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### Session Law 88-184

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LEGISLATIVE SUPPLEMENT "B" - SESSION LAW ABSTRACT

Sess. Law # <u>88-184</u>	Sec. #	LOF cite
Prime Bill # <u>54</u>	Comp./Sim. Bills	
JLMC Hist. Cites	Senate House	Comms. of Ref. Senate House <u>Crain Just.</u>

COMMITTEE RECORDS

H/S	Committee	Year	Record Series: Folder title, etc.	Loc. Cite	✓
S	J-1-100	83	SF 345 (100-100-100)	15/1728	
H	Crain Just	83	HB 1665 (100-100-100)	19/871	

☐ continued on reverse

Senate/House Journals

Page #	?	Date	Page #	?	Date

Committee/Floor Tapes

H/S	c/f	Committee/subcommittee name	Date	#	Location Cite

Other Documentation

Record Series Title, folder title, etc.	Location Cite

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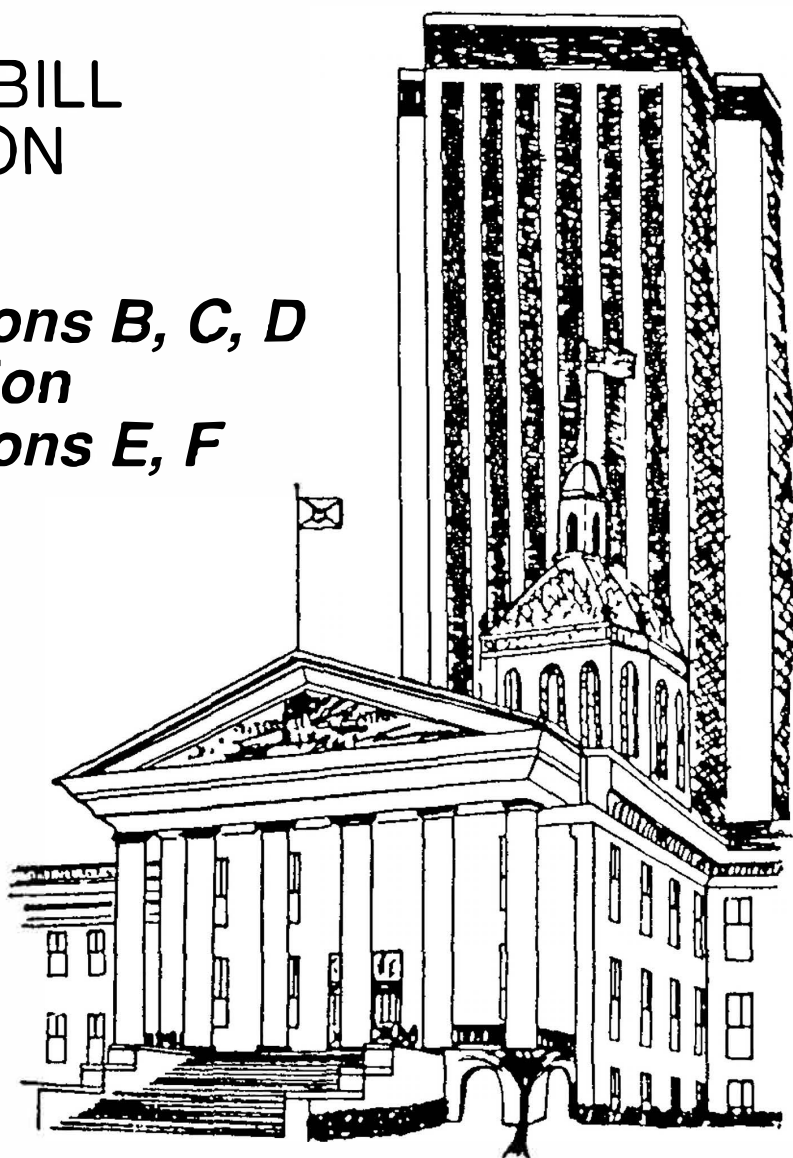
NOTES

This image shows a single page of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.

# **FLORIDA LEGISLATURE**

## **FINAL LEGISLATIVE BILL INFORMATION**

***1987 Special Sessions B, C, D  
1988 Regular Session  
1988 Special Sessions E, F***



prepared by:

***Joint Legislative Management Committee***  
**Legislative Information Division**  
**Capitol Building, Room 826 — 488-4371**



# FLORIDA LEGISLATURE—REGULAR SESSION—1988

## HISTORY OF SENATE BILLS

115

### S 578 (CONTINUED)

04/12/88 SENATE Introduced, referred to Judiciary-Criminal; Judiciary-Civil -SJ 72  
 04/15/88 SENATE Extension of time granted Committee Judiciary-Criminal  
 04/25/88 SENATE On Committee agenda—Judiciary-Criminal, 04/27/88, 9:00 am, Room-C  
 04/27/88 SENATE Comm Report Favorable by Judiciary-Criminal -SJ 193  
 04/28/88 SENATE Now in Judiciary-Civil -SJ 193  
 04/29/88 SENATE Extension of time granted Committee Judiciary-Civil  
 05/13/88 SENATE Extension of time granted Committee Judiciary-Civil  
 05/18/88 SENATE On Committee agenda—Judiciary-Civil, 05/19/88, 9 15 am, Room-B -SJ 341  
 05/19/88 SENATE Comm. Report: Favorable by Judiciary-Civil, placed on Calendar -SJ 358  
 06/07/88 SENATE Died on Calendar, Iden /Sim /Compare Bill passed, refer to HB 1653 (Ch 88-381)

### S 579 GENERAL BILL/CS/CS by Judiciary-Criminal; Governmental Operations; Johnson (Similar CS/H 327, Compare H 70, H 377, ENG/H 1336, H 1364, S 498, S 696, S 791, CS/S 1201, S 1328)

Concealed Weapons/License to Carry, redefines term "officer" for purposes of carrying firearms off-duty; provides that machine guns are not concealed weapons or firearms for purposes of licensure, requires dept. to deny license if applicant has been found guilty of certain crimes, provides licensure procedures & qualifications for consular security officials of foreign governments, etc Amends 790 001, 052, 06., 33 Effective Date 07/01/88  
 03/30/88 SENATE Prefiled  
 04/12/88 SENATE Introduced, referred to Judiciary-Criminal, Governmental Operations -SJ 72  
 04/15/88 SENATE Extension of time granted Committee Judiciary-Criminal  
 04/25/88 SENATE On Committee agenda—Judiciary-Criminal, 04/27/88, 9:00 am, Room-C  
 04/27/88 SENATE Comm Report. Favorable with 2 amendment(s) by Judiciary-Criminal -SJ 193  
 04/28/88 SENATE Now in Governmental Operations -SJ 193  
 05/02/88 SENATE Extension of time granted Committee Governmental Operations  
 05/13/88 SENATE On Committee agenda—Governmental Operations, 05/17/88, 2 00 pm, Room-H, Extension of time granted Committee Governmental Operations  
 05/17/88 SENATE Comm Report: CS by Governmental Operations, placed on Calendar -SJ 352  
 05/19/88 SENATE CS read first time -SJ 352  
 05/26/88 SENATE Withdrawn from Calendar, recommitted to Judiciary-Criminal -SJ 462, On Committee agenda—Judiciary-Criminal, 05/30/88, 1:00 pm, Room-C -SJ 462  
 05/27/88 SENATE Extension of time granted Committee Judiciary-Criminal  
 05/30/88 SENATE Comm Report: CS/CS by Judiciary-Criminal, placed on Calendar -SJ 464, CS read first time -SJ 466  
 05/31/88 SENATE Placed on Special Order Calendar -SJ 468 & -SJ 549; Read second time -SJ 554; CS passed, YEAS 40 NAYS 0 -SJ 611  
 05/31/88 HOUSE In Messages  
 06/01/88 HOUSE Received, placed on Calendar -HJ 1156, Substituted for CS/HB 327 -HJ 1157, Read second time, Read third time; CS passed; YEAS 116 NAYS 0 -HJ 1157  
 06/01/88 Ordered enrolled -SJ 630  
 06/18/88 Signed by Officers and presented to Governor  
 07/01/88 Approved by Governor, Chapter No 88-183

### S 580 GENERAL BILL by Johnson (Similar H 635)

Criminal Justice Information Council; increases number of members on Criminal Justice Information Systems Council; provides for clerk of circuit court to be member of council. Amends 943.06 Effective Date: 07/01/88 or upon becoming law, whichever occurs later.  
 03/30/88 SENATE Prefiled  
 04/12/88 SENATE Introduced, referred to Judiciary-Criminal -SJ 72  
 04/15/88 SENATE Extension of time granted Committee Judiciary-Criminal  
 04/18/88 SENATE On Committee agenda—Judiciary-Criminal, 04/20/88, 2 00 pm, Room-C  
 04/20/88 SENATE Comm Report. Favorable by Judiciary-Criminal, placed on Calendar -SJ 142  
 05/05/88 SENATE Placed on Special Order Calendar -SJ 225 & -SJ 228  
 05/10/88 SENATE Placed on Special Order Calendar -SJ 242 & -SJ 245, Iden./Sim. House Bill substituted; Laid on Table under Rule, Iden /Sim./Compare Bill passed, refer to HB 635 (Ch 88-52) -SJ 260

### S 581 GENERAL BILL/CS by Judiciary-Civil; Dudley (Similar ENG/H 645)

Probate & Administration of Estates, redefines term "beneficiary", provides for validation of devise to unfunded trust created during lifetime of testator; provides for service of notice of administration, specifies times within which claims & objections must be filed, provides that compensation for personal representatives & professionals may include certain compensation, provides for applicability, etc. Amends Chs. 731, 732, 733 Effective Date 07/01/88 or upon becoming law, whichever occurs later  
 03/30/88 SENATE Prefiled

### S 581 (CONTINUED)

04/12/88 SENATE Introduced, referred to Judiciary-Civil -SJ 72  
 04/15/88 SENATE Extension of time granted Committee Judiciary-Civil  
 04/29/88 SENATE Extension of time granted Committee Judiciary-Civil  
 05/13/88 SENATE Extension of time granted Committee Judiciary-Civil  
 05/18/88 SENATE On Committee agenda—Judiciary-Civil, 05/19/88, 9 15 am, Room-B -SJ 341  
 05/19/88 SENATE Comm. Report: CS by Judiciary-Civil, placed on Calendar -SJ 359  
 05/23/88 SENATE CS read first time -SJ 360  
 06/02/88 SENATE Placed on Consent Calendar -SJ 715, Amendments adopted, Iden /Sim. House Bill substituted, Laid on Table under Rule, Iden./Sim./Compare Bill passed, refer to HB 645 (Ch. 88-340) -SJ 772

### S 582 GENERAL BILL/CS by Judiciary-Criminal; Grizzle; Grant (Similar ENG/H 423, CS/H 1123, Compare CS/H 1059, CS/ENG/S 90, ENG/S 457, S 680)

Offenses Involving Children, (THIS BILL COMBINES S 582,680) prohibits removal of minor from state or concealment of location of minor under specified circumstances, provides that infliction of physical or mental injury to a child constitutes child abuse, provides penalties Amends 787 04, 827 04. Effective Date 10/01/88  
 03/30/88 SENATE Prefiled  
 04/12/88 SENATE Introduced, referred to Judiciary-Criminal; Appropriations -SJ 72  
 04/15/88 SENATE Extension of time granted Committee Judiciary-Criminal  
 04/29/88 SENATE Extension of time granted Committee Judiciary-Criminal  
 05/03/88 SENATE On Committee agenda—Judiciary-Criminal, 05/05/88, 1 00 pm, Room-C  
 05/05/88 SENATE CS combines this bill and 680, Comm Report. CS by Judiciary-Criminal -SJ 246  
 05/09/88 SENATE CS read first time -SJ 248, Now in Appropriations -SJ 246  
 05/19/88 SENATE Extension of time granted Committee Appropriations  
 05/26/88 SENATE Withdrawn from Appropriations -SJ 430, Placed on Calendar  
 06/07/88 SENATE Died on Calendar, Iden /Sim /Compare Bill passed, refer to CS/SB 90 (Ch 88-151)

### S 583 GENERAL BILL by Weinstock (Similar H 314)

DUI/Blood Alcohol Level Lowered, lowers blood alcohol level which establishes offense of driving with unlawful blood alcohol level Amends 316 193., 1934. Effective Date 10/01/88  
 03/30/88 SENATE Prefiled  
 04/12/88 SENATE Introduced, referred to Judiciary-Criminal; Appropriations -SJ 72  
 04/15/88 SENATE Extension of time granted Committee Judiciary-Criminal  
 04/29/88 SENATE Extension of time granted Committee Judiciary-Criminal  
 05/13/88 SENATE Extension of time granted Committee Judiciary-Criminal  
 05/27/88 SENATE Extension of time granted Committee Judiciary-Criminal  
 06/07/88 SENATE Died in Committee on Judiciary-Criminal

### S 584 JOINT RESOLUTION by Johnson (Identical H 667)

State Lottery/Proceeds Distribution; constitutional amendment to provide that net proceeds from state lottery shall be distributed annually to various public school districts, community college system, & state university system for nonrecurring education enhancement expenditures Amends a. 15, Art. X  
 03/30/88 SENATE Prefiled  
 04/12/88 SENATE Introduced, referred to Commerce, Appropriations, Rules and Calendar -SJ 72  
 04/15/88 SENATE Extension of time granted Committee Commerce  
 04/29/88 SENATE Extension of time granted Committee Commerce  
 05/13/88 SENATE Extension of time granted Committee Commerce  
 05/27/88 SENATE Extension of time granted Committee Commerce  
 06/07/88 SENATE Died in Committee on Commerce

### S 585 GENERAL BILL/CS/ENG by Judiciary-Criminal; Johnson (Similar H 1665, Compare H 1017)

Interception of Communications, (SEE ALSO H 1653) provides when interception & disclosure of wire, oral, & electronic communications is allowed or prohibited & provides civil remedies & criminal penalties, provides when manufacture, distribution, or possession of such communications is allowed or prohibited, provides for seizure & forfeiture of intercepting devices; provides for authorization of interception of communications, etc Amends Ch 934. Effective Date 10/01/88.  
 03/30/88 SENATE Prefiled  
 04/12/88 SENATE Introduced, referred to Judiciary-Criminal -SJ 72  
 04/15/88 SENATE Extension of time granted Committee Judiciary-Criminal  
 04/29/88 SENATE Extension of time granted Committee Judiciary-Criminal  
 05/12/88 SENATE On Committee agenda—Judiciary-Criminal, 05/16/88, 2 00 pm, Room-C  
 05/13/88 SENATE Extension of time granted Committee Judiciary-Criminal  
 05/16/88 SENATE Comm Report. CS by Judiciary-Criminal, placed on Calendar -SJ 311  
 05/18/88 SENATE CS read first time -SJ 312  
 05/30/88 SENATE Placed on Special Order Calendar -SJ 463, CS passed as amended, YEAS 36 NAYS 0 -SJ 539  
 05/30/88 HOUSE In Messages

## HISTORY OF SENATE BILLS

**S 585 (CONTINUED)**

05/31/88 HOUSE Received, placed on Calendar -HJ 972, Substituted for HB 1665 -HJ 1002, Read second time, Amendment adopted, Read third time, CS passed as amended, YEAS 110 NAYS 0 -HJ 1003

05/31/88 SENATE In Messages

06/01/88 SENATE Concurred, CS passed as amended, YEAS 33 NAYS 0 -SJ 628

06/01/88 Ordered engrossed, then enrolled -SJ 628

06/16/88 Signed by Officers and presented to Governor

07/01/88 Approved by Governor, Chapter No 88-184

**S 586 GENERAL BILL by Johnson (Identical H 535)**

Tax Assessment/Mobile Home Assoc., provides for filing of petitions with property appraisal adjustment board by mobile homeowners' associations Amends 194 011 Effective Date Upon becoming law

03/30/88 SENATE Prefiled

04/12/88 SENATE Introduced, referred to Economic, Community and Consumer Affairs, Finance, Taxation and Claims -SJ 72

04/15/88 SENATE Extension of time granted Committee Economic, Community and Consumer Affairs

04/29/88 SENATE Extension of time granted Committee Economic, Community and Consumer Affairs

05/13/88 SENATE Extension of time granted Committee Economic, Community and Consumer Affairs

05/27/88 SENATE Extension of time granted Committee Economic, Community and Consumer Affairs

06/07/88 SENATE Died in Committee on Economic, Community and Consumer Affairs

**S 587 GENERAL BILL/CS/CS/CS/ENG by Appropriations; Governmental Operations; Commerce, Crenshaw (Similar CS/CS/ENG/H 1034)**

Public Depositories/General Revision, revises collateral deposit requirements for public depositories; provides for additional powers & duties of Treasurer, provides specified time in which sale of securities must be accomplished or assessment must be made following default or insolvency, requires certain penalties be deposited in specified trust fund, revises certain reporting requirements of public depositories, etc Amends Ch 280, 20 13, 175 301, 185 30, 240 551, 655 057 Effective Date 10/01/88 except as otherwise provided

03/30/88 SENATE Prefiled

04/12/88 SENATE Introduced, referred to Commerce, Governmental Operations, Appropriations -SJ 72, On Committee agenda—Commerce, 04/14/88, 9:00 am, Room-A

04/14/88 SENATE Comm Report CS by Commerce -SJ 104

04/15/88 SENATE CS read first time -SJ 126, Now in Governmental Operations -SJ 104

04/25/88 SENATE On Committee agenda—Governmental Operations, 04/27/88, 2:00 pm, Room-H

04/27/88 SENATE Comm Report CS/CS by Governmental Operations -SJ 212

04/29/88 SENATE CS read first time -SJ 216, Now in Appropriations -SJ 212

05/04/88 SENATE Extension of time granted Committee Appropriations

05/18/88 SENATE On Committee agenda—Appropriations, 05/19/88, 2:00 pm, Room-A -SJ 341

05/19/88 SENATE Comm Report CS/CS/CS by Appropriations, placed on Calendar -SJ 359

05/23/88 SENATE CS read first time -SJ 360

05/26/88 SENATE Placed on Special Order Calendar -SJ 426, CS passed, YEAS 36 NAYS 0 -SJ 436

05/30/88 HOUSE In Messages

06/01/88 HOUSE Received, placed on Calendar -HJ 1178, Read second time, Amendments adopted, Read third time; CS passed as amended, YEAS 115 NAYS 0 -HJ 1178

06/01/88 SENATE In Messages

06/02/88 SENATE Concurred, CS passed as amended, YEAS 35 NAYS 0 -SJ 756

06/02/88 Ordered engrossed, then enrolled -SJ 756

06/16/88 Signed by Officers and presented to Governor

07/01/88 Approved by Governor, Chapter No 88-185

**S 588 GENERAL BILL by Deratany (Identical H 1000)**

Advertising/Solicitation of Purchase, prohibits use of certain terms & pictures re law enforcement, fire protection, police, or firefighters or representation of benefit thereto in solicitation of purchase of advertising, provides penalties Effective Date 10/01/88

03/30/88 SENATE Prefiled

04/12/88 SENATE Introduced, referred to Economic, Community and Consumer Affairs -SJ 72

04/15/88 SENATE Extension of time granted Committee Economic, Community and Consumer Affairs

04/29/88 SENATE Extension of time granted Committee Economic, Community and Consumer Affairs

05/13/88 SENATE Extension of time granted Committee Economic, Community and Consumer Affairs

05/27/88 SENATE Extension of time granted Committee Economic, Community and Consumer Affairs

**S 588 (CONTINUED)**

06/07/88 SENATE Died in Committee on Economic, Community and Consumer Affairs

**S 589 GENERAL BILL/ENG by Jenne (Similar H 482)**

Military Code/Pretrial Warrants, provides that military judges, presidents of courts-martial, & summary court officers of Fla National Guard may execute pretrial confinement warrants for 48-hour periods, provides that Adjutant General may extend such pretrial confinement for period not to exceed 15 days Amends 250 36 Effective Date 10/01/88

03/30/88 SENATE Prefiled

04/12/88 SENATE Introduced, referred to Judiciary-Civil -SJ 72

04/15/88 SENATE Extension of time granted Committee Judiciary-Civil

04/29/88 SENATE Extension of time granted Committee Judiciary-Civil; On Committee agenda—Judiciary-Civil, 05/04/88, 9:00 am, Room-B

05/04/88 SENATE Comm Report Favorable with 1 amendment(s) by Judiciary-Civil, placed on Calendar -SJ 228

05/11/88 SENATE Placed on Special Order Calendar -SJ 267

05/12/88 SENATE Placed on Special Order Calendar -SJ 267, Passed as amended, YEAS 38 NAYS 0 -SJ 287

05/17/88 HOUSE In Messages

05/19/88 HOUSE Received, referred to Appropriations -HJ 593

05/24/88 HOUSE Withdrawn from Appropriations -HJ 673, Placed on Calendar

05/31/88 HOUSE Placed on Special Order Calendar

06/01/88 HOUSE Retained on Regular Calendar

06/03/88 HOUSE Read second time, Read third time, Passed, YEAS 116 NAYS 0 -HJ 1315

06/03/88 Ordered enrolled -SJ 1008

06/21/88 Signed by Officers and presented to Governor

07/06/88 Approved by Governor, Chapter No 88-297

**S 590 GENERAL BILL/ENG by Grant (Similar H 662)**

Search Warrants/Child Abuse Offenses, (SEE ALSO H 1653) authorizes issuance of warrant to search private dwellings in which specified misdemeanor child abuse offenses are being committed Amends 933 18 Effective Date 10/01/88

03/30/88 SENATE Prefiled

04/12/88 SENATE Introduced, referred to Judiciary-Criminal -SJ 73

04/15/88 SENATE Extension of time granted Committee Judiciary-Criminal

04/29/88 SENATE Extension of time granted Committee Judiciary-Criminal

05/03/88 SENATE On Committee agenda—Judiciary-Criminal, 05/05/88, 1:00 pm, Room-C

05/05/88 SENATE Comm Report. Favorable by Judiciary-Criminal, placed on Calendar -SJ 246

05/11/88 SENATE Placed on Special Order Calendar -SJ 267

05/12/88 SENATE Placed on Special Order Calendar -SJ 267, Passed as amended, YEAS 35 NAYS 0 -SJ 287

05/17/88 HOUSE In Messages

05/19/88 HOUSE Received, referred to Appropriations -HJ 594

05/24/88 HOUSE Withdrawn from Appropriations -HJ 673, Placed on Calendar

05/25/88 HOUSE Placed on Special Order Calendar

05/30/88 HOUSE Read second time, Read third time, Passed; YEAS 114 NAYS 0 -HJ 845

05/30/88 Ordered enrolled -SJ 548

06/21/88 Signed by Officers and presented to Governor

07/06/88 Approved by Governor, Chapter No 88-298

**S 591 GENERAL BILL by Dudley (Identical H 1005)**

Animal Control Officers, redefines "officer" as term relates to local animal control or cruelty ordinances, provides required training course for animal control officers; specifies content, requires certain curriculum approval, provides for issuance of certificate, provides exemption, authorizes imposition of surcharge to pay cost of training course Amends 828 27 Effective Date 10/01/88

03/30/88 SENATE Prefiled

04/12/88 SENATE Introduced, referred to Economic, Community and Consumer Affairs -SJ 73

04/15/88 SENATE Extension of time granted Committee Economic, Community and Consumer Affairs

04/25/88 SENATE On Committee agenda—Economic, Community and Consumer Affairs, 04/27/88, 9:00 am, Room-H

04/27/88 SENATE Comm Report Favorable by Economic, Community and Consumer Affairs, placed on Calendar -SJ 194

06/07/88 SENATE Died on Calendar

**S 592 GENERAL BILL by Grizzle (Similar CS/H 538, Compare ENG/H 1653)**

Drug Abuse/Additional Penalties, (SEE ALSO H 1653) authorizes courts to impose additional assessments against offenders who violate criminal provisions of Drug Abuse Prevention & Control Act, provides that such additional assessments be remitted by court clerks for use in specified drug abuse programs; authorizes establishment of county drug abuse trust funds to provide grants to certain treatment or education programs, etc Amends 893 13, 921 187, 142 01, 03; creates 893 16, 165 Effective Date 10/01/88

03/30/88 SENATE Prefiled

## HISTORY OF HOUSE BILLS

**H 1663 (CONTINUED)**

- 05/16/88 HOUSE Introduced, referred to Community Affairs, Finance & Taxation -HJ 489
- 05/25/88 HOUSE On Committee agenda—Community Affairs, 05/26/88, 8 00 am, 212-HOB
- 05/26/88 HOUSE Preliminary Committee Action by Community Affairs Favorable
- 05/27/88 HOUSE Comm Report. Favorable by Community Affairs -HJ 906, Now in Finance & Taxation -HJ 906
- 05/31/88 HOUSE Withdrawn from Finance & Taxation -HJ 915. Placed on Calendar
- 06/02/88 HOUSE Placed on Local Calendar, Iden /Sim Senate Bill substituted, Laid on Table under Rule, Iden /Sim /Compare Bill passed, refer to SB 1409 (Ch 88-461) -HJ 1209

**H 1664 GENERAL BILL by Finance & Taxation; Simon (Compare ENG/S 1203)**

- Corporate Income Tax, revises definition of "Internal Revenue Code" under Fla Income Tax Code, revises provisions re determination of tax applicable to certain taxpayers, revises definition of "bank" under said code, operates retroactively to 01/01/88 Amends 220 03, 11, 62 Effective Date. Upon becoming law
- 05/10/88 HOUSE Filed
- 05/16/88 HOUSE Introduced, placed on Calendar -HJ 489
- 05/19/88 HOUSE Placed on Special Order Calendar
- 05/24/88 HOUSE Read second time -HJ 671
- 05/25/88 HOUSE Read third time, Passed, YEAS 110 NAYS 0 -HJ 685
- 05/25/88 SENATE In Messages
- 05/30/88 SENATE Received, referred to Finance, Taxation and Claims -SJ 468
- 06/07/88 SENATE Died in Committee on Finance, Taxation and Claims, Iden /Sim /Compare bill passed, refer to SB 1203 (Ch 88-119)

**H 1665 GENERAL BILL by Criminal Justice; Mackenzie (Similar CS/ENG/S 585, Compare H 1017)**

- Electronic Communications, provides when interception & disclosure of wire, oral, & electronic communications is allowed or prohibited & provides civil remedies & criminal penalties, provides when manufacture, distribution, or possession of such communications is allowed or prohibited, provides for seizure & forfeiture of intercepting devices, provides for authorization of interception of communications, etc Amends Ch 934 Effective Date 10/01/88
- 05/10/88 HOUSE Filed
- 05/16/88 HOUSE Introduced, placed on Calendar -HJ 489
- 05/30/88 HOUSE Placed on Special Order Calendar
- 05/31/88 HOUSE Iden /Sim Senate Bill substituted -HJ 1002, Laid on Table under Rule, Iden /Sim /Compare Bill passed, refer to CS/SB 585 (Ch 88-184) -HJ 1003

**H 1666 CONCURRENT RESOLUTION by Wallace; Mills; Martin; Challoner. Dr David Reynolds, supports appointment of Dr Challoner to White House Science Council**

- 05/10/88 HOUSE Filed, Introduction allowed -HJ 401, Introduced, referred to Science & Technology -HJ 402
- 05/11/88 HOUSE Withdrawn from Science & Technology -HJ 413, Placed on Calendar, Placed on Special Order Calendar; Read second time, Adopted -HJ 414, Immediately certified -HJ 414
- 05/11/88 SENATE In Messages; Received, Adopted; YEAS 38 NAYS 0 -SJ 271
- 05/12/88 Ordered enrolled
- 05/18/88 Signed by Officers and filed with Secretary of State -HJ 589

**H 1667 GENERAL BILL by Criminal Justice; Canady; Renke (Similar CS/S 427, Compare H 629, CS/H 1154, CS/CS/CS/ENG/S 634)**

- Accounts of Crimes/Royalties, (SEE ALSO H 1653) amends provision re state lien on proceeds from literary or other accounts of crime, defines term "conviction", provides for distribution of proceeds accruing to convicted felon. Amends 944 512. Effective Date. 10/01/88
- 05/11/88 HOUSE Filed
- 05/16/88 HOUSE Introduced, referred to Appropriations -HJ 489
- 06/07/88 HOUSE Died in Committee on Appropriations, Iden./Sim / Compare bill passed, refer to CS/CS/CS/SB 634 (Ch. 88-96)

**H 1668 GENERAL BILL/ENG by Regulatory Reform; Gordon (Compare H 200, H 345, CS/ENG/S 211, S 266)**

- Abortion Clinics; (SUNSET) amends rulemaking responsibilities of H R S. Dept re such clinics & to disposal of fetal remains, provides penalties for improper disposal of fetal remains, revises language re penalties, deletes requirement for internal risk mgmt programs in clinics, provides that minor may have abortion without parental consent under certain conditions, etc Amends Ch. 390, 395 041, revives/readopts 390 011(2), 012- 019, 021. Effective Date 10/01/88.
- 05/11/88 HOUSE Filed
- 05/16/88 HOUSE Introduced, referred to Appropriations -HJ 489
- 05/26/88 HOUSE Withdrawn from Appropriations -HJ 732, Placed on Calendar
- 05/31/88 HOUSE Placed on Special Order Calendar
- 06/01/88 HOUSE Read second time, Amendment pending -HJ 1114

**H 1668 (CONTINUED)**

- 06/02/88 HOUSE Was taken up -HJ 1213, Amendment pending -HJ 1215, Pending amendment adopted -HJ 1216; Amendments adopted, Read third time, Passed as amended, YEAS 92 NAYS 23 -HJ 1216
- 06/02/88 SENATE In Messages
- 06/03/88 SENATE Received -SJ 790, Substituted for SB 266, Passed, YEAS 24 NAYS 8 -SJ 995
- 06/03/88 Ordered enrolled
- 06/07/88 Signed by Officers and presented to Governor -HJ 1780
- 06/15/88 Approved by Governor; Chapter No 88-97

**H 1669 GENERAL BILL by Regulatory Reform; Lippman (Similar S 1064)**

- Sunset & Sundown Laws/Repeal Dates, repeals various regulatory sunset and sundown laws & provides for review of such laws in advance of their respective dates of repeal, etc Amends F S Effective Date. Upon becoming law
- 05/11/88 HOUSE Filed
- 05/16/88 HOUSE Introduced, placed on Calendar -HJ 489
- 05/30/88 HOUSE Placed on Special Order Calendar, Iden./Sim. Senate Bill substituted, Laid on Table under Rule, Iden /Sim / Compare Bill passed, refer to SB 1064 (Ch 88-303) -HJ 829

**H 1670 RESOLUTION by Dantzler and others (Identical S 1418)**

- Pope Dick Sr & Julie Downing, recognizes & commends the late Dick Pope, Sr., & Julie Downing Pope, outstanding Floridians, for major personal & professional contributions they made to this state as leaders in tourism industry
- 05/11/88 HOUSE Filed
- 05/16/88 HOUSE Introduced, referred to Tourism & Cultural Affairs -HJ 490
- 05/25/88 HOUSE Withdrawn from Tourism & Cultural Affairs -HJ 686, Placed on Calendar
- 06/02/88 HOUSE Read second time, Adopted -HJ 1206

**H 1671 GENERAL BILL/ENG by Natural Resources; Martin; Friedman, Arnold (Similar CS/ENG/H 130, Compare CS/H 805, H 1127, H 1141, CS/ENG/H 1265, H 1281, H 1334, CS/CS/ENG/H 1487, S 156, ENG/S 624, CS/S 749, S 753, ENG/S 827, S 942, S 1005, CS/CS/S 1149, CS/CS/ENG/S 1192)**

- Pollution Control, revises definitions of "petroleum product" & "pollutants" for purposes of excise taxes on fuel & other pollutants, revises rates of tax for water quality & conditions under which tax is imposed, provides limitations on expenditure of funds from Water Quality Assurance T F for water supply systems or filters for contaminated potable water wells, amends provision re authority of D E R to adopt rules regulating water wells, etc Amends FS Appropriation. \$5,667,406 Effective Date 07/06/88 except as otherwise provided
- 05/10/88 HOUSE Filed
- 05/16/88 HOUSE Introduced, referred to Finance & Taxation, Appropriations -HJ 490
- 05/19/88 HOUSE On Committee agenda—Finance & Taxation, 05/19/88, 8 00 am, 21 HOB, Preliminary Committee Action by Finance & Taxation. Favorable with 2 amendments
- 05/20/88 HOUSE Comm Report. Favorable with 2 amendment(s) by Finance & Taxation -HJ 633, Now in Appropriations -HJ 633
- 05/26/88 HOUSE On Committee agenda—Appropriations, 05/26/88, 3.00 pm, Morris Hall; Preliminary Committee Action by Appropriations' Favorable with 13 amendments
- 05/31/88 HOUSE Comm Report Favorable with 13 amendment(s) by Appropriations, placed on Calendar -HJ 1086, Placed on Special Order Calendar, Read second time -HJ 1003, Amendments adopted, Read third time, Passed as amended, YEAS 116 NAYS 0 -HJ 1008

- 06/01/88 SENATE In Messages
- 06/06/88 SENATE Received, referred to Natural Resources and Conservation -SJ 1011, Immediately withdrawn from Natural Resources and Conservation -SJ 1063; Substituted for CS/SB 749 -SJ 1064, Passed as amended, YEAS 31 NAYS 0 -SJ 1067
- 06/07/88 HOUSE In Messages, Was taken up -HJ 1666, Concurred; Passed as further amended, YEAS 112 NAYS 0 -HJ 1670
- 06/07/88 Ordered engrossed, then enrolled
- 06/21/88 Signed by Officers and presented to Governor
- 07/06/88 Approved by Governor, Chapter No 88-393

- 05/26/88 HOUSE On Committee agenda—Appropriations, 05/26/88, 3.00 pm, Morris Hall; Preliminary Committee Action by Appropriations' Favorable with 13 amendments
- 05/31/88 HOUSE Comm Report Favorable with 13 amendment(s) by Appropriations, placed on Calendar -HJ 1086, Placed on Special Order Calendar, Read second time -HJ 1003, Amendments adopted, Read third time, Passed as amended, YEAS 116 NAYS 0 -HJ 1008

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- 06/07/88 Ordered engrossed, then enrolled
- 06/21/88 Signed by Officers and presented to Governor
- 07/06/88 Approved by Governor, Chapter No 88-393

**H 1672 GENERAL BILL by Natural Resources; Martin; Saunders (Compare CS/ENG/H 1166, S 1322)**

- Coastal & Marine Resources, specifies additional lands not subject to lease, prohibits permits for drilling & associated construction for exploration or production of oil, gas, or other petroleum products, in specified area, creates Marine Mining Act, Fla Ocean & Coastal Law Policy Program within Fla. Sea Grant College, & Marine Resource Council; creates Office of Coastal Management within D E R, establishes Interagency Mgmt Committee, etc Amends Chs 253, 377, 380. Appropriation \$1,000,000 Effective Date 09/01/88
- 05/10/88 HOUSE Filed
- 05/16/88 HOUSE Introduced, referred to Appropriations -HJ 490
- 06/07/88 HOUSE Died in Committee on Appropriations

STORAGE NAME: PCB CJ 88-15  
Date: April 26, 1988

**HB 1665**

HOUSE OF REPRESENTATIVES  
COMMITTEE ON CRIMINAL JUSTICE  
STAFF ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: PCB CJ 88-15  
RELATING TO: Wire and Electronic Communications  
SPONSOR(S): \_\_\_\_\_  
EFFECTIVE DATE: October 1, 1988  
COMPANION BILL(S): \_\_\_\_\_  
OTHER COMMITTEES OF REFERENCE: (1) \_\_\_\_\_  
(2) \_\_\_\_\_

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I. SUMMARY:

A. PRESENT SITUATION:

On October 21, 1986, President Reagan signed into law the electronic communications Privacy Act of 1986. (Public Law 99-508). This new legislation made several far reaching revisions of the federal Wire and Oral Intercept Law, commonly referred to as "Title III." The Act became effective on January 20, 1987. There is a special 2-year delayed effective date measured from the date of enactment, October 21, 1986, governing state authorizations of interceptions. As a result, by October 21, 1988, Florida must have in effect a revised Chapter 934, F.S., that complies with the requirements of the federal Act.

B. EFFECT OF PROPOSED CHANGES:

Current Florida law only recognizes and protects oral communications conducted over "wire", i.e., telephones. The changes proposed would extend the protection provided oral communications to communications using new technologies, such as cellular phones, voice mail, and computer-to-computer data transfer. Because the Federal Electronic Communications Privacy Act of 1986 will become effective October 21, 1988, current florida statutes will only be applicable to those portions of the amended Federal law that deal with oral and wire communications. In the absence of new florida statutes all electronic communications would be subject to federal law, and the resulting federal protections and procedures.

This bill would enact the minimum changes required to conform with the federal law but uses florida language when necessary to protect the cause and meaning of the federal statute.

1718

MAY 30 1988

STANDARD FORM 3/88

Several sections of this bill are not required for conformance to federal law. Section 6 provides language, similar to SB 585, which would allow evidence from intercepts to be made available to the Department of Legal Affairs for use in civil RICO proceedings. Section 7 authorizes the use of non-law enforcement personnel for the purpose of monitoring and translating foreign language or coded communications. Although this provision is not strictly necessary, it parallels federal law and addresses the use of new technology and foreign languages by persons engaging in criminal activities. Section 10 of the bill establishes statutory procedures governing the issuance of court orders for the use of pen registers and trap and trace devices.

Although the federal law does not preempt any existing state law regulating the installation and use of pen registers or trap and trace devices, Florida has no statutes addressing the use of these devices.

This section would adopt the federal requirements for application and issuance of a court order authorizing the installation and use of these devices

C. SECTION-BY-SECTION ANALYSIS:

**Section 1: Definitions - 934.02, F.S.** Because of changes in the federal law and the addition of "electronic communications" to the law, the term "electronic" is added to many sections for the definitions and substantive law, frequently in the phrase: "wire, electronic, or oral communication."

(1) Change from "communication" to "aural transfer" limits the definition in recognition of new sections regarding electronic communication, with a new definition of "electronic transfer" added at a later point; deletion of "common carrier" term expands the applicability of this section to "in house" communications systems; "electronic storage is defined later; exempts the radio portion of a cordless telephone conversation but not cellular phones -- those are "wire communications."

(2) Specifically excludes the later defined term of "electronic communication" from an "oral communication."

(3) The words "or other" were added in recognition of the distinctions between wire, oral, and electronic communications and will now include the interception of computer communications. Previous to the federal change, one was able to intercept beeps, chirps, etc., generated by computer transmissions without an intercept order. Now, those beeps, etc., are within the scope of a protected communication to which access is allowed only by an intercept order or by consent of a party.

(4) The term "provider of wire or electronic communication service" was added to expand the scope beyond "communications

1719

common carrier" and includes computer mail systems, internal telephone systems, etc.

(5) No change made to Florida's definition.

(6) No change made to Florida's definition.

(7) Revised to the federal definition.

(8) No change made to Florida's definition; similar to federal one already.

(9) Added "electronic" communication section to meet federal change.

(10) No changes made to Florida's definition.

(11) Although not used by new federal version, this definition referring to federal Code is provided to make it clear that if referred to in federal cases, Florida's intent is to rely on the federal definition, too.

(12) Added definition taken directly from federal law; added to include all types of "electronic" transfers of communication but specifically excludes four types of communication: excludes radio part of a cordless telephone conversation, the interception of the non-radio portion would be interception of a wire communication; excludes interception of "tone-only" beepers, interception of voice pager would be an oral interception and the interception of a digital readout pager would be a wire interception; excludes wire and oral communications from "electronic communication" definition; excludes communications from a "tracking device."

(13) Added new definition taken directly from federal law relating to the authorized use of electronic communication service.

(14) Added new definition from federal law; relating to the transmission and storage of electronic communications.

(15) Added new definition from federal law, relating to the sending or receiving of wire or electronic communications.

(16) Added new definition from federal law; excludes "clear" broadcasts which are generally accessible to the public. Otherwise, the use of any radio receiver would be criminal under the federal law and Florida's counterpart.

(17) Added new definition from federal law which relates to Part II. Includes temporary or backup storage of wire or electronic communications incidental to the electronic transmission of those types of communications. While concept of stored electronic communication is new, emphasize is on "communication" which is in temporary or intermediate storage incidental to its transmission

from the communicator to the intended recipient, or which is stored as a "backup protection" as a service on behalf of the service's customer. Not all stored electronic data will be stored electronic communication. It must first be a communication, then must be in "electronic storage" as defined in this section.

(18) Added new definition from federal law; needed because of change of definition of "wire communication."

(19) Added new definition from federal law; utilized in access to stored electronics communication sections of the law.

(20) Added new definition from federal law; excludes devices used by telephone companies, etc., for billing, cost accounting, or business purposes.

(21) Added new definition from federal law.

(22) Added definition from federal law; was not in prior Florida law although it has been in the federal law for some time.

(23) Added definition of "subpoena" which includes administrative or investigative subpoenas. Term not directly defined in federal law, however, definition takes into account the applications in which "subpoenas" may be used under Florida law and is consistent with the concept of subpoena reflected in federal law.

**PART I: INTERCEPTION OF WIRE, ORAL, OR ELECTRONIC COMMUNICATION  
CONSISTS OF SECTIONS (2) THROUGH (8).**

**Section 2: Section 934.03, F.S.** In general this section lists the criminal violations of the intercept law and includes circumstances under which interceptions are legal without obtaining a court order. References to "this chapter" are replaced with references to specific sections since Chapter 934 is being expanded into three sections, with ss. 934.03-934.09 representing what would be Part I.

(1) Changes the burden of proof from showing "willful" interception, disclosure, or use to that of an "intentional" nature. Change to "intentional" language appears to show a higher degree of culpability. Penalty for violation listed in subsection (4).

(2) Section lists what persons or entities may lawfully intercept conversations: Also includes unique florida language referring to Governor, Attorney General, or State Attorney.

(2)(b) No change from prior law except addition of "electronic" and substitution of specific section for "this chapter".

1721



(2)(c) The proposed revision makes required substitution of specific sections for "this chapter" and adds required "electronic" language. In addition, includes within Florida's provision "investigative" officers such as investigators of the Comptroller's Officer, Division of Insurance Fraud, or other state departments having investigative function but not having full law enforcement officer status to intercept wire, oral or electronic communication when the investigative officer is a party to the communication or when one party has given consent and the interception is to obtain evidence of a criminal act. In practice, investigative or law enforcement officers could record conversations, phone calls, electronic communications if a party to the conversation, call, or communication, or when a party is cooperating with an investigation. Such power should not be confused with an intercept ("wiretap" type) order, which may be sought only by full law enforcement officers.

(2)(d) Retains Florida's "all party" criteria (In contrast to federal's one party criteria).

(2)(e), (f), and (g). Only changes are to make present version conform to new sections of proposed 934.

(2)(h) Is an all new section from federal law--provides that it is not unlawful to engage in the listed activities, including interception of readily accessible communications, including AM and FM radio broadcasts. Also states that it is not a violation of this law to engage in conduct which is prohibited by specifically mentioned federal laws--improper conduct is still prohibited by those listed sections, but such conduct cannot be made criminal by this Florida law or its federal counterpart.

(2)(h) Includes a Florida "hybrid" of the federal language in subsections 6 and 7 which refers to the interception of satellite communication. This section defines activities which are not unlawful under chapter 934 (or the federal counterpart). Language in subsection (h) is taken from federal law, section 2511(5)(a) and (b), creating a "hybrid" for inclusion in Chapter 934. The manner in which 18 U.S.C. 2511(a) and (b) is written made it very difficult to apply to Florida statutory provisions. As a result, a determination of what was not deemed unlawful under the federal law was made, and the conduct was added to the "it shall not be unlawful" list. The federal law does provide a detailed method by which suit or sanction by the federal government can be done to address satellite interceptions. This scheme was deemed inappropriate for Florida to parallel, so Florida counterparts are not provided. Adequate remedies for such conduct are available through the federal forum via U.S.C. 2511(5)(a)(I) and (II).

(2)(i) Is an all new section from federal law and parallel Florida section provides that use of pen register/trap and trace devices is not a s. 934.03 violation as these are covered by

1722



later sections of the law. Lists other lawful activities included to protect service provider

(3) All new from federal law--lists exceptions under which a provider of electronic communication service to the public may release the contents of the communication to others, including release to law enforcement personnel when the contents were inadvertently obtained and appeared to be related to a crime.

(4) Punishment section is revised--It is a third degree felony violate section (1), excluding certain conduct relating to new offense established by the federal law and listed in subsection (b). Subsection (b) is similar to federal subsection 2511(4)(b)(I) and (II). While the punishment scheme seems complex, it was deemed necessary to "decriminalize" or reduce the criminal impact of certain conduct. If Florida does not specify the lower penalties, certain types of activity would be considered felony level violations. It is clear the federal counterpart intended that certain activity not carry with it a felony penalty. This proposed sections reflects that same intent.

**Section 3: Section 934.04--**Revised to adopt federal language "knowing or having reason to know that the design of such device renders.") Violation retains punishment as felony. "Provider" language substituted for "communications common carrier" as done in federal statute. "Intrastate" added along with present language to allow Florida to punish pure in-state activity. Federal law does not contain "intrastate" since "interstate" activity is the federal concern.

**Section 4: Section 934.05--**Added "electronic" to conform Florida law.

**Section 5: Section 934.07--**Proposal limits those who can seek intercept authorization to the Department of Law Enforcement or any law enforcement agency "as defined in s. 934.02(10)". This limitation is provided to make it clear that only full "law enforcement agencies" are authorized to seek and obtain intercept orders.

Presently, Florida allows intercepts for crimes listed in a "menu" provided in 934.07. Proposal adds to the "menu" the following: any violation of Chapter 893 (drug offenses) instead of the dated language in present version.

**Section 6: Section 934.08--**Revised language to make florida law consistent with federal law. No change in subsections (1), (2), (3), (4), or (5) other than the addition of "electronic" communication term. Also, provides language, similar to SB 585, which would allow evidence from intercepts to be made available to the Department of Legal Affairs for use in civil RICO proceedings.

1723

**Section 7: Section 934.09--**Extensive listing of requirements which must be met in order to obtain an intercept order, as well as those requirements that must be followed in carrying out such an order.

- (1) Added "electronic" communication term.
- (2) No change.
- (3) Added "electronic" communication term.
- (4) Added "electronic" communication term.
- (5) Added "electronic" communication term.

When a code or foreign language is used and an expert in the code or foreign language is not reasonably available, the entire conversation may be intercepted and minimized at a later time. This is commonly referred to as "after the fact minimization". This is a federal change.

Intercepts may also be conducted by non-sworn personnel who are employees of, or are under contract with, authorized governmental entities as long as they are acting under the supervision of an authorized investigative or law enforcement officer. This will allow experts (for example, interpreters, computer experts, accountants, etc.) who are not sworn law enforcement officers to assist in intercepts, but only under the supervision of a law enforcement officer. This language appears in federal act.

- (6) No major change.
- (7) Added "electronic: communication term.
- (8) Added "electronic" communication term.
- (9) Added "electronic" communication term. Added new subsection (c) which limits the remedies and sanctions for violations involving electronic communications (similar to federal act).

**Section 8: Section 934.10--**Changes are based on federal law, but retains much of the present law. Adds "preliminary or equitable or declaratory relief" as an option.

**PART II OF CHAPTER 934, CONSISTS OF SECTION 9**

**Section 9: creates ss. 934.21, 934.22, 934.23, 934.24, 934.25, 934.26, 934.27, and 934.28, F.S.**

**Section 934.21:** 18 USC 2701 verbatim through subsection (1). Subsection (2) revised to fit Florida's punishment schemes, utilizing the federal statute's imprisonment sanctions as a guide to determining whether the offense is misdemeanor or felony.

1724

**Section 934.22:** Tracks 18 USC 2702 except references to subsection changed to refer to Florida statutes.

**Section 934.23:** Sets standards for governmental access to such material.

**934.23(1)** substitutes "warrant issued by a judge of competent jurisdiction" for federal language: "warrant issued under the Rules of Criminal Procedure or equivalent state warrant." Established a 180 DAY RULE for determining what level of judicial approval is necessary for access. If the contents of an electronic communication which is in electronic storage for 180 days or less is sought, it must be based on warrant (based upon probable cause) issued by a judge of competent jurisdiction. Electronic communication which is in storage for more than 180 days may be accessed by subpoena or by an order issued upon certification that the information sought is "relevant to a criminal investigation."

**Section 934.23(2):** Same comment regarding "judge of competent jurisdiction" as above.

Also, (2)(b)1 refers to "subpoena" which has been defined in s. 934.02(23) to encompass the full range of investigative subpoenas provided under Florida law. Federal section utilizes the language: "uses an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury subpoena."

**934.23(3)** applies same criteria to "backup" customer service storage.

**934.23(4)** was included in federal scheme under the same section from which the proposed s. 934.23(3) is derived. However, to make numbering consistent with Florida's statutory scheme, and to assume clarity, the federal section has been split into two subsections: 934.23(3) and 934.23(4).

Utilizes "subpoena" for same reason mentioned in comments to s. 934.23(3). Also utilizes "judges of competent jurisdiction" substitution mentioned earlier.

**Section 934.24:** Section provides method by which the government can require a service provider to create and maintain a backup duplicate copy of the communications being sought pending compliance with notice provisions and resolution of any challenges that might occur. This protects against a target destroying or erasing the communication when notified of the investigation.

In the federal equivalent to 934.24(3)(a) "delivery of the information" is utilized. However, "delivery" is defined to mean mailing of information. To assure information is not accidentally destroyed in the mail process, the phrase "actual

1725

receipt by the requesting governmental entity of the information has been substituted as Florida's version. Otherwise, an unscrupulous provider could mail a blank disk, having already destroyed the original, then legally destroyed the backup copy (since the information had been "delivered" by being mailed), and then claim the disk was erased in transit in the mail. It is possible under the federal scheme that the provider could claim to have complied with the "delivery" requirement of the law. By requiring actual receipt instead of "delivery", it can be better assured that the backup copy does in fact contain what it was required to contain.

**934.24(7)** Federal Rule 5(b) and Florida Rule of Civil Procedure 1.080 have same definition of delivery:

Delivery of a copy within this rule shall mean (1) handling it to the attorney or to the party or (2) leaving it at his office with his clerk or other person in charge thereof, or (3) if there is no one in charge, leaving it in a conspicuous place therein, or (4) if the office is closed or the person to be served has no office, leaving it at his usual place of abode with some person of his family above fifteen years of age and informing such person of the contents. Service by mail shall be complete upon mailing.

Subsection (7) tracks federal language except for substituted reference to Florida Rule of Civil Procedure 1.0808 instead of Federal Rule and initial phrase which takes into account use in this proposal of actual receipts as the standard under 934.24(3)(a).

**934.24(10):** New provisions tracks federal language, with additional language regarding petition or request for discretionary review. It is intent of federal statute to prohibit any appeals since appeals could be done solely to stall the progress of an investigation. Same result should occur from use of language here.

**Section 934.25:** Provides method by which required notice to customer may be delayed.

**934.25(1)(b)** utilizes "subpoena", assuring that state attorney and statewide prosecutor subpoenas will be included within scope.

**934.25(7)** shows several substitutions to make procedures applicable to Florida state situations. Federal version reads

...Investigative agent in charge or assistant agent in charge or an equivalent of an investigating agency's headquarters or regional office, or the chief prosecuting attorney or the first assistant prosecuting attorney of an equivalent of a prosecuting attorney's headquarters or regional office.

1726

This wording is not clearly understood. The proposed Florida version attempts to clarify the intent that s supervisor or limited designee be the certifying official rather than case agents or regular prosecutors.

934.25(8) does not appear in federal version. Language was added to make it clear that delivery is an previously used in s. 934.24(7) and as appears in Fla. Rule of Civil Procedure 1.080.

Section 934.26: Federal statutory language but with Florida statutory numbering and references. It should be noted that costs not "profit" are to be reimbursed.

Telephone toll records or telephone listings are specifically exempted by 934.26(3) and in federal law. Federal comments indicate this was done in recognition that such records have traditionally been provided as a courtesy and without charge to law enforcement. Only if costs are high due to a voluminous request will the provider be able to seek cost reimbursement.

Section 934.27: Sets forth civil actions and good faith defense. Similar to federal language.

Section 934.28: Federal law, with Florida sections references added.

**ADDITIONAL COMMENTS:**

18 U.S.C. 2710 indicates that the definitions provided in section 2510 apply to the above chapter, too. Since all important definitions will be under F.S. 934.02 or specifically provided within a section of chapter 934, no additional statement to this effect is needed at this point.

**\*\*THIS CONCLUDES ELECTRONIC COMMUNICATION COMMENT SECTIONS\*\***

**COMMENTS TO PART III, Pen Registers and Trap & Trace Devices consists of Section (10)**

Section 10: This section is completely new, and is mandated since federal law establishes minimum standards for issuance of pen/trap authorizations. The proposed Florida sections track the federal counterparts as closely as possible, with references to Florida statutory sections being substituted for federal sections.

As a matter of practice around Florida, some type of application and order for pen register and trap and trace use has become common, but the format utilized, the standards applied by courts in reviewing the application, and procedures have varied widely. The proposal is a means of establishing uniformity of procedure across the state, making Florida's standards conform with the federal standards.

1727

934.31(1) tracks federal language except "s. 934.33" substituted for "section 3123 of this title or under the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.)" language found in federal law.

934.31(2) is identical to federal language except for changes in section references and format to comply with Florida statutory format.

934.31(3) matches the federal penalty found in 18 U.S.C. 3121(c) to Florida penalties (i.e. First Degree Misdemeanor) with the additional penalty option provided in 934.41 (discussed later).

934.32(1)(a) tracks federal language except "state attorney, the Statewide Prosecutor, or designated Assistant State Attorney or Assistant Statewide Prosecutor" is substituted for "attorney for the Government" found in 18 U.S.C. 3122(a)(1). It was noted that "attorney for the Government" had wide application in federal system, and that the prosecutors named in the Florida proposal would be empowered with substantially the same powers and responsibilities as such attorneys.

The ability to designate assistants is deemed important since ready access to authorizing attorneys is an important factor to investigative and law enforcement interests.

934.32(1)(b) allows investigative or law enforcement officers to make the application. This is supplemental to 934.32(1)(a), meaning either option could be selected. The federal counterpart, 18 U.S.C. 3122(2) reads, "Unless prohibited by State law, a State Investigative or law enforcement officer may..." Since 934.02(6) defines "Investigative or law enforcement officer" and since the use of a pen register or trap and trace device involves no interception of oral, wire, or electronic communication, but rather involves determining the phone numbers being dialed for from which calls to a subject's phone are being made, it was felt that there should be no problem in allowing officers to apply for pen registers or trap and trace devices.

934.33 describes what must be stated in an order authorizing pen registers or trap and trace devices. Language through subsection (4) is identical to federal provision except that references to federal sections have been changed to conform to Florida Statutes references.

934.34 is new and is very similar to the federal law. It obligates providers of service, landlords, custodians or other persons to furnish all information, facilities and assistance necessary to accomplish the installation and/or obligates such persons to install the device IF the court order makes such a direction (see: 934.34(1) and (2)).

934.34(2) further requires results of the trap and trace to be furnished to an officer "at reasonable intervals during regular business hours for the duration of the order."

934.34(3) allows reasonable compensation for reasonable expenses for providing facilities or assistance. Again it appears that "profit" is not contemplated as something to be reimbursed.

934.34(4) provides immunity to providers who provide information, facilities, or assistance in accordance with the terms of an order. This section is apparently added in recognition of the providers' concerns regarding civil lawsuits by aggrieved customers upon whose facilities pens or traps were placed. Tracks federal language except "under this chapter" changed to read "under ss. 934.31-934.34" since "chapter" as used by federal version is limited to Part III of Florida's statute.

934.34(5) tracks federal language except federal "under this chapter" changed to read "under ss. 934.31-934.34" for same reason as stated above.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

### A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

Indeterminate

2. Recurring or Annualized Continuation Effects:

Indeterminate

3. Long Run Effects Other Than Normal Growth:

Indeterminate

4. Appropriations Consequences:

Indeterminate

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:

Indeterminate

2. Recurring or Annualized Continuation Effects:

Indeterminate

3. Long Run Effects Other Than Normal Growth:

1729

Indeterminate

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Indeterminate

2. Direct Private Sector Benefits:

Indeterminate

3. Effects on Competition, Private Enterprise, and Employment Markets:

Indeterminate

D. FISCAL COMMENTS:

III. LONG RANGE CONSEQUENCES:

IV. COMMENTS:

V. AMENDMENTS:

VI. SIGNATURES:

SUBSTANTIVE COMMITTEE:

Prepared by:

Karen Mann, Staff Analyst

Staff Director:

Bill Ryan

APPROPRIATIONS:

Prepared by:

Staff Director:

1730



STORAGE NAME: H 1665-F.CJ  
 Date: June 9, 1988

(B) (D) P Y  
 OFFICE OF THE  
 FLORIDA CLERK OF COURTS  
 FLORIDA DEPARTMENT OF STATE  
 TALLAHASSEE, FL 32399-0200  
 Series 12 - Cotton 1871

HOUSE OF REPRESENTATIVES  
 COMMITTEE ON CRIMINAL JUSTICE  
 FINAL STAFF ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: HB 1665 (PCB CJ 88-15) Passed as CS/SB 585  
 RELATING TO: Wire and Electronic Communications  
 SPONSOR(S): Committee on Criminal Justice  
 EFFECTIVE DATE: October 1, 1988  
 DATE BECAME LAW: July 1, 1988  
 CHAPTER #: 88-184 Laws of Florida  
 COMPANION BILL(S): SB 585  
 OTHER COMMITTEES OF REFERENCE: (1) Appropriations  
 (2) \_\_\_\_\_

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I. SUMMARY:

A. PRESENT SITUATION:

On October 21, 1986, President Reagan signed into law the electronic communications Privacy Act of 1986. (Public Law 99-508). This new legislation made several far reaching revisions of the federal Wire and Oral Intercept Law, commonly referred to as "Title III." The Act became effective on January 20, 1987. There is a special 2-year delayed effective date measured from the date of enactment, October 21, 1986, governing state authorizations of interceptions. As a result, by October 21, 1988, Florida must have in effect a revised Chapter 934, F.S., that complies with the requirements of the federal Act.

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This bill would enact the minimum changes required to conform with the federal law but uses Florida language when necessary to protect the cause and meaning of the federal statute.

Several sections of this bill are not required for conformance to federal law. Section 6 provides language, similar to SB 585, which would allow evidence from intercepts to be made available to the Department of Legal Affairs for use in civil RICO proceedings. Section 7 authorizes the use of non-law enforcement personnel for the purpose of monitoring and translating foreign language or coded communications. Although this provision is not strictly necessary, it parallels federal law and addresses the use of new technology and foreign languages by persons engaging in criminal activities. Section 10 of the bill establishes statutory procedures governing the issuance of court orders for the use of pen registers and trap and trace devices.

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C. SECTION-BY-SECTION ANALYSIS:

**Section 1: Definitions - 934.02, F.S.** Because of changes in the federal law and the addition of "electronic communications" to the law, the term "electronic" is added to many sections for the definitions and substantive law, frequently in the phrase: "wire, electronic, or oral communication."

(1) Change from "communication" to "aural transfer" limits the definition in recognition of new sections regarding electronic communication, with a new definition of "electronic transfer" added at a later point; deletion of "common carrier" term expands the applicability of this section to "in house" communications systems; "electronic storage is defined later; exempts the radio portion of a cordless telephone conversation but not cellular phones -- those are "wire communications."

(2) Specifically excludes the later defined term of "electronic communication" from an "oral communication."

(3) The words "or other" were added in recognition of the distinctions between wire, oral, and electronic communications and will now include the interception of computer communications. Previous to the federal change, one was able to intercept beeps, chirps, etc., generated by computer transmissions without an intercept order. Now, those beeps, etc., are within the scope of a protected communication to which

access is allowed only by an intercept order or by consent of a party.

(4) The term "provider of wire or electronic communication service" was added to expand the scope beyond "communications common carrier" and includes computer mail systems, internal telephone systems, etc.

(5) No change made to Florida's definition.

(6) No change made to Florida's definition.

(7) Revised to the federal definition.

(8) No change made to Florida's definition; similar to federal one already.

(9) Added "electronic" communication section to meet federal change.

(10) No changes made to Florida's definition.

(11) Although not used by new federal version, this definition referring to federal Code is provided to make it clear that if referred to in federal cases, Florida's intent is to rely on the federal definition, too.

(12) Added definition taken directly from federal law; added to include all types of "electronic" transfers of communication but specifically excludes four types of communication: excludes radio part of a cordless telephone conversation, the interception of the non-radio portion would be interception of a wire communication; excludes interception of "tone-only" beepers, interception of voice pager would be an oral interception and the interception of a digital readout pager would be a wire interception; excludes wire and oral communications from "electronic communication" definition; excludes communications from a "tracking device."

(13) Added new definition taken directly from federal law relating to the authorized use of electronic communication service.

(14) Added new definition from federal law; relating to the transmission and storage of electronic communications.

(15) Added new definition from federal law, relating to the sending or receiving of wire or electronic communications.

(16) Added new definition from federal law; excludes "clear" broadcasts which are generally accessible to the public. Otherwise, the use of any radio receiver would be criminal under the federal law and Florida's counterpart.

(17) Added new definition from federal law which relates to Part II. Includes temporary or backup storage of wire or electronic communications incidental to the electronic transmission of those types of communications. While concept of stored electronic communication is new, emphasize is on "communication" which is in temporary or intermediate storage incidental to its transmission from the communicator to the intended recipient, or which is stored as a "backup protection" as a service on behalf of the service's customer. Not all stored electronic data will be stored electronic communication. It must first be a communication, then must be in "electronic storage" as defined in this section.

(18) Added new definition from federal law; needed because of change of definition of "wire communication."

(19) Added new definition from federal law; utilized in access to stored electronics communication sections of the law.

(20) Added new definition from federal law; excludes devices used by telephone companies, etc., for billing, cost accounting, or business purposes.

(21) Added new definition from federal law.

(22) Added definition from federal law; was not in prior Florida law although it has been in the federal law for some time.

(23) Added definition of "subpoena" which includes administrative or investigative subpoenas. Term not directly defined in federal law, however, definition takes into account the applications in which "subpoenas" may be used under Florida law and is consistent with the concept of subpoena reflected in federal law.

PART I: INTERCEPTION OF WIRE, ORAL, OR ELECTRONIC  
COMMUNICATION CONSISTS OF SECTIONS (2) THROUGH (8).

**Section 2: Section 934.03, F.S.** In general this section lists the criminal violations of the intercept law and includes circumstances under which interceptions are legal without obtaining a court order. References to "this chapter" are replaced with references to specific sections since Chapter 934 is being expanded into three sections, with ss. 934.03-934.09 representing what would be Part I.

(1) Changes the burden of proof from showing "willful" interception, disclosure, or use to that of an "intentional" nature. Change to "intentional" language appears to show a higher degree of culpability. Penalty for violation listed in subsection (4).

(2) Section lists what persons or entities may lawfully intercept conversations: Also includes unique florida language referring to Governor, Attorney General, or State Attorney.

(2)(b) No change from prior law except addition of "electronic" and substitution of specific section for "this chapter".

(2)(c) The proposed revision makes required substitution of specific sections for "this chapter" and adds required "electronic" language. In addition, includes within Florida's provision "investigative" officers such as investigators of the Comptroller's Office, Division of Insurance Fraud, or other state departments having investigative function but not having full law enforcement officer status to intercept wire, oral or electronic communication when the investigative officer is a party to the communication or when one party has given consent and the interception is to obtain evidence of a criminal act. In practice, investigative or law enforcement officers could record conversations, phone calls, electronic communications if a party to the conversation, call, or communication, or when a party is cooperating with an investigation. Such power should not be confused with an intercept ("wiretap" type) order, which may be sought only by full law enforcement officers.

(2)(d) Retains Florida's "all party" criteria (In contrast to federal's one party criteria).

(2)(e),(f), and (g). Only changes are to make present version conform to new sections of proposed 934.

(2)(h) Is an all new section from federal law--provides that it is not unlawful to engage in the listed activities, including interception of readily accessible communications, including AM and FM radio broadcasts. Also states that it is not a violation of this law to engage in conduct which is prohibited by specifically mentioned federal laws--improper conduct is still prohibited by those listed sections, but such conduct cannot be made criminal by this Florida law or its federal counterpart.

(2)(h) Includes a Florida "hybrid" of the federal language in subsections 6 and 7 which refers to the interception of satellite communication. This section defines activities which are not unlawful under chapter 934 (or the federal counterpart). Language in subsection (h) is taken from federal law, section 2511(5)(a) and (b), creating a "hybrid" for inclusion in Chapter 934. The manner in which 18 U.S.C. 2511(a) and (b) is written made it very difficult to apply to Florida statutory provisions. As a result, a determination of what was not deemed unlawful under the federal law was made, and the conduct was added to the "it shall not be unlawful" list. The federal law does provide a detailed method by which suit or sanction by the federal government can be done to

address satellite interceptions. This scheme was deemed inappropriate for Florida to parallel, so Florida counterparts are not provided. Adequate remedies for such conduct are available through the federal forum via U.S.C. 2511(5)(a)(I) and (II).

(2)(i) Is an all new section from federal law and parallel Florida section provides that use of pen register/trap and trace devices is not a s. 934.03 violation as these are covered by later sections of the law. Lists other lawful activities included to protect service provider

(3) All new from federal law--lists exceptions under which a provider of electronic communication service to the public may release the contents of the communication to others, including release to law enforcement personnel when the contents were inadvertently obtained and appeared to be related to a crime.

(4) Punishment section is revised--It is a third degree felony violate section (1), excluding certain conduct relating to new offense established by the federal law and listed in subsection (b). Subsection (b) is similar to federal subsection 2511(4)(b)(I) and (II). While the punishment scheme seems complex, it was deemed necessary to "decriminalize" or reduce the criminal impact of certain conduct. If Florida does not specify the lower penalties, certain types of activity would be considered felony level violations. It is clear the federal counterpart intended that certain activity not carry with it a felony penalty. This proposed sections reflects that same intent.

**Section 3: Section 934.04--Revised to adopt federal language "knowing or having reason to know that the design of such device renders.") Violation retains punishment as felony. "Provider" language substituted for "communications common carrier" as done in federal statute. "Intrastate" added along with present language to allow Florida to punish pure in-state activity. Federal law does not contain "intrastate" since "interstate" activity is the federal concern.**

**Section 4: Section 934.05--Added "electronic" to conform Florida law.**

**Section 5: Section 934.07--Proposal limits those who can seek intercept authorization to the Department of Law Enforcement or any law enforcement agency "as defined in s. 934.02(10)". This limitation is provided to make it clear that only full "law enforcement agencies" are authorized to seek and obtain intercept orders.**

Presently, Florida allows intercepts for crimes listed in a "menu" provided in 934.07. Proposal adds to the "menu" the following: any violation of Chapter 893 (drug offenses) instead of the dated language in present version.

**Section 6: Section 934.08**--Revised language to make florida law consistent with federal law. No change in subsections (1), (2), (3), (4), or (5) other than the addition of "electronic" communication term. Also, provides language, similar to SB 585, which would allow evidence from intercepts to be made available to the Department of Legal Affairs for use in civil RICO proceedings. This section provides conforming language to SB 585 which extends the provision allowing persons who have received intercept information to disclose such information while giving testimony.

**Section 7: Section 934.09**--Extensive listing of requirements which must be met in order to obtain an intercept order, as well as those requirements that must be followed in carrying out such an order.

- (1) Added "electronic" communication term.
- (2) No change.
- (3) Added "electronic" communication term.
- (4) Added "electronic" communication term.
- (5) Added "electronic" communication term.

When a code or foreign language is used and an expert in the code or foreign language is not reasonably available, the entire conversation may be intercepted and minimized at a later time. This is commonly referred to as "after the fact minimization". This is a federal change.

Intercepts may also be conducted by non-sworn personnel who are employees of, or are under contract with, authorized governmental entities as long as they are acting under the supervision of an authorized investigative or law enforcement officer. This will allow experts (for example, interpreters, computer experts, accountants, etc.) who are not sworn law enforcement officers to assist in intercepts, but only under the supervision of a law enforcement officer. This language appears in federal act.

- (6) No major change.
- (7) Added "electronic: communication term.
- (8) Added "electronic" communication term.
- (9) Added "electronic" communication term. Added new subsection (c) which limits the remedies and sanctions for violations involving electronic communications (similar to federal act).

**Section 8:** Section 934.10--Changes are based on federal law, but retains much of the present law. Adds "preliminary or equitable or declaratory relief" as an option.

**PART II OF CHAPTER 934, CONSISTS OF SECTION 9**

**Section 9:** creates ss. 934.21, 934.22, 934.23, 934.24, 934.25, 934.26, 934.27, and 934.28, F.S.

**Section 934.21:** 18 USC 2701 verbatim through subsection (1). Subsection (2) revised to fit Florida's punishment schemes, utilizing the federal statute's imprisonment sanctions as a guide to determining whether the offense is misdemeanor or felony.

**Section 934.22:** Tracks 18 USC 2702 except references to subsection changed to refer to Florida statutes.

**Section 934.23:** Sets standards for governmental access to such material.

**934.23(1)** substitutes "warrant issued by a judge of competent jurisdiction" for federal language: "warrant issued under the Rules of Criminal Procedure or equivalent state warrant." Established a 180 DAY RULE for determining what level of judicial approval is necessary for access. If the contents of an electronic communication which is in electronic storage for 180 days or less is sought, it must be based on warrant (based upon probable cause) issued by a judge of competent jurisdiction. Electronic communication which is in storage for more than 180 days may be accessed by subpoena or by an order issued upon certification that the information sought is "relevant to a criminal investigation."

**Section 934.23(2):** Same comment regarding "judge of competent jurisdiction" as above.

Also, (2)(b)1 refers to "subpoena" which has been defined in s. 934.02(23) to encompass the full range of investigative subpoenas provided under Florida law. Federal section utilizes the language: "uses an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury subpoena."

**934.23(3)** applies same criteria to "backup" customer service storage.

**934.23(4)** was included in federal scheme under the same section from which the proposed s. 934.23(3) is derived. However, to make numbering consistent with Florida's statutory scheme, and to assume clarity, the federal section has been split into two subsections: 934.23(3) and 934.23(4).



Utilizes "subpoena" for same reason mentioned in comments to s. 934.23(3). Also utilizes "judges of competent jurisdiction" substitution mentioned earlier.

**Section 934.24:** Section provides method by which the government can require a service provider to create and maintain a backup duplicate copy of the communications being sought pending compliance with notice provisions and resolution of any challenges that might occur. This protects against a target destroying or erasing the communication when notified of the investigation.

In the federal equivalent to 934.24(3)(a) "delivery of the information" is utilized. However, "delivery" is defined to mean mailing of information. To assure information is not accidentally destroyed in the mail process, the phrase "actual receipt by the requesting governmental entity of the information has been substituted as Florida's version. Otherwise, an unscrupulous provider could mail a blank disk, having already destroyed the original, then legally destroyed the backup copy (since the information had been "delivered" by being mailed), and then claim the disk was erased in transit in the mail. It is possible under the federal scheme that the provider could claim to have complied with the "delivery" requirement of the law. By requiring actual receipt instead of "delivery", it can be better assured that the backup copy does in fact contain what it was required to contain.

**934.24(7)** Federal Rule 5(b) and Florida Rule of Civil Procedure 1.080 have same definition of delivery:

Delivery of a copy within this rule shall mean (1) handling it to the attorney or to the party or (2) leaving it at his office with his clerk or other person in charge thereof, or (3) if there is no one in charge, leaving it in a conspicuous place therein, or (4) if the officer is closed or the person to be served has no office, leaving it at his usual place of abode with some person of his family above fifteen years of age and informing such person of the contents. Service by mail shall be complete upon mailing.

Subsection (7) tracks federal language except for substituted reference to Florida Rule of Civil Procedure 1.0808 instead of Federal Rule and initial phrase which takes into account use in this proposal of actual receipts as the standard under 934.24(3)(a).

**934.24(10):** New provisions tracks federal language, with additional language regarding petition or request for discretionary review. It is intent of federal statute to prohibit any appeals since appeals could be done solely to stall the progress of an investigation. Same result should occur from use of language here.

**Section 934.25:** Provides method by which required notice to customer may be delayed.

**934.25(1)(b)** utilizes "subpoena", assuring that state attorney and statewide prosecutor subpoenas will be included within scope.

**934.25(7)** shows several substitutions to make procedures applicable to Florida state situations. Federal version reads

...Investigative agent in charge or assistant agent in charge or an equivalent of an investigating agency's headquarters or regional office, or the chief prosecuting attorney or the first assistant prosecuting attorney of an equivalent of a prosecuting attorney's headquarters or regional office.

This wording is not clearly understood. The proposed Florida version attempts to clarify the intent that s supervisor or limited designee be the certifying official rather than case agents or regular prosecutors.

**934.25(8)** does not appear in federal version. Language was added to make it clear that delivery is an previously used in s. 934.24(7) and as appears in Fla. Rule of Civil Procedure 1.080.

**Section 934.26:** Federal statutory language but with Florida statutory numbering and references. It should be noted that costs not "profit" are to be reimbursed.

Telephone toll records or telephone listings are specifically exempted by 934.26(3) and in federal law. Federal comments indicate this was done in recognition that such records have traditionally been provided as a courtesy and without charge to law enforcement. Only if costs are high due to a voluminous request will the provider be able to seek cost reimbursement.

**Section 934.27:** Sets forth civil actions and good faith defense. Similar to federal language.

**Section 934.28:** Federal law, with Florida sections references added.

#### **ADDITIONAL COMMENTS:**

18 U.S.C. 2710 indicates that the definitions provided in section 2510 apply to the above chapter, too. Since all important definitions will be under F.S. 934.02 or specifically provided within a section of chapter 934, no additional statement to this effect is needed at this point.

**\*\*THIS CONCLUDES ELECTRONIC COMMUNICATION COMMENT SECTIONS\*\***

**COMMENTS TO PART III, Pen Registers and Trap & Trace Devices  
consists of Section (10)**

**Section 10:** This section is completely new, and is mandated since federal law establishes minimum standards for issuance of pen/trap authorizations. The proposed Florida sections track the federal counterparts as closely as possible, with references to Florida statutory sections being substituted for federal sections.

As a matter of practice around Florida, some type of application and order for pen register and trap and trace use has become common, but the format utilized, the standards applied by courts in reviewing the application, and procedures have varied widely. The proposal is a means of establishing uniformity of procedure across the state, making Florida's standards conform with the federal standards.

**934.31(1)** tracks federal language except "s. 934.33" substituted for "section 3123 of this title or under the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.)" language found in federal law.

**934.31(2)** is identical to federal language except for changes in section references and format to comply with Florida statutory format.

**934.31(3)** matches the federal penalty found in 18 U.S.C. 3121(c) to Florida penalties (i.e. First Degree Misdemeanor) with the additional penalty option provided in 934.41 (discussed later).

**934.32(1)(a)** tracks federal language except "state attorney, the Statewide Prosecutor, or designated Assistant State Attorney or Assistant Statewide Prosecutor" is substituted for "attorney for the Government" found in 18 U.S.C. 3122(a)(1). It was noted that "attorney for the Government" had wide application in federal system, and that the prosecutors named in the Florida proposal would be empowered with substantially the same powers and responsibilities as such attorneys.

The ability to designate assistants is deemed important since ready access to authorizing attorneys is an important factor to investigative and law enforcement interests.

**934.32(1)(b)** allows investigative or law enforcement officers to make the application. This is supplemental to 934.32(1)(a), meaning either option could be selected. The federal counterpart, 18 U.S.C. 3122(2) reads, "Unless prohibited by State law, a State Investigative or law enforcement officer may..." Since 934.02(6) defines "Investigative or law enforcement officer" and since the use of a pen register or trap and trace device involves no interception of oral, wire, or electronic communication, but rather involves determining

the phone numbers being dialed for from which calls to a subject's phone are being made, it was felt that there should be no problem in allowing officers to apply for pen registers or trap and trace devices.

934.33 describes what must be stated in an order authorizing pen registers or trap and trace devices. Language through subsection (4) is identical to federal provision except that references to federal sections have been changed to conform to Florida Statutes references.

934.34 is new and is very similar to the federal law. It obligates providers of service, landlords, custodians or other persons to furnish all information, facilities and assistance necessary to accomplish the installation and/or obligates such persons to install the device IF the court order makes such a direction (see: 934.34(1) and (2)).

934.34(2) further requires results of the trap and trace to be furnished to an officer "at reasonable intervals during regular business hours for the duration of the order."

934.34(3) allows reasonable compensation for reasonable expenses for providing facilities or assistance. Again it appears that "profit" is not contemplated as something to be reimbursed.

934.34(4) provides immunity to providers who provide information, facilities, or assistance in accordance with the terms of an order. This section is apparently added in recognition of the providers' concerns regarding civil lawsuits by aggrieved customers upon whose facilities pens or traps were placed. Tracks federal language except "under this chapter" changed to read "under ss. 934.31-934.34" since "chapter" as used by federal version is limited to Part III of Florida's statute.

934.34(5) tracks federal language except federal "under this chapter" changed to read "under ss. 934.31-934.34" for same reason as stated above.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

### A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

#### 1. Non-recurring or First Year Start-Up Effects:

Indeterminate

#### 2. Recurring or Annualized Continuation Effects:

Indeterminate

3. Long Run Effects Other Than Normal Growth:

Indeterminate

4. Appropriations Consequences:

Indeterminate

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:

Indeterminate

2. Recurring or Annualized Continuation Effects:

Indeterminate

3. Long Run Effects Other Than Normal Growth:

Indeterminate

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Indeterminate

2. Direct Private Sector Benefits:

Indeterminate

3. Effects on Competition, Private Enterprise, and Employment Markets:

Indeterminate

D. FISCAL COMMENTS:

III. LONG RANGE CONSEQUENCES:

IV. COMMENTS:

V. SIGNATURES:

SUBSTANTIVE COMMITTEE:

Prepared by:

Staff Director:

Karen E. Mann, Staff Analyst

Bill Ryan

FINANCE & TAXATION:

Prepared by:

Staff Director:

Page 14  
Bill #: HB 1665  
Date: June 9, 1988

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APPROPRIATIONS:  
Prepared by:

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Staff Director:

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File with Parent Committee

TO: Chairman, Committee on Criminal Justice

Subcommittee on Crime Prevention and Management

Date of Meeting April 28, 1988Time 9:00 a.m.Place 16 HOBBILL NO. PCB CJ 88-15

FINAL ACTION: X Favorable  
 \_\_\_\_\_ Favorable with \_\_\_\_\_ Amendments  
 \_\_\_\_\_ Favorable with Proposed Substitute  
 \_\_\_\_\_ Unfavorable

## VOTE:

YEA	MEMBER	NAY
X	Casas	
X	Crotty	
	Gustafson	
	Meffert	
X	UpChurch	
X	Mackenzie, Chairman	

Total  
Yeas 4

YEA	MEMBER	NAY

Total  
Nays 0\_\_\_\_\_  
Subcommittee Chairman

## APPEARANCE RECORD

The following persons (other than legislators) appeared before the subcommittee during the consideration of this bill:

<u>Name</u>	<u>Representing</u>	<u>Address</u>
Michael Ramage	FDLE	P. O. Box 1489
Ken Waters	GTE of Florida	Tallahassee, FL
Pete Antannoci	Statewide Prosecutor	315 South Calhoun Street
		Tallahassee, FL

Note: Please indicate by an "X" any State employee appearing at the request of the Chairman.

Received by Parent Committee:

Date: \_\_\_\_\_

Received by: \_\_\_\_\_

COMMITTEE INFORMATION RECORD  
House of Representatives

Committee on Criminal Justice

Date of Meeting May 3, 1988

Time 8:00 a.m.

Place	21 HOB
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Bill No.: PCB CJ 88-15

FINAL ACTION: X Favorable  
 \_\_\_\_\_ Favorable with \_\_\_\_\_ Amendments  
 \_\_\_\_\_ Favorable with Substitute  
 \_\_\_\_\_ Unfavorable

VOTE:

YEA	MEMBER	NAY
X	Abrams, Mike	
X	Ascherl, Jack	
X	Canady, Charles	
X	Casas, Roberto	
X	Clements, Spud	
X	Crotty, Richard	
X	Dunbar, Pete	
X	Frankel, Lois	
X	Glickman, Ron	
	Gordon, Elaine	
X	Langton, Mike	
X	Lewis, Marian	
X	Locke, Dick	
X	Mackenzie, Anne	
	Meffert, Chris	
X	Press, Steve	
X	Renke, John	
X	Souto, Javier	
	Thomas, David	

[illegible]

Total

Yeas 20

Total

Days

\*If Rep. Titone had been present he would have voted yes.

Chairman

### APPEARANCE RECORD

The following persons (other than legislators) appeared before the committee during the consideration of this bill:

Name

## Representing

Address

(11) (11) (11) 117  
 1001 Ship - The  
 FLORIDA STATE AND RIVER  
 DEPARTMENT OF FISH  
 R. A. GILG, DIRECTOR  
 Tallahassee, FL 32301-0750  
 Series 79, Carton 1871

**Note:** Please indicate by an "X" any State employee appearing at the request of the Chairman.

(FILE WITH THE CLERK AND  
ATTACH SUBCOMMITTEE REPORT  
IF APPLICABLE)



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# Florida House of Representatives

Jon Mills, Speaker  
Committee on Criminal Justice

Tom Gustafson  
Chairman

S. L. "Spud" Clements, Jr.  
Vice Chairman

April 29, 1988

Subcommittee Chairmen  
Charles Canady  
Anne Mackenzie  
Mike Langton  
Steve Press

## M E M O R A N D U M

TO: Representatives Gustafson, Mackenzie, and Canady  
FROM: Karen Mann, Staff Analyst  
RE: PCB 15 -- Wire and Electronic Communications

The following is a brief explanation of PCB 15 and a status report regarding the positions of interested parties. The Florida Legislature needs to pass this legislation in its current form in order to comply with the federal Wire and Oral Intercept Law which takes effect October 21, 1988. The changes made to the current Chapter 934, F.S., were made with the intention to minimize deviation from tracking the federal language, while maintaining florida language and meaning when possible. This PCB expands current law regulating wire and oral communications to cover the new technology with electronic communications. However, there are a few instances in which provisions were added based on an expressed need from the Statewide Prosecutor and FDLE legal counsel. Here is a brief explanation of those sections:

Section 6: (1), Page 17, lines 29 - 31

The underlined language was picked up from SB 585, by Senator Johnson, and provides that the Department of Legal Affairs can have access (shared to them by law enforcement) to the intercept information for use in civil RICO proceedings which may occur concurrently with law enforcement activity. The Statewide Prosecutor, Pete Antanocci, feels strongly that this language should be included. All other parties have bought off on this issue. This language does not track federal language, nor is it necessary for conformance with the federal Act.

Section 7: (5), Page 23, lines 12 - 22

The underlined language here tracks federal language, however, it is not considered as a necessary provision to comply with the federal Act. This language addresses the use of technology by those persons engaging in criminal activity subject to action under this chapter, in that many interceptions involve persons speaking in a foreign language other than one anticipated (i.e., Spanish) or the interception is in a computer coded message. This language would allow for an interpreter to listen to the interception and perform minimization after the fact. That is, the confidential or protected portions of the conversation or interception (husband/wife conversations, etc.) would be cut out after the determination has been made as to what portion of that interception was valuable. This provision has not been identified as a problem.

Section 10: entire section, Page 41, line 26 through the end of the bill.

Currently, Florida has no statutes addressing the application and issuance of a court order authorizing the installation and use of "pen registers" and "trap and trace devices." These instruments are investigative tools. The pen register is a device which displays only the phone number of outgoing calls. Trap and trace devices display only the phone number of incoming calls. These devices are currently being utilized by law enforcement but there are statutes regulating their use. These new sections attempts to adopt the federal requirements for the application and issuance of a court order authorizing the installation of these devices. If Florida did not adopt this language, without current statutory provisions, law enforcement would be subject to the federal requirements and this is undesirable to law enforcement.

At the subcommittee meeting, a GTE representative indicated some concern with two provisions of the bill. One provision is current law and has been for several years. This is at the bottom of page 10 and top of page 11, Section 2, s. 934.03(1)2, F.S. This involves the communication providers (phone companies) who are requested by a citizen to trace a phone call for law enforcement purposes (obscene, harassing, or threatening phone calls). This can only be conducted after the individual makes a complaint to law enforcement and provides the case number to the phone company, at this point an interception proceeds. The current law provides that the phone company must notify law enforcement within 48 hours after the interception. GTE asserts that this is not enough time for them to notify law enforcement. In an effort to compromise on this issue, a meeting took place involving the Statewide Prosecutor, FDLE legal counsel, John Fuller (Sheriff's Assoc.), Willis Booth (Police Chiefs Assoc.), representatives from GTE, AT&T, and Southern Bell, Ed Levine (Staff for Joint Committee on Information, Technology and Resources), and myself. GTE agreed to wait on this issue and address it during the interim since it is current law and our bill does not alter that provision. AT&T has also agreed to hold off on this issue. The Southern Bell representative wanted to check with his legal counsel and would get back to either Ed Levine or myself by Monday. The other parties (law enforcement, etc.) did

not want this provision altered at this point. I believe the PCB in its current form is okay regarding this issue.

Regarding this same section, another issue surfaced which had not previously been considered. Currently, Southern Bell is providing a mechanism by which a customer's phone will display the number of origin on incoming calls. This is being conducted in the Orlando area on an experimental basis. However, some State offices such as Ed Levine's have this capability through suncom. The federal law permits one-party consent on traces such as these. However, Florida law provides for two-party consent unless the trace is for law enforcement purposes as mentioned previously. After further discussion it was felt that because the phone company is not being requested to trace these calls and the customer is initiating it, that it is not in violation of this section. However, we are checking with the Public Service Commission regarding how this would be affected by the new provisions. It was felt that since this technology is readily available, the phone companies must have considered the liability previously and that there is no problem with it.

Finally, Section 10, s. 934.26, F.S., bottom of page 39 through page 40, dealing with cost reimbursement has also been identified as a problem for phone companies. Previously, there were no provisions for phone companies to be reimbursed by law enforcement for phone companies to provide them with requested toll records (paragraph (3)). This new provision states that if a court determines that the information is unusually voluminous or causes undue burden, the company can be reimbursed. This cost is apparently quite extensive. The phone companies wanted this paragraph deleted which allow them to be reimbursed for these records regardless of the nature. This would place an extremely costly burden on law enforcement that can not be absorbed in their current budget. The federal people are trying to resolve this very issue right now with an amendment to the Wire and Electronic Communications Act. However, in the absence of a compromise, GTE agreed with law enforcement that this could be resolved during the interim with the benefit of a resolution at the federal level. However, AT&T's position is for this language to come out and allow for complete reimbursements for toll record expenses. The Southern Bell representative is checking with his legal counsel and will let us know his position by Monday. Ed Levine and myself feel like this is another issue we could look at during the interim, because this added cost for phone companies is reflected in customer charges (the public has been absorbing this cost, so to speak). Law enforcement definitely does not want this provision removed.

To conclude, when Ed Levine and myself (Senate staff was also included) were scaling this bill down (at the request of Rep. Mackenzie) to the bare essentials, we omitted almost all of the "extra" provisions wanted by law enforcement on the basis of our recommending to our respective chairpersons that we examine all of these issues when there is more time to properly address them. We

feel like this bill conforms Florida Statutes with the federal law and adds new language only when necessary.

**BILL VOTE SHEET**

(VS-88: File with Secretary of Senate)

BILL NO. SB 585

COMMITTEE ON: Judiciary-Criminal

DATE: May 16, 1988

ACTION:

TIME: 2:00 p.m. - 5:00 p.m.

☐ Favorably with        amendments

PLACE: Room C Senate Office Building

☒ Favorably with Committee Substitute

☐ Unfavorably

OTHER COMMITTEE REFERENCES:  
(in order shown)

☐ Submitted as a Committee Bill

None

☐ Temporarily Passed

☐ Reconsidered

☐ Not Considered

THE VOTE WAS:

5/16/88

FINAL BILL VOTE		SENATORS	Motion by Johnson to adopt proposed CS											
Aye	Nay		Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay
X		Beard												
X		Brown												
X		Grant												
		Jenne												
X		Lehtinen												
		VICE-CHAIRMAN Weinstein												
X		CHAIRMAN Johnson												
5	0	TOTAL	W/O	-										
Aye	Nay		Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay

Please Complete: The Key sponsor appeared ( X )  
 A Senator appeared ( )  
 Sponsor's aide appeared ( )  
 Other appearance ( X )

## SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. Rudolph <i>JHR</i>	Liepshutz <i>MM</i>	1. JCR	
2. _____	_____	2. _____	_____
3. _____	_____	3. _____	_____
4. _____	_____	4. _____	_____

## SUBJECT:

Intercepted Wire or Oral  
Communications

## BILL NO. AND SPONSOR:

Proposed CS/SB 585 by  
Senator JohnsonI. SUMMARY:

## A. Present Situation:

Chapter 934, Florida Statutes, governs security of communications. Currently, this chapter regulates the interception of wire and oral communications (i.e. those communications that can be heard and understood with the human ear.) Florida law does not protect the interception of non-aural electronic communications, which includes video teleconferencing, electronic mail and computer data transmissions.

In addition, no statutory guidelines exist which establish procedures necessary to obtain and use pen registers and trap and trace devices. As a matter of practice in Florida, some type of application and order for pen register and trap and trace use has become common, but the format used and standards applied by the courts in reviewing the applications vary widely.

On October 21, 1986, President Reagan signed into law the Electronic Communications Privacy Act of 1986 (Public Law No. 99-508). This legislation provides a comprehensive revision of the original Title III of the Omnibus Crime Control and Safe Streets Act of 1968, which had governed aural acquisition of the contents of wire and oral communications. The principle intent of the new federal law is to update and clarify federal privacy protections and standards in light of dramatically improved communications technologies, and to protect the transmission of all forms of information from improper interception. Significant revisions at the federal level include:

1. Regulation of electronic communications in addition to wire and oral communications already regulated under the original law (Title III);
2. Creation of new law to implement standards for government access to transactional records and stored electronic communications; and
3. Establishment of uniform procedures to regulate the use of pen registers (devices which register the phone numbers to which phone calls are placed) and trap and trace devices (devices which indicate the phone numbers from which telephone calls are received).

The Federal Electronic Communications Privacy Act of 1986 became effective on January 20, 1987. A special 2-year delayed effective date measured from the date of enactment, October 21, 1986, governs state authorizations of intercepts. States, therefore, have until October 21, 1988 to revise their laws to provide at least the same level of protection of privacy

interests and restrictions upon electronic surveillance and interceptions as the federal law. Failure to amend state law to comply with the federal act will result in state investigators being able to access electronic communications only through the federal system.

B. Effect of Proposed Changes:

Proposed CS/SB 585 would provide the minimum changes necessary to Chapter 934 in order to conform with federal law by the October 21, 1988 deadline. In general, Chapter 934 would be brought into line with the companion federal provisions regarding the interception of wire, oral and, most significantly, electronic communications. Revisions would track as closely as possible the language of the existing federal statutes involving interceptions of communications and related matters, such as stored wire and electronic communications and transactional records access. Further, uniform procedures for obtaining authorization to use pen registers and trap and trace devices would be established. These procedures would adopt the federal requirements for application and issuance of a court order authorizing the installation and use of these devices.

With the inclusion of electronic communications in Chapter 934, the following forms of communications, which are currently excluded from the chapter's protections against unauthorized interception, would continue to be excluded: (1) the radio portion of a cordless telephone conversation (in contrast with the non-radio portion, which would be a wire communication); (2) communications through "tone-only" beepers (in contrast with voice pagers, which would be oral communications, and digital readout pagers, which would be wire communications); and (3) communications from "tracking devices" (i.e., beepers placed in automobiles or packages in order to trace their location). These forms of communications would be excluded primarily because of the limited privacy implications related to their use. Notably, however, both the wire and radio portions of cellular telephone communications would be specifically included as protected communications within Chapter 934.

Another significant proposed change would provide that when a code or foreign language is used in a communication and an expert is not reasonably available, the entire conversation could be intercepted and minimized at a later date ("after the fact minimization"). Further, non-law enforcement personnel would be allowed to monitor and translate the foreign language or coded communications. After the fact minimization would be particularly essential for access to electronic communications which are indecipherable at the time they are made.

Although not required for compliance with federal law, this legislation would authorize investigative and law enforcement officers who obtain evidence derived from an intercepted wire, oral, or electronic communication to disclose it to the Department of Legal Affairs for use in certain proceedings, including civil RICO proceedings. As a result, investigative and law enforcement officers would be able to share wiretap evidence with the department prior to the actual arrest. This disclosure would, therefore, facilitate the department's timely coordination of seizure of property under the civil RICO law (Chapter 895) with arrests made by law enforcement agencies.

In effect, enactment of this legislation would result in a substantial revision of Chapter 934 in the following areas: (1) interception of wire, oral, and electronic communications; (2) stored wire and electronic communications and transactional records access; and (3) pen registers and trap and trace devices.

II. ECONOMIC IMPACT AND FISCAL NOTE:

## A. Public:

None.

## B. Government:

According to the Florida Department of Law Enforcement and the Office of The Attorney General, the fiscal impact of proposed CS/SB 585 is indeterminable. It is suggested, however, that any impact would be minimal.

III. COMMENTS:

None.

IV. AMENDMENTS:

None.



## SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Rudolph</u>	<u>Liepshutz</u>	1. <u>JCR</u>	<u>Fav/CS</u>
2. _____	_____	2. _____	_____
3. _____	_____	3. _____	_____
4. _____	_____	4. _____	_____

SUBJECT: Intercepted Wire or Oral Communications

BILL NO. AND SPONSOR: CS/SB 585 by Judiciary-Criminal Committee and Senator Johnson

I. SUMMARY:

## A. Present Situation:

Chapter 934, Florida Statutes, governs security of communications. Currently, this chapter regulates the interception of wire and oral communications (i.e. those communications that can be heard and understood with the human ear.) Florida law does not protect the interception of non-aural electronic communications, which includes video teleconferencing, electronic mail and computer data transmissions.

In addition, no statutory guidelines exist which establish procedures necessary to obtain and use pen registers and trap and trace devices. As a matter of practice in Florida, some type of application and order for pen register and trap and trace use has become common, but the format used and standards applied by the courts in reviewing the applications vary widely.

On October 21, 1986, President Reagan signed into law the Electronic Communications Privacy Act of 1986 (Public Law No. 99-508). This legislation provides a comprehensive revision of the original Title III of the Omnibus Crime Control and Safe Streets Act of 1968, which had governed aural acquisition of the contents of wire and oral communications. The principle intent of the new federal law is to update and clarify federal privacy protections and standards in light of dramatically improved communications technologies, and to protect the transmission of all forms of information from improper interception. Significant revisions at the federal level include:

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2. Creation of new law to implement standards for government access to transactional records and stored electronic communications; and
3. Establishment of uniform procedures to regulate the use of pen registers (devices which register the phone numbers to which phone calls are placed) and trap and trace devices (devices which indicate the phone numbers from which telephone calls are received).

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provide at least the same level of protection of privacy interests and restrictions upon electronic surveillance and interceptions as the federal law. Failure to amend state law to comply with the federal act will result in state investigators being able to access electronic communications only through the federal system.

B. Effect of Proposed Changes:

CS/SB 585 would provide the minimum changes necessary to Chapter 934 in order to conform with federal law by the October 21, 1988 deadline. In general, Chapter 934 would be brought into line with the companion federal provisions regarding the interception of wire, oral and, most significantly, electronic communications. Revisions would track as closely as possible the language of the existing federal statutes involving interceptions of communications and related matters, such as stored wire and electronic communications and transactional records access. Further, uniform procedures for obtaining authorization to use pen registers and trap and trace devices would be established. These procedures would adopt the federal requirements for application and issuance of a court order authorizing the installation and use of these devices.

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Although not required for compliance with federal law, this legislation would authorize investigative and law enforcement officers who obtain evidence derived from an intercepted wire, oral, or electronic communication to disclose it to the Department of Legal Affairs for use in certain investigations and proceedings, especially involving RICO violations. As a result, investigative and law enforcement officers would be able to share wiretap evidence with the department prior to the actual arrest. This disclosure would, therefore, facilitate the department's timely coordination of seizure of property under the Florida RICO Act (Chapter 895) with arrests made by law enforcement agencies.

In effect, enactment of this legislation would result in a substantial revision of Chapter 934 in the following areas: (1) interception of wire, oral, and electronic communications; (2) stored wire and electronic communications and transactional records access; and (3) pen registers and trap and trace devices.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.

B. Government:

According to the Florida Department of Law Enforcement and the Office of The Attorney General, the fiscal impact of CS/SB 585 is indeterminable. It is suggested, however, that any impact would be minimal.

III. COMMENTS:

None.

IV. AMENDMENTS:

None.

## SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
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2. _____	_____	2. _____	_____
3. _____	_____	3. _____	_____
4. _____	_____	4. _____	_____

<b>SUBJECT:</b>	<b>BILL NO. AND SPONSOR:</b>
Intercepted Wire or Oral Communications	CS/SB 585 by Judiciary-Criminal Committee and Senator Johnson

I. SUMMARY:

## A. Present Situation:

Chapter 934, Florida Statutes, governs security of communications. Currently, this chapter regulates the interception of wire and oral communications (i.e. those communications that can be heard and understood with the human ear.) Florida law does not protect the interception of non-aural electronic communications, which includes video teleconferencing, electronic mail and computer data transmissions.

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## B. Government:

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III. COMMENTS:

None.

IV. AMENDMENTS:

None.

Florida Information Associates Florida Legislature Staff Analyses 1988 Sessions		<u>LAWS OF FLORIDA CHAPTER NO.</u>  88-0184
<u>PRIME BILL NUMBER</u>	<u>TYPE OF BILL</u>	<u>SPONSOR</u>
88/S0585 *	general	Johnson
<u>PRIME BILL TITLE</u> (short title)  Interception of Communications		
<u>SIMILAR/IDENTICAL BILL SUBSTITUTED BY PRIME BILL:</u> 88/H1665		
<u>DOCUMENTATION REPRODUCED</u>		<u>Analysis</u>
PRIME SENATE COMMITTEE:		(   )
----- Judiciary-Criminal -----		
FINAL SENATE COMMITTEE:		( X )
----- Judiciary-Criminal -----		
PRIME HOUSE COMMITTEE:		(   )
----- n/a -----		
FINAL HOUSE COMMITTEE:		(   )
----- n/a -----		
SUBSTITUTED BILL:		( X )
----- (88/H1665) -----		
OTHER:		(   )
NOTE: Consult the <u>Final Legislative Bill Information</u> (from Joint Legislative Management Committee, Division of Legislative Information, 1988) for more detailed bill history data. If prime bill number above is followed by an asterisk (*), it was amended on the floor, and the staff analysis for that bill may not be in accordance with the enacted law. The analyses reproduced here were supplied by the appropriate committee, who is solely responsible for their accuracy and completeness.		
<u>ADDITIONAL INFORMATION:</u>   		