

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.

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

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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" means a law enforcement officer who is
12 seeking a court order or subpoena under s. 16.56, s. 27.04, s.
13 905.185, or s. 914.04 or who is issued a search warrant under
14 s. 933.01, or anyone who is authorized to issue a subpoena
15 under Rule 3.220, Florida Rules of Criminal Procedure.

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

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

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

28 (f) "Out-of-state corporation" means any corporation
29 that is qualified to do business in this state under s.
30 607.1501.

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1 (g) "Out-of-state record of regularly conducted
2 business activity" means a memorandum, report, record, or data
3 compilation, in any form, of acts, events, conditions,
4 opinions, or diagnoses, maintained in another state or
5 country.

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

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

17 (2) The following provisions apply to any subpoena,
18 court order, or search warrant, issued in compliance with the
19 Electronic Communications Privacy Act in chapter 121
20 (commencing with s. 2701) of Part I of Title 18 of the United
21 States Code; and that is subject to this chapter which allows
22 a search for records that are in the actual or constructive
23 possession of an out-of-state corporation that provides
24 electronic communication services or remote computing services
25 to the public, when those records would reveal the identity of
26 the customers using those services; data stored by, or on
27 behalf of, the customers; the customers' usage of those
28 services; the recipients or destinations of communications
29 sent to or from those customers.

30 (a) When properly served with a subpoena, court order,
31 or search warrant issued by a Florida court, an out-of-state

1 corporation subject to this section shall provide to the
2 applicant all records sought pursuant to that subpoena, court
3 order, or warrant within 10 business days after receipt, or
4 the date indicated within the subpoena, if later, including
5 those records maintained or located outside this state.

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

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

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

26 (3) A Florida corporation that provides electronic
27 communication services or remote computing services to the
28 public, when served with a subpoena, court order, or warrant
29 issued by another state to produce records that would reveal
30 the identity of the customers using those services; data
31 stored by, or on behalf of, the customers; the customers'

1 usage of those services; or the recipients or destinations of
2 communications sent to or from those customers shall produce
3 those records as if that subpoena, court order, or warrant had
4 been issued by a Florida court.

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

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

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

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

21 (c) The business activity made such a record as a
22 regular practice; and

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

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26 unless the source of information or the method or
27 circumstances of preparation indicate lack of trustworthiness.

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

30 (7) No evidence in such records in the form of opinion
31 or diagnosis is admissible under subsection (5) unless such

1 opinion or diagnosis would be admissible under ss.
2 90.701-90.705 if the person whose opinion is recorded were to
3 testify to the opinion directly.

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

15 (9) In any criminal case, the content of any
16 electronic communication may be obtained under this section
17 only by court order or by the issuance of a search warrant.

18 Section 2. This act shall take effect upon becoming a
19 law.