

By Senator Burt

16-1081A-01

1                                   A bill to be entitled  
2           An act relating to production of certain  
3           records and other productions as a result of a  
4           subpoena, order, or warrant; creating s.  
5           92.605, F.S.; defining terms; providing an  
6           exemption; providing requirements for  
7           production of records by an out-of-state  
8           corporation upon issuance of a subpoena, court  
9           order, or search warrant pertaining to such  
10          records; providing requirements for  
11          out-of-state corporations seeking to quash a  
12          subpoena or warrant; requiring out-of-state  
13          corporations to verify the authenticity of  
14          records such corporations are required to  
15          produce; providing requirements for the  
16          production of certain records by certain  
17          Florida corporations; providing that a cause of  
18          action does not arise against any out-of-state  
19          or Florida corporation or other specified  
20          persons for production of certain records,  
21          information, facilities, or assistance;  
22          providing an effective date.

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

26           Section 1. Section 92.605, Florida Statutes, is  
27 created to read:

28           92.605 Production of certain records by Florida  
29 corporations and out-of-state corporations.

30           (1) For the purposes of this section, the term:

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1           (a) "Adverse result" includes one of the following  
2 consequences to notification of the existence of a court  
3 order, a subpoena, or a search warrant:

4           1. Danger to the life or physical safety of an  
5 individual.

6           2. A flight from prosecution.

7           3. The destruction of or tampering with evidence.

8           4. The intimidation of potential witnesses.

9           5. Serious jeopardy to an investigation or undue delay  
10 of a trial.

11           (b) "Applicant" or means a law enforcement officer who  
12 is seeking a court order or subpoena under s. 16.56, s. 27.04,  
13 s. 905.185, or s. 914.04 or who is issued a search warrant  
14 under s. 933.01.

15           (c) "Business" means any business, institution,  
16 association, profession, occupation, or calling of any kind,  
17 whether or not conducted for profit.

18           (d) "Electronic communication services" and "remote  
19 computing services" have the same meaning as provided in the  
20 Electronic Communications Privacy Act in Chapter 121  
21 (commencing with Section 2701) of Part I of Title 18 of the  
22 United States Code Annotated. This section does not apply to  
23 corporations that do not provide those services to the public.

24           (e) "Florida corporation" means any corporation or  
25 other entity that is regulated under ch. 607, excluding  
26 out-of-state corporations.

27           (f) "Out-of-state corporation" means any corporation  
28 that is qualified to do business in this state under s.  
29 607.1501.

30           (g) "Out-of-state record of regularly conducted  
31 business activity" means a memorandum, report, record, or data

1 compilation, in any form, of acts, events, conditions,  
2 opinions, or diagnoses, maintained in another state or  
3 country.

4 (h) "Out-of-state certification" means a written  
5 declaration made and signed in another state or country by the  
6 custodian of an out-of-state record of regularly conducted  
7 business activity or another qualified person that, if falsely  
8 made, would subject the maker to criminal penalty under the  
9 laws of another state or country.

10 (i) "Properly served" means delivery by hand or in a  
11 manner reasonably allowing for proof of delivery if delivered  
12 by United States mail, overnight-delivery service, or  
13 facsimile to a person or entity properly registered to do  
14 business in the state.

15 (2) The following provisions apply to any subpoena,  
16 court order, or search warrant that is subject to this chapter  
17 which allows a search for records that are in the actual or  
18 constructive possession of an out-of-state corporation that  
19 provides electronic communication services or remote computing  
20 services to the public, when those records would reveal the  
21 identity of the customers using those services; data stored  
22 by, or on behalf of, the customers; the customers' usage of  
23 those services; the recipients or destinations of  
24 communications sent to or from those customers; or the content  
25 of those communications.

26 (a) When properly served with a subpoena, court order,  
27 or search warrant issued by a Florida court, an out-of-state  
28 corporation subject to this section shall provide to the  
29 applicant all records sought pursuant to that subpoena, court  
30 order, or warrant within 5 business days after receipt, or the  
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1 date indicated within the subpoena, if later, including those  
2 records maintained or located outside this state.

3 (b) When the applicant makes a showing and the court  
4 finds that failure to produce records within 5 business days  
5 would cause an adverse result, the subpoena, court order, or  
6 warrant may require production of records within less than 5  
7 business days. A court may reasonably extend the time required  
8 for production of the records upon finding that the  
9 out-of-state corporation has shown good cause for that  
10 extension and that an extension of time would not cause an  
11 adverse result.

12 (c) An out-of-state corporation seeking to quash the  
13 subpoena, court order, or warrant must seek relief from the  
14 court issuing it within the time required for production of  
15 records under this section. The issuing court shall hear and  
16 decide that motion within 5 court days after the motion is  
17 filed.

18 (d) The out-of-state corporation shall verify the  
19 authenticity of records that it produces by providing an  
20 affidavit that complies with the requirements set forth in  
21 this section. Records produced in compliance with this section  
22 are admissible in evidence as set forth in subsection (5).

23 (3) A Florida corporation that provides electronic  
24 communication services or remote computing services to the  
25 public, when served with a subpoena, court order, or warrant  
26 issued by another state to produce records that would reveal  
27 the identity of the customers using those services; data  
28 stored by, or on behalf of, the customers; the customers'  
29 usage of those services; the recipients or destinations of  
30 communications sent to or from those customers; or the content  
31 of those communications shall produce those records as if that

1 subpoena, court order, or warrant had been issued by a Florida  
2 court.

3 (4) A cause of action does not arise against any  
4 out-of-state or Florida corporation subject to this section,  
5 or its officers, employees, agents, or other specified  
6 persons, for providing records, information, facilities, or  
7 assistance in accordance with the terms of a subpoena or  
8 warrant subject to this section.

9 (5) In a criminal or civil proceeding in a court of  
10 the State of Florida, an out-of-state record of regularly  
11 conducted business activity, or a copy of such record, shall  
12 not be excluded as evidence by the hearsay rule if an  
13 out-of-state certification attests that:

14 (a) Such record was made at or near the time of the  
15 occurrence of the matters set forth by, or from information  
16 transmitted by, a person with knowledge of those matters;

17 (b) Such record was kept in the course of a regularly  
18 conducted business activity;

19 (c) The business activity made such a record as a  
20 regular practice; and

21 (d) If such record is not the original, it is a  
22 duplicate of the original;

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24 unless the source of information or the method or  
25 circumstances of preparation indicate lack of trustworthiness.

26 (6) An out-of-state certification under this section  
27 shall authenticate such record or duplicate.

28 (7) No evidence in such records in the form of opinion  
29 or diagnosis is admissible under subsection (5) unless such  
30 opinion or diagnosis would be admissible under ss.

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1 90.701-90.705 if the person whose opinion is recorded were to  
2 testify to the opinion directly.

3 (8) At the arraignment or as soon after the  
4 arraignment as practicable, or 60 days prior to a civil trial,  
5 a party intending to offer in evidence under this section an  
6 out-of-state record of regularly conducted business activity  
7 shall provide written notice of that intention to each other  
8 party. A motion opposing admission in evidence of such record  
9 shall be made by the opposing party and determined by the  
10 court before trial. Failure by a party to file such motion  
11 before trial shall constitute a waiver of objection to such  
12 record or duplicate, but the court for cause shown may grant  
13 relief from the waiver.

14 Section 2. This act shall take effect upon becoming a  
15 law.

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18 SENATE SUMMARY

19 Provides requirements for the production of records by  
20 Florida corporations and out-of-state corporations in  
21 response to a subpoena, court order, or search warrant.  
(See bill for details.)  
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