

By the Committee on Criminal Justice and Senator Burt

307-1949-01

1 A bill to be entitled
2 An act relating to production of certain
3 records and other productions as a result of a
4 subpoena, order, or warrant; creating s.
5 92.605, F.S.; defining terms; providing an
6 exemption; providing requirements for
7 production of records by an out-of-state
8 corporation upon issuance of a subpoena, court
9 order, or search warrant pertaining to such
10 records; providing requirements for
11 out-of-state corporations seeking to quash a
12 subpoena or warrant; requiring out-of-state
13 corporations to verify the authenticity of
14 records such corporations are required to
15 produce; providing requirements for the
16 production of certain records by certain
17 Florida corporations; providing that a cause of
18 action does not arise against any out-of-state
19 or Florida corporation or other specified
20 persons for production of certain records,
21 information, facilities, or assistance;
22 providing an effective date.

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24 Be It Enacted by the Legislature of the State of Florida:

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26 Section 1. Section 92.605, Florida Statutes, is
27 created to read:

28 92.605 Production of certain records by Florida
29 corporations and out-of-state corporations.

30 (1) For the purposes of this section, the term:
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1 (a) "Adverse result" includes one of the following
2 consequences to notification of the existence of a court
3 order, a subpoena, or a search warrant:

4 1. Danger to the life or physical safety of an
5 individual.

6 2. A flight from prosecution.

7 3. The destruction of or tampering with evidence.

8 4. The intimidation of potential witnesses.

9 5. Serious jeopardy to an investigation or undue delay
10 of a trial.

11 (b) "Applicant" means a law enforcement officer who is
12 seeking a court order or subpoena under s. 16.56, s. 27.04, s.
13 905.185, or s. 914.04 or who is issued a search warrant under
14 s. 933.01.

15 (c) "Business" means any business, institution,
16 association, profession, occupation, or calling of any kind,
17 whether or not conducted for profit.

18 (d) "Electronic communication services" and "remote
19 computing services" have the same meaning as provided in the
20 Electronic Communications Privacy Act in Chapter 121
21 (commencing with Section 2701) of Part I of Title 18 of the
22 United States Code Annotated. This section does not apply to
23 corporations that do not provide those services to the public.

24 (e) "Florida corporation" means any corporation or
25 other entity that is regulated under ch. 607, excluding
26 out-of-state corporations.

27 (f) "Out-of-state corporation" means any corporation
28 that is qualified to do business in this state under s.
29 607.1501.

30 (g) "Out-of-state record of regularly conducted
31 business activity" means a memorandum, report, record, or data

1 compilation, in any form, of acts, events, conditions,
2 opinions, or diagnoses, maintained in another state or
3 country.

4 (h) "Out-of-state certification" means a written
5 declaration made and signed in another state or country by the
6 custodian of an out-of-state record of regularly conducted
7 business activity or another qualified person that, if falsely
8 made, would subject the maker to criminal penalty under the
9 laws of another state or country.

10 (i) "Properly served" means delivery by hand or in a
11 manner reasonably allowing for proof of delivery if delivered
12 by United States mail, overnight-delivery service, or
13 facsimile to a person or entity properly registered to do
14 business in the state.

15 (2) The following provisions apply to any subpoena,
16 court order, or search warrant, issued in compliance with the
17 Electronic Communications Privacy Act in chapter 121
18 (commencing with s. 2701) of Part I of Title 18 of the United
19 States Code; and that is subject to this chapter which allows
20 a search for records that are in the actual or constructive
21 possession of an out-of-state corporation that provides
22 electronic communication services or remote computing services
23 to the public, when those records would reveal the identity of
24 the customers using those services; data stored by, or on
25 behalf of, the customers; the customers' usage of those
26 services; the recipients or destinations of communications
27 sent to or from those customers.

28 (a) When properly served with a subpoena, court order,
29 or search warrant issued by a Florida court, an out-of-state
30 corporation subject to this section shall provide to the
31 applicant all records sought pursuant to that subpoena, court

1 order, or warrant within 10 business days after receipt, or
2 the date indicated within the subpoena, if later, including
3 those records maintained or located outside this state.

4 (b) When the applicant makes a showing and the court
5 finds that failure to produce records within 10 business days
6 would cause an adverse result, the subpoena, court order, or
7 warrant may require production of records within less than 10
8 business days. A court may reasonably extend the time required
9 for production of the records upon finding that the
10 out-of-state corporation has shown good cause for that
11 extension and that an extension of time would not cause an
12 adverse result.

13 (c) An out-of-state corporation seeking to quash the
14 subpoena, court order, or warrant must seek relief from the
15 court issuing it within the time required for production of
16 records under this section. The issuing court shall hear and
17 decide that motion within 5 court days after the motion is
18 filed.

19 (d) The out-of-state corporation shall verify the
20 authenticity of records that it produces by providing an
21 affidavit that complies with the requirements set forth in
22 this section. Records produced in compliance with this section
23 are admissible in evidence as set forth in subsection (5).

24 (3) A Florida corporation that provides electronic
25 communication services or remote computing services to the
26 public, when served with a subpoena, court order, or warrant
27 issued by another state to produce records that would reveal
28 the identity of the customers using those services; data
29 stored by, or on behalf of, the customers; the customers'
30 usage of those services; or the recipients or destinations of
31 communications sent to or from those customers shall produce

1 those records as if that subpoena, court order, or warrant had
2 been issued by a Florida court.

3 (4) A cause of action does not arise against any
4 out-of-state or Florida corporation subject to this section,
5 or its officers, employees, agents, or other specified
6 persons, for providing records, information, facilities, or
7 assistance in accordance with the terms of a subpoena, court
8 order, or warrant subject to this section.

9 (5) In a criminal proceeding in a court of the State
10 of Florida, an out-of-state record of regularly conducted
11 business activity, or a copy of such record, shall not be
12 excluded as evidence by the hearsay rule if an out-of-state
13 certification attests that:

14 (a) Such record was made at or near the time of the
15 occurrence of the matters set forth by, or from information
16 transmitted by, a person with knowledge of those matters;

17 (b) Such record was kept in the course of a regularly
18 conducted business activity;

19 (c) The business activity made such a record as a
20 regular practice; and

21 (d) If such record is not the original, it is a
22 duplicate of the original;

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24 unless the source of information or the method or
25 circumstances of preparation indicate lack of trustworthiness.

26 (6) An out-of-state certification under this section
27 shall authenticate such record or duplicate.

28 (7) No evidence in such records in the form of opinion
29 or diagnosis is admissible under subsection (5) unless such
30 opinion or diagnosis would be admissible under ss.

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1 90.701-90.705 if the person whose opinion is recorded were to
2 testify to the opinion directly.

3 (8) At the arraignment or as soon after the
4 arraignment as practicable, or 60 days prior to a civil trial,
5 a party intending to offer in evidence under this section an
6 out-of-state record of regularly conducted business activity
7 shall provide written notice of that intention to each other
8 party. A motion opposing admission in evidence of such record
9 shall be made by the opposing party and determined by the
10 court before trial. Failure by a party to file such motion
11 before trial shall constitute a waiver of objection to such
12 record or duplicate, but the court for cause shown may grant
13 relief from the waiver.

14 (9) In any criminal case, the content of any
15 electronic communication may be obtained under this section
16 only by court order or by the issuance of a search warrant.

17 Section 2. This act shall take effect upon becoming a
18 law.

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20 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
21 COMMITTEE SUBSTITUTE FOR
22 Senate Bill 2028

- 23 - The CS changes the time for a corporation to respond to
24 a subpoena, court order or search warrant from 5 days to
25 10 days.
26 - Limits the admissibility of evidence gathered under the
27 provisions of the bill, where there is an out-of-state
28 certification, to criminal proceedings.
29 - Allows the obtaining of electronic communications only
30 where the applicant has secured a court order or a
31 search warrant.