

Amendment No.

CHAMBER ACTION

Senate

House

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1 Representative Trujillo offered the following:

2  
3 **Amendment (with title amendment)**

4 Remove everything after the enacting clause and insert:

5 Section 1. Portable electronic device; prohibited search  
6 and seizure.-

7 (1) FINDINGS.-The Legislature finds that:

8 (a) The number of residents of this state using and  
9 carrying portable electronic devices is growing exponentially.  
10 These devices are capable of storing and accessing a nearly  
11 limitless amount of personal and private information. Commonly  
12 linked to the Internet, these devices are used to access  
13 personal and business information and databases in computers and  
14 servers that are located anywhere in the world. A user of a  
15 portable electronic device has a reasonable and justifiable

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16 expectation of privacy in the information that these devices  
17 contain and can access through the Internet.

18 (b) The right of the people to be secure in their persons,  
19 houses, papers, and effects against unreasonable searches and  
20 seizures, and against the unreasonable interception of private  
21 communications by any means, may not be violated.

22 (c) A warrant may not be issued except upon probable  
23 cause, supported by affidavit, particularly describing the place  
24 or places to be searched, the person or persons, thing or things  
25 to be seized, the communication to be intercepted, and the  
26 nature of evidence to be obtained.

27 (d) The intrusion on the privacy of information and the  
28 freedom of communication of a person who is arrested is of such  
29 enormity that the officer who makes the arrest must obtain a  
30 warrant to search the information contained in, or accessed  
31 through, the arrested person's portable electronic device, such  
32 as a cellular telephone.

33 (2) INTENT.—It is the intent of the Legislature that this  
34 section prohibit the search of information contained in a  
35 portable electronic device, as defined in this section, by a law  
36 enforcement agency or other governmental entity incident to  
37 arrest except pursuant to a warrant issued by a duly authorized  
38 judicial officer using established procedures.

39 (3) DEFINITION.—As used in this section, the term  
40 "portable electronic device" means an object capable of being  
41 easily transported or conveyed by a person which is capable of  
42 creating, receiving, accessing, or storing electronic data or

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43 communications and communicate by any means with another entity  
44 or individual.

45 (4) PROHIBITED ACTS.—

46 (a) The contents and communications of a portable  
47 electronic device, including, but not limited to, data or  
48 information contained in or transmitted from the portable  
49 electronic device, are not subject to a search or seizure  
50 incident to arrest by a law enforcement agency or other  
51 governmental entity except pursuant to a warrant issued by a  
52 duly authorized judicial officer using the procedures  
53 established by law.

54 (b) Incident to an arrest, a law enforcement agency or  
55 other governmental entity may temporarily maintain custody of  
56 and may employ a device designed to temporarily disable  
57 electronic devices while awaiting the issuance of a warrant by a  
58 duly authorized judicial officer.

59 (c) Except as provided in paragraph (a), this section does  
60 not:

61 1. Curtail reliance by a law enforcement agency or other  
62 governmental entity on another lawful exception to the warrant  
63 requirement.

64 2. Prevent a governmental entity from acting upon a high  
65 risk of a terrorist attack by a specific individual or  
66 organization if the United States Secretary of Homeland Security  
67 determines that credible intelligence indicates that there is  
68 such a risk.

69 3. Apply in cases of a search for a missing child who is  
70 less than 18 years of age, or a special needs or elderly adult.

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71 4. Apply to transponders used to assess or collect tolls.

72 5. Apply when the search incident to an arrest is strictly  
73 of the physical components or features of the portable  
74 electronic device and conducted out of concern for the safety of  
75 law enforcement officers.

76 6. Apply to searches incident to an arrest regarding an  
77 internal affairs investigation of a law enforcement officer or  
78 personnel, conducted by a law enforcement agency or other  
79 governmental entity that employs sworn law enforcement officers.

80 7. Apply to a device used to determine the location of an  
81 individual who has been required as part of a court order or  
82 adjudication to wear such a device.

83 8. Apply when the governmental entity reasonably believes  
84 that an emergency involving immediate danger of death or serious  
85 physical injury to a person or the danger of escape of a  
86 prisoner or suspect requires the search or seizure, without  
87 delay, of the contents of a portable electronic device  
88 concerning a specific person or persons and that a warrant  
89 cannot be obtained in time to prevent the identified danger, or  
90 the possessor of the portable electronic device, in good faith,  
91 believes that an emergency involves the danger of death.

92  
93 Within 48 hours after seeking disclosure, the governmental  
94 entity seeking the contents of the portable electronic device  
95 shall file with the appropriate court a written statement  
96 setting forth the facts giving rise to the emergency and the  
97 facts that lead it to believe that the contents of a portable  
98 electronic device are important in addressing the emergency.

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99 Private entities providing electronic communications services  
100 may not be held responsible for ensuring that governmental  
101 entities comply with this section.

102 (5) REMEDY.—

103 (a) An aggrieved person in a trial, hearing, or proceeding  
104 in or before a court, department, officer, agency, regulatory  
105 body, or other authority may move to suppress the contents of  
106 any information contained in a portable electronic device, or  
107 evidence derived therefrom, on the grounds that:

108 1. The information was unlawfully obtained;

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

111 3. The information was not obtained in conformity with the  
112 search warrant.

113  
114 Such motion shall be made before the trial, hearing, or  
115 proceeding unless there is no opportunity to make such motion or  
116 the person was not aware of the grounds of the motion. If the  
117 motion is granted, the information or evidence derived therefrom  
118 shall be suppressed. The judge, upon the filing of such motion  
119 by the aggrieved person, may make available to the aggrieved  
120 person or his or her counsel for inspection such portions of the  
121 information or evidence derived therefrom as the judge  
122 determines to be in the interest of justice.

123 (b) In addition to another right to appeal, the state has  
124 the right to appeal from an order granting a motion to suppress  
125 made under paragraph (a) or the denial of an application for a  
126 search warrant if the attorney certifies to the judge or other

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127 official granting such motion or denying such application that  
128 the appeal is not taken for purposes of delay. Such appeal shall  
129 be taken within 30 days after the date the order was entered and  
130 shall be diligently prosecuted.

131 (c) The remedies and sanctions described in this  
132 subsection with respect to the information contained in a  
133 portable electronic device are the only judicial remedies and  
134 sanctions for violations of those provisions of this section  
135 involving such information.

136 Section 2. Location informational tracking; prohibited  
137 search and seizure.-

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

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

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

156 (a) "Electronic communication service" means a service  
157 that provides to its users the ability to send or receive wire  
158 or electronic communications.

159 (b) "Governmental entity" means a state or local agency,  
160 including, but not limited to, a law enforcement entity or any  
161 other investigative entity, agency, department, division,  
162 bureau, board, or commission, or an individual acting or  
163 purporting to act for or on behalf of a state or local agency.

164 (c) "Location information" means information concerning  
165 the location of an electronic device, including both the current  
166 location and a previous location of the device, which, in whole  
167 or in part, is generated, derived from, or obtained by the  
168 operation of an electronic device.

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

172 (f) "Portable electronic device" means an object capable  
173 of being easily transported or conveyed by a person which is  
174 capable of creating, receiving, accessing, or storing electronic  
175 data or communications and communicate by any means with another  
176 entity or individual.

177 (g) "Remote computing service" means the provision of  
178 computer storage or processing services by means of an  
179 electronic communications system.

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

182 (4) PROHIBITED ACTS.-

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

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

191 (c) The application must include:

192 1. A statement of the identity of the applicant and the  
193 identity of the law enforcement agency conducting the  
194 investigation.

195 2. A certification by the applicant that the information  
196 likely to be obtained is relevant to an ongoing criminal  
197 investigation being conducted by the investigating agency.

198 3. A statement of the offense to which the information  
199 likely to be obtained relates.

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

203 (d) If the court finds that the required certification and  
204 statements have been made in the application, the court shall  
205 enter an ex parte order authorizing the monitoring of an  
206 electronic device. Such order may authorize the monitoring of  
207 the electronic device within the jurisdiction of the court and  
208 outside that jurisdiction, but within this state.

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

212 (f) A court order may not be issued for the location of an  
213 electronic device pursuant to this section for a period of time  
214 longer than is necessary to achieve the objective of the  
215 authorization, and in any event no longer than 30 days,  
216 commencing on the day the order is issued, or 10 days after the  
217 location information is initially obtained, whichever comes  
218 first.

219 (g) Extensions of an order may be granted, but only upon a  
220 judge finding continuing probable cause and that the extension  
221 is necessary to achieve the objective of the authorization. Each  
222 extension granted for an order pursuant to this section may not  
223 exceed the time period that the authorizing judge deems  
224 necessary to achieve the purposes for which the order was  
225 originally granted, but in any event, may not exceed 60 days.

226 (5) EXCEPTIONS.—Notwithstanding subsection (4), a  
227 governmental entity may obtain location information without a  
228 court order if disclosure of the location information is not  
229 prohibited by federal law and if:

230 (a) It involves transponders used to assess or collect  
231 tolls.

232 (b) Done in reliance by a law enforcement agency or other  
233 governmental entity on lawful exceptions to the warrant  
234 requirement.

235 (c) There is a high risk of a terrorist attack by a  
236 specific individual or organization if the United States

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237 Secretary of Homeland Security determines that credible  
238 intelligence indicates that there is such a risk.

239 (d) It involves a search for a missing child who is less  
240 than 18 years of age, or a special needs or elderly adult.

241 (e) It is made in response to the user's call for  
242 emergency services.

243 (f) It is done with the informed, affirmative consent of  
244 the owner or user of the electronic device; however the owner or  
245 user may not consent to the disclosure of location information  
246 if the device is known or believed to be in the possession of,  
247 or attached to a possession of, a third party known to the owner  
248 or user, unless the third party is under 18 years of age. The  
249 informed, affirmative consent of the owner or user of the  
250 electronic device may not be used as consent to disclose the  
251 location information of another portable electronic device that  
252 may be remotely linked or connected to the owner or user of the  
253 subject portable electronic device.

254 (g) It is done with the informed, affirmative consent of  
255 the legal guardian or next of kin of the electronic device's  
256 user, if the user is believed to be deceased or has been  
257 reported missing and unable to be contacted.

258 (h) It is done when the governmental entity reasonably  
259 believes that an emergency involving immediate danger of death  
260 or serious physical injury to a person requires the disclosure,  
261 without delay, of location information concerning a specific  
262 person or persons and that a warrant cannot be obtained in time  
263 to prevent the identified danger and the possessor of the  
264 location information, in good faith, believes that an emergency

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265 involving danger of death or serious physical injury to a person  
266 requires the disclosure without delay.

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268 Within 48 hours after seeking disclosure, the governmental  
269 entity seeking the location information shall file with the  
270 appropriate court a written statement setting forth the facts  
271 giving rise to the emergency and the facts as to why the person  
272 whose location information was sought is believed to be  
273 important in addressing the emergency. Private entities  
274 providing electronic communications services shall not be made  
275 responsible for ensuring that governmental entities comply with  
276 this section.

277 (6) REMEDY.—

278 (a) An aggrieved person in a trial, hearing, or proceeding  
279 in or before a court, department, officer, agency, regulatory  
280 body, or other authority may move to suppress the contents of  
281 information contained in a portable electronic device or  
282 evidence derived therefrom, on the grounds that:

283 1. The information was unlawfully obtained;

284 2. The order of authorization or approval under which it  
285 was obtained is insufficient on its face; or

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

288

289 Such motion shall be made before the trial, hearing, or  
290 proceeding unless there was no opportunity to make such motion  
291 or the person was not aware of the grounds of the motion. If the  
292 motion is granted, the information or evidence derived therefrom

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293 shall be suppressed. The judge, upon the filing of such motion  
294 by the aggrieved person, may make available to the aggrieved  
295 person or his or her counsel for inspection such portions of the  
296 information or evidence derived therefrom as the judge  
297 determines to be in the interest of justice.

298 (b) In addition to another right to appeal, the state has  
299 the right to appeal from an order granting a motion to suppress  
300 made under paragraph (a) or the denial of an application for an  
301 order of approval if the attorney certifies to the judge or  
302 other official granting such motion or denying such application  
303 that the appeal is not taken for purposes of delay. Such appeal  
304 shall be taken within 30 days after the date the order was  
305 entered and shall be diligently prosecuted.

306 (c) The remedies and sanctions described in this  
307 subsection with respect to the information contained in a  
308 portable electronic device are the only judicial remedies and  
309 sanctions for violations of those provisions of this section  
310 involving such information.

311 (7) CAUSE OF ACTION.—This section does not create a cause  
312 of action against a foreign or Florida private entity or its  
313 officers, employees, agents, or other specified persons for  
314 providing location information.

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

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318 **T I T L E A M E N D M E N T**

319 Remove everything before the enacting clause and insert:

320 A bill to be entitled

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321 An act relating to the search and seizure of a  
322 portable electronic device; providing legislative  
323 findings and intent; defining the term "portable  
324 electronic device"; providing that information  
325 contained in a portable electronic device is not  
326 subject to a search by a law enforcement officer  
327 incident to an arrest except pursuant to a warrant  
328 issued by a duly authorized judicial officer using  
329 procedures established by law; providing exceptions;  
330 providing a remedy; prohibiting location informational  
331 tracking; providing legislative findings and intent;  
332 defining terms; prohibiting a governmental entity from  
333 obtaining the location information of an electronic  
334 device without a valid court order issued by a duly  
335 authorized judicial officer; providing that a court  
336 order may not be issued for the location of an  
337 electronic device for a period of time longer than is  
338 necessary to achieve the objective of the court order;  
339 providing time periods for the validity of a court  
340 order; providing criteria by which a court order for  
341 location information may be extended; providing  
342 exceptions to the requirement that a court order be  
343 obtained for location information; providing a remedy;  
344 providing applicability; providing an effective date.

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