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LEGISLATIVE ACTION

Senate

House

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Floor: WD

04/03/2013 09:59 AM

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Senator Brandes moved the following:

**Senate Amendment (with title amendment)**

Between lines 53 and 54

insert:

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

(1) FINDINGS.-The Legislature finds that:

(a) The number of residents of this state using and carrying portable electronic devices is growing exponentially. These devices are capable of storing and accessing a nearly limitless amount of personal and private information. Commonly linked to the Internet, these devices are used to access personal and business information and databases in computers and



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14 servers that are located anywhere in the world. A user of a  
15 portable electronic device has a reasonable and justifiable  
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 cause,  
23 supported by affidavit, particularly describing the place or  
24 places to be searched, the person or persons, thing or things to  
25 be seized, the communication to be intercepted, and the nature  
26 of evidence to be obtained.

27 (d) The intrusion on the privacy of information and the  
28 freedom of communication of any person who is arrested is of  
29 such enormity that the officer who makes the arrest must obtain  
30 a 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 "portable  
40 electronic device" means an object capable of being easily  
41 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 communicates 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. Operate to curtail reliance by a law enforcement agency  
62 or other governmental entity on any other lawful exceptions to  
63 the warrant 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.

71 4. Apply to transponders used for the purpose of assessing



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72 or collecting tolls.

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

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

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

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

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



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101 may not be held responsible for ensuring that governmental  
102 entities comply with this section.

103 (5) REMEDY.—

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

109 1. The information was unlawfully obtained;

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

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

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

124 (b) In addition to any other right to appeal, the state has  
125 the right to appeal from an order granting a motion to suppress  
126 made under paragraph (a) or the denial of an application for a  
127 search warrant if the attorney certifies to the judge or other  
128 official granting such motion or denying such application that  
129 the appeal is not taken for purposes of delay. Such appeal shall



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130 be taken within 30 days after the date the order was entered and  
131 shall be diligently prosecuted.

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

136 Section 3. 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 for  
143 a judicial procedure for the acquisition of stored  
144 communications in the possession of a provider of electronic  
145 communication service or a remote computing service.

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

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

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



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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 any previous location of the device, which, in  
167 whole or in part, is generated, derived from, or obtained by the  
168 operation of an electronic device.

169       (d) "Location information service" means the provision of a  
170 global positioning service or other mapping, locational, or  
171 directional information service.

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

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

180       (g) "Remote computing service" means the provision of  
181 computer storage or processing services by means of an  
182 electronic communications system.

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

185       (4) PROHIBITED ACTS.-

186       (a) A law enforcement agency or other governmental entity  
187 may not obtain the location information of an electronic device



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188 without a valid court order issued by a duly authorized judicial  
189 officer using the procedure set forth in this section.

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

194 (c) The application must include:

195 1. A statement of the identity of the applicant and the  
196 identity of the law enforcement agency conducting the  
197 investigation.

198 2. A certification by the applicant that the information  
199 likely to be obtained is relevant to an ongoing criminal  
200 investigation being conducted by the investigating agency.

201 3. A statement of the offense to which the information  
202 likely to be obtained relates.

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

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

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

215 (f) A court order may not be issued for the location of an  
216 electronic device pursuant to this section for a period of time





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217 longer than is necessary to achieve the objective of the  
218 authorization, and in any event no longer than 30 days,  
219 commencing on the day the order is issued, or 10 days after the  
220 location information is initially obtained, whichever comes  
221 first.

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

229 (5) EXCEPTIONS.—Notwithstanding subsection (4), a  
230 governmental entity may obtain location information without a  
231 court order if disclosure of the location information is not  
232 prohibited by federal law and any of the following circumstances  
233 exists:

234 (a) Transponders used for the purpose of assessing or  
235 collecting tolls.

236 (b) Reliance by a law enforcement agency or other  
237 governmental entity on lawful exceptions to the warrant  
238 requirement.

239 (c) A high risk of a terrorist attack by a specific  
240 individual or organization if the United States Secretary of  
241 Homeland Security determines that credible intelligence  
242 indicates that there is such a risk.

243 (d) Cases of a search for a missing child who is less than  
244 18 years of age, or a special needs or elderly adult.

245 (e) In order to respond to the user's call for emergency



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246 services.

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

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

262 (h) If the governmental entity reasonably believes that an  
263 emergency involving immediate danger of death or serious  
264 physical injury to a person requires the disclosure, without  
265 delay, of location information concerning a specific person or  
266 persons and that a warrant cannot be obtained in time to prevent  
267 the identified danger and the possessor of the location  
268 information, in good faith, believes that an emergency involving  
269 danger of death or serious physical injury to a person requires  
270 the disclosure without delay.

271  
272 Within 48 hours of seeking disclosure, the governmental entity  
273 seeking the location information shall file with the appropriate  
274 court a written statement setting forth the facts giving rise to



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275 the emergency and the facts as to why the person whose location  
276 information was sought is believed to be important in addressing  
277 the emergency. Private entities providing electronic  
278 communications services shall not be made responsible for  
279 ensuring that governmental entities comply with this section.

280 (6) REMEDY.—

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

286 1. The information was unlawfully obtained;

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

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

291  
292 Such motion shall be made before the trial, hearing, or  
293 proceeding unless there was no opportunity to make such motion  
294 or the person was not aware of the grounds of the motion. If the  
295 motion is granted, the information or evidence derived therefrom  
296 shall be suppressed. The judge, upon the filing of such motion  
297 by the aggrieved person, may make available to the aggrieved  
298 person or his or her counsel for inspection such portions of the  
299 information or evidence derived therefrom as the judge  
300 determines to be in the interest of justice.

301 (b) In addition to any other right to appeal, the state has  
302 the right to appeal from an order granting a motion to suppress  
303 made under paragraph (a) or the denial of an application for an



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304 order of approval if the attorney certifies to the judge or  
305 other official granting such motion or denying such application  
306 that the appeal is not taken for purposes of delay. Such appeal  
307 shall be taken within 30 days after the date the order was  
308 entered and shall be diligently prosecuted.

309 (c) The remedies and sanctions described herein with  
310 respect to the information contained in a portable electronic  
311 device are the only judicial remedies and sanctions for  
312 violations of those sections involving such information.

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

317 Section 4. This act shall take effect July 1, 2013.

318

319 ===== T I T L E A M E N D M E N T =====

320 And the title is amended as follows:

321 Delete line 12

322 and insert:

323

324 of the act; providing legislative findings and intent;  
325 defining the term "portable electronic device";  
326 providing that information contained in a portable  
327 electronic device is not subject to a search by a law  
328 enforcement officer incident to an arrest except  
329 pursuant to a warrant issued by a duly authorized  
330 judicial officer using procedures established by law;  
331 providing exceptions; providing a remedy; prohibiting  
332 location informational tracking; providing legislative



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333 findings and intent; defining terms; prohibiting a  
334 governmental entity from obtaining the location  
335 information of an electronic device without a valid  
336 court order issued by a duly authorized judicial  
337 officer; providing that a court order may not be  
338 issued for the location of an electronic device for a  
339 period of time longer than is necessary to achieve the  
340 objective of the court order; providing time periods  
341 for the validity of a court order; providing criteria  
342 by which a court order for location information may be  
343 extended; providing exceptions to the requirement that  
344 a court order be obtained for location information;  
345 providing a remedy; providing applicability; providing  
346 an effective date.