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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/26/2018	.	
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The Committee on Rules (Brandes) recommended the following:

1 **Senate Substitute for Amendment (654094) (with title**
2 **amendment)**

3
4 Between lines 187 and 188

5 insert:

6 Section 4. Section 934.23, Florida Statutes, is amended to
7 read:

8 934.23 Required disclosure of customer communications or
9 records.—

10 (1) As used in this section, the term:

11 (a) "A court of competent jurisdiction" means a court that



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12 has jurisdiction over the investigation or that is otherwise
13 authorized by law.

14 (b) "Investigative or law enforcement officer" has the same
15 meaning as s. 934.02(6), except that in any criminal
16 investigation, if a law enforcement agency seeks disclosure of
17 information obtainable by a subpoena under this section, the
18 agency must request a state attorney, an assistant state
19 attorney, the statewide prosecutor, or an assistant statewide
20 prosecutor obtain such subpoena.

21 (2)(1) An investigative or law enforcement officer may
22 require the disclosure by a provider of electronic communication
23 service or remote computing service of the contents of a wire or
24 electronic communication that is ~~has been~~ in electronic storage
25 in an electronic communications system or remote computing
26 system for ~~180 days or less~~ only pursuant to a warrant issued by
27 the judge of a court of competent jurisdiction. ~~As used in this~~
28 section, the term "a court of competent jurisdiction" means a
29 court that has jurisdiction over the investigation or that is
30 otherwise authorized by law. An investigative or law enforcement
31 officer may require the disclosure by a provider of electronic
32 communication services of the contents of a wire or electronic
33 communication that has been in electronic storage in an
34 electronic communications system for more than 180 days by the
35 means available under subsection (2).

36 (2) An investigative or law enforcement officer may require
37 a provider of remote computing service to disclose the contents
38 of any wire or electronic communication to which this subsection
39 is made applicable by subsection (3):

40 (a) Without required notice to the subscriber or customer



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41 ~~if the investigative or law enforcement officer obtains a~~
42 ~~warrant issued by the judge of a court of competent~~
43 ~~jurisdiction; or~~

44 ~~(b) With prior notice, or with delayed notice pursuant to~~
45 ~~s. 934.25, from the investigative or law enforcement officer to~~
46 ~~the subscriber or customer if the investigative or law~~
47 ~~enforcement officer:~~

48 ~~1. Uses a subpoena; or~~

49 ~~2. Obtains a court order for such disclosure under~~
50 ~~subsection (5).~~

51 (3) Subsection (2) is applicable with respect to any
52 electronic communication that is held or maintained on a remote
53 computing service:

54 (a) On behalf of a subscriber or customer of such service
55 and received by means of electronic transmission from, or
56 created by means of computer processing of communications
57 received by means of electronic transmission from, a subscriber
58 or customer of such service.

59 (b) Solely for the purposes of providing storage or
60 computer processing services to a subscriber or customer, if the
61 provider is not authorized to access the contents of any such
62 communication for purposes of providing any service other than
63 storage or computer processing.

64 (4) (a) An investigative or law enforcement officer may
65 require a provider of electronic communication service or remote
66 computing service to disclose a record or other information
67 pertaining to a subscriber or customer of such service, not
68 including the contents of a communication, only when the
69 investigative or law enforcement officer:



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70 1. Obtains a warrant issued by the judge of a court of
71 competent jurisdiction;
72 2. Obtains a court order for such disclosure under
73 subsection (5);
74 3. Has the consent of the subscriber or customer to such
75 disclosure; or
76 4. Seeks information under paragraph (b).
77 (b) A provider of electronic communication service or
78 remote computing service shall disclose to an investigative or
79 law enforcement officer the name; address; local and long-
80 distance telephone connection records, or records of session
81 times or durations; length of service, including the starting
82 date of service; types of services used; telephone or instrument
83 number or other subscriber number or identity, including any
84 temporarily assigned network address; and means and source of
85 payment, including any credit card or bank account number of a
86 subscriber to or customer of such service when the governmental
87 entity uses a subpoena or obtains such information in the manner
88 specified in paragraph (a) for obtaining information under that
89 paragraph.
90 ~~(c) An investigative or law enforcement officer who~~
91 ~~receives records or information under this subsection is not~~
92 ~~required to provide notice to a subscriber or customer.~~
93 (5) A court order for disclosure under ~~subsection (2),~~
94 ~~subsection (3), or~~ subsection (4) shall issue only if the
95 investigative or law enforcement officer offers specific and
96 articulable facts showing that there are reasonable grounds to
97 believe that a record or other information pertaining to a
98 subscriber or customer of an electronic communication service or



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99 ~~remote computing service the contents of a wire or electronic~~
100 ~~communication or the records of other information sought~~ are
101 relevant and material to an ongoing criminal investigation. A
102 court issuing an order pursuant to this section, on a motion
103 made promptly by the service provider, may quash or modify such
104 order if the information or records requested are unusually
105 voluminous in nature or compliance with such order otherwise
106 would cause an undue burden on such provider.

107 (6) No cause of action shall lie in any court against any
108 provider of wire or electronic communication service, its
109 officers, employees, agents, or other specified persons for
110 providing information, facilities, or assistance in accordance
111 with the terms of a court order, warrant, subpoena, or
112 certification under ss. 934.21-934.28.

113 (7) (a) A provider of wire or electronic communication
114 services or a remote computing service, upon the request of an
115 investigative or law enforcement officer, shall take all
116 necessary steps to preserve records and other evidence in its
117 possession pending the issuance of a court order or other
118 process.

119 (b) Records referred to in paragraph (a) shall be retained
120 for a period of 90 days, which shall be extended for an
121 additional 90 days upon a renewed request by an investigative or
122 law enforcement officer.

123 (8) A provider of electronic communication service, a
124 remote computing service, or any other person who furnished
125 assistance pursuant to this section shall be held harmless from
126 any claim and civil liability resulting from the disclosure of
127 information pursuant to this section and shall be reasonably



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128 compensated for reasonable expenses incurred in providing such
129 assistance.

130 Section 5. Section 934.24, Florida Statutes is repealed.

131 Section 6. Section 934.25, Florida Statutes, is amended to
132 read:

133 934.25 Nondisclosure by service provider ~~Delayed notice.~~-

134 ~~(1) An investigative or law enforcement officer acting~~
135 ~~under s. 934.23(2) may:~~

136 ~~(a) Where a court order is sought, include in the~~
137 ~~application a request for an order delaying the notification~~
138 ~~required under s. 934.23(2) for a period not to exceed 90 days,~~
139 ~~which request the court shall grant if it determines that there~~
140 ~~is reason to believe that notification of the existence of the~~
141 ~~court order may have an adverse result described in subsection~~
142 ~~(2).~~

143 ~~(b) Where a subpoena is obtained, delay the notification~~
144 ~~required under s. 934.23(2) for a period not to exceed 90 days~~
145 ~~upon the execution of a written certification of a supervisory~~
146 ~~official that there is reason to believe that notification of~~
147 ~~the existence of the subpoena may have an adverse result~~
148 ~~described in subsection (2).~~

149 ~~(2) Any of the following acts constitute an adverse result~~
150 ~~for purposes of subsection (1):~~

151 ~~(a) Endangering the life or physical safety of an~~
152 ~~individual.~~

153 ~~(b) Fleeing from prosecution.~~

154 ~~(c) Destroying or tampering with evidence.~~

155 ~~(d) Intimidating potential witnesses.~~

156 ~~(e) Seriously jeopardizing an investigation or unduly~~



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157 ~~delaying a trial.~~

158 ~~(3) The investigative or law enforcement officer shall~~
159 ~~maintain a true copy of a certification obtained under paragraph~~
160 ~~(1)(b).~~

161 ~~(4) Extensions of the delay of notification provided in s.~~
162 ~~934.23(2) of up to 90 days each may be granted by the court upon~~
163 ~~application, or by certification by an investigative or law~~
164 ~~enforcement officer, but only in accordance with subsection (6).~~

165 ~~(5) Upon the expiration of the period of delay of~~
166 ~~notification under subsection (1) or subsection (4), the~~
167 ~~investigative or law enforcement officer must serve upon or~~
168 ~~deliver by registered or first-class mail to the subscriber or~~
169 ~~customer a copy of the process or request together with notice~~
170 ~~which:~~

171 ~~(a) States with reasonable specificity the nature of the~~
172 ~~law enforcement inquiry, and~~

173 ~~(b) Informs the subscriber or customer:~~

174 ~~1. That information maintained for such subscriber or~~
175 ~~customer by the service provider named in the process or request~~
176 ~~was supplied to or requested by the investigative or law~~
177 ~~enforcement officer and the date on which such information was~~
178 ~~so supplied or requested.~~

179 ~~2. That notification of such subscriber or customer was~~
180 ~~delayed.~~

181 ~~3. What investigative or law enforcement officer or what~~
182 ~~court made the certification or determination pursuant to which~~
183 ~~that delay was made.~~

184 ~~4. Which provision of ss. 934.21-934.28 allowed such delay.~~

185 ~~(1)(6) An investigative or law enforcement officer acting~~



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186 ~~under s. 934.23, when not required to notify the subscriber or~~
187 ~~customer under s. 934.23(2)(a), or to the extent that such~~
188 ~~notice may be delayed pursuant to subsection (1), may apply to a~~
189 court for an order commanding a provider of electronic
190 communication service or remote computing service to whom a
191 warrant, subpoena, or court order is directed, for such period
192 as the court deems appropriate, not to notify any ~~other~~ person
193 of the existence of such warrant, subpoena, or court order. The
194 court shall enter such order if it determines that there is
195 reason to believe that notification of the existence of the
196 warrant, subpoena, or court order will result in an adverse
197 result. ~~any of the following:~~

198 (2) For purposes of this section, an "adverse result" means
199 any of the following acts:

200 (a) Endangering the life or physical safety of an
201 individual.

202 (b) Fleeing from prosecution.

203 (c) Destroying or tampering with evidence.

204 (d) Intimidating potential witnesses.

205 (e) Seriously jeopardizing an investigation or unduly
206 delaying a trial.

207 ~~(7) As used in paragraph (1)(b), the term "supervisory~~
208 ~~official" means the person in charge of an investigating or law~~
209 ~~enforcement agency's or entity's headquarters or regional~~
210 ~~office; the state attorney of the circuit from which the subject~~
211 ~~subpoena has been issued; the statewide prosecutor; or an~~
212 ~~assistant state attorney or assistant statewide prosecutor~~
213 ~~specifically designated by the state attorney or statewide~~
214 ~~prosecutor to make such written certification.~~



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215 ~~(8) As used in subsection (5), the term "deliver" shall be~~
216 ~~construed in accordance with the definition of "delivery" as~~
217 ~~provided in Rule 1.080, Florida Rules of Civil Procedure.~~

218 Section 7. Section 934.255, Florida Statutes, is created to
219 read:

220 934.255 Subpoenas in investigations of sexual offenses.—

221 (1) As used in this section, the term:

222 (a) "Adverse result" means any of the following acts:

223 1. Endangering the life or physical safety of an
224 individual.

225 2. Fleeing from prosecution.

226 3. Destroying or tampering with evidence.

227 4. Intimidating potential witnesses.

228 5. Seriously jeopardizing an investigation or unduly
229 delaying a trial.

230 (b) "Child" means a person under 18 years of age.

231 (c) "Investigative or law enforcement officer" has the same
232 meaning as s. 934.02(6), except that in any criminal
233 investigation, if a law enforcement agency seeks disclosure of
234 information obtainable by a subpoena under this section, the
235 agency must request a state attorney, an assistant state
236 attorney, the statewide prosecutor, or an assistant statewide
237 prosecutor obtain such subpoena.

238 (d) "Sexual abuse of a child" means a criminal offense
239 based on any conduct described in s. 39.01(71).

240 (e) "Supervisory official" means the person in charge of an
241 investigating or law enforcement agency's or entity's
242 headquarters or regional office; the state attorney of the
243 circuit from which the subpoena has been issued; the statewide



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244 prosecutor; or an assistant state attorney or assistant
245 statewide prosecutor specifically designated by the state
246 attorney or statewide prosecutor to make such written
247 certification.

248 (2) An investigative or law enforcement officer who is
249 conducting an investigation into:

250 (a) Allegations of the sexual abuse of a child or an
251 individual's suspected commission of a crime listed in s.
252 943.0435(1)(h)1.a.(I) may use a subpoena to compel the
253 production of records, documents, or other tangible objects and
254 the testimony of the subpoena recipient concerning the
255 production and authenticity of such records, documents, or
256 objects, except as provided in paragraph (b).

257 (b) Allegations of the sexual abuse of a child may use a
258 subpoena to require a provider of electronic communication
259 services or remote computing services to disclose a record or
260 other information pertaining to a subscriber or customer of such
261 service as described in s. 934.23(4)(b).

262 (c) A subpoena issued under paragraph (a) must describe the
263 records, documents, or other tangible objects required to be
264 produced, and must prescribe a date by which such records,
265 documents, or other tangible objects must be produced.

266 (3) At any time before the date prescribed in a subpoena
267 issued under subsection (2)(a) for production of records,
268 documents, or other tangible objects or the date prescribed in a
269 subpoena issued under subsection (2)(b) for production of a
270 record or other information, a person or entity receiving such
271 subpoena may, before a judge of competent jurisdiction, petition
272 for an order modifying or setting aside the prohibition of



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273 disclosure issued under subsection (5).

274 (4) An investigative or law enforcement officer who uses a
275 subpoena issued under paragraph (2) (a) to obtain any record,
276 document, or other tangible object may retain such items for use
277 in any ongoing criminal investigation or a closed investigation
278 with the intent that the investigation may later be reopened.

279 (5) (a) If a subpoena issued under subsection (2) is served
280 upon a recipient and accompanied by a written certification of a
281 supervisory official that there is reason to believe that
282 notification of the existence of the subpoena may have an
283 adverse result, the subpoena recipient is prohibited from
284 disclosing to any person for a period of 180 days the existence
285 of the subpoena.

286 (b) A recipient of a subpoena issued under subsection (2)
287 that is accompanied by a written certification issued pursuant
288 to this subsection is authorized to disclose information
289 otherwise subject to any applicable nondisclosure requirement to
290 persons as is necessary to comply with the subpoena, to an
291 attorney in order to obtain legal advice or assistance regarding
292 compliance with the subpoena, or to any other person as allowed
293 and specifically authorized by the investigative or law
294 enforcement officer who obtained the subpoena or the supervisory
295 official who issued the written certification. The subpoena
296 recipient shall notify any person to whom disclosure of the
297 subpoena is made pursuant to this paragraph of the existence of,
298 and length of time associated with, the nondisclosure
299 requirement.

300 (c) A person to whom disclosure of the subpoena is made
301 under paragraph (a) is subject to the nondisclosure requirements



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302 of this subsection in the same manner as the subpoena recipient.

303 (d) At the request of the investigative or law enforcement
304 officer who obtained the subpoena or the supervisory official
305 who issued the written certification, the subpoena recipient
306 shall identify to the investigative or law enforcement officer
307 or supervisory official, before or at the time of compliance
308 with the subpoena, the name of any person to whom disclosure was
309 made under paragraph (b). If the investigative or law
310 enforcement officer or supervisory official makes such a
311 request, the subpoena recipient has an ongoing duty to disclose
312 the identity of any individuals notified of the subpoena's
313 existence throughout the nondisclosure period.

314 (e) The investigative or law enforcement officer shall
315 maintain a true copy of a written certification obtained under
316 this subsection.

317 (6) An investigative or law enforcement officer acting
318 under paragraph (2)(b) may apply to a court for an order
319 extending the nondisclosure period provided in subsection (5)
320 for a subpoena and commanding a provider of electronic
321 communication service or remote computing service to whom the
322 subpoena is directed, for such period as the court deems
323 appropriate, not to notify any person of the existence of such
324 subpoena. The court shall enter such order if it determines that
325 there is reason to believe that notification of the existence of
326 the subpoena will result in an adverse result.

327 (7) In the case of contumacy by a person served a subpoena
328 issued under subsection (2), or his or her refusal to comply
329 with such a subpoena, the investigative or law enforcement
330 officer who sought the subpoena may petition a court of



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331 competent jurisdiction to compel compliance. The court may
332 address the matter as indirect criminal contempt pursuant to
333 Rule 3.840 of the Florida Rules of Criminal Procedure. Any
334 prohibited disclosure of a subpoena issued under subsection (2)
335 for which a period of prohibition of disclosure provided in
336 subsection (5) or an extension thereof under subsection (6) is
337 in effect is punishable as provided in s. 934.43. However,
338 limited disclosure is authorized as provided in subsection (5).

339 (8) No cause of action shall lie in any court against any
340 provider of wire or electronic communication service, its
341 officers, employees, agents, or other specified persons for
342 providing information, facilities, or assistance in accordance
343 with the terms of a subpoena under this section.

344 (9) (a) A provider of wire or electronic communication
345 services or a remote computing service, upon the request of an
346 investigative or law enforcement officer, shall take all
347 necessary steps to preserve records and other evidence in its
348 possession pending the issuance of a court order or other
349 process.

350 (b) Records referred to in paragraph (a) shall be retained
351 for a period of 90 days, which shall be extended for an
352 additional 90 days upon a renewed request by an investigative or
353 law enforcement officer.

354 (10) A provider of electronic communication service, a
355 remote computing service, or any other person who furnished
356 assistance pursuant to this section shall be held harmless from
357 any claim and civil liability resulting from the disclosure of
358 information pursuant to this section and shall be reasonably
359 compensated for reasonable expenses incurred in providing such



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360 assistance. A witness who is subpoenaed to appear to testify
361 under subsection (2) and who complies with the subpoena must be
362 paid the same fees and mileage rate paid to a witness appearing
363 before a court of competent jurisdiction in this state.

364
365 ===== T I T L E A M E N D M E N T =====

366 And the title is amended as follows:

367 Delete lines 2 - 12

368 and insert:

369 An act relating to security of communications;
370 amending s. 934.01, F.S.; revising and providing
371 legislative findings; amending s. 934.02, F.S.;
372 redefining the term "oral communication"; defining the
373 terms "microphone-enabled household device" and
374 "portable electronic communication device"; amending
375 s. 934.21, F.S.; revising the exceptions to conduct
376 that constitutes unlawful access to stored
377 communications; amending s. 934.23, F.S.; defining
378 "investigative or law enforcement officer" and
379 specifying that an exception to such definition is
380 that in any criminal investigation a law enforcement
381 agency must request a prosecutor obtain a subpoena for
382 information obtainable by a subpoena; requiring a
383 warrant for any content of a stored communications;
384 deleting provisions relating to obtaining content of
385 stored communications, with required subscriber
386 notice, by obtaining a court order for disclosure or
387 using a subpoena; deleting provisions relating to any
388 electronic communication held or maintained in a



389 remote computing service; deleting a provision on not
390 providing notice applicable to a subpoena for basic
391 subscriber information; repealing s. 934.24, F.S.;
392 deleting provisions relating to backup protection for
393 content of stored communication; deleting provisions
394 authorizing a subscriber to seek a court order to
395 quash such subpoena or vacate such court order for
396 disclosure; amending 934.25, F.S., deleting provisions
397 relating to delaying subscriber notice when such
398 notice is required for obtaining contents of stored
399 communications pursuant to a court order for
400 disclosure or subpoena; deleting reference to
401 subscriber notice or delay of such notice in
402 provisions relating to nondisclosure of a warrant,
403 court order, or subpoena for stored communications;
404 creating s. 934.255, F.S.; defining "adverse result,"
405 "child," "investigative or law enforcement officer,"
406 "sexual abuse of child," and "supervisory official";
407 specifying that an exception to the definition of
408 "investigative or law enforcement officer" is that in
409 any criminal investigation a law enforcement agency
410 must request a prosecutor obtain a subpoena for
411 information obtainable by a subpoena; authorizing an
412 investigative or law enforcement officer conducting an
413 investigation into specified matters to subpoena
414 certain persons or entities for the production of
415 records, documents, or other tangible things and
416 testimony for stored communications, excluding basic
417 subscriber information relevant to stored



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418 communications; authorizing an investigative or law
419 enforcement officer conducting an investigation into
420 specified matters to subpoena certain person or
421 entities for basic subscriber information relevant to
422 stored communications; specifying requirements for the
423 issuance of a subpoena; authorizing a subpoenaed
424 person to petition a court for an order modifying or
425 setting aside a prohibition on disclosure;
426 authorizing, under certain circumstances, an
427 investigative or law enforcement officer to retain
428 subpoenaed records, documents, or other tangible
429 objects; prohibiting the disclosure of a subpoena for
430 a specified period if the disclosure might result in
431 an adverse result; providing exceptions; requiring an
432 investigative or law enforcement officer to maintain a
433 true copy of a written certification required for
434 nondisclosure; authorizing an investigative or law
435 enforcement officer to apply to a court for an order
436 prohibiting certain entities from notifying any person
437 of the existence of a subpoena under certain
438 circumstances; authorizing an investigative or law
439 enforcement officer to petition a court to compel
440 compliance with a subpoena; authorizing a court to
441 punish a person who does not comply with a subpoena as
442 indirect criminal contempt; providing criminal
443 penalties; precluding a cause of action against
444 certain entities or persons for providing information,
445 facilities, or assistance in accordance with terms of
446 a subpoena; providing for preservation of evidence



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447 pending issuance of legal process; providing that
448 certain entities or persons shall be held harmless
449 from any claim and civil liability resulting from
450 disclosure of specified information; providing for
451 reasonable compensation for reasonable expenses
452 incurred in providing assistance; requiring that a
453 subpoenaed witness be paid certain fees and mileage;