

By Senator Brandes

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1 A bill to be entitled
2 An act relating to search and seizure of a portable
3 electronic device; providing legislative findings and
4 intent; defining the term "portable electronic
5 device"; providing that information contained in a
6 portable electronic device is not subject to a search
7 by a law enforcement officer incident to an arrest
8 except pursuant to a warrant issued by a duly
9 authorized judicial officer using procedures
10 established by law; providing exceptions; prohibiting
11 location informational tracking; providing legislative
12 findings and intent; defining terms; prohibiting a
13 government entity from obtaining the location
14 information of an electronic device without a valid
15 search warrant issued by a duly authorized judicial
16 officer; providing that a search warrant may not be
17 issued for the location of an electronic device for a
18 period of time longer than is necessary to achieve the
19 objective of the search warrant authorization;
20 providing time periods for the validity of a search
21 warrant; providing criteria by which to extend a
22 search warrant for location information; providing
23 exceptions to the requirement to obtain a search
24 warrant for location information; providing an
25 effective date.

26
27 Be It Enacted by the Legislature of the State of Florida:

28
29 Section 1. Portable electronic device; prohibited search

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30 and seizure.

31 (1) FINDINGS.—The Legislature finds that:

32 (a) The number of residents of this state using and
33 carrying portable electronic devices is growing at a rapidly
34 increasing rate. These devices can store, and do encourage the
35 storing of, an almost limitless amount of personal and private
36 information. Commonly linked to the Internet, these devices are
37 used to access personal and business information and databases
38 in computers and servers that are located anywhere in the world.
39 A user of a portable electronic device has a reasonable and
40 justifiable expectation of privacy in the information that these
41 devices contain and can access through the Internet.

42 (b) The right of the people to be secure in their persons,
43 houses, papers, and effects against unreasonable searches and
44 seizures, and against the unreasonable interception of private
45 communications by any means, shall not be violated.

46 (c) No warrant shall be issued except upon probable cause,
47 supported by affidavit, particularly describing the place or
48 places to be searched, the person or persons, thing or things to
49 be seized, the communication to be intercepted, and the nature
50 of evidence to be obtained.

51 (d) The intrusion on the privacy of information and the
52 freedom of communication of any person who is arrested is of
53 such enormity that the officer who makes the arrest must obtain
54 a warrant to search the information contained in, or accessed
55 through, the arrested person's portable electronic device, such
56 as a cellular telephone.

57 (2) INTENT.—It is the intent of the Legislature that this
58 section prohibit the search of information contained in a

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59 portable electronic device, as defined in this section, by a law
60 enforcement agency or other governmental entity at any time
61 except pursuant to a warrant issued by a duly authorized
62 judicial officer using established procedures.

63 (3) DEFINITION.—As used in this section, the term “portable
64 electronic device” means an object capable of being easily
65 transported or conveyed by a person which is capable of
66 creating, receiving, accessing, or storing electronic data or
67 communications and that communicates with, by any means, another
68 entity or individual.

69 (4) PROHIBITED ACTS.—

70 (a) The contents and communications of a portable
71 electronic device, including, but not limited to, data or
72 information contained in or transmitted from the portable
73 electronic device, are not subject to a search or seizure by a
74 law enforcement agency or other governmental entity except
75 pursuant to a warrant issued by a duly authorized judicial
76 officer using the procedures established by law.

77 (b) Except as provided in paragraph (a), this section does
78 not:

79 1. Curtail reliance by a law enforcement agency or other
80 governmental entity on lawful exceptions to the warrant
81 requirement;

82 2. Apply in cases of a search conducted incident to
83 national security; or

84 3. Apply in cases of a search for a missing child who is
85 less than 18 years of age.

86 4. Apply to transponders used for the purpose of assessing
87 or collecting toll.

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88 5. Apply whenever the government entity reasonably believes
89 that an emergency involving immediate danger of death or serious
90 physical injury to a person requires the search or seizure,
91 without delay, of the contents of a portable electronic device
92 concerning a specific person or persons and that a warrant
93 cannot be obtained in time to prevent the identified danger, or
94 the possessor of the portable electronic device, in good faith,
95 believes that an emergency involves the danger of death.

96
97 The government entity seeking the contents of the portable
98 electronic device shall file with the appropriate court a
99 written statement setting forth the facts giving rise to the
100 emergency and the facts as to why the person or persons whose
101 contents of a portable electronic device was sought are believed
102 to be important in addressing the emergency, no later than 48
103 hours after seeking disclosure. Private entities providing
104 electronic communications services shall not be made responsible
105 for ensuring that government entities comply with this section.

106 Section 2. Location informational tracking; prohibited
107 search and seizure.-

108 (1) FINDINGS.-The Legislature finds that existing law
109 authorizes a court to issue a warrant for the search of a place
110 and the seizure of property or things identified in the warrant
111 when there is probable cause to believe that specified grounds
112 exist. The Legislature also finds that existing law provides for
113 a warrant procedure for the acquisition of stored communications
114 in the possession of a provider of electronic communication
115 service or a remote computing service.

116 (2) INTENT.-It is the intent of the Legislature to prohibit

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117 a government entity from obtaining the location information of
118 an electronic device without a valid search warrant issued by a
119 duly authorized judicial officer unless certain exceptions
120 apply, including in an emergency or when requested by the owner
121 of the device. However, it is also the intent of the Legislature
122 that this bill, with certain exceptions, prohibits the use of
123 information obtained in violation of this section in a civil or
124 administrative hearing.

125 (3) DEFINITIONS.-As used in this section the term:

126 (a) "Electronic communication service" means a service that
127 provides to its users the ability to send or receive wire or
128 electronic communications.

129 (b) "Government entity" means a state or local agency,
130 including, but not limited to, a law enforcement entity or any
131 other investigative entity, agency, department, division,
132 bureau, board, or commission, or an individual acting or
133 purporting to act for or on behalf of a state or local agency.

134 (c) "Location information" means information, concerning
135 the location of an electronic device, including both the current
136 location and any previous location of the device, that, in whole
137 or in part, is generated, derived from, or obtained by the
138 operation of an electronic device.

139 (d) "Location information service" means the provision of a
140 global positioning service or other mapping, locational, or
141 directional information service.

142 (e) "Owner" means the person or entity recognized by the
143 law as having the legal title, claim, or right to an electronic
144 device.

145 (f) "Portable electronic device" means an object capable of

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146 being easily transported or conveyed by a person which is
147 capable of creating, receiving, accessing, or storing electronic
148 data or communications and that communicates with, by any means,
149 another entity or individual.

150 (g) "Remote computing service" means the provision of
151 computer storage or processing services by means of an
152 electronic communications system.

153 (h) "User" means a person or entity that uses an electronic
154 device.

155 (4) PROHIBITED ACTS.-

156 (a) A law enforcement agency or other government entity may
157 not obtain the location information of an electronic device
158 without a valid search warrant issued by a duly authorized
159 judicial officer using procedures established pursuant to law.

160 (b)1. A search warrant may not be issued for the location
161 of an electronic device pursuant to this section for a period of
162 time longer than is necessary to achieve the objective of the
163 authorization, and in any event no longer than 30 days,
164 commencing on the day the location information is initially
165 obtained, or 10 days after the issuance of the warrant,
166 whichever comes first.

167 2. Extensions of a warrant may be granted, but only upon a
168 judge finding continuing probable cause and that the extension
169 is necessary to achieve the objective of the authorization. Each
170 extension granted for a warrant pursuant to this section shall
171 be for no longer than the authorizing judge deems necessary to
172 achieve the purposes for which the warrant was originally
173 granted, but in any event, shall be for no longer than 30 days.

174 (5) EXCEPTIONS.-Notwithstanding subsection (4), a

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175 government entity may obtain location information without a
176 search warrant if disclosure of the location information is not
177 prohibited by federal law, in any of the following
178 circumstances:

179 (a) Transponders used for the purpose of assessing or
180 collecting tolls.

181 (b) Reliance by a law enforcement agency or other
182 governmental entity on lawful exceptions to the warrant
183 requirement.

184 (c) Cases of a search conducted incident to a national
185 security event.

186 (d) Cases of a search for a missing child who is less than
187 18 years of age.

188 (e) In order to respond to the user's call for emergency
189 services.

190 (f) With the informed, affirmative consent of the owner or
191 user of the electronic device concerned, provided that the owner
192 or user may not consent to the disclosure of location
193 information if the device is known or believed to be in the
194 possession of, or attached to a possession of, a third party
195 known to the owner or user, unless that third party is less than
196 18 years of age. The informed, affirmative consent of the owner
197 or user of the electronic device concerned may not be used as
198 consent to disclose the location information of another portable
199 electronic device that may be remotely linked or connected to
200 the owner or user of the portable electronic device concerned.

201 (g) With the informed, affirmative consent of the legal
202 guardian or next of kin of the electronic device's user, if the
203 user is believed to be deceased or has been reported missing and

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204 unable to be contacted.

205 (h) If the government entity reasonably believes that an
206 emergency involving immediate danger of death or serious
207 physical injury to a person requires the disclosure, without
208 delay, of location information concerning a specific person or
209 persons and that a warrant cannot be obtained in time to prevent
210 the identified danger and the possessor of the location
211 information, in good faith, believes that an emergency involving
212 danger of death or serious physical injury to a person requires
213 the disclosure without delay.

214
215 The government entity seeking the location information shall
216 file with the appropriate court a written statement setting
217 forth the facts giving rise to the emergency and the facts as to
218 why the person or persons whose location information was sought
219 are believed to be important in addressing the emergency, no
220 later than 48 hours after seeking disclosure. Private entities
221 providing electronic communications services shall not be made
222 responsible for ensuring that government entities comply with
223 this section.

224 (6) CAUSE OF ACTION.—This section does not create a cause
225 of action against any foreign or Florida private entity, its
226 officers, employees, agents, or other specified persons, for
227 providing location information.

228 Section 3. This act shall take effect July 1, 2013.