

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

27  
 28   Be It Enacted by the Legislature of the State of Florida:

29  
 30 Section 1. Section 933.31, Florida Statutes, is created to  
 31 read:

32 933.31 Portable electronic device; prohibited search.—

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

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

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

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

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

57 | through, the arrested person's portable electronic device, such  
 58 | as a cellular telephone.

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

65 | (3) DEFINITION.—As used in this section, the term:

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

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

76 | (4) PROHIBITED ACTS.—

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

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

85 1. Prevent law enforcement or any government entity from  
 86 relying on lawful exceptions to the warrant requirement, other  
 87 than searches incident to arrest.

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

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

98 4. Prevent law enforcement from disabling a portable  
 99 electronic device or its access to wireless communication  
 100 pending a lawful search warrant.

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

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

113 933.32 Location informational tracking; prohibited search  
114 and seizure.-

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

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

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

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

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

141 (c) "Location information" means information, concerning  
142 the location of an electronic device, including both the current  
143 location and any previous location of the device, that, in whole  
144 or in part, is generated, derived from, or obtained by the  
145 operation of an electronic device.

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

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

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

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

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

162 (4) PROHIBITED ACTS.-

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

169        (b)1. A search warrant may not be issued for the location  
170 of an electronic device pursuant to this section for a period of  
171 time longer than is necessary to achieve the objective of the  
172 authorization, and in any event no longer than 30 days,  
173 commencing on the day the location information is initially  
174 obtained, or 10 days after the issuance of the warrant,  
175 whichever comes first.

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

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

188        (a) Transponders used for the purpose of assessing or  
189 collecting tolls.

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

193        (c) Cases of a search conducted incident to a national  
194 security event.

195        (d) Cases of a search for a missing child who is less than  
196 18 years of age.

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

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

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

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

223  
 224 The government entity seeking the location information shall

225 file with the appropriate court a written statement setting  
 226 forth the facts giving rise to the emergency and the facts as to  
 227 why the person or persons whose location information was sought  
 228 are believed to be important in addressing the emergency, no  
 229 later than 48 hours after seeking disclosure. Private entities  
 230 providing electronic communications services shall not be made  
 231 responsible for ensuring that government entities comply with  
 232 this section.

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

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