



654094

LEGISLATIVE ACTION

Senate

.  
. .  
. .  
. .  
. .

House

---

The Committee on Rules (Brandes) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 187 and 188

insert:

Section 4. Section 934.23, Florida Statutes, is amended to read:

934.23 Required disclosure of customer communications or records.—

(1) As used in this section, the term:

(a) "A court of competent jurisdiction" means a court that has jurisdiction over the investigation or that is otherwise



654094

12 authorized by law.

13 (b) "Investigative or law enforcement officer" has the same  
14 meaning as s. 934.02(6), except that in any investigation  
15 relating to whether a crime has been or is being committed only  
16 a state attorney, an assistant state attorney, the statewide  
17 prosecutor, or an assistant statewide prosecutor may seek under  
18 this section the disclosure of a wire or electronic  
19 communication, including the contents of such communication, and  
20 any record or other information pertaining to a subscriber or  
21 customer of a provider of electronic communication service or  
22 provider of remote computing service.

23 (2) ~~(1)~~ An investigative or law enforcement officer may  
24 require the disclosure by a provider of electronic communication  
25 service or remote computing service of the contents of a wire or  
26 electronic communication that has been in electronic storage in  
27 an electronic communications system for 180 days or less only  
28 pursuant to a warrant issued by the judge of a court of  
29 competent jurisdiction. As used in this section, the term "a  
30 court of competent jurisdiction" means a court that has  
31 jurisdiction over the investigation or that is otherwise  
32 authorized by law. An investigative or law enforcement officer  
33 may require the disclosure by a provider of electronic  
34 communication services of the contents of a wire or electronic  
35 communication that has been in electronic storage in an  
36 electronic communications system for more than 180 days by the  
37 means available under subsection (3) ~~(2)~~.

38 ~~(2) An investigative or law enforcement officer may require~~  
39 ~~a provider of remote computing service to disclose the contents~~  
40 ~~of any wire or electronic communication to which this subsection~~



654094

41 ~~is made applicable by subsection (3):~~

42 ~~(a) Without required notice to the subscriber or customer~~  
43 ~~if the investigative or law enforcement officer obtains a~~  
44 ~~warrant issued by the judge of a court of competent~~  
45 ~~jurisdiction; or~~

46 ~~(b) With prior notice, or with delayed notice pursuant to~~  
47 ~~s. 934.25, from the investigative or law enforcement officer to~~  
48 ~~the subscriber or customer if the investigative or law~~  
49 ~~enforcement officer:~~

50 ~~1. Uses a subpoena; or~~

51 ~~2. Obtains a court order for such disclosure under~~  
52 ~~subsection (5).~~

53 (3) Subsection (2) is applicable with respect to any  
54 electronic communication that is held or maintained on a remote  
55 computing service:

56 (a) On behalf of a subscriber or customer of such service  
57 and received by means of electronic transmission from, or  
58 created by means of computer processing of communications  
59 received by means of electronic transmission from, a subscriber  
60 or customer of such service.

61 (b) Solely for the purposes of providing storage or  
62 computer processing services to a subscriber or customer, if the  
63 provider is not authorized to access the contents of any such  
64 communication for purposes of providing any service other than  
65 storage or computer processing.

66 (4) (a) An investigative or law enforcement officer may  
67 require a provider of electronic communication service or remote  
68 computing service to disclose a record or other information  
69 pertaining to a subscriber or customer of such service, not



654094

70 including the contents of a communication, only when the  
71 investigative or law enforcement officer:

72 1. Obtains a warrant issued by the judge of a court of  
73 competent jurisdiction;

74 2. Obtains a court order for such disclosure under  
75 subsection (5);

76 3. Has the consent of the subscriber or customer to such  
77 disclosure; or

78 4. Seeks information under paragraph (b).

79 (b) A provider of electronic communication service or  
80 remote computing service shall disclose to an investigative or  
81 law enforcement officer the name; address; local and long-  
82 distance telephone connection records, or records of session  
83 times or durations; length of service, including the starting  
84 date of service; types of services used; telephone or instrument  
85 number or other subscriber number or identity, including any  
86 temporarily assigned network address; and means and source of  
87 payment, including any credit card or bank account number of a  
88 subscriber to or customer of such service when the governmental  
89 entity uses a subpoena or obtains such information in the manner  
90 specified in paragraph (a) for obtaining information under that  
91 paragraph.

92 ~~(c) An investigative or law enforcement officer who~~  
93 ~~receives records or information under this subsection is not~~  
94 ~~required to provide notice to a subscriber or customer.~~

95 (5) A court order for disclosure under ~~subsection (2),~~  
96 ~~subsection (3), or~~ subsection (4) shall issue only if the  
97 investigative or law enforcement officer offers specific and  
98 articulable facts showing that there are reasonable grounds to



654094

99 believe that a record or other information pertaining to a  
100 subscriber or customer of an electronic communication service or  
101 remote computing service ~~the contents of a wire or electronic~~  
102 ~~communication or the records of other information sought~~ are  
103 relevant and material to an ongoing criminal investigation. A  
104 court issuing an order pursuant to this section, on a motion  
105 made promptly by the service provider, may quash or modify such  
106 order if the information or records requested are unusually  
107 voluminous in nature or compliance with such order otherwise  
108 would cause an undue burden on such provider.

109 (6) No cause of action shall lie in any court against any  
110 provider of wire or electronic communication service, its  
111 officers, employees, agents, or other specified persons for  
112 providing information, facilities, or assistance in accordance  
113 with the terms of a court order, warrant, subpoena, or  
114 certification under ss. 934.21-934.28.

115 (7) (a) A provider of wire or electronic communication  
116 services or a remote computing service, upon the request of an  
117 investigative or law enforcement officer, shall take all  
118 necessary steps to preserve records and other evidence in its  
119 possession pending the issuance of a court order or other  
120 process.

121 (b) Records referred to in paragraph (a) shall be retained  
122 for a period of 90 days, which shall be extended for an  
123 additional 90 days upon a renewed request by an investigative or  
124 law enforcement officer.

125 (8) A provider of electronic communication service, a  
126 remote computing service, or any other person who furnished  
127 assistance pursuant to this section shall be held harmless from



654094

128 any claim and civil liability resulting from the disclosure of  
129 information pursuant to this section and shall be reasonably  
130 compensated for reasonable expenses incurred in providing such  
131 assistance.

132 Section 5. Section 934.24, Florida Statutes is repealed.

133 Section 6. Section 934.25, Florida Statutes, is amended to  
134 read:

135 934.25 Nondisclosure by service provider ~~Delayed notice.~~-

136 ~~(1) An investigative or law enforcement officer acting~~  
137 ~~under s. 934.23(2) may:~~

138 ~~(a) Where a court order is sought, include in the~~  
139 ~~application a request for an order delaying the notification~~  
140 ~~required under s. 934.23(2) for a period not to exceed 90 days,~~  
141 ~~which request the court shall grant if it determines that there~~  
142 ~~is reason to believe that notification of the existence of the~~  
143 ~~court order may have an adverse result described in subsection~~  
144 ~~(2).~~

145 ~~(b) Where a subpoena is obtained, delay the notification~~  
146 ~~required under s. 934.23(2) for a period not to exceed 90 days~~  
147 ~~upon the execution of a written certification of a supervisory~~  
148 ~~official that there is reason to believe that notification of~~  
149 ~~the existence of the subpoena may have an adverse result~~  
150 ~~described in subsection (2).~~

151 ~~(2) Any of the following acts constitute an adverse result~~  
152 ~~for purposes of subsection (1):~~

153 ~~(a) Endangering the life or physical safety of an~~  
154 ~~individual.~~

155 ~~(b) Fleeing from prosecution.~~

156 ~~(c) Destroying or tampering with evidence.~~



654094

157           ~~(d) Intimidating potential witnesses.~~  
158           ~~(e) Seriously jeopardizing an investigation or unduly~~  
159 ~~delaying a trial.~~  
160           ~~(3) The investigative or law enforcement officer shall~~  
161 ~~maintain a true copy of a certification obtained under paragraph~~  
162 ~~(1)(b).~~  
163           ~~(4) Extensions of the delay of notification provided in s.~~  
164 ~~934.23(2) of up to 90 days each may be granted by the court upon~~  
165 ~~application, or by certification by an investigative or law~~  
166 ~~enforcement officer, but only in accordance with subsection (6).~~  
167           ~~(5) Upon the expiration of the period of delay of~~  
168 ~~notification under subsection (1) or subsection (4), the~~  
169 ~~investigative or law enforcement officer must serve upon or~~  
170 ~~deliver by registered or first-class mail to the subscriber or~~  
171 ~~customer a copy of the process or request together with notice~~  
172 ~~which:~~  
173           ~~(a) States with reasonable specificity the nature of the~~  
174 ~~law enforcement inquiry, and~~  
175           ~~(b) Informs the subscriber or customer:~~  
176           ~~1. That information maintained for such subscriber or~~  
177 ~~customer by the service provider named in the process or request~~  
178 ~~was supplied to or requested by the investigative or law~~  
179 ~~enforcement officer and the date on which such information was~~  
180 ~~so supplied or requested.~~  
181           ~~2. That notification of such subscriber or customer was~~  
182 ~~delayed.~~  
183           ~~3. What investigative or law enforcement officer or what~~  
184 ~~court made the certification or determination pursuant to which~~  
185 ~~that delay was made.~~



654094

186 ~~4. Which provision of ss. 934.21-934.28 allowed such delay.~~

187 ~~(1)-(6) An investigative or law enforcement officer acting~~  
188 ~~under s. 934.23, when not required to notify the subscriber or~~  
189 ~~customer under s. 934.23(2)(a), or to the extent that such~~  
190 ~~notice may be delayed pursuant to subsection (1), may apply to a~~  
191 ~~court for an order commanding a provider of electronic~~  
192 ~~communication service or remote computing service to whom a~~  
193 ~~warrant, subpoena, or court order is directed, for such period~~  
194 ~~as the court deems appropriate, not to notify any other person~~  
195 ~~of the existence of such warrant, subpoena, or court order. The~~  
196 ~~court shall enter such order if it determines that there is~~  
197 ~~reason to believe that notification of the existence of the~~  
198 ~~warrant, subpoena, or court order will result in an adverse~~  
199 ~~result. any of the following:~~

200 ~~(2) For purposes of this section, an "adverse result" means~~  
201 ~~any of the following acts:~~

202 ~~(a) Endangering the life or physical safety of an~~  
203 ~~individual.~~

204 ~~(b) Fleeing from prosecution.~~

205 ~~(c) Destroying or tampering with evidence.~~

206 ~~(d) Intimidating potential witnesses.~~

207 ~~(e) Seriously jeopardizing an investigation or unduly~~  
208 ~~delaying a trial.~~

209 ~~(7) As used in paragraph (1)(b), the term "supervisory~~  
210 ~~official" means the person in charge of an investigating or law~~  
211 ~~enforcement agency's or entity's headquarters or regional~~  
212 ~~office; the state attorney of the circuit from which the subject~~  
213 ~~subpoena has been issued; the statewide prosecutor; or an~~  
214 ~~assistant state attorney or assistant statewide prosecutor~~





654094

215 ~~specifically designated by the state attorney or statewide~~  
216 ~~prosecutor to make such written certification.~~

217 ~~(8) As used in subsection (5), the term "deliver" shall be~~  
218 ~~construed in accordance with the definition of "delivery" as~~  
219 ~~provided in Rule 1.080, Florida Rules of Civil Procedure.~~

220 Section 7. Section 934.255, Florida Statutes, is created to  
221 read:

222 934.255 Subpoenas in investigations of sexual offenses.—

223 (1) As used in this section, the term:

224 (a) "Adverse result" means any of the following acts:

225 1. Endangering the life or physical safety of an

226 individual.

227 2. Fleeing from prosecution.

228 3. Destroying or tampering with evidence.

229 4. Intimidating potential witnesses.

230 5. Seriously jeopardizing an investigation or unduly

231 delaying a trial.

232 (b) "Child" means a person under 18 years of age.

233 (c) "Investigative or law enforcement officer" has the same

234 meaning as s. 934.02(6), except that in any investigation

235 relating to whether a crime has been or is being committed only

236 a state attorney, an assistant state attorney, the statewide

237 prosecutor, or an assistant statewide prosecutor may seek

238 through use of a subpoena the information described in

239 paragraphs (2) (a) and (2) (b).

240 (d) "Sexual abuse of a child" means a criminal offense

241 based on any conduct described in s. 39.01(71).

242 (e) "Supervisory official" means the person in charge of an

243 investigating or law enforcement agency's or entity's



654094

244 headquarters or regional office; the state attorney of the  
245 circuit from which the subpoena has been issued; the statewide  
246 prosecutor; or an assistant state attorney or assistant  
247 statewide prosecutor specifically designated by the state  
248 attorney or statewide prosecutor to make such written  
249 certification.

250 (2) An investigative or law enforcement officer who is  
251 conducting an investigation into:

252 (a) Allegations of the sexual abuse of a child or an  
253 individual's suspected commission of a crime listed in s.  
254 943.0435(1)(h)1.a.(I) may use a subpoena to compel the  
255 production of records, documents, or other tangible objects and  
256 the testimony of the subpoena recipient concerning the  
257 production and authenticity of such records, documents, or  
258 objects, except as provided in paragraph (b).

259 (b) Allegations of the sexual abuse of a child may use a  
260 subpoena to require a provider of electronic communication  
261 services or remote computing services to disclose a record or  
262 other information pertaining to a subscriber or customer of such  
263 service as described in s. 934.23(4)(b).

264 (c) A subpoena issued under paragraph (a) must describe the  
265 records, documents, or other tangible objects required to be  
266 produced, and must prescribe a date by which such records,  
267 documents, or other tangible objects must be produced.

268 (3) At any time before the date prescribed in a subpoena  
269 issued under subsection (2)(a) for production of records,  
270 documents, or other tangible objects or the date prescribed in a  
271 subpoena issued under subsection (2)(b) for production of a  
272 record or other information, a person or entity receiving such



654094

273 subpoena may, before a judge of competent jurisdiction, petition  
274 for an order modifying or setting aside the prohibition of  
275 disclosure issued under subsection (5).

276 (4) An investigative or law enforcement officer who uses a  
277 subpoena issued under paragraph (2) (a) to obtain any record,  
278 document, or other tangible object may retain such items for use  
279 in any ongoing criminal investigation or a closed investigation  
280 with the intent that the investigation may later be reopened.

281 (5) (a) If a subpoena issued under subsection (2) is served  
282 upon a recipient and accompanied by a written certification of a  
283 supervisory official that there is reason to believe that  
284 notification of the existence of the subpoena may have an  
285 adverse result, the subpoena recipient is prohibited from  
286 disclosing to any person for a period of 180 days the existence  
287 of the subpoena.

288 (b) A recipient of a subpoena issued under subsection (2)  
289 that is accompanied by a written certification issued pursuant  
290 to this subsection is authorized to disclose information  
291 otherwise subject to any applicable nondisclosure requirement to  
292 persons as is necessary to comply with the subpoena, to an  
293 attorney in order to obtain legal advice or assistance regarding  
294 compliance with the subpoena, or to any other person as allowed  
295 and specifically authorized by the investigative or law  
296 enforcement officer who obtained the subpoena or the supervisory  
297 official who issued the written certification. The subpoena  
298 recipient shall notify any person to whom disclosure of the  
299 subpoena is made pursuant to this paragraph of the existence of,  
300 and length of time associated with, the nondisclosure  
301 requirement.



654094

302       (c) A person to whom disclosure of the subpoena is made  
303 under paragraph (a) is subject to the nondisclosure requirements  
304 of this subsection in the same manner as the subpoena recipient.

305       (d) At the request of the investigative or law enforcement  
306 officer who obtained the subpoena or the supervisory official  
307 who issued the written certification, the subpoena recipient  
308 shall identify to the investigative or law enforcement officer  
309 or supervisory official, before or at the time of compliance  
310 with the subpoena, the name of any person to whom disclosure was  
311 made under paragraph (b). If the investigative or law  
312 enforcement officer or supervisory official makes such a  
313 request, the subpoena recipient has an ongoing duty to disclose  
314 the identity of any individuals notified of the subpoena's  
315 existence throughout the nondisclosure period.

316       (e) The investigative or law enforcement officer shall  
317 maintain a true copy of a written certification obtained under  
318 this subsection.

319       (6) An investigative or law enforcement officer acting  
320 under paragraph (2)(b) may apply to a court for an order  
321 extending the nondisclosure period provided in subsection (5)  
322 for a subpoena and commanding a provider of electronic  
323 communication service or remote computing service to whom the  
324 subpoena is directed, for such period as the court deems  
325 appropriate, not to notify any other person of the existence of  
326 such subpoena. The court shall enter such order if it determines  
327 that there is reason to believe that notification of the  
328 existence of the subpoena will result in an adverse result.

329       (7) In the case of contumacy by a person served a subpoena  
330 issued under subsection (2), or his or her refusal to comply



654094

331 with such a subpoena, the investigative or law enforcement  
332 officer who sought the subpoena may petition a court of  
333 competent jurisdiction to compel compliance. The court may  
334 address the matter as indirect criminal contempt pursuant to  
335 Rule 3.840 of the Florida Rules of Criminal Procedure. Any  
336 prohibited disclosure of a subpoena issued under subsection (2)  
337 for which a period of prohibition of disclosure provided in  
338 subsection (5) or an extension thereof under subsection (6) is  
339 in effect is punishable as provided in s. 934.43. However,  
340 limited disclosure is authorized as provided in subsection (5).

341 (8) No cause of action shall lie in any court against any  
342 provider of wire or electronic communication service, its  
343 officers, employees, agents, or other specified persons for  
344 providing information, facilities, or assistance in accordance  
345 with the terms of a subpoena under this section.

346 (9) (a) A provider of wire or electronic communication  
347 services or a remote computing service, upon the request of an  
348 investigative or law enforcement officer, shall take all  
349 necessary steps to preserve records and other evidence in its  
350 possession pending the issuance of a court order or other  
351 process.

352 (b) Records referred to in paragraph (a) shall be retained  
353 for a period of 90 days, which shall be extended for an  
354 additional 90 days upon a renewed request by an investigative or  
355 law enforcement officer.

356 (10) A provider of electronic communication service, a  
357 remote computing service, or any other person who furnished  
358 assistance pursuant to this section shall be held harmless from  
359 any claim and civil liability resulting from the disclosure of



654094

360 information pursuant to this section and shall be reasonably  
361 compensated for reasonable expenses incurred in providing such  
362 assistance. A witness who is subpoenaed to appear to testify  
363 under subsection (2) and who complies with the subpoena must be  
364 paid the same fees and mileage rate paid to a witness appearing  
365 before a court of competent jurisdiction in this state.

366  
367 ===== T I T L E A M E N D M E N T =====

368 And the title is amended as follows:

369 Delete lines 2 - 12

370 and insert:

371 An act relating to security of communications;  
372 amending s. 934.01, F.S.; revising and providing  
373 legislative findings; amending s. 934.02, F.S.;  
374 redefining the term "oral communication"; defining the  
375 terms "microphone-enabled household device" and  
376 "portable electronic communication device"; amending  
377 s. 934.21, F.S.; revising the exceptions to conduct  
378 that constitutes unlawful access to stored  
379 communications; amending s. 934.23, F.S.; defining  
380 "investigative or law enforcement officer" and  
381 specifying that an exception to such definition is  
382 that in any criminal investigation only a prosecutor  
383 may obtain disclosure of a stored communications  
384 through specified legal process; requiring a warrant  
385 for any content of a stored communications; deleting  
386 provisions relating to obtaining content of stored  
387 communications, with required subscriber notice, by  
388 obtaining a court order for disclosure or using a



654094

389 subpoena; deleting provisions relating to any  
390 electronic communication held or maintained in a  
391 remote computing service; deleting a provision on not  
392 providing notice applicable to a subpoena for basic  
393 subscriber information; repealing s. 934.24, F.S.;  
394 deleting provisions relating to backup protection for  
395 content of stored communication obtained, with prior  
396 subscriber notice, by court order for disclosure or  
397 subpoena; deleting provisions authorizing a subscriber  
398 to seek a court order to quash such subpoena or vacate  
399 such court order for disclosure; amending 934.25,  
400 F.S., deleting provisions relating to delaying  
401 subscriber notice when such notice is required for  
402 obtaining contents of stored communications pursuant  
403 to a court order for disclosure or subpoena; deleting  
404 reference to subscriber notice or delay of such notice  
405 in provisions relating to nondisclosure of a warrant,  
406 court order, or subpoena for stored communications;  
407 creating s. 934.255, F.S.; defining "adverse result,"  
408 "child," "investigative or law enforcement officer,"  
409 "sexual abuse of child," and "supervisory official";  
410 specifying that an exception to the definition of  
411 "investigative or law enforcement officer" is that in  
412 any criminal investigation only a prosecutor may use a  
413 subpoena to obtain disclosure of basic subscriber  
414 information relevant to stored communications;  
415 authorizing an investigative or law enforcement  
416 officer conducting an investigation into specified  
417 matters to subpoena certain persons or entities for



654094

418 the production of records, documents, or other  
419 tangible things and testimony for stored  
420 communications, excluding basic subscriber information  
421 relevant to stored communications; authorizing an  
422 investigative or law enforcement officer conducting an  
423 investigation into specified matters to subpoena  
424 certain person or entities for basic subscriber  
425 information relevant to stored communications;  
426 specifying requirements for the issuance of a  
427 subpoena; authorizing a subpoenaed person to petition  
428 a court for an order modifying or setting aside a  
429 prohibition on disclosure; authorizing, under certain  
430 circumstances, an investigative or law enforcement  
431 officer to retain subpoenaed records, documents, or  
432 other tangible objects; prohibiting the disclosure of  
433 a subpoena for a specified period if the disclosure  
434 might result in an adverse result; providing  
435 exceptions; requiring an investigative or law  
436 enforcement officer to maintain a true copy of a  
437 written certification required for nondisclosure;  
438 authorizing an investigative or law enforcement  
439 officer to apply to a court for an order prohibiting  
440 certain entities from notifying any person of the  
441 existence of a subpoena under certain circumstances;  
442 authorizing an investigative or law enforcement  
443 officer to petition a court to compel compliance with  
444 a subpoena; authorizing a court to punish a person who  
445 does not comply with a subpoena as indirect criminal  
446 contempt; providing criminal penalties; precluding a





654094

447 cause of action against certain entities or persons  
448 for providing information, facilities, or assistance  
449 in accordance with terms of a subpoena; providing for  
450 preservation of evidence pending issuance of legal  
451 process; providing that certain entities or persons  
452 shall be held harmless from any claim and civil  
453 liability resulting from disclosure of specified  
454 information; providing for reasonable compensation for  
455 reasonable expenses incurred in providing assistance;  
456 requiring that a subpoenaed witness be paid certain  
457 fees and mileage;