

By the Committee on Criminal Justice; and Senators Brandes,
Negrón, and Soto

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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; providing a
11 remedy; prohibiting location informational tracking;
12 providing legislative findings and intent; defining
13 terms; prohibiting a government entity from obtaining
14 the location information of an electronic device
15 without a valid court order issued by a duly
16 authorized judicial officer; providing that a court
17 order may not be issued for the location of an
18 electronic device for a period of time longer than is
19 necessary to achieve the objective of the court order
20 authorization; providing time periods for the validity
21 of a court order; providing criteria by which to
22 extend a court order for location information;
23 providing exceptions to the requirement to obtain a
24 court order for location information; providing a
25 remedy; providing an 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 incident to
61 arrest 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
74 incident to arrest by a law enforcement agency or other
75 governmental entity except pursuant to a warrant issued by a
76 duly authorized judicial officer using the procedures
77 established by law.

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

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

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

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

87 4. Apply to transponders used for the purpose of assessing

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88 or collecting toll.

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

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

107 (5) REMEDY.—

108 (a) Any aggrieved person in any trial, hearing, or
109 proceeding in or before any court, department, officer, agency,
110 regulatory body, or other authority may move to suppress the
111 contents of any information contained in a portable electronic
112 device or evidence derived therefrom, on the grounds that:

113 1. The information was unlawfully obtained;

114 2. The search warrant under which it was obtained is
115 insufficient on its face; or

116 3. The information was not obtained in conformity with the

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117 search warrant.

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119 Such motion shall be made before the trial, hearing, or
120 proceeding unless there was no opportunity to make such motion
121 or the person was not aware of the grounds of the motion. If the
122 motion is granted, the information or evidence derived
123 therefrom, shall be suppressed. The judge, upon the filing of
124 such motion by the aggrieved person, may make available to the
125 aggrieved person or his or her counsel for inspection such
126 portions of the information or evidence derived therefrom as the
127 judge determines to be in the interest of justice.

128 (b) In addition to any other right to appeal, the state
129 shall have the right to appeal from an order granting a motion
130 to suppress made under paragraph (a) or the denial of an
131 application for a search warrant if the attorney shall certify
132 to the judge or other official granting such motion or denying
133 such application that the appeal is not taken for purposes of
134 delay. Such appeal shall be taken within 30 days after the date
135 the order was entered and shall be diligently prosecuted.

136 (c) The remedies and sanctions described herein with
137 respect to the information contained in a portable electronic
138 device are the only judicial remedies and sanctions for
139 violations of those sections involving such information.

140 Section 2. Location informational tracking; prohibited
141 search and seizure.-

142 (1) FINDINGS.-The Legislature finds that existing law
143 authorizes a court to issue a warrant for the search of a place
144 and the seizure of property or things identified in the warrant
145 when there is probable cause to believe that specified grounds

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146 exist. The Legislature also finds that existing law provides for
147 a judicial procedure for the acquisition of stored
148 communications in the possession of a provider of electronic
149 communication service or a remote computing service.

150 (2) INTENT.-It is the intent of the Legislature to prohibit
151 a government entity from obtaining the location information of
152 an electronic device without a valid court order issued by a
153 duly authorized judicial officer unless certain exceptions
154 apply, including in an emergency or when requested by the owner
155 of the device. However, it is also the intent of the Legislature
156 that this bill, with certain exceptions, prohibits the use of
157 information obtained in violation of this section in a civil or
158 administrative hearing.

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

160 (a) "Electronic communication service" means a service that
161 provides to its users the ability to send or receive wire or
162 electronic communications.

163 (b) "Government entity" means a state or local agency,
164 including, but not limited to, a law enforcement entity or any
165 other investigative entity, agency, department, division,
166 bureau, board, or commission, or an individual acting or
167 purporting to act for or on behalf of a state or local agency.

168 (c) "Location information" means information, concerning
169 the location of an electronic device, including both the current
170 location and any previous location of the device, that, in whole
171 or in part, is generated, derived from, or obtained by the
172 operation of an electronic device.

173 (d) "Location information service" means the provision of a
174 global positioning service or other mapping, locational, or

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175 directional information service.

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

179 (f) "Portable electronic device" means an object capable of
180 being easily transported or conveyed by a person which is
181 capable of creating, receiving, accessing, or storing electronic
182 data or communications and that communicates with, by any means,
183 another entity or individual.

184 (g) "Remote computing service" means the provision of
185 computer storage or processing services by means of an
186 electronic communications system.

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

189 (4) PROHIBITED ACTS.-

190 (a) A law enforcement agency or other government entity may
191 not obtain the location information of an electronic device
192 without a valid court order issued by a duly authorized judicial
193 officer using the procedure set forth in this section.

194 (b) An investigative or law enforcement officer may make
195 application to a judge of competent jurisdiction for an order
196 authorizing or approving the search for and seizure of the
197 location information related to an electronic device.

198 (c) The application must include:

199 1. A statement of the identity of the applicant and the
200 identity of the law enforcement agency conducting the
201 investigation.

202 2. A certification by the applicant that the information
203 likely to be obtained is relevant to an ongoing criminal

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204 investigation being conducted by the investigating agency.

205 3. A statement of the offense to which the information
206 likely to be obtained relates.

207 4. A statement whether it may be necessary to monitor the
208 electronic device outside the jurisdiction of the court from
209 which authorization is being sought.

210 (d) If the court finds that the required certification and
211 statements have been made in the application, the court shall
212 enter an ex parte order authorizing the monitoring of an
213 electronic device. Such order may authorize the monitoring of
214 the device within the jurisdiction of the court and outside that
215 jurisdiction but within the State of Florida.

216 (e) A court may not require greater specificity or
217 additional information beyond that which is required by this
218 section as a requisite for issuing an order.

219 (f) A court order may not be issued for the location of an
220 electronic device pursuant to this section for a period of time
221 longer than is necessary to achieve the objective of the
222 authorization, and in any event no longer than 30 days,
223 commencing on the day the order is issued, or 10 days after the
224 location information is initially obtained whichever comes
225 first.

226 (g) Extensions of an order may be granted, but only upon a
227 judge finding continuing probable cause and that the extension
228 is necessary to achieve the objective of the authorization. Each
229 extension granted for an order pursuant to this section shall be
230 for no longer than the authorizing judge deems necessary to
231 achieve the purposes for which the order was originally granted,
232 but in any event, shall be for no longer than 30 days.

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233 (5) EXCEPTIONS.—Notwithstanding subsection (4), a
234 government entity may obtain location information without a
235 search warrant if disclosure of the location information is not
236 prohibited by federal law, in any of the following
237 circumstances:

238 (a) Transponders used for the purpose of assessing or
239 collecting tolls.

240 (b) Reliance by a law enforcement agency or other
241 governmental entity on lawful exceptions to the warrant
242 requirement.

243 (c) Cases of a search conducted incident to a national
244 security event.

245 (d) Cases of a search for a missing child who is less than
246 18 years of age.

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

249 (f) With the informed, affirmative consent of the owner or
250 user of the electronic device concerned, provided that the owner
251 or user may not consent to the disclosure of location
252 information if the device is known or believed to be in the
253 possession of, or attached to a possession of, a third party
254 known to the owner or user, unless that third party is less than
255 18 years of age. The informed, affirmative consent of the owner
256 or user of the electronic device concerned may not be used as
257 consent to disclose the location information of another portable
258 electronic device that may be remotely linked or connected to
259 the owner or user of the portable electronic device concerned.

260 (g) With the informed, affirmative consent of the legal
261 guardian or next of kin of the electronic device's user, if the

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262 user is believed to be deceased or has been reported missing and
263 unable to be contacted.

264 (h) If the government entity reasonably believes that an
265 emergency involving immediate danger of death or serious
266 physical injury to a person requires the disclosure, without
267 delay, of location information concerning a specific person or
268 persons and that a warrant cannot be obtained in time to prevent
269 the identified danger and the possessor of the location
270 information, in good faith, believes that an emergency involving
271 danger of death or serious physical injury to a person requires
272 the disclosure without delay.

273
274 The government entity seeking the location information shall
275 file with the appropriate court a written statement setting
276 forth the facts giving rise to the emergency and the facts as to
277 why the person or persons whose location information was sought
278 are believed to be important in addressing the emergency, no
279 later than 48 hours after seeking disclosure. Private entities
280 providing electronic communications services shall not be made
281 responsible for ensuring that government entities comply with
282 this section.

283 (6) REMEDY.—

284 (a) Any aggrieved person in any trial, hearing, or
285 proceeding in or before any court, department, officer, agency,
286 regulatory body, or other authority may move to suppress the
287 contents of any information contained in a portable electronic
288 device or evidence derived therefrom, on the grounds that:

- 289 1. The information was unlawfully obtained;
290 2. The order of authorization or approval under which it

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291 was obtained is insufficient on its face; or

292 3. The information was not obtained in conformity with the
293 order of authorization or approval.

294
295 Such motion shall be made before the trial, hearing, or
296 proceeding unless there was no opportunity to make such motion
297 or the person was not aware of the grounds of the motion. If the
298 motion is granted, the information or evidence derived
299 therefrom, shall be suppressed. The judge, upon the filing of
300 such motion by the aggrieved person, may make available to the
301 aggrieved person or his or her counsel for inspection such
302 portions of the information or evidence derived therefrom as the
303 judge determines to be in the interest of justice.

304 (b) In addition to any other right to appeal, the state
305 shall have the right to appeal from an order granting a motion
306 to suppress made under paragraph (a) or the denial of an
307 application for an order of approval if the attorney shall
308 certify to the judge or other official granting such motion or
309 denying such application that the appeal is not taken for
310 purposes of delay. Such appeal shall be taken within 30 days
311 after the date the order was entered and shall be diligently
312 prosecuted.

313 (c) The remedies and sanctions described herein with
314 respect to the information contained in a portable electronic
315 device are the only judicial remedies and sanctions for
316 violations of those sections involving such information.

317 (7) CAUSE OF ACTION.—This section does not create a cause
318 of action against any foreign or Florida private entity, its
319 officers, employees, agents, or other specified persons, for

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320 providing location information.

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