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LEGISLATIVE ACTION

Senate

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House

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Floor: WD

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04/23/2013 09:12 AM

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Senator Brandes moved the following:

Senate Amendment (with title amendment)

Between lines 73 and 74

insert:

Section 3. Location informational tracking; prohibited search and seizure.-

(1) FINDINGS.-The Legislature finds that existing law authorizes a court to issue a warrant for the search of a place and the seizure of property or things identified in the warrant when there is probable cause to believe that specified grounds exist. The Legislature also finds that existing law provides for a judicial procedure for the acquisition of stored communications in the possession of a provider of electronic



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14 communication service or a remote computing service.

15 (2) INTENT.-It is the intent of the Legislature to prohibit
16 a governmental entity from obtaining the location information of
17 an electronic device without a valid court order issued by a
18 duly authorized judicial officer unless certain exceptions
19 apply, including in an emergency or when requested by the owner
20 of the device. However, it is also the intent of the Legislature
21 that this act, with certain exceptions, prohibits the use of
22 information obtained in violation of this section in a civil or
23 administrative hearing.

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

25 (a) "Electronic communication service" means a service that
26 provides to its users the ability to send or receive wire or
27 electronic communications.

28 (b) "Governmental entity" means a state or local agency,
29 including, but not limited to, a law enforcement entity or any
30 other investigative entity, agency, department, division,
31 bureau, board, or commission, or an individual acting or
32 purporting to act for or on behalf of a state or local agency.

33 (c) "Location information" means information, concerning
34 the location of an electronic device, including both the current
35 location and any previous location of the device, which, in
36 whole or in part, is generated, derived from, or obtained by the
37 operation of an electronic device.

38 (d) "Location information service" means the provision of a
39 global positioning service or other mapping, locational, or
40 directional information service.

41 (e) "Owner" means the person or entity recognized by the
42 law as having the legal title, claim, or right to an electronic



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43 device.

44 (f) "Portable electronic device" means an object capable of
45 being easily transported or conveyed by a person which is
46 capable of creating, receiving, accessing, or storing electronic
47 data or communications and communicates by any means with
48 another entity or individual.

49 (g) "Remote computing service" means the provision of
50 computer storage or processing services by means of an
51 electronic communications system.

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

54 (4) PROHIBITED ACTS.-

55 (a) A law enforcement agency or other governmental entity
56 may not obtain the location information of an electronic device
57 without a valid court order issued by a duly authorized judicial
58 officer using the procedure set forth in this section.

59 (b) An investigative or law enforcement officer may make
60 application to a judge of competent jurisdiction for an order
61 authorizing or approving the search for and seizure of the
62 location information related to a specific electronic device or
63 any electronic device used by a particular person.

64 (c) The application must include:

65 1. A statement of the identity of the applicant and the
66 identity of the law enforcement agency conducting the
67 investigation.

68 2. A certification by the applicant that the information
69 likely to be obtained is relevant to an ongoing criminal
70 investigation being conducted by the investigating agency, or a
71 non-criminal investigation being conducted to prevent harm to a



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72 person.

73 3. A statement of the offense to which the information
74 likely to be obtained relates, if applicable.

75 4. A statement as to whether it may be necessary to monitor
76 the electronic device outside the jurisdiction of the court from
77 which authorization is being sought.

78 (d) If the court finds that the required certification and
79 statements have been made in the application, the court shall
80 enter an ex parte order authorizing the monitoring of a specific
81 electronic device or authorize the monitoring of any device
82 being used by a specific person during the time period for which
83 an order may be issued under this section. Such order may
84 authorize the monitoring of the device within the jurisdiction
85 of the court and outside that jurisdiction, but within this
86 state.

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

90 (f) A court order may not be issued for the location of an
91 electronic device pursuant to this section for a period of time
92 longer than is necessary to achieve the objective of the
93 authorization, and in any event no longer than 30 days,
94 commencing on the day the order is issued, or 10 days after the
95 location information is initially obtained, whichever comes
96 first.

97 (g) Extensions of an order may be granted, but only upon a
98 judge finding that the extension is necessary to achieve the
99 objective of the original authorization. Each extension granted
100 for an order pursuant to this section may not exceed the time



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101 period that the authorizing judge deems necessary to achieve the
102 purposes for which the order was originally granted, but in any
103 event, each extension may not exceed 60 days.

104 (5) EXCEPTIONS.—Notwithstanding subsection (4), a
105 governmental entity may obtain location information without a
106 court order if disclosure of the location information is not
107 prohibited by federal law and any of the following circumstances
108 exists:

109 (a) Transponders used for the purpose of assessing or
110 collecting tolls.

111 (b) Reliance by a law enforcement agency or other
112 governmental entity on lawful exceptions to the warrant
113 requirement.

114 (c) A high risk of a terrorist attack by a specific
115 individual or organization if the United States Secretary of
116 Homeland Security determines that credible intelligence
117 indicates that there is such a risk.

118 (d) Cases of a search for a missing endangered person, as
119 defined in s. 937.0201.

120 (e) In order to respond to any user's call for emergency
121 services.

122 (f) With the informed, affirmative consent of the owner or
123 user of the electronic device; however the owner or user may not
124 consent to the disclosure of location information if the device
125 is known or believed to be in the possession of, or attached to
126 a possession of, a third party known to the owner or user and to
127 whom the owner or user has intentionally provided electronic
128 device, unless the third party is under 18 years of age. The
129 informed, affirmative consent of the owner or user of the



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130 electronic device may not be used as consent to disclose the
131 location information of another portable electronic device that
132 may be remotely linked or connected to the owner or user of the
133 subject portable electronic device.

134 (g) With the informed, affirmative consent of the legal
135 guardian or next of kin of the electronic device's owner or
136 user, if the owner or user is believed to be deceased or has
137 been reported missing and unable to be contacted.

138 (h) If the governmental entity reasonably believes that an
139 emergency involving immediate danger of death or serious
140 physical injury to a person requires the disclosure, without
141 delay, of location information concerning a specific person or
142 persons and that a court order cannot be obtained in time to
143 prevent the identified danger and the possessor of the location
144 information, in good faith, believes that an emergency involving
145 danger of death or serious physical injury to a person requires
146 the disclosure without delay.

147 (6) REMEDY.—

148 (a) Any aggrieved person in a trial, hearing, or proceeding
149 in or before a court, department, officer, agency, regulatory
150 body, or other authority may move to suppress the contents of
151 information contained in a portable electronic device or
152 evidence derived therefrom, on the grounds that:

- 153 1. The information was unlawfully obtained;
154 2. The order of authorization or approval under which it
155 was obtained is insufficient on its face; or
156 3. The information was not obtained in conformity with the
157 order of authorization or approval.
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159 Such motion shall be made before the trial, hearing, or
160 proceeding unless there was no opportunity to make such motion
161 or the person was not aware of the grounds of the motion. If the
162 motion is granted, the information or evidence derived therefrom
163 shall be suppressed. The judge, upon the filing of such motion
164 by the aggrieved person, may make available to the aggrieved
165 person or his or her counsel for inspection such portions of the
166 information or evidence derived therefrom as the judge
167 determines to be in the interest of justice.

168 (b) In addition to any other right to appeal, the state has
169 the right to appeal from an order granting a motion to suppress
170 made under paragraph (a) or the denial of an application for an
171 order of approval if the attorney certifies to the judge or
172 other official granting such motion or denying such application
173 that the appeal is not taken for purposes of delay. Such appeal
174 shall be taken within 30 days after the date the order was
175 entered and shall be diligently prosecuted.

176 (c) The remedies and sanctions described herein with
177 respect to the information contained in a portable electronic
178 device are the only judicial remedies and sanctions for
179 violations of those sections involving such information.

180 (7) CAUSE OF ACTION.—This section does not create a cause
181 of action against any foreign or Florida private entity, its
182 officers, employees, agents, or other specified persons for
183 providing location information.

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185 ===== T I T L E A M E N D M E N T =====

186 And the title is amended as follows:

187 Delete line 15



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188 and insert:
189 "electronic signature"; prohibiting location
190 informational tracking; providing legislative findings
191 and intent; defining terms; prohibiting a governmental
192 entity from obtaining the location information of an
193 electronic device without a valid court order issued
194 by a duly authorized judicial officer; providing that
195 a court order may not be issued for the location of an
196 electronic device for a period of time longer than is
197 necessary to achieve the objective of the court order;
198 providing time periods for the validity of a court
199 order; providing criteria by which a court order for
200 location information may be extended; providing
201 exceptions to the requirement that a court order be
202 obtained for location information; providing a remedy;
203 providing applicability; providing an effective date.