, pursuant to s.
27 934.33(2)(b) or s. 934.35, to an officer of the law
28 enforcement agency designated in the court order at reasonable
29 intervals during regular business hours for the duration of
30 the order. The obligation of a provider of electronic
31 communication service under such an order, or under such

1 emergency pen register or trap and trace device installation,
2 may include, but is not limited to, conducting an in-progress
3 trace, or providing other assistance to support the
4 investigation as may be specified in the order.

5 Section 10. Section 934.35, Florida Statutes, is
6 created to read:

7 934.35 Emergency pen register and trap and trace
8 device installation.--

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

14 1. An emergency exists which:

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

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

21 2. There are grounds upon which an order could be
22 entered under this chapter to authorize such interception

23
24 may have installed and use a pen register or trap and trace
25 device if, within 48 hours after the installation has occurred
26 or begins to occur, an order approving the installation or use
27 is issued in accordance with s. 934.33.

28 (b) In the absence of an authorizing order, such use
29 shall immediately terminate when the information sought is
30 obtained, when the application for the order is denied, or
31

1 when 48 hours have elapsed since the installation of the pen
2 register or trap and trace device, whichever is earlier.

3 (2) The knowing installation or use by any
4 investigative or law enforcement officer of a pen register or
5 trap and trace device pursuant to subsection (1) without
6 application for the authorizing order within 48 hours after
7 the installation constitutes a violation of s. 934.31.

8 (3) A provider of wire or electronic service,
9 landlord, custodian, or other person who furnished facilities
10 or technical assistance pursuant to this section shall be held
11 harmless from any claims and civil liability resulting from
12 the disclosure of information pursuant to this section and
13 shall be reasonably compensated for reasonable expenses
14 incurred in providing such facilities and assistance.

15 Section 11. This act shall take effect October 1,
16 2000.

17
18 *****

19 HOUSE SUMMARY

20
21 Revises and clarifies provisions relating to security of
22 communications. Prohibits disclosure of wire, oral, or
23 electronic communications relating to criminal
24 investigations. Provides for emergency interception of
25 wire, oral, or electronic communications and emergency
26 installation of pen register and trap and trace devices
27 and specifies termination of such installations. Requires
28 preservation of communication service records. Expands
29 defenses to specified civil or criminal actions and
30 extends the absence of civil liability for specified
31 activities. See bill for details.