

1978

Session Law 78-376

Florida Senate & House of Representatives

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78-376

HCMJ

HC 320

17/511 Summaries X

SJCV

✓ 17/518 MAT. FILES (2/14/78)

18/1238 BF

SB 156

18 / 1287V

GENERAL ACTS
RESOLUTIONS AND MEMORIALS
ADOPTED BY THE
FIFTH LEGISLATURE OF FLORIDA
UNDER THE CONSTITUTION
AS REVISED IN 1968

During its Second Regular Session
April 4, 1978 through June 2, 1978
and the Special Session
June 7, 1978 through June 8, 1978



Volume I, Part Two

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TALLAHASSEE

1978

Approved by the Governor June 20, 1978.

Filed in Office Secretary of State June 21, 1978.

CHAPTER 78-376

Committee Substitute for House Bill No. 320

AN ACT relating to the security of communications; amending s. 934.03(2)(a), Florida Statutes, and adding paragraph (g), permitting officers, employees, and agents of communication common carriers to provide certain assistance to law enforcement officers in interception of wire or oral communications; authorizing certain persons to intercept and record wire communications; amending s. 934.09(4), Florida Statutes, requiring, upon request, that the court order authorizing interception of a wire or oral communication direct certain persons to assist in the interception; providing for compensation for such assistance; amending s. 934.10, Florida Statutes, providing an additional defense to liability; providing an effective date.

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

Section 1. Paragraph (a) of subsection (2) of section 934.03, Florida Statutes, is amended and paragraph (g) is added to said subsection, to read:

934.03 Interception and disclosure of wire or oral communications prohibited.--

(2)(a)1. It is lawful under this chapter for an operator of a switchboard, or an officer, employee, or agent of any communication common carrier whose facilities are used in the transmission of a wire communication, to intercept, disclose, or use that communication in the normal course of his employment while engaged in any activity which is a necessary incident to the rendition of his service or to the protection of the rights or property of the carrier of such communication; provided, that said communication common carriers shall not utilize service observing or random monitoring except for mechanical or service quality control checks.

2. It shall not be unlawful under this chapter for an officer, employee, or agent of any communication common carrier to provide information, facilities, or technical assistance to an investigative or law enforcement officer who, pursuant to this chapter, is authorized to intercept a wire or oral communication.

(g) It is lawful under this chapter for an employee of an ambulance service licensed pursuant to s. 401.25, a firestation employing firefighters as defined by s. 633.30, a public utility as defined by ss. 365.01 and 366.02, or any other entities with published emergency telephone numbers; provided, however, such public utility may intercept and record incoming wire communications on published emergency telephone numbers only, or an agency operating an emergency telephone number "911" system established pursuant to s. 365.171, to intercept and record incoming wire communications.

Section 2. Subsection (4) of section 934.09, Florida Statutes, is amended to read:

934.09 Procedure for interception of wire or oral communications.--

(4) Each order authorizing or approving the interception of any wire or oral communication shall specify:

(a) The identity of the person, if known, whose communications are to be intercepted;

(b) The nature and location of the communications facilities as to which, or the place where, authority to intercept is granted;

(c) A particular description of the type of communication sought to be intercepted and a statement of the particular offense to which it relates;

(d) The identity of the agency authorized to intercept the communications and of the person authorizing the application; and

(e) The period of time during which such interception is authorized, including a statement as to whether or not the interception shall automatically terminate when the described communication has been first obtained.

An order authorizing the interception of a wire or oral communication shall, upon the request of the applicant, direct that a communication common carrier, landlord, custodian, or other person shall furnish the applicant forthwith all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such carrier, landlord, custodian, or person is according the person whose communications are to be intercepted. Any communication common carrier, landlord, custodian, or other person furnishing such facilities or technical assistance shall be compensated therefor by the applicant at prevailing rates.

Section 3. Section 934.10, Florida Statutes, is amended to read:

934.10 Recovery of civil damages authorized.--Any person whose wire or oral communication is intercepted, disclosed, or used in violation of this chapter shall have a civil cause of action against any person who intercepts, discloses, or uses, or procures any other person to intercept, disclose, or use, such communications, and shall be entitled to recover from any such person:

(1) Actual damages, but not less than liquidated damages computed at the rate of \$100 a day for each day of violation or \$1,000, whichever is higher;

(2) Punitive damages; and

(3) A reasonable attorney's fee and other litigation costs reasonably incurred.

A good faith reliance on a court order or legislative authorization

as provided in this chapter shall constitute a complete defense to any civil or criminal action under the laws of this state.

Section 4. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 5. This act shall take effect upon becoming a law.

Approved by the Governor June 20, 1978.

Filed in Office Secretary of State June 21, 1978.

CHAPTER 78-377

House Bill No. 405

AN ACT relating to automobile liability insurance; amending s. 626.9541(15)(c), Florida Statutes, prohibiting automobile liability insurers from imposing or requesting an additional premium for insurance, or refusing to renew a policy, solely because the insured was involved in an automobile accident where the insured was not convicted of a moving traffic violation in connection with the accident; providing an effective date.

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

Section 1. Paragraph (c) of subsection (15) of section 626.9541, Florida Statutes, is amended to read:

626.9541 Unfair methods of competition and unfair or deceptive acts or practices defined.--The following, when committed or performed without just cause and with such frequency as to indicate a general business practice, are defined as unfair methods of competition and unfair or deceptive acts or practices:

(15) ILLEGAL DEALINGS IN PREMIUMS; EXCESS OR REDUCED CHARGES FOR INSURANCE.--

(c) Imposing or requesting an additional premium for automobile liability insurance, or refusing to renew the policy, solely because the insured was involved in an automobile accident, unless the applicant's or insured's insurer has incurred a loss under the insured's policy, other than with respect to uninsured motorist coverage, arising out of the accident, or unless the insurer's file shall contain sufficient proof of fault, or other criteria, to justify the additional charge or refusal to renew. An insurer which imposes and collects such a surcharge shall, in conjunction with the notice of premium due, notify the named insured that he is entitled to reimbursement of such amount under the conditions listed below, and shall subsequently reimburse him, if the named insured demonstrates that the operator involved in the accident was:

1. Lawfully parked.

2. Reimbursed by, or on behalf of, a person responsible for the accident or has a judgment against such person.

3. Struck in the rear by another vehicle headed in the same direction and was not convicted of a moving traffic violation in connection with the accident.

4. Hit by a "hit-and-run" driver, if the accident was reported to the proper authorities within 24 hours after discovering the accident.

5. Not convicted of a moving traffic violation in connection with the accident, ~~but the operator of the other automobile involved in such accident was convicted of a moving traffic violation.~~

6. Finally adjudicated not to be liable by a court of competent jurisdiction.

7. In receipt of a traffic citation which was dismissed or nolle prossed.

Section 2. This act shall take effect upon becoming a law.

Approved by the Governor June 20, 1978.

Filed in Office Secretary of State June 21, 1978.

CHAPTER 78-378

House Bill No. 506

AN ACT relating to the Public Service Commission; repealing ss. 347.08, 347.09, 347.10, 347.11, 347.12, 347.13, 347.14, 347.15, 347.16, 347.17, and 347.18, Florida Statutes, relating to the regulation of certain toll bridges, causeways, tunnels, toll highways, and ferries; providing that all the rights, powers, and duties of the commission over any such facility are transferred to the Department of Transportation to be administered under chapter 338, Florida Statutes; providing exceptions; adding s. 338.13(5), Florida Statutes, providing for the termination of ferries operated by the state; providing an effective date.

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

Section 1. Sections 347.08, 347.09, 347.10, 347.11, 347.12, 347.13, 347.14, 347.15, 347.16, 347.17, and 347.18, Florida Statutes, are hereby repealed, and all rights, powers, and duties of the Public Service Commission over any transportation toll facility pursuant to ss. 347.08-347.18 are hereby transferred to the Department of Transportation to be administered under the provisions of chapter 338, Florida Statutes. The provisions of this act shall not apply to any proceeding pending before the Public Service Commission on the effective date of this act, nor to any appeal or further proceedings taken thereon, nor shall such proceeding be abated or delayed in any manner because of the provisions of this section.

History of Legislation 1978 Regular Session

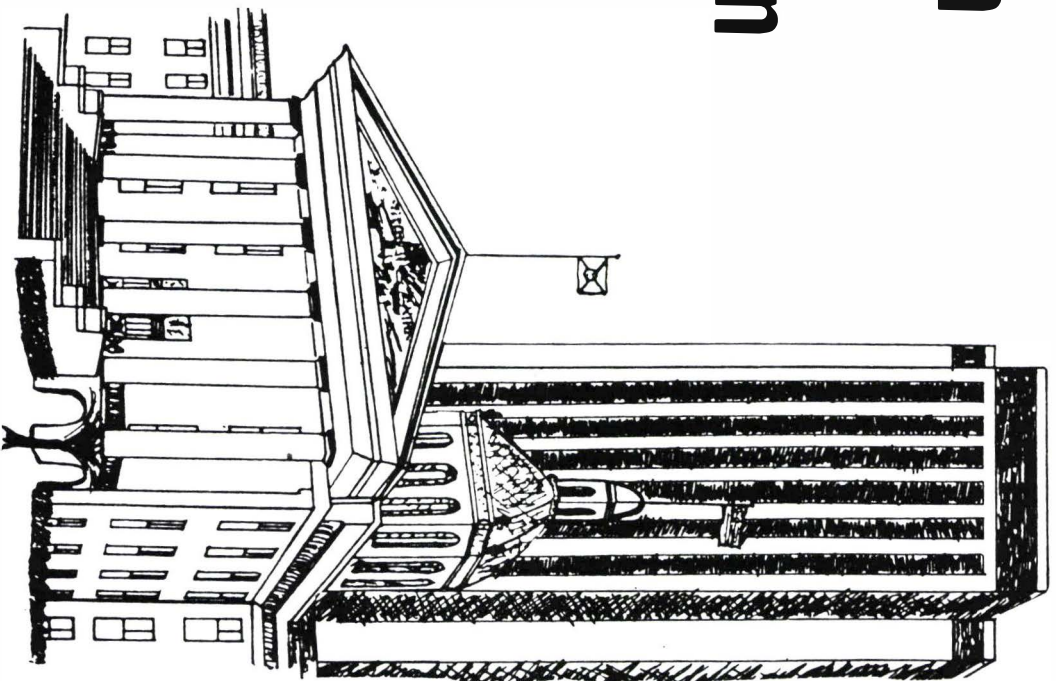
Florida Legislature *Special Session "D"*

prepared by:

Legislative Information Division

Joint Legislative Management Committee

Capitol Building, Room 826 — 488-4371



04/04/78 APPROPRIATIONS -HJ 00038; SUBREFERRED TO SUBCOMMITTEE ON GENERAL LEGISLATION
 06/02/78 HOUSE DIED IN COMMITTEE ON FINANCE & TAXATION

H 0316 GENERAL BILL BY CRAIG AND OTHERS
 PUBLIC BUSINESS; PROVIDES PUBLIC PRINTING, BINDING & REBINDING OF STATE & ITS SUBDIVISIONS BE LET TO LOWEST BIDDER; REQUIRES WORK BE DONE IN STATE; PROVIDES EXCEPTIONS; PROVIDES PROCEDURES FOR BIDDING & AWARD OF CONTRACTS; REQUIRES CERTAIN STATEMENTS UNDER OATH BE FILED BY BIDDERS, ETC. AMENDS F.S. EFFECTIVE DATE: 10/01/78.
 11/21/77 HOUSE PREFILED, REFERRED TO GOVERNMENTAL OPERATIONS, APPROPRIATIONS
 04/04/78 HOUSE INTRODUCED, REFERRED TO GOVERNMENTAL OPERATIONS, APPROPRIATIONS -HJ 00038
 04/05/78 HOUSE SUBREFERRED TO SUBCOMMITTEE ON STATE PURCHASING
 06/02/78 HOUSE DIED IN COMMITTEE ON GOVERNMENTAL OPERATIONS

H 0317 GENERAL BILL BY FORTUNE AND OTHERS
 PUBLIC UTILITIES; REQUIRES PUBLIC UTILITIES TO BILL CERTAIN ELDERLY & DISABLED CUSTOMERS AT BEGINNING OF MONTH; PROVIDES FOR RULES. CREATES 366.14. EFFECTIVE DATE: 10/01/78.
 11/21/77 HOUSE PREFILED, REFERRED TO REGULATED INDUSTRIES & LICENSING
 12/13/77 HOUSE SUBREFERRED TO SUBCOMMITTEE ON PUBLIC UTILITIES
 03/29/78 HOUSE COMM. REPORT: FAVORABLE WITH AMEND., PLACED ON CALENDAR BY REGULATED INDUSTRIES & LICENSING
 04/04/78 HOUSE INTRODUCED, REFERRED TO REGULATED INDUSTRIES & LICENSING -HJ 00038; SUBREFERRED TO SUBCOMMITTEE ON PUBLIC UTILITIES; COMM. REPORT: FAVORABLE WITH AMEND., PLACED ON CALENDAR BY REGULATED INDUSTRIES & LICENSING -HJ 00097
 04/05/78 HOUSE PLACED ON SPECIAL ORDER CALENDAR
 06/02/78 HOUSE DIED ON CALENDAR

H 0318 GENERAL BILL BY BARRETT AND OTHERS (IDENTICAL S 0854)
 GRAND JURY; INCLUDES CERTAIN CRIMES INVOLVING OBSCENE MATERIALS WITHIN SUBJECT MATTER JURISDICTION OF STATEWIDE GRAND JURY. AMENDS 905.34. EFFECTIVE DATE: UPON BECOMING LAW.
 11/21/77 HOUSE PREFILED, REFERRED TO CRIMINAL JUSTICE
 01/23/78 HOUSE SUBREFERRED TO SUBCOMMITTEE SELECT
 04/04/78 HOUSE INTRODUCED, REFERRED TO CRIMINAL JUSTICE -HJ 00038; SUBREFERRED TO SUBCOMMITTEE SELECT; COMM. REPORT: FAVORABLE, PLACED ON CALENDAR BY CRIMINAL JUSTICE -HJ 00097
 06/02/78 HOUSE DIED ON CALENDAR

H 0319 GENERAL BILL BY ECKHART AND OTHERS (IDENTICAL H 0582, S 0058, SIMILAR H 0131)
 BURGLARY; PROVIDES FOR MINIMUM SENTENCE OF IMPRISONMENT WITHOUT PAROLE FOR PERSONS CONVICTED OF BURGLARY OF PRIVATE DWELLING; AUTHORIZES PROBATION EXCEPT IN CERTAIN CIRCUMSTANCES. AMENDS 810.02. EFFECTIVE DATE: 01/01/79.
 11/21/77 HOUSE PREFILED, REFERRED TO CRIMINAL JUSTICE, APPROPRIATIONS
 03/29/78 HOUSE SUBREFERRED TO SUBCOMMITTEE I
 04/04/78 HOUSE INTRODUCED, REFERRED TO CRIMINAL JUSTICE, APPROPRIATIONS -HJ 00038; SUBREFERRED TO SUBCOMMITTEE I
 06/02/78 HOUSE DIED IN COMMITTEE ON CRIMINAL JUSTICE

H 0320 GENERAL BILL BY MELVIN (COMPARE CS/S 0156)
 (CS) SECURITY OF COMMUNICATIONS; PERMITS OFFICERS, EMPLOYEES & AGENTS OF COMMUNICATION COMMON CARRIERS TO PROVIDE CERTAIN ASSISTANCE TO LAW ENFORCEMENT OFFICERS IN INTERCEPTION OF WIRE OR ORAL COMMUNICATIONS, ETC. AMENDS 934.03, .09-.10. EFFECTIVE DATE: 06/20/78.
 11/21/77 HOUSE PREFILED, REFERRED TO CRIMINAL JUSTICE
 01/23/78 HOUSE SUBREFERRED TO SUBCOMMITTEE SELECT
 04/04/78 HOUSE INTRODUCED, REFERRED TO CRIMINAL JUSTICE -HJ 00038; SUBREFERRED TO SUBCOMMITTEE SELECT
 04/13/78 HOUSE COMM. REPORT: C/S PLACED ON CALENDAR BY CRIMINAL JUSTICE -HJ 00199
 04/18/78 HOUSE PLACED ON SPECIAL ORDER CALENDAR
 04/19/78 HOUSE C/S READ FIRST AND SECOND TIME; AMENDMENTS ADOPTED
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04/19/78 -HJ 00262
 04/20/78 HOUSE READ THIRD TIME; AMENDMENT ADOPTED; C/S PASSED AS AMENDED; YEAS 105 NAYS 3 -HJ 00285
 04/26/78 SENATE RECEIVED, REFERRED TO JUDICIARY-CIVIL, JUDICIARY-CRIMINAL -SJ 00216
 05/03/78 SENATE COMM. REPORT: FAVORABLE BY JUDICIARY-CIVIL -SJ 00328
 05/04/78 SENATE NOW IN JUDICIARY-CRIMINAL -SJ 00328
 05/15/78 SENATE EXTENSION OF TIME GRANTED COMMITTEE JUDICIARY-CRIMINAL
 05/16/78 SENATE COMM. REPORT: FAVORABLE WITH AMEND., PLACED ON CALENDAR BY JUDICIARY-CRIMINAL -SJ 00384
 05/30/78 SENATE AMENDMENT ADOPTED; AMENDMENT PENDING -SJ 00609
 05/31/78 SENATE PLACED ON SPECIAL ORDER CALENDAR; PASSED AS AMENDED; YEAS 33 NAYS 4 -SJ 00667
 06/01/78 HOUSE CONCURRENT; C/S PASSED AS FURTHER AMENDED; YEAS 112 NAYS 0 -HJ 00956
 06/08/78 HOUSE SIGNED BY OFFICERS AND PRESENTED TO GOVERNOR
 06/20/78 APPROVED BY GOVERNOR CHAPTER NO. 78-376

H 0321 GENERAL BILL BY FECHTEL (COMPARE H 1698, S 0134, CS/S 0321)
 GAME & FRESH WATER FISH; MAKES IT ILLEGAL TO KILL A FLORIDA PANTHER & PROVIDES PENALTY; INCREASES TO FELONY OF 3RD DEGREE THE PENALTY FOR POSSESSION OR TRANSPORTATION OF COMMERCIAL QUANTITIES OF FRESHWATER GAME FISH. CREATES 372.0725; AMENDS 372.9903. EFFECTIVE DATE: 10/01/78.
 11/21/77 HOUSE PREFILED, REFERRED TO NATURAL RESOURCES, APPROPRIATIONS
 01/17/78 HOUSE COMM. REPORT: FAVORABLE BY NATURAL RESOURCES; NOW IN APPROPRIATIONS
 04/04/78 HOUSE INTRODUCED, REFERRED TO NATURAL RESOURCES, APPROPRIATIONS -HJ 00038; COMM. REPORT: FAVORABLE BY NATURAL RESOURCES -HJ 00097; NOW IN APPROPRIATIONS
 04/05/78 HOUSE WITHDRAWN FROM APPROPRIATIONS -HJ 00103; PLACED ON CALENDAR
 04/26/78 HOUSE PLACED ON SPECIAL ORDER CALENDAR
 05/12/78 HOUSE READ SECOND TIME; AMENDMENT ADOPTED -HJ 00529
 05/15/78 HOUSE READ THIRD TIME; AMENDMENTS ADOPTED; PASSED AS AMENDED; YEAS 110 NAYS 4 -HJ 00543
 05/18/78 SENATE RECEIVED, REFERRED TO NATURAL RESOURCES AND CONSERVATION, JUDICIARY-CRIMINAL -SJ 00411
 05/25/78 SENATE WITHDRAWN FROM NATURAL RESOURCES AND CONSERVATION, JUDICIARY-CRIMINAL -SJ 00530; PLACED ON CALENDAR
 06/02/78 SENATE DIED ON CALENDAR, IDEN./SIM./COMPARE BILL PASSED, REFER TO SB 321 (CH. 78-173)

H 0322 GENERAL BILL BY FECHTEL
 CAPITOL CENTER; DIRECTS GENERAL SERVICES DEPT. TO UTILIZE SPACE IN OLD CAPITOL BLDG. IN SPECIFIED MANNER; DIRECTS DEPT. TO CONSULT WITH ARCHIVES, HISTORY & RECORDS MGT. DIV. PRIOR TO CONTRACTING FOR ANY REMODELING OF OLD CAPITOL BLDG.; AUTHORIZES SPECIFIED WORK ON OLD CAPITOL BLDG. CREATES 272.045. EFFECTIVE DATE: 07/01/78.
 11/21/77 HOUSE PREFILED, REFERRED TO GOVERNMENTAL OPERATIONS, APPROPRIATIONS
 04/04/78 HOUSE INTRODUCED, REFERRED TO GOVERNMENTAL OPERATIONS, APPROPRIATIONS -HJ 00038
 06/02/78 HOUSE DIED IN COMMITTEE ON GOVERNMENTAL OPERATIONS

H 0323
 01/03/78 HOUSE WITHDRAWN -HJ 00038

H 0324 GENERAL BILL BY STEINBERG (COMPARE ENG/H 2118)
 SECURITIES; PROHIBITS FRAUDULENT, DECEITFUL OR MISLEADING PRACTICES IN SECURITIES TRANSACTIONS; REQUIRES DISCLOSURE & FILING OF DISCLOSURE STATEMENT WITH BANKING & FINANCE DEPT. RE CERTAIN UNREGISTERED SECURITIES; REQUIRES REGISTRATION OF BROKERS, DEALERS & AGENTS, ETC. AMENDS F.S. EFFECTIVE DATE: 01/01/79.
 12/07/77 HOUSE PREFILED, REFERRED TO COMMERCE, APPROPRIATIONS
 04/04/78 HOUSE INTRODUCED, REFERRED TO COMMERCE, APPROPRIATIONS -HJ 00039
 06/02/78 HOUSE DIED IN COMMITTEE, IDEN./SIM./COMPARE BILL PASSED, REFER TO HB 2118 (CH. 78-435)

H 0325 GENERAL BILL BY DANSON AND OTHERS (IDENTICAL CS/S 0800)
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S 0153 GENERAL BILL BY SCARBOROUGH
 USE OF FORCE DURING ARRESTS; LIMITS USE OF DEADLY FORCE BY A LAW
 ENFORCEMENT OFFICER OR PERSON ASSISTING HIM IN MAKING A LAWFUL ARREST.
 AMENDS 776.05. EFFECTIVE DATE: 10/01/78.
 11/03/77 SENATE PREFILED
 11/17/77 SENATE REFERRED TO JUDICIARY-CRIMINAL
 04/04/78 SENATE INTRODUCED, REFERRED TO JUDICIARY-CRIMINAL -SJ 00023
 04/17/78 SENATE EXTENSION OF TIME GRANTED COMMITTEE JUDICIARY-CRIMINAL
 05/02/78 SENATE EXTENSION OF TIME GRANTED COMMITTEE JUDICIARY-CRIMINAL
 05/15/78 SENATE EXTENSION OF TIME GRANTED COMMITTEE JUDICIARY-CRIMINAL
 06/02/78 SENATE DIED IN COMMITTEE ON JUDICIARY-CRIMINAL

S 0154 GENERAL BILL BY JOHNSTON AND OTHERS (SIMILAR H 0030)
 FIREMEN; AMENDS PROVISION RE ELIGIBILITY OF FIREMEN FOR DEATH BENEFITS,
 TO EXTEND FROM 180 DAYS TO 1 YEAR SPECIFIED PERIOD WITHIN WHICH DEATH
 MUST OCCUR AFTER INJURY IS RECEIVED. AMENDS 112.191. EFFECTIVE DATE:
 01/01/79.
 11/03/77 SENATE PREFILED
 11/17/77 SENATE REFERRED TO ECONOMIC, COMMUNITY AND CONSUMER AFFAIRS,
 GOVERNMENTAL OPERATIONS
 01/17/78 SENATE COMM. REPORT: FAVORABLE WITH AMEND. BY ECONOMIC,
 COMMUNITY AND CONSUMER AFFAIRS; NOW IN GOVERNMENTAL
 OPERATIONS
 02/15/78 SENATE COMM. REPORT: FAVORABLE, PLACED ON CALENDAR BY
 GOVERNMENTAL OPERATIONS
 04/04/78 SENATE INTRODUCED, REFERRED TO ECONOMIC, COMMUNITY AND
 CONSUMER AFFAIRS, GOVERNMENTAL OPERATIONS -SJ 00023;
 COMM. REPORT: FAVORABLE WITH AMEND. BY ECONOMIC,
 COMMUNITY AND CONSUMER AFFAIRS; NOW IN GOVERNMENTAL
 OPERATIONS -SJ 00069; COMM. REPORT: FAVORABLE, PLACED
 ON CALENDAR BY GOVERNMENTAL OPERATIONS -SJ 00070;
 PLACED ON SPECIAL ORDER CALENDAR; PASSED AS AMENDED;
 YEAS 36 NAYS 2 -SJ 00072
 04/06/78 HOUSE RECEIVED, PLACED ON CALENDAR -HJ 00122
 04/13/78 HOUSE SUBSTITUTED FOR HB 30; READ SECOND TIME -HJ 00189
 04/14/78 HOUSE READ THIRD TIME; PASSED; YEAS 102 NAYS 0 -HJ 00204
 04/19/78 SENATE SIGNED BY OFFICERS AND PRESENTED TO GOVERNOR -SJ C0161
 04/25/78 APPROVED BY GOVERNOR CHAPTER NO. 78-7 -SJ 00228

S 0155 GENERAL BILL BY HENDERSON (SIMILAR H 0592)
 PHYSICAL THERAPY PRACTICE; REDEFINES "PHYSICAL THERAPY"; REVISES
 PROVISIONS RE APPROVAL OF PHYSICAL THERAPY COURSES; PROVIDES FOR
 REGISTRATION OF GRADUATES OF PHYSICAL THERAPY PROGRAMS IN FOREIGN
 COUNTRIES; PROVIDES EXAMINATION FEES & PROCEDURES FOR RENEWAL OF
 REGISTRATION, ETC. AMENDS CH. 486. EFFECTIVE DATE: 06/15/78.
 11/03/77 SENATE PREFILED
 11/17/77 SENATE REFERRED TO HEALTH AND REHABILITATIVE SERVICES,
 ECONOMIC, COMMUNITY AND CONSUMER AFFAIRS, FINANCE,
 TAXATION AND CLAIMS
 01/18/78 SENATE COMM. REPORT: FAVORABLE WITH AMEND. BY HEALTH AND
 REHABILITATIVE SERVICES; NOW IN ECONOMIC, COMMUNITY AND
 CONSUMER AFFAIRS
 02/15/78 SENATE COMM. REPORT: FAVORABLE WITH AMEND. BY ECONOMIC,
 COMMUNITY AND CONSUMER AFFAIRS; NOW IN FINANCE,
 TAXATION AND CLAIMS
 04/04/78 SENATE INTRODUCED, REFERRED TO HEALTH AND REHABILITATIVE
 SERVICES, ECONOMIC, COMMUNITY AND CONSUMER AFFAIRS,
 FINANCE, TAXATION AND CLAIMS -SJ 00023; COMM. REPORT:
 FAVORABLE WITH AMEND. BY HEALTH AND REHABILITATIVE
 SERVICES; NOW IN ECONOMIC, COMMUNITY AND CONSUMER
 AFFAIRS -SJ 00069; COMM. REPORT: FAVORABLE WITH AMEND.
 BY ECONOMIC, COMMUNITY AND CONSUMER AFFAIRS; NOW IN
 FINANCE, TAXATION AND CLAIMS -SJ 00069
 04/13/78 SENATE COMM. REPORT: FAVORABLE, PLACED ON CALENDAR BY FINANCE,
 TAXATION AND CLAIMS -SJ 00144
 05/25/78 SENATE PASSED AS AMENDED; YEAS 24 NAYS 8 -SJ 00530
 05/30/78 HOUSE RECEIVED, REFERRED TO REGULATED INDUSTRIES & LICENSING
 -HJ 00835
 05/31/78 HOUSE WITHDRAWN FROM REGULATED INDUSTRIES & LICENSING
 -HJ 00907; PLACED ON CALENDAR; SUBSTITUTED FOR HB 592;
 READ SECOND TIME; READ THIRD TIME; PASSED; YEAS 108

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05/31/78 NAYS 2 -HJ 00918
 06/05/78 SENATE SIGNED BY OFFICERS AND PRESENTED TO GOVERNOR
 06/15/78 APPROVED BY GOVERNOR CHAPTER NO. 78-278

S 0156 GENERAL BILL BY DUNN (COMPARE CS/H 0320, H 1989, S 0057)
 (CS) SECURITY OF COMMUNICATIONS; PROVIDES FOR LAWFUL INTERCEPTION OF
 COMMUNICATIONS WITH PRIOR CONSENT OF 1 OR MORE PARTIES TO SAME; REVISES
 LIST OF OFFENSES TO WHICH APPLICATION FOR INTERCEPTION OF COMMUNICATIONS
 MUST RELATE; PROVIDES FOR DISCLOSURE & USE OF COMMUNICATIONS, ETC.
 AMENDS CH. 934. EFFECTIVE DATE: 07/01/78.
 11/03/77 SENATE PREFILED
 11/17/77 SENATE REFERRED TO JUDICIARY-CRIMINAL, JUDICIARY-CIVIL
 02/16/78 SENATE COMM. REPORT: C/S BY JUDICIARY-CRIMINAL; NOW IN
 JUDICIARY-CIVIL
 04/04/78 SENATE INTRODUCED, REFERRED TO JUDICIARY-CRIMINAL,
 JUDICIARY-CIVIL -SJ 00023; COMM. REPORT: C/S BY
 JUDICIARY-CRIMINAL; NOW IN JUDICIARY-CIVIL -SJ 00070
 04/17/78 SENATE EXTENSION OF TIME GRANTED COMMITTEE JUDICIARY-CIVIL
 05/01/78 SENATE EXTENSION OF TIME GRANTED COMMITTEE JUDICIARY-CIVIL
 05/03/78 SENATE COMM. REPORT: FAVORABLE WITH AMEND., PLACED ON CALENDAR
 BY JUDICIARY-CIVIL -SJ 00328
 05/18/78 SENATE PLACED ON SPECIAL ORDER CALENDAR
 06/02/78 SENATE DIED ON CALENDAR, IDENT./COMPARE BILL PASSED, REFER
 TO HB 320 (CH. 78-376)

S 0157 GENERAL BILL BY MACKAY AND OTHERS (SIMILAR H 0267)
 FISHING LICENSES; EXCEPTS CERTAIN RETARDED PERSONS FROM PAYMENT OF FEES
 FOR FISHING LICENSES. AMENDS 372.57. EFFECTIVE DATE: 10/01/78.
 11/03/77 SENATE PREFILED
 11/17/77 SENATE REFERRED TO NATURAL RESOURCES AND CONSERVATION
 01/18/78 SENATE COMM. REPORT: FAVORABLE, PLACED ON CALENDAR BY NATURAL
 RESOURCES AND CONSERVATION
 04/04/78 SENATE INTRODUCED, REFERRED TO NATURAL RESOURCES AND
 CONSERVATION -SJ 00023; COMM. REPORT: FAVORABLE, PLACED
 ON CALENDAR BY NATURAL RESOURCES AND CONSERVATION
 -SJ 00070
 04/06/78 SENATE PLACED ON SPECIAL ORDER CALENDAR; PASSED AS AMENDED;
 YEAS 36 NAYS 0 -SJ 00086
 04/11/78 HOUSE RECEIVED, REFERRED TO NATURAL RESOURCES -HJ 00160;
 WITHDRAWN FROM NATURAL RESOURCES -HJ 00160; PLACED ON
 CALENDAR
 04/12/78 HOUSE SUBSTITUTED FOR HB 267; READ SECOND TIME -HJ 00176
 04/13/78 HOUSE READ THIRD TIME; PASSED; YEAS 114 NAYS 0 -HJ 00186
 04/19/78 SENATE SIGNED BY OFFICERS AND PRESENTED TO GOVERNOR -SJ 00161
 04/25/78 APPROVED BY GOVERNOR CHAPTER NO. 78-6 -SJ 00228

S 0158 GENERAL BILL BY ZINKIL (IDENTICAL H 0042)
 RETAIL MERCHANDISE; REQUIRES CERTAIN MERCHANDISE SOLD AT RETAIL IN
 UNASSEMBLED CONDITION BE SO MARKED ON CONTAINER; PROVIDES PENALTY.
 CREATES 817.185. EFFECTIVE DATE: 10/01/78.
 11/04/77 SENATE PREFILED
 11/17/77 SENATE REFERRED TO COMMERCE, JUDICIARY-CRIMINAL
 04/04/78 SENATE INTRODUCED, REFERRED TO COMMERCE, JUDICIARY-CRIMINAL
 -SJ 00023
 04/17/78 SENATE EXTENSION OF TIME GRANTED COMMITTEE COMMERCE
 04/25/78 SENATE WITHDRAWN FROM COMMERCE, JUDICIARY-CRIMINAL;
 INDEFINITELY POSTPONED -SJ 00208

S 0159 GENERAL BILL BY ZINKIL (SIMILAR H 0097)
 MOBILE HOMES; REQUIRES PARK OWNER TO HOLD SECURITY DEPOSITS & ADVANCE
 RENT IN SEPARATE ACCOUNT OR POST BOND & TO GIVE NOTICE OF MANNER IN
 WHICH SUCH DEPOSITS & RENT ARE HELD; REQUIRES INTEREST BE PAID WHEN SUCH
 FUNDS ARE COMMINGLED WITH OTHER FUNDS OF PARK OWNER, ETC. CREATES
 83.7565. EFFECTIVE DATE: 10/01/78.
 11/04/77 SENATE PREFILED
 11/17/77 SENATE REFERRED TO ECONOMIC, COMMUNITY AND CONSUMER AFFAIRS,
 COMMERCE
 03/08/78 SENATE COMM. REPORT: UNFAVORABLE, LAID ON TABLE UNDER RULE BY
 ECONOMIC, COMMUNITY AND CONSUMER AFFAIRS
 04/04/78 SENATE INTRODUCED, REFERRED TO ECONOMIC, COMMUNITY AND
 CONSUMER AFFAIRS, COMMERCE -SJ 00023; COMM. REPORT:

CONTINUED ON NEXT PAGE

By Representative Melvin

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A bill to be entitled
An act relating to the security of
communications; adding a new subsection (4) to
s. 934.09, Florida Statutes, requiring a court
order authorizing the interception of a wire or
oral communication to direct the interceptor to
take certain action; providing compensation and
exemption from civil or criminal liability for
the interceptor; providing an effective date.

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

Section 1. Subsections (4)-(9) of section 934.09,
Florida Statutes, are renumbered as subsections (5)-(10),
respectively, and a new subsection (4) is added to said
section to read:

934.09 Procedure for interception of wire or oral
communications.--

(4) An order authorizing the interception of a wire or
oral communication shall, upon request of the applicant,
direct that a communication common carrier, landlord,
custodian or other person furnish the applicant forthwith all
information, facilities, and technical assistance necessary to
accomplish the interception unobtrusively and with a minimum
of interference with the services that such carrier, landlord,
custodian, or person is providing to the person whose
communications are to be intercepted. Any communication
common carrier, landlord, custodian, or other person
furnishing such facilities or technical assistance shall be
compensated therefor by the applicant at the prevailing rates

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1	<u>and shall be exempt from any civil or criminal liability for</u>	2.3/10
2	<u>furnishing such facilities or assistance.</u>	
3	Section 2. This act shall take effect upon becoming a	2.3/11
4	law.	
5		
6	*****	1:hbs
7	HOUSE SUMMARY	1:hbs
8	Provides that any court order authorizing the	2.3/14
9	interception of any wire or oral communication shall,	2.3/15
10	upon request of the applicant, direct a communication	2.3/16
11	common carrier, landlord, custodian, or other person to	2.3/17
12	furnish the applicant necessary assistance to effect the	2.3/18
13	interception in a certain manner. Provides that the	2.3/19
14	person furnishing such assistance shall be compensated at	2.3/20
15	prevailing rates and shall be exempt from civil or	
16	criminal liability for providing such assistance.	
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FLORIDA HOUSE OF REPRESENTATIVES
Tallahassee

Jerry G. Melvin
Representative, 5th District

Reply to:

Post Office Drawer 1366
Fort Walton Beach, Florida 32548
(904) 243-1611

322 House Office Building
Tallahassee, Florida 32304
(904) 488-9045

Committees:

Tourism & Economic Development, Chairman
Appropriations
Rules & Calendar

February 14, 1978

Mr. Tony Fontana
Chairman
Subcommittee, Criminal Justice
215 House Office Building
Tallahassee, Florida 32304

Dear Mr. Chairman:

I am aware of your committee changes in the Security of Communications Bill (HB 320), making it a committee substitute. Actually, it now appears to be an even better vehicle. I urge passage in its present form.

Sincerely,

A large, stylized handwritten signature in cursive script that reads "Jerry Melvin". The signature is written in black ink and is positioned over the typed name and title.

Jerry Melvin
Representative

JM/ccB



FLORIDA HOUSE OF REPRESENTATIVES

DONALD L. TUCKER, Speaker / JOHN L. RYALS, Speaker Pro Tempore
COMMITTEE ON CRIMINAL JUSTICE

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Ralph H. Haben, Jr.
Chairman

Barry Richard
Vice Chairman

MEMORANDUM

March 8, 1978

TO: Members, Committee on Criminal Justice

FROM: Staff, Committee on Criminal Justice

SUBJECT: Proposed Committee Substitute for House Bill 320 by
Melvin, Relating to Security of Communications

Florida's Security of Communication Act (Chapter 934, Florida Statutes), adopted in 1969, was modeled closely on the Federal Crime Control Act of 1968. In 1970, Congress amended the Federal Act to provide for the issuance of court orders directing telephone companies and certain persons to render assistance in intercepting of wire and oral communications. Florida has not yet added any provisions of this type.

The proposed committee substitute would bring Florida's Act in line with the Federal Act by making the following changes:

1. Paragraph (a) of subsection (2) of section 934.03, Florida Statutes, would be amended to allow communication common carriers to provide information or technical assistance to law enforcement officials who are authorized to intercept wire or oral communications.
2. Subsection (4) of section 934.09, Florida Statutes, would be amended to allow issuance of court orders directing telephone companies, landlords, and other persons to render assistance in interception of wire or oral communications. Persons furnishing such assistance would be compensated at prevailing rates.

3. Section 934.10, Florida Statutes, would be amended to provide that a good faith reliance on legislative authorization would be a complete defense to any civil or criminal action against a person who intercepts or discloses a wire or oral communication.

/nrd

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Proposed Committee Substitute for HB 320

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A bill to be entitled
An act relating to the security of communica-
tions; amending s. 934.03(2) (a), Florida
Statutes, prohibiting the interception and
disclosure of wire or oral communications;
permitting interception by a communication
common carrier when pursuant to this chapter;
amending s. 934.09(4), Florida Statutes, providing
a procedure for the interception of wire or oral
communications; amending s. 934.10, Florida
Statutes, providing for the recovery of civil
damages; providing a defense to liability;
providing an effective date.

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

Section 1. Paragraph (a) of subsection (2) of section
934.03, Florida Statutes, is amended to read:

934.03 Interception and disclosure of wire or oral
communications prohibited.--

(2) (a) 1. It is not unlawful under this chapter for an
operator of a switchboard, or an officer, employee, or agent
of a communication common carrier whose facilities are used in
the transmission of a wire communication, to intercept, dis-
close, or use that communication in the normal course of his
employment while engaged in any activity which is necessarily
incident to the rendition of his service or to the protection
of the rights or property of the carrier of the communication;
provided, that said communication common carrier shall not

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1 utilize service observing or random monitoring except for
2 mechanical or service quality control checks.

3 2. It shall not be unlawful under this chapter for
4 an officer, employee, or agent of any communication common
5 carrier to provide information, facilities, or technical
6 assistance to an investigative or law enforcement officer
7 who, pursuant to this chapter, is authorized to intercept a
8 wire or oral communication.

9 Section 2. Subsection (4) of section 934.09, Florida
10 Statutes, is amended to read:

11 934.09 Procedure for interception of wire or oral
12 communication.--

13 (4) Each order authorizing or approving the inter-
14 ception of any wire or oral communication shall specify:

15 (a) The identity of the person, if known, whose
16 communications are to be intercepted;

17 (b) The nature and location of the communications
18 facilities as to which, or the place where, authority to
19 intercept is granted;

20 (c) A particular description of the type of
21 communication sought to be intercepted and a statement of
22 the particular offense to which it related;

23 (d) The identity of the agency authorized to intercept
24 the communications and the person authorizing the application;
25 and

26 (e) The period of time during which such interception
27 is authorized, including a statement as to whether or not the
28 interception shall automatically terminate when the described
29 communication has been first obtained.

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2 An order authorizing the interception of a wire or oral
3 communication shall, upon the request of the applicant, direct
4 that a communication common carrier, landlord, custodian or
5 other person shall furnish the applicant forthwith all
6 information, facilities, and technical assistance necessary
7 to accomplish the interception unobtrusively and with a
8 minimum of interference with the services that such carrier,
9 landlord, custodian, or person is according the person whose
10 communications are to be intercepted. Any communication
11 common carrier, landlord, custodian or other person furnishing
12 such facilities or technical assistance shall be compensated
13 therefor by the applicant at prevailing rates.

14 Section 3. Section 934.10, Florida Statutes, is
15 amended to read:

16 934.10 Recovery of civil damages authorized.--A
17 person whose wire or oral communication is intercepted, dis-
18 closed, or used in violation of this chapter shall have a civil
19 cause of action against any person who intercepts, discloses
20 or uses, or procures any other person to intercept, disclose, or
21 use such communications, and shall be entitled to recover from
22 such person:

23 (1) Actual damages, but not less than liquidated
24 damages computed at a rate of \$100 a day for each day of
25 violation or \$1000, whichever is higher;

26 (2) Punitive damages; and

27 (3) A reasonable attorney's fee and other litigation
28 costs reasonably incurred.

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A good faith reliance on a court order or legislative
authorization shall constitute a complete defense to any
civil or criminal action under the laws of this state.

Section 4. This act shall take effect upon becoming
a law.

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CS/HB 320
CRIMINAL JUSTICE
(MELVIN)

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1	A bill to be entitled	1:btc
2	An act relating to the security of	1.4
3	communications; amending s. 934.03(2)(a),	
4	Florida Statutes, and adding paragraph (g),	1.4/1
5	permitting officers, employees, and agents of	1.4/2
6	communication common carriers to provide	
7	certain assistance to law enforcement officers	
8	in interception of wire or oral communications;	1.4/3
9	authorizing certain persons to intercept and	
10	record wire communications; amending s.	
11	934.09(4), Florida Statutes, requiring, upon	1.4/4
12	request, that the court order authorizing	
13	interception of a wire or oral communication	1.4/5
14	direct certain persons to assist in the	
15	interception; providing for compensation for	1.4/6
16	such assistance; amending s. 934.10, Florida	
17	Statutes, providing an additional defense to	
18	liability; providing an effective date.	1.4/7
19		
20	Be It Enacted by the Legislature of the State of Florida:	1:enc
21		
22	Section 1. Paragraph (a) of subsection (2) of section	1.4/7
23	934.03, Florida Statutes, is amended and paragraph (g) is	1.4/8
24	added to said subsection, to read:
25	934.03 Interception and disclosure of wire or oral	2.2..
26	communications prohibited.--
27	(2)(a) <u>1</u> . It is lawful under this chapter for an	2.2/3
28	operator of a switchboard, or an officer, employee, or agent
29	of any communication common carrier whose facilities are used	2.2/4
30	in the transmission of a wire communication, to intercept,	2.2/6
31	disclose, or use that communication in the normal course of	2.2/7

1 his employment while engaged in any activity which is a
 2 necessary incident to the rendition of his service or to the 2.2/8
 3 protection of the rights or property of the carrier of such 2.2/9
 4 communication; provided, that said communication common 2.2/10
 5 carriers shall not utilize service observing or random
 6 monitoring except for mechanical or service quality control 2.2/11
 7 checks.

8 2. It shall not be unlawful under this chapter for an 2.2/12
 9 officer, employee, or agent of any communication common
 10 carrier to provide information, facilities, or technical
 11 assistance to an investigative or law enforcement officer who, 2.2/13
 12 pursuant to this chapter, is authorized to intercept a wire or 2.2/14
 13 oral communication.

14 (g) It is lawful under this chapter for an employee of 1:lus
 15 an ambulance service licensed pursuant to s. 401.25, a 2.2/15
 16 firestation employing firefighters as defined by s. 633.30, a
 17 public utility as defined by ss. 365.01 and 366.02; provided, 2.2/16
 18 however, such public utility may intercept and record incoming
 19 wire communications on published emergency telephone numbers 2.2/17
 20 only, or an agency operating an emergency telephone number 2.2/18
 21 "911" system established pursuant to s. 365.171, to intercept
 22 and record incoming wire communications.

23 Section 2. Subsection (4) of section 934.09, Florida 2:2/18
 24 Statutes, is amended to read:

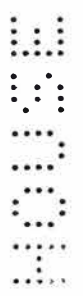
25 934.09 Procedure for interception of wire or oral 3:2
 26 communications.-- 3:2/1

27 (4) Each order authorizing or approving the 4:25
 28 interception of any wire or oral communication shall specify:

29 (a) The identity of the person, if known, whose 1:es
 30 communications are to be intercepted; 4.27
 31

1	(b) The nature and location of the communications	4.27
2	facilities as to which, or the place where, authority to	4.28
3	intercept is granted;	4.29
4	(c) A particular description of the type of	4.29
5	communication sought to be intercepted and a statement of the	4.30
6	particular offense to which it relates;	5.1
7	(d) The identity of the agency authorized to intercept	5.1
8	the communications and of the person authorizing the	5.2
9	application; and	
10	(e) The period of time during which such interception	1:es
11	is authorized, including a statement as to whether or not the	5.2/2
12	interception shall automatically terminate when the described	5.2/3
13	communication has been first obtained.	
14		
15	<u>An order authorizing the interception of a wire or oral</u>	5.2/4
16	<u>communication shall, upon the request of the applicant, direct</u>	
17	<u>that a communication common carrier, landlord, custodian, or</u>	5.2/5
18	<u>other person shall furnish the applicant forthwith all</u>	
19	<u>information, facilities, and technical assistance necessary to</u>	5.2/6
20	<u>accomplish the interception unobtrusively and with a minimum</u>	
21	<u>of interference with the services that such carrier, landlord,</u>	
22	<u>custodian, or person is according the person whose</u>	5.2/7
23	<u>communications are to be intercepted. Any communication</u>	5.2/8
24	<u>common carrier, landlord, custodian, or other person</u>	
25	<u>furnishing such facilities or technical assistance shall be</u>	
26	<u>compensated therefor by the applicant at prevailing rates.</u>	5.2/9
27	Section 3. Section 934.10, Florida Statutes, is	5.2/9
28	amended to read:	
29	934.10 Recovery of civil damages authorized.--Any	6.2
30	person whose wire or oral communication is intercepted,	
31	disclosed, or used in violation of this chapter shall have a	6.2/2

1	civil cause of action against any person who intercepts,	6.2/3
2	discloses, or uses, or procures any other person to intercept,	6.2/4
3	disclose, or use, such communications, and shall be entitled	
4	to recover from any such person:	6.2/5
5	(1) Actual damages, but not less than liquidated	6.8
6	damages computed at the rate of \$100 a day for each day of	
7	violation or \$1,000, whichever is higher;	6.9
8	(2) Punitive damages; and	6.9
9	(3) A reasonable attorney's fee and other litigation	1:es
10	costs reasonably incurred.	6.11.
11		
12	A good faith reliance on a court order <u>or legislative</u>	6.11
13	<u>authorization as provided in this chapter</u> shall constitute a	6.11/1
14	complete defense to any civil or criminal action under the	6.11/2
15	laws of this state.	6.11/3
16	Section 4. This act shall take effect upon becoming a	6.11/3
17	law.	
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THE FLORIDA SENATE

COMMITTEE ON JUDICIARY-CIVIL

27 Senate Office Building
Tallahassee, Florida 32304
904/488-3070

Senator Mattox Hair, *Chairman*
Senator Lori Wilson, *Vice Chairman*

Sylvia M. Alberdi, *Staff Director*

M E M O R A N D U M

TO: Judiciary-Criminal Committee
FROM: Judiciary-Civil Committee
SUBJECT: SB _____
CS / HB 320
DATE: May 4, 1978

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The Senate Committee on Judiciary-Civil has heard the above captioned bill and, upon reporting it favorably, herewith transmits its Staff Analysis and Economic Statement to you as the next committee of reference.

/bv

Attachment

LEW BRANTLEY
President

SHERMAN S. WINN
President Pro Tempore

JOE BROWN
Secretary

JOHN D. MELTON
Sergeant at Arms

DATE: May 2, 1978

COMMITTEE ACTION: 1. FAV; 5-3-78

ANALYST STAFF DIRECTOR

1. Fiveash Alberdi

SENATE

2. _____

3. _____

2. _____

STAFF ANALYSIS AND ECONOMIC STATEMENT

AMEND. OR CS ATTACHED _____

3. _____

JUDICIARY-CIVIL COMMITTEE

BILL No. AND SPONSOR:

SUBJECT:

CS/HB 320

Criminal Justice Committee (Rep. Melvin)

Security of Communications

REFERENCES: 1. Judiciary-Civil; 2. Judiciary-Criminal

I. SUMMARY:

This bill allows communication common carriers to provide information, facilities, or technical assistance to law enforcement officials who are authorized to intercept wire or oral communications. The bill authorizes licensed ambulance services, fire stations, and public utilities to intercept and record incoming calls on published emergency telephone numbers.

This bill also provides that when a court authorizes the interception of a wire or oral communication the court shall, when requested to do so by the applicant, direct that a communication common carrier, landlord, custodian, or other person furnish the applicant with such information, facilities, and technical assistance as he may need to accomplish the interception unobtrusively and with a minimum of interference. The applicant must compensate at the prevailing rate any such person furnishing facilities or technical assistance.

Additionally, the bill establishes as a complete defense to any civil or criminal action, a good faith reliance on legislative authorization as provided in this chapter.

II. PURPOSE:

A. Present Situation:

Presently, the provisions of Florida's Security of Communications Act do not specifically allow communication common carriers, landlords, custodians, or other persons to render assistance to law enforcement officers in interception of wire or oral communications. The act also does not authorize compensation for any such assistance.

The recordation of all incoming calls to emergency numbers is not authorized by the present act.

Additionally, there is only one complete defense to any civil or criminal actions under this chapter provided for by the terms of the Act, that being a good faith reliance on a court order.

B. Effect on Present Situation:

This bill would enable the courts to direct communication common carriers and certain other persons to render assistance to law enforcement officials in making authorized interceptions of certain communications to such persons. The bill would also allow the blanket recordation of all incoming calls to an emergency telephone number.

The bill would allow a mistake in law, if made in good faith, to be used as a complete defense in any civil or criminal action arising under this act.

III. ECONOMIC CONSIDERATIONS:

A. Economic Impact on the Public: YES X NO _____

This bill would require that any person giving assistance to law enforcement officials under this section be compensated at the prevailing rate by the applicant, thus relieving such a person of the burden of bearing the costs involved.

continued....

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DATE: May 2, 1978

PAGE: 2

SENATE

BILL NO. CS/HB 320

ANALYST: STAFF ANALYSIS AND ECONOMIC STATEMENT

Fiveash

Judiciary-Civil Committee

III. ECONOMIC CONSIDERATIONS: (continued)

B. Economic Impact on State or Local Government: YES X NO

This bill would require that the various law enforcement agencies involved in intercepting wire or oral communications compensate those persons rendering assistance to them. It is not possible to determine the exact costs to the agencies at the present time.

IV. COMMENTS:

This bill passed the House on April 20, 1978. Several other bills dealing with this subject, either identical or comparable, have been introduced. CS/SB 156, by the Committee on Judiciary-Criminal and Senator Dunn, has also been referenced to this committee.

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A bill to be entitled
An act relating to security of communications;
amending s. 934.03(2)(d), Florida Statutes;
providing for lawful interception of
communications with prior consent of one or
more parties to the communication; amending s.
934.07, Florida Statutes; revising the list of
offenses to which application for interception
of communications must relate; amending s.
934.08(3), (5), Florida Statutes; providing for
the disclosure and use of lawfully intercepted
communications in any proceeding in any state
court; prescribing the uses of lawfully
intercepted communication not relating to
offenses specified in the order of
authorization or approval and relating to
offenses not specified in an order or approval;
amending s. 934.09(4), (8), (9), Florida
Statutes; providing for certain persons to be
directed to furnish information, facilities,
and technical assistance relating to a lawful
interception of communications; excluding grand
jury proceedings from requirements for notice
before disclosure of intercepted communications
and from provisions authorizing an aggrieved
person to move to suppress intercepted
communications; providing an effective date.

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

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1 Section 1. Paragraph (d) of subsection (2) of section
2 934.03, Florida Statutes, is amended to read:

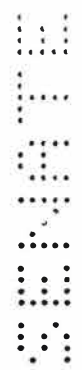
3 934.03 Interception and disclosure of wire or oral
4 communications prohibited.--

5 (2)

6 (d) It is lawful under this chapter for a person to
7 intercept a wire or oral communication when one or more ~~all~~ of
8 the parties to the communication have given prior consent to
9 such interception.

10 Section 2. Section 934.07, Florida Statutes, is
11 amended to read:

12 934.07 Authorization for interception of wire or oral
13 communications.--The Governor, the Attorney General, or any
14 State Attorney may authorize an application to a judge of
15 competent jurisdiction for, and such judge may grant in
16 conformity with this chapter, an order authorizing or
17 approving the interception of wire or oral communications by
18 the Department of Criminal Law Enforcement or any law
19 enforcement agency of this state or any political subdivision
20 thereof having responsibility for the investigation of the
21 offense as to which the application is made, when such
22 interception may provide or has provided evidence of the
23 commission of the offense of murder, kidnapping, gambling,
24 robbery, burglary, theft, receiving dealing-in stolen
25 property, prostitution, criminal usury, bribery, extortion,
26 evasion of payment of cigarette taxes, arson, obscenity,
27 illegal possession or use of a destructive device, forgery,
28 counterfeiting, obstruction of justice, tampering with jurors,
29 evidence, or witnesses, or dealing in narcotic drugs or other
30 dangerous drugs, any violation of the provisions of the
31 Florida Anti-Fencing Act; or any conspiracy to commit any



1 violation of the laws of this state relating to the crimes
2 specifically enumerated above.

3 Section 3. Subsections (3) and (5) of section 934.08,
4 Florida Statutes, are amended to read:

5 934.08 Authorization for disclosure and use of
6 intercepted wire or oral communications.--

7 (3) Any person who has received, by any means
8 authorized by this chapter, any information concerning a wire
9 or oral communication or evidence derived therefrom
10 intercepted in accordance with the provisions of this chapter
11 may disclose the contents of that communication or such
12 derivative evidence while giving testimony under oath or
13 affirmation in any ~~criminal~~ proceeding in any court of any the
14 state or of the United States in any grand jury proceedings,
15 or in any investigation or proceeding in connection with the
16 Judicial Qualifications Commission, if such testimony is
17 otherwise admissible.

18 (5) When an investigative or law enforcement officer,
19 while engaged in intercepting wire or oral communications in
20 the manner authorized herein, intercepts wire or oral
21 communications not relating to offenses ~~for which an order or~~
22 ~~authorization or approval could have been secured pursuant to~~
23 ~~s. 934.077 other than those~~ specified in the order of
24 authorization or approval and relating to offenses not
25 specified in the order of authorization or approval, the
26 contents thereof and evidence derived therefrom may be
27 disclosed or used as provided in subsections (1) and (2) of
28 this section. Such contents and any evidence derived therefrom
29 may be used under subsection (3) of this section when
30 authorized or approved by a judge of competent jurisdiction
31 when such judge finds on subsequent application that the

1 contents were otherwise intercepted in accordance with the
 2 provisions of this chapter. Such application shall be made as
 3 soon as practicable.

4 Section 4. Subsections (4), (8), and (9) of section
 5 934.09, Florida Statutes, are amended to read:

6 934.09 Procedure for interception of wire or oral
 7 communications.--

8 (4) Each order authorizing or approving the
 9 interception of any wire or oral communication shall specify:

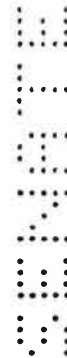
10 (a) The identity of the person, if known, whose
 11 communications are to be intercepted;

12 (b) The nature and location of the communications
 13 facilities as to which, or the place where, authority to
 14 intercept is granted;

15 (c) A particular description of the type of
 16 communication sought to be intercepted and a statement of the
 17 particular offense to which it relates;

18 (d) The identity of the agency authorized to intercept
 19 the communications and of the person authorizing the
 20 application; and

21 (e) The period of time during which such interception
 22 is authorized, including a statement as to whether or not the
 23 interception shall automatically terminate when the described
 24 communication has been first obtained. An order authorizing
 25 the interception of a wire or oral communication shall, upon
 26 request of the applicant, direct a communication common
 27 carrier, landlord, custodian, or other person to furnish the
 28 applicant forthwith with all information, facilities, and
 29 technical assistance necessary to accomplish the interception
 30 unobtrusively and with a minimum of interference with the
 31 services that such carrier, landlord, custodian, or person is



1 according the person whose communications are to be
 2 intercepted. Any communication common carrier, landlord,
 3 custodian, or other person furnishing such facilities or
 4 technical assistance shall be compensated therefor by the
 5 applicant at the prevailing rates.

6 (8) The contents of any intercepted wire or oral
 7 communication or evidence derived therefrom shall not be
 8 received in evidence or otherwise disclosed in any trial,
 9 hearing, or other proceeding, except in a grand jury
 10 proceeding, unless each party, not less than 10 days before
 11 the trial, hearing, or proceeding, has been furnished with a
 12 copy of the court order and accompanying application under
 13 which the interception was authorized or approved. This 10-day
 14 period may be waived by the judge if he finds that it was not
 15 possible to furnish the party with the above information 10
 16 days before the trial, hearing, or proceeding and that the
 17 party will not be prejudiced by the delay in receiving such
 18 information.

19 (9)(a) Any aggrieved person in any trial, hearing, or
 20 proceeding in or before any court, department, officer,
 21 agency, regulatory body, or other authority except in a grand
 22 jury proceeding may move to suppress the contents of any
 23 intercepted wire or oral communication, or evidence derived
 24 therefrom, on the grounds that:

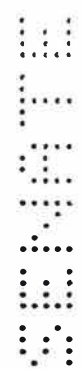
- 25 1. The communication was unlawfully intercepted;
- 26 2. The order of authorization or approval under which
 27 it was intercepted is insufficient on its face; or
- 28 3. The interception was not made in conformity with
 29 the order of authorization or approval.

1 Such motion shall be made before the trial, hearing, or
 2 proceeding unless there was no opportunity to make such motion
 3 or the person was not aware of the grounds of the motion. If
 4 the motion is granted, the contents of the intercepted wire or
 5 oral communication, or evidence derived therefrom, shall be
 6 treated as having been obtained in violation of this chapter.
 7 The judge, upon the filing of such motion by the aggrieved
 8 person, may make available to the aggrieved person or his
 9 counsel for inspection such portions of the intercepted
 10 communication or evidence derived therefrom as the judge
 11 determines to be in the interests of justice.

12 (b) In addition to any other right to appeal, the
 13 state shall have the right to appeal from an order granting a
 14 motion to suppress made under paragraph (a) or the denial of
 15 an application for an order of approval if the attorney shall
 16 certify to the judge or other official granting such motion or
 17 denying such application that the appeal is not taken for
 18 purposes of delay. Such appeal shall be taken within 30 days
 19 after the date the order was entered and shall be diligently
 20 prosecuted.

21 Section 5. This act shall take effect July 1, 1978.

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1 A bill to be entitled
2 An act relating to security of communications;
3 amending s. 934.03(2)(d), Florida Statutes;
4 providing for lawful interception of
5 communications with prior consent of one or
6 more parties to the communication; amending s.
7 934.07, Florida Statutes; revising the list of
8 offenses to which application for interception
9 of communications must relate; amending s.
10 934.08(3), (5), Florida Statutes; providing for
11 the disclosure and use of lawfully intercepted
12 communications in any proceeding in any state
13 court; prescribing the uses of lawfully
14 intercepted communication not relating to
15 offenses specified in the order of
16 authorization or approval and relating to
17 offenses not specified in an order or approval;
18 amending s. 934.09(4), (8), (9), Florida
19 Statutes; providing for certain persons to be
20 directed to furnish information, facilities,
21 and technical assistance relating to a lawful
22 interception of communications; excluding grand
23 jury proceedings from requirements for notice
24 before disclosure of intercepted communications
25 and from provisions authorizing an aggrieved
26 person to move to suppress intercepted
27 communications; providing an effective date.

28
29 Be It Enacted by the Legislature of the State of Florida:
30
31

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Tallahassee, FL 32399-0250
Series 14 Carton 1287

1 Section 1. Paragraph (d) of subsection (2) of section
2 934.03, Florida Statutes, is amended to read:

3 934.03 Interception and disclosure of wire or oral
4 communications prohibited.--

5 (2)

6 (d) It is lawful under this chapter for a person to
7 intercept a wire or oral communication when one or more ~~all~~ of
8 the parties to the communication have given prior consent to
9 such interception.

10 Section 2. Section 934.07, Florida Statutes, is
11 amended to read:

12 934.07 Authorization for interception of wire or oral
13 communications.--The Governor, the Attorney General, or any
14 State Attorney may authorize an application to a judge of
15 competent jurisdiction for, and such judge may grant in
16 conformity with this chapter, an order authorizing or
17 approving the interception of wire or oral communications by
18 the Department of Criminal Law Enforcement or any law
19 enforcement agency of this state or any political subdivision
20 thereof having responsibility for the investigation of the
21 offense as to which the application is made, when such
22 interception may provide or has provided evidence of the
23 commission of the offense of murder, kidnapping, gambling,
24 robbery, burglary, theft, receiving ~~dealing-in~~ stolen
25 property, prostitution, criminal usury, bribery, extortion,
26 evasion of payment of cigarette taxes, arson, obscenity,
27 illegal possession or use of a destructive device, forgery,
28 counterfeiting, obstruction of justice, tampering with jurors,
29 evidence, or witnesses, any violation of the Florida RICO
30 (Racketeer Influenced and Corrupt Organization) Act,
31 bookmaking, or dealing in narcotic drugs or other dangerous

1 drugs, any violation of the provisions of the Florida Anti-
 2 Fencing Act; or any conspiracy to commit any violation of the
 3 laws of this state relating to the crimes specifically
 4 enumerated above.

5 Section 3. Subsections (3) and (5) of section 934.08,
 6 Florida Statutes, are amended to read:

7 934.08 Authorization for disclosure and use of
 8 intercepted wire or oral communications.--

9 (3) Any person who has received, by any means
 10 authorized by this chapter, any information concerning a wire
 11 or oral communication or evidence derived therefrom
 12 intercepted in accordance with the provisions of this chapter
 13 may disclose the contents of that communication or such
 14 derivative evidence while giving testimony under oath or
 15 affirmation in any ~~criminal~~ proceeding in any court of any the
 16 state or of the United States in any grand jury proceedings,
 17 or in any investigation or proceeding in connection with the
 18 Judicial Qualifications Commission, if such testimony is
 19 otherwise admissible.

20 (5) When an investigative or law enforcement officer,
 21 while engaged in intercepting wire or oral communications in
 22 the manner authorized herein, intercepts wire or oral
 23 communications not relating to offenses ~~for which an order or~~
 24 ~~authorization or approval could have been secured pursuant to~~
 25 ~~s. 934.07, other than these~~ specified in the order of
 26 authorization or approval and relating to offenses not
 27 specified in the order of authorization or approval, the
 28 contents thereof and evidence derived therefrom may be
 29 disclosed or used as provided in subsections (1) and (2) of
 30 this section. Such contents and any evidence derived therefrom
 31 may be used under subsection (3) of this section when

1 authorized or approved by a judge of competent jurisdiction
2 when such judge finds on subsequent application that the
3 contents were otherwise intercepted in accordance with the
4 provisions of this chapter. Such application shall be made as
5 soon as practicable.

6 Section 4. Subsections (4), (8), and (9) of section
7 934.09, Florida Statutes, are amended to read:

8 934.09 Procedure for interception of wire or oral
9 communications.--

10 (4) Each order authorizing or approving the
11 interception of any wire or oral communication shall specify:

12 (a) The identity of the person, if known, whose
13 communications are to be intercepted;

14 (b) The nature and location of the communications
15 facilities as to which, or the place where, authority to
16 intercept is granted;

17 (c) A particular description of the type of
18 communication sought to be intercepted and a statement of the
19 particular offense to which it relates;

20 (d) The identity of the agency authorized to intercept
21 the communications and of the person authorizing the
22 application; and

23 (e) The period of time during which such interception
24 is authorized, including a statement as to whether or not the
25 interception shall automatically terminate when the described
26 communication has been first obtained. An order authorizing
27 the interception of a wire or oral communication shall, upon
28 request of the applicant, direct a communication common
29 carrier, landlord, custodian, or other person to furnish the
30 applicant forthwith with all information, facilities, and
31 technical assistance necessary to accomplish the interception

1 unobtrusively and with a minimum of interference with the
2 services that such carrier, landlord, custodian, or person is
3 according the person whose communications are to be
4 intercepted. Any communication common carrier, landlord,
5 custodian, or other person furnishing such facilities or
6 technical assistance shall be compensated therefor by the
7 applicant at the prevailing rates.

8 (8) The contents of any intercepted wire or oral
9 communication or evidence derived therefrom shall not be
10 received in evidence or otherwise disclosed in any trial,
11 hearing, or other proceeding, except in a grand jury
12 proceeding, unless each party, not less than 10 days before
13 the trial, hearing, or proceeding, has been furnished with a
14 copy of the court order and accompanying application under
15 which the interception was authorized or approved. This 10-day
16 period may be waived by the judge if he finds that it was not
17 possible to furnish the party with the above information 10
18 days before the trial, hearing, or proceeding and that the
19 party will not be prejudiced by the delay in receiving such
20 information.

21 (9)(a) Any aggrieved person in any trial, hearing, or
22 proceeding in or before any court, department, officer,
23 agency, regulatory body, or other authority except in a grand
24 jury proceeding may move to suppress the contents of any
25 intercepted wire or oral communication, or evidence derived
26 therefrom, on the grounds that:

- 27 1. The communication was unlawfully intercepted;
- 28 2. The order of authorization or approval under which
29 it was intercepted is insufficient on its face; or
- 30 3. The interception was not made in conformity with
31 the order of authorization or approval.

1
2 Such motion shall be made before the trial, hearing, or
3 proceeding unless there was no opportunity to make such motion
4 or the person was not aware of the grounds of the motion. If
5 the motion is granted, the contents of the intercepted wire or
6 oral communication, or evidence derived therefrom, shall be
7 treated as having been obtained in violation of this chapter.
8 The judge, upon the filing of such motion by the aggrieved
9 person, may make available to the aggrieved person or his
10 counsel for inspection such portions of the intercepted
11 communication or evidence derived therefrom as the judge
12 determines to be in the interests of justice.

13 (b) In addition to any other right to appeal, the
14 state shall have the right to appeal from an order granting a
15 motion to suppress made under paragraph (a) or the denial of
16 an application for an order of approval if the attorney shall
17 certify to the judge or other official granting such motion or
18 denying such application that the appeal is not taken for
19 purposes of delay. Such appeal shall be taken within 30 days
20 after the date the order was entered and shall be diligently
21 prosecuted.

22 Section 5. If any provision of this act or the
23 application thereof to any person or circumstance is held
24 invalid, the invalidity shall not affect other provisions or
25 applications of the act which can be given effect without the
26 invalid provision or application, and to this end the
27 provisions of this act are declared severable.


28 Section 6. This act shall take effect July 1, 1978.
29
30
31

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR SENATE BILL 156

The committee amended the bill to provide the following:

1. That violation of the Florida Racketeering Influenced and Corrupt Organization (RICO) Act and bookmaking be included in the designated criminal conduct for which law enforcement officers may legally wiretap to gather information for criminal prosecution.
2. Made provisions of the act severable.

Committee on JUDICIARY-CRIMINAL


~~Chairman~~ Staff Director
Reginald E. Moore

DATE: February 17, 1978 (Updated)

COMMITTEE ACTION: ²⁻¹⁰⁻⁷⁸ 1. Favorable w/CS

ANALYST STAFF DIRECTOR

2. _____

1. Moore Moore

SENATE

3. _____

2. _____ STAFF ANALYSIS AND ECONOMIC STATEMENT

~~ATTACHED~~ CS ATTACHED ✓

3. _____ JUDICIARY-CRIMINAL COMMITTEE

BILL No. AND SPONSOR:
CS/SB 156 Senator Dunn

SUBJECT:
Security of Communications

REFERENCES: Judiciary-Criminal; Judiciary-Civil

I. BILL SUMMARY:

The bill updates and includes several acts of criminal conduct for which law enforcement officers may legally wiretap to gather information for criminal prosecution. Evasion of cigarette taxes, arson, obscenity, illegal possession or use of a destructive device, forgery, counterfeiting, obstruction of justice, and tampering with jurors, evidence or witnesses, bookmaking, and violation of the Florida RICO Act and violations of the Florida Anti-Fencing Act are included. The bill permits legal wiretapping when one of the parties to the communication previously gives permission for the interception. The bill provides that the common carrier shall furnish facilities and technical assistance. The contents of any intercepted communication may be disclosed in any grand jury proceeding without giving 10 days notice prior to disclosure to the grand jury.

Provides for severability of provisions.

II. PURPOSE:

A. Present Situation:

The present statute requires that both parties to an intended interception give permission for the interception of the communication. The prohibited conduct for which wire or oral interceptions are permitted does not include certain crimes. The law requires that a person be given ten days notice prior to disclosure of the contents of an intercepted communication before a grand jury proceeding, and that only the interception of the enumerated crimes in the statute may be used by a grand jury.

B. Effect on Present Situation:

The bill would include the interception of wire or oral communication for the crimes of: evasion of payment of cigarette taxes, arson, obscenity, illegal possession or use of a destructive device, forgery, counterfeiting, obstruction of justice, tampering with jurors, witnesses, or evidence. The bill would permit the interception of wire or oral communications when one of the parties to the communication gives permission for the interception. The bill requires that the common carriers furnish facilities and technical assistance whenever requested. The bill would authorize the disclosure of an intercepted wire or oral communication to a grand jury without giving the 10 days notice required in the section for other legal disclosures.

This bill would permit a grand jury to receive evidence of a crime not specified in the order authorizing the interception of wire or oral communication. This is to change the result reached in: In re Grand Jury Investigations; In re Frank Cobo, 287 So. 2d 43, (Florida, 1973), and to conform Florida law to the provisions of the Federal Statutes.

III. ECONOMIC CONSIDERATIONS:

- A. Economic Impact on Public: Yes No X
- B. Economic Impact on State or Local Government: Yes X No

If enacted, this bill would result in some minimal savings to the state. Savings would result from the decreased incidence of court ordered interception since the consent of only one or more parties would be required.

IV. COMMENTS:

1. This bill is similar to SB 865 of 1977, which favorably passed the Committees on Judiciary-Criminal and Governmental Operations, but died on the calendar.
2. This bill would make 934.03(2)(d) consistent with the law prior to 1974. During the 1974 legislative session this statute was amended by SB 459, Chapter 74-249, Laws of Florida, to provide that prior consent of all parties was required for the interception of a wire or oral communication.
3. The Florida Supreme Court has recently ruled in the case of Shevin v. Sunbeam Television that the 1974 amendment to 934.03(2)(d), Florida Statutes, is constitutional.

DATE: May 3, 1978

COMMITTEE ACTION: 1. CS; 2-16-78

ANALYST STAFF DIRECTOR

2. FAV/2; 5-3-78

1. Moore Moore

SENATE

3. _____

2. Krasovsky Alberdi *pa* STAFF ANALYSIS AND ECONOMIC STATEMENT

AMEND. ~~XXXX~~ ATTACHED X

JUDICIARY-CIVIL COMMITTEE

3. _____

BILL NO. AND SPONSOR:
CS/SB 156
Judiciary-Criminal Committee (Dunn)

SUBJECT:
Security of Communications

REFERENCES: 1. Judiciary-Criminal; 2. Judiciary-Civil

I. SUMMARY:

As amended, this bill amends various sections of Chapter 934, Florida Statutes, relating to security of communications in that:

- (1) The Governor, Attorney General, or any State Attorney may authorize an application for a judicial order approving the interception of wire or oral communications when such interception may provide or has provided evidence of the commission of evasion of cigarette taxes, arson, obscenity, illegal possession or use of a destructive device, forgery, counterfeiting, obstruction of justice, tampering with jurors, evidence, or witnesses, bookmaking, or any violation of the Florida Racketeer Influenced and Corrupt Organization Act (RICO), 934.07, F.S.;
- (2) Communications intercepted under Chapter 934, and any evidence derived therefrom, may be used in any proceeding in any court of any state, including grand juries, and in any federal court, 934.08(3), F.S.;
- (3) Communications intercepted by law enforcement officers, and evidence derived therefrom, which does not relate to the offenses indicated in the authorizing order, may be disclosed to another law enforcement agency to the extent that such disclosure is appropriate for the performance of official duties or may, with judicial approval, be used in any court proceeding in any state, 934.08(5), F.S.;
- (4) An order authorizing the interception of a wire or oral communication shall, upon request of the applicant, direct the communications common carrier or other person to furnish all information, facilities, and technical assistance necessary to accomplish the interception. Furnishing of facilities or technical assistance shall be compensated by the applicant at the prevailing rates, 934.09(4)(e), F.S.;
- (5) Intercepted communications, or evidence derived therefrom, may be introduced in a grand jury proceeding without furnishing a copy of the authorizing court order to the parties involved, 934.09(8), F.S.; and
- (6) An aggrieved person may not move to suppress from a grand jury proceeding the contents of any wire or oral communication, or evidence derived therefrom, on the grounds that the communication was unlawfully intercepted, that the order authorizing the interception was insufficient, or that the interception was not made in conformity with the authorizing order, 934.09(9)(a), F.S..

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II. PURPOSE:

A. Present Situation:

Under current provisions of Chapter 934, Florida Statutes:

- (1) Authorization for application for a judicial order approving the interception of wire or oral communications is permitted for certain enumerated offenses, such as murder, kidnapping, and gambling:
- (2) Communications intercepted under Chapter 934, and any evidence derived therefrom, may be used in any criminal proceeding in any court of that state, including grand juries, and in any federal court;

ANALYST: STAFF ANALYSIS AND ECONOMIC STATEMENT
Krasovsky Judiciary-Civil Committee

II. PURPOSE: (continued)A. Present Situation:

- (3) Intercepted communications, and any evidence derived therefrom, relating to offenses not specified in the authorizing order may be used by law enforcement officials and in court proceedings when they relate to offenses for which an order or authorization could have been secured under the provisions of this chapter;
- (4) No authority exists which directs a communication common carrier, or others, to provide the facilities or technical assistance necessary to accomplish the interception;
- (5) Intercepted communications shall not be disclosed in any court proceedings, including grand jury proceedings, unless each party has been furnished with a copy of the authorizing order at least ten days before the proceeding; and
- (6) An aggrieved person may move to suppress such communications in any proceeding, including grand jury proceedings, on the grounds that the communication was unlawfully intercepted, that the order authorizing the interception was insufficient, or that the interception was not made in conformity with the authorizing order.

B. Effect on Present Situation:

The effect of this bill would be to partially conform Florida's wiretap statutes to various federal statutes. Also, the result of a 1973 Florida Supreme Court case would be legislatively changed to allow intercepted communications not relating to specified crimes cited in the authorizing order to be used in legal proceedings.

III. ECONOMIC CONSIDERATIONS:A. Economic Impact on the Public: YES X NO

This bill would require that any person giving assistance to law enforcement officials under this section be compensated at the prevailing rate by the applicant, thus relieving such a person of the burden of bearing the costs involved.

B. Economic Impact on State or Local Government: YES X NO

This bill would require that the various law enforcement agencies involved in intercepting communications compensate those persons rendering assistance to them. It is not possible to determine the costs to the agencies at the present time.

IV. COMMENTS:

A similar bill last session died on the Senate Calendar.

CS/HB 320 contains a provision similar to certain portions of this bill. Please see #4 under the summary section of this analysis.

Line numbers on amendment blank have no relation to line numbers on bills.

CS/SB ..156.....

HB

The Committee on Judiciary-Civil offered the following amendment which was moved by Senator and adopted: and failed:

Amendment

On page 2, lines 1-9, strike

a .all of Section 1.

b

c .(Renumber Subsequent Sections)

d

e

f

g

~~and insert:~~

1

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FOR COMMITTEE USE ONLY	PRINTER: Do not pick up
Amendment No. <u>1</u> , taken up by committee:	Adopted <input checked="" type="checkbox"/> Failed <input type="checkbox"/>
Offered by <u>Senator Scott</u>	

(If amendment is text of another bill, insert: Bill No. _____ or Draft No. _____)

Line numbers on amendment blank have no relation to line numbers on bills.

CS/SB .156.....

HB

The Committee on Judiciary-Civil offered the following amendment which was moved by Senator and adopted: and failed:

Title Amendment

On page 1 , lines... 3-6 , strike

- a .. all of lines 3 through and including line 6
 - b
 - c
 - d
 - e
 - f
 - g
- and insert:
- 1 .. amending s.
 - 2
 - 3
 - 4
 - 5
 - 6
 - 7
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FOR COMMITTEE USE ONLY	PRINTER: Do not pick up
Amendment No. <u>4</u> , taken up by committee:	Adopted <input checked="" type="checkbox"/> Failed <input type="checkbox"/>
Offered by <u>Senator Hair</u>	

(If amendment is text of another bill, insert: Bill No. _____ or Draft No. _____)

DATE: April 3, 1978

COMMITTEE ACTION: 1. CS; 2-16-78

ANALYST STAFF DIRECTOR

2. _____

1. Moore Moore

SENATE

3. _____

2. Krasovsky Alberdi

STAFF ANALYSIS AND ECONOMIC STATEMENT

AMEND. OR CS ATTACHED _____

JUDICIARY-CIVIL COMMITTEE

SEE AMENDED ANALYSIS

3. _____

BILL No. AND SPONSOR:

CS/SB 156

Judiciary-Criminal Committee (Dunn)

SUBJECT:

Security of Communications

REFERENCES: 1. Judiciary-Criminal; 2. Judiciary-Civil

I. SUMMARY:

This bill amends various sections of Chapter 934, Florida Statutes, relating to security of communications in that:

- (1) It is lawful for a person to intercept wire or oral communications with the prior consent of one or more of the parties to the communications, 934.03(2)(d), F.S.
- (2) The Governor, Attorney General, or any State Attorney may authorize an application for a judicial order approving the interception of wire or oral communications when such interception may provide or has provided evidence of the commission of evasion of cigarette taxes, arson, obscenity, illegal possession or use of a destructive device, forgery, counterfeiting, obstruction of justice, tampering with jurors, evidence, or witnesses, bookmaking, or any violation of the Florida Racketeer Influenced and Corrupt Organization Act (RICO), 934.07, F.S.;
- (3) Communications intercepted under Chapter 934, and any evidence derived therefrom, may be used in any proceeding in any court of any state, including grand juries, and in any federal court, 934.08(3), F.S.;
- (4) Communications intercepted by law enforcement officers, and evidence derived therefrom, which does not relate to the offenses indicated in the authorizing order, may be disclosed to another law enforcement agency to the extent that such disclosure is appropriate for the performance of official duties or may, with judicial approval, be used in any court proceeding in any state, 934.08(5), F.S.;
- (5) An order authorizing the interception of a wire or oral communication shall, upon request of the applicant, direct the communications common carrier or other person to furnish all information, facilities, and technical assistance necessary to accomplish the interception. Furnishing of facilities or technical assistance shall be compensated by the applicant at the prevailing rates, 934.09(4)(e), F.S.;
- (6) Intercepted communications, or evidence derived therefrom, may be introduced in a grand jury proceeding without furnishing a copy of the authorizing court order to the parties involved, 934.09(8), F.S.; and
- (7) An aggrieved person may not move to suppress from a grand jury proceeding the contents of any wire or oral communication, or evidence derived therefrom, on the grounds that the communication was unlawfully intercepted, that the order authorizing the interception was insufficient, or that the interception was not made in conformity with the authorizing order, 934.09(9)(a), F.S.

II. PURPOSE:

A. Present Situation:

Under current provisions of Chapter 934, Florida Statutes:

- (1) All parties to the communication must give prior consent before interception of the communication is legally permitted;

ANALYST: Krasovsky
STAFF ANALYSIS AND ECONOMIC STATEMENT
Judiciary-Civil CommitteeII. PURPOSE: (continued)A. Present Situation:

- (2) Authorization for application for a judicial order approving the interception of wire or oral communications is permitted for certain enumerated offenses, such as murder, kidnapping, and gambling;
- (3) Communications intercepted under Chapter 934, and any evidence derived therefrom, may be used in any criminal proceeding in any court of that state, including grand juries, and in any federal court;
- (4) Intercepted communications, and any evidence derived therefrom, relating to offenses not specified in the authorizing order may be used by law enforcement officials and in court proceedings when they relate to offenses for which an order or authorization could have been secured under the provisions of this chapter;
- (5) No authority exists which directs a communication common carrier, or others, to provide the facilities or technical assistance necessary to accomplish the interception,
- (6) Intercepted communications shall not be disclosed in any court proceeding, including grand jury proceedings, unless each party has been furnished with a copy of the authorizing order at least ten days before the proceeding; and
- (7) An aggrieved person may move to suppress such communications in any proceeding, including grand jury proceedings, on the grounds that the communication was unlawfully intercepted, that the order authorizing the interception was insufficient, or that the interception was not made in conformity with the authorizing order.

B. Effect on Present Situation:

The effect of this bill would be to partially conform Florida's wiretap statutes to various federal statutes. Also, the result of a 1973 Florida Supreme Court case would be legislatively changed to allow intercepted communications not relating to specified crimes cited in the authorizing order to be used in legal proceedings. Further, by providing that only one party to the communications need give consent to the interception, law prior to 1974 would be, in effect, re-enacted.

III. ECONOMIC CONSIDERATIONS:

- A. Economic Impact on the Public: YES NO
- B. Economic Impact on State or Local Government: YES NO

Minimal saving would probably result from the decreased incidence of court ordered wiretaps since the consent of only one party to the communications would be required under the provisions of this bill.

IV. COMMENTS:

A similar bill last session died on the Senate Calendar.

CS/HB 320 contains a provision similar to certain portions of this bill. Please see #5 under the summary section of this analysis.

CB/SB 156

state

High court reaffirms inadmissability of secretly recorded conversations

United Press International

TALLAHASSEE — The Florida Supreme Court declared Thursday that a secretly made recording of an extortion threat was illegal and may not be used as evidence in the trial of the alleged extortionists.

The fact that the victim who recorded the conversation was an investigative reporter makes no difference, the court said.

"This court cannot substitute its judgment for that of the Legislature and create an exception which would encompass the instant circumstances," it ruled, saying its function is to interpret the laws, not determine their wisdom.

THE 6-0 DECISION agreed with Palm Beach Circuit Judge Emery J. Newell, who rejected the state's effort to introduce the tape at the August 1975 extortion trial of Harold Walls and Stanley Gerstenfeld.

(Gerstenfeld was found shot to death late Feb. 3, in the parking lot near the Golden Gloves boxing exhibition in Miami Beach.)

Palm Beach freelance magazine reporter Francis Antel said he recorded the extortion-threat conversation at his home on Feb. 19, 1975 when, he said, he was threatened with bodily injury if he did not give the men \$5,000.

The ruling upholds the law making it illegal to secretly intercept an oral communication, and barring use of any such interception as evidence in any official proceeding.

THE DECISION does not harm the state's case, the court noted, since Antel is free to testify to the whole conversation.

Previously, the court refused to make an exception to the law for investigative reporters of *The Miami Herald* and Miami television station WCKT.

In other decisions Thursday, the court:

✓ Ruled that sheriffs' deputies cannot join a union.

The decision was made in cases growing out of efforts to unionize deputies in Palm Beach and Osceola counties, but it apparently affects all counties and an estimated 6,300 deputies statewide.

The ruling overturns decisions made by the Public Employees Relations Commission and the 1st District Court of Appeal which had ordered elections in the two localities. The court said a deputy is invested with the same power as the sheriff and "there is no relation as master and servant existing between" them.

✓ Ruled that a motor vehicle must have been used in a drug-trafficking operation before its forfeiture can be ordered under the Florida Uniform Contraband Transportation Act.

Without ruling on the constitutionality of the act, the court reversed Suwannee Circuit Judge Thomas Kennon Jr., who had ordered forfeiture of a pickup truck belonging to Elbert Bryan Griffis III after marijuana was found in it during a routine inspection in Live Oak. Griffis was put on one-year probation after pleading no contest to possession of marijuana.

In a 6-1 decision, the high court said a literal reading of the law supports Kennon's finding that the statute does not require that a vehicle be used in an illegal drug operation. But the court said the legislative intent was to prevent the transportation of drugs for distribution, not to punish citizens for mere possession of drugs in a vehicle.

✓ Affirmed the death sentence given James Adams of Fort Pierce in the November 1973 murder of Edgar Brown. It rejected Adams' claim that he had no chance to rebut St. Lucie trial Judge Wallace Sample's statement in the sentencing phase of the proceeding that Adams had a record involving crimes of violence.

The court said Adams admitted at the trial to "five or more" prior crime convictions.

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Supreme Court and press freedom

Court agrees to rule on important question involving libel cases

By WARREN WEAVER Jr.
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WASHINGTON — The Supreme Court agreed Monday to decide whether a public figure who claims that he has been the victim of libel has the right to examine the state of mind of reporters and editors who prepared the account to which he objects.

Setting the stage for what is expected to be a major ruling in the area of press freedom, the justices took on the delicate legal question of whether it is possible for a person to establish that he has been maliciously defamed without being given an opportunity to explore why and how the news media decide what to report and what not to report.

(Under a 1973 Supreme Court ruling, in the case of *New York Times vs. Sullivan*, a public figure must show actual malice or reckless disregard of the truth to win a libel suit.)

THE CASE THE court accepted for a hearing next winter, and a decision next year, involves a 1973 segment of the Columbia Broadcasting System's program *60 Minutes*.

In essence, the dispute centers on how far behind the written, spoken or pictorial news report a prominent person can legally search in an effort to demonstrate that he was intentionally rather than accidentally wronged.

In the case (*Herbert vs. Lando*, No. 77-1105), Anthony Herbert, a former lieutenant colonel in the Army, sued a CBS producer and reporter for defamation, contending that they had portrayed him as a "liar" by casting doubt on his claims that he had protested war atrocities in Vietnam to his superiors.

The case has not yet come to trial

but reached the Supreme Court on the preliminary question of how deeply Herbert's lawyers can probe into the editorial decisions of Barry Lando, the producer of the report, and Mike Wallace, the reporter.

Preliminary examination of Lando about the preparation of the segment ran for more than a year and produced 2,900 pages of testimony and 240 exhibits. But when the producer refused to answer questions as to why he had chosen certain interviews and information rather than others, Herbert sought a court order to force him to respond.

FEDERAL DISTRICT Judge Charles S. Haight Jr. ruled that Lando must answer almost all questions about his state of mind to establish whether malice was involved in the broadcast account. Rejecting CBS's invocation of First Amendment protection, he held that the plaintiff (Herbert) bore a "heavy burden of proof" and should be given broad authority for pretrial exploration.

Dividing 2 to 1, the 2nd U.S. Court of Appeals reversed Haight's ruling, with the majority holding that Lando did not have to answer questions about how leads were developed, how the relative truthfulness of various news sources was estimated or how editors discussed what should go into the final television report.

CHIEF JUDGE Irving R. Kaufman wrote that this kind of pretrial inquiry violated the constitutional protection of the press by inhibiting its editorial function.

Herbert urged the Supreme Court to review the Kaufman ruling, to test the position that journalists' opinions and state of mind are absolutely immune from court inquiry under the First Amendment. CBS argued that the appeals court ruling should stand, in part because it could always be tested later, after the trial.

Court refuses to review Florida law on recording of news interviews

Los Angeles Times

WASHINGTON — The Supreme Court on Monday refused to review an appeal by a Florida television station and newspaper challenging the validity of a state law that prohibits the electronic recording of news interviews without prior consent of the persons being interviewed.

The Florida law that the court left intact prohibits the filming or recording of any conversation without the consent of all parties to the conversation. As a practical matter, it prevents, for example, television cameramen from the concealed or unannounced filming of subjects without their permission. It also prevents newspaper reporters from the electronic recording of conversations — on the telephone or in person — without the consent of interviewees.

Miami television station WKCT and *The Miami Herald* challenged the law, saying it infringed on First Amendment rights and would inhibit their efforts to report news of consumer fraud, official corruption or other criminal activity. The use of concealed recording devices, they argued, was no different from the concealed use of pencils and pads — or simple memory — except that the recorders are more accurate.

State authorities, defending the law, argued that there were less intrusive alternatives to concealed recorders in gathering news — such as making notes, examining public records or assigning two reporters to a story for corroboration.

The Florida Supreme Court upheld the law, saying it did not restrict the actual publication of news. The state court found that persons being interviewed have an "expectation of privacy" that protects them against being recorded without their knowledge.



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SECURITY OF COMMUNICATIONS

SUBJECT

Proposed amendment to the Security of Communications Act (chapter 934 Florida Statutes) to authorize a court to direct communication common carriers to assist in interception of communications.

BACKGROUND

The Federal Crime Control and Safe Streets Act (18 U.S.C. S2518) authorizing the interception of communications by law enforcement agencies in the investigation of specific major criminal activities became law in 1968.

The Florida Security of Communications Act (chapter 934 State Statutes) adopted in 1969 is nearly a verbatim copy of the Federal Crime Control Act of 1968.

In 1970, Congress amended the Federal Act (effective 2/1/71) by adding the following language to 18 U.S.C. S2518 (4):
See Attached

OBJECTIVE

Add the Federal amendment as paragraph (F) to subsection (4) of section 934.09 Florida Statutes.

REASONS

1. The Florida Statute in its present form does not by express terms authorize a court to direct a telephone company to assist in effecting an interception.
2. It does not provide for compensation to companies which do assist.
3. There is no explicit protection from civil or criminal liability if a company does assist law enforcement agencies with an interception.

Enactment of the proposed amendment would resolve the foregoing points and at the same time bring the Florida Statute into line with the Federal Act.

An order authorizing the interception of a wire or oral communication shall, upon request of the applicant, direct that a communication common carrier, landlord, custodian or other person shall furnish the applicant forthwith all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such carrier, landlord, custodian, or person is according to the person whose communications are to be intercepted. Any communication common carrier, landlord, custodian or other person furnishing such facilities or technical assistance shall be compensated therefore by the applicant at the prevailing rates.

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of Vero Beach Fla.
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