

1                   A bill to be entitled  
2           An act relating to search of a portable electronic  
3           device; creating s. 933.31, F.S.; providing  
4           legislative findings and intent; providing  
5           definitions; providing that information contained in a  
6           portable electronic device is not subject to a search  
7           by a law enforcement officer incident to an arrest  
8           except pursuant to a warrant issued by a duly  
9           authorized judicial officer using procedures  
10          established by law; providing exceptions; creating s.  
11          933.32, F.S.; prohibiting location informational  
12          tracking; providing legislative findings and intent;  
13          defining terms; prohibiting a government entity from  
14          obtaining the location information of an electronic  
15          device without a valid search warrant issued by a duly  
16          authorized judicial officer; providing that a search  
17          warrant may not be issued for the location of an  
18          electronic device for a period of time longer than is  
19          necessary to achieve the objective of the search  
20          warrant authorization; providing time periods for the  
21          validity of a search warrant; providing criteria by  
22          which to extend a search warrant for location  
23          information; providing exceptions to the requirement  
24          to obtain a search warrant for location information;  
25          providing an effective date.

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27   Be It Enacted by the Legislature of the State of Florida:  
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29 Section 1. Section 933.31, Florida Statutes, is created to  
30 read:

31 933.31 Portable electronic device; prohibited search.—

32 (1) FINDINGS.—The Legislature finds that:

33 (a) The number of residents of this state using and  
34 carrying portable electronic devices is growing at a rapidly  
35 increasing rate. These devices can store, and do encourage the  
36 storing of, an almost limitless amount of personal and private  
37 information. Commonly linked to the Internet, these devices are  
38 used to access personal and business information and databases  
39 in computers and servers that are located anywhere in the world.  
40 A user of a portable electronic device has a reasonable and  
41 justifiable expectation of privacy in the information that these  
42 devices contain and can access through the Internet.

43 (b) The right of the people to be secure in their persons,  
44 houses, papers, and effects against unreasonable searches and  
45 seizures, and against the unreasonable interception of private  
46 communications by any means, shall not be violated.

47 (c) No warrant shall be issued except upon probable cause,  
48 supported by affidavit, particularly describing the place or  
49 places to be searched, the person or persons, thing or things to  
50 be seized, the communication to be intercepted, and the nature  
51 of evidence to be obtained.

52 (d) The intrusion on the privacy of information and the  
53 freedom of communication of any person who is arrested is of  
54 such enormity that the officer who makes the arrest must obtain  
55 a warrant to search the information contained in, or accessed  
56 through, the arrested person's portable electronic device, such

57 | as a cellular telephone.

58 | (2) INTENT.—It is the intent of the Legislature that this  
 59 | section prohibit the search of information contained in a  
 60 | portable electronic device, as defined in this section, by a law  
 61 | enforcement agency or other government entity at any time except  
 62 | pursuant to a warrant issued by a duly authorized judicial  
 63 | officer using established procedures.

64 | (3) DEFINITIONS.—As used in this section, the term:

65 | (a) "Government entity" means a state or local agency,  
 66 | including, but not limited to, a law enforcement entity or any  
 67 | other investigative entity, agency, department, division,  
 68 | bureau, board, or commission, or an individual acting or  
 69 | purporting to act for or on behalf of a state or local agency.

70 | (b) "Portable electronic device" means an object capable  
 71 | of being easily transported or conveyed by a person which is  
 72 | capable of creating, receiving, accessing, or storing electronic  
 73 | data or communications and that communicates with, by any means,  
 74 | another entity or individual.

75 | (4) PROHIBITED ACTS.—

76 | (a) The contents and communications of a portable  
 77 | electronic device, including, but not limited to, data or  
 78 | information contained in or transmitted from the portable  
 79 | electronic device, are not subject to a search by a law  
 80 | enforcement agency or other government entity except pursuant to  
 81 | a warrant issued by a duly authorized judicial officer using the  
 82 | procedures established by law.

83 | (b) Notwithstanding paragraph (a), this section does not:

84 | 1. Prevent a law enforcement agency or any other

85 government entity from relying on lawful exceptions to the  
 86 warrant requirement, other than searches incident to arrest;

87 2. Apply to transponders used for the purpose of assessing  
 88 or collecting tolls.

89 3. Apply whenever the government entity reasonably  
 90 believes that an emergency involving immediate danger of death  
 91 or serious physical injury to a person requires the search,  
 92 without delay, of the contents of a portable electronic device  
 93 concerning a specific person or persons and that a warrant  
 94 cannot be obtained in time to prevent the identified danger, or  
 95 the possessor of the portable electronic device, in good faith,  
 96 believes that an emergency involves the danger of death.

97 4. Prevent law enforcement from disabling a portable  
 98 electronic device or the device's access to wireless  
 99 communication pending the obtaining of a lawful search warrant.

100  
 101 The government entity seeking the contents of the portable  
 102 electronic device shall file with the appropriate court a  
 103 written statement setting forth the facts giving rise to the  
 104 emergency and the facts as to why the person or persons whose  
 105 contents of a portable electronic device was sought are believed  
 106 to be important in addressing the emergency, no later than 48  
 107 hours after seeking disclosure. Private entities providing  
 108 electronic communications services are not responsible for  
 109 ensuring that government entities comply with this section.

110 Section 2. Section 933.32, Florida Statutes, is created to  
 111 read:

112 933.32 Location informational tracking; prohibitions.-

113        (1) FINDINGS.-The Legislature finds that existing law  
114 authorizes a court to issue a warrant for the search of a place  
115 and the seizure of property or things identified in the warrant  
116 when there is probable cause to believe that specified grounds  
117 exist. The Legislature also finds that existing law provides for  
118 a warrant procedure for the acquisition of stored communications  
119 in the possession of a provider of electronic communication  
120 service or a remote computing service.

121        (2) INTENT.-It is the intent of the Legislature to  
122 prohibit a government entity from obtaining the location  
123 information of an electronic device without a valid search  
124 warrant issued by a duly authorized judicial officer unless  
125 certain exceptions apply, including in an emergency or when  
126 requested by the owner of the device. However, it is also the  
127 intent of the Legislature that this bill, with certain  
128 exceptions, prohibits the use of information obtained in  
129 violation of this section in a civil or administrative hearing.

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

131        (a) "Electronic communication service" means a service  
132 that provides to its users the ability to send or receive wire  
133 or electronic communications.

134        (b) "Government entity" means a state or local agency,  
135 including, but not limited to, a law enforcement entity or any  
136 other investigative entity, agency, department, division,  
137 bureau, board, or commission, or an individual acting or  
138 purporting to act for or on behalf of a state or local agency.

139        (c) "Location information" means information, concerning  
140 the location of an electronic device, including both the current

141 location and any previous location of the device, that, in whole  
142 or in part, is generated, derived from, or obtained by the  
143 operation of an electronic device.

144 (d) "Location information service" means the provision of  
145 a global positioning service or other mapping, locational, or  
146 directional information service.

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

150 (f) "Portable electronic device" means an object capable of  
151 being easily transported or conveyed by a person which is  
152 capable of creating, receiving, accessing, or storing electronic  
153 data or communications and that communicates with, by any means,  
154 another entity or individual.

155 (g) "Remote computing service" means the provision of  
156 computer storage or processing services by means of an  
157 electronic communications system.

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

160 (4) PROHIBITED ACTS.-

161 (a) A law enforcement agency or other government entity  
162 may not obtain the location information of an electronic device  
163 for the purpose of continuously or periodically tracking an  
164 individual without a valid search warrant issued by a duly  
165 authorized judicial officer using procedures established  
166 pursuant to law, unless an exception in subsection (5) applies.

167 (b)1. A search warrant may not be issued for the location  
168 of an electronic device pursuant to this section for a period of

169 time longer than is necessary to achieve the objective of the  
170 authorization, and in any event no longer than 30 days,  
171 commencing on the day the location information is initially  
172 obtained, or 10 days after the issuance of the warrant,  
173 whichever comes first.

174 2. Extensions of a warrant may be granted, but only upon a  
175 judge finding continuing probable cause and that the extension  
176 is necessary to achieve the objective of the authorization. Each  
177 extension granted for a warrant pursuant to this section shall  
178 be for no longer than the authorizing judge deems necessary to  
179 achieve the purposes for which the warrant was originally  
180 granted, but in any event, shall be for no longer than 30 days.

181 (5) EXCEPTIONS.—Notwithstanding subsection (4), a  
182 government entity may obtain location information without a  
183 search warrant if disclosure of the location information is not  
184 prohibited by federal law, in any of the following  
185 circumstances:

186 (a) Transponders used for the purpose of assessing or  
187 collecting tolls.

188 (b) Reliance by a law enforcement agency or other  
189 government entity on lawful exceptions to the warrant  
190 requirement.

191 (c) Cases of a search conducted incident to a national  
192 security event.

193 (d) Cases of a search for a missing child who is less than  
194 18 years of age.

195 (e) In order to respond to the user's call for emergency  
196 services.

197        (f) With the informed, affirmative consent of the owner or  
198 user of the electronic device concerned, provided that the owner  
199 or user may not consent to the disclosure of location  
200 information if the device is known or believed to be in the  
201 possession of, or attached to a possession of, a third party  
202 known to the owner or user, unless that third party is less than  
203 18 years of age. The informed, affirmative consent of the owner  
204 or user of the electronic device concerned may not be used as  
205 consent to disclose the location information of another portable  
206 electronic device that may be remotely linked or connected to  
207 the owner or user of the portable electronic device concerned.

208        (g) With the informed, affirmative consent of the legal  
209 guardian or next of kin of the electronic device's user, if the  
210 user is believed to be deceased or has been reported missing and  
211 unable to be contacted.

212        (h) If the government entity reasonably believes that an  
213 emergency involving immediate danger of death or serious  
214 physical injury to a person requires the disclosure, without  
215 delay, of location information concerning a specific person or  
216 persons and that a warrant cannot be obtained in time to prevent  
217 the identified danger and the possessor of the location  
218 information, in good faith, believes that an emergency involving  
219 danger of death or serious physical injury to a person requires  
220 the disclosure without delay.

221  
222        The government entity seeking the location information shall  
223 file with the appropriate court a written statement setting  
224 forth the facts giving rise to the emergency and the facts as to



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225 why the person or persons whose location information was sought  
226 are believed to be important in addressing the emergency, no  
227 later than 48 hours after seeking disclosure. Private entities  
228 providing electronic communications services are not responsible  
229 for ensuring that government entities comply with this section.

230 (6) CAUSE OF ACTION.—This section does not create a cause  
231 of action against any foreign or Florida private entity, its  
232 officers, employees, agents, or other specified persons, for  
233 providing location information.

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