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LEGISLATIVE ACTION

Senate

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House

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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



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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;