

STORAGE NAME: h4143.cjcl

DATE: April 14, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
Civil Justice and Claims
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 4143

RELATING TO: Emergency Telephone Number "911" Services

SPONSOR(S): Representative Edwards and others

COMPANION BILL(S): SB 2164 by Senator Latvala

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

(1) CIVIL JUSTICE & CLAIMS YEAS 9 NAYS 0

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I. SUMMARY:

This bill provides a limitation on liability for wireless telecommunications service providers with respect to the provision of "911" services.

This bill amends section 365.171, Florida Statutes.

This bill will have no fiscal impact on government.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

The Florida Emergency Telephone Act - The Florida Emergency Telephone Act, s. 365.171, F.S., establishes a simplified means of procuring emergency services by the implementation of a statewide emergency number. The Florida Emergency Telephone Act provides citizens with rapid direct access to public safety agencies for purposes of law enforcement, fire, medical, rescue and other emergency services.

Section 365.171(13)(a), F.S., states that any "county may impose a '911' fee to be paid by the local exchange subscribers within its boundaries served by the '911' service." Approval of the "911" fee may be by referendum as provided in s. 365.171(13)(b), F.S., or by a majority vote of the board of county commissioners of participating counties. The statute specifies the manner of imposing and collecting this fee or payment:

1. At the request of the county subscribing to the "911" service, the telephone company shall, insofar as practicable, bill said charges pro rata to the local exchange subscribers served by the "911" service, on an individual access line basis, at a rate not to exceed 50 cents per month per line (up to a maximum of 25 access lines).
2. The telephone company shall have no obligation to take any legal action to enforce collection of the "911" fee.
3. The county subscribing to "911" service shall remain ultimately responsible to the telephone company for all "911" service and equipment charges.

Section 365.171(13)(c), F.S., provides that any county imposing a "911" fee in accordance with the provisions of subsection (13) shall pay to the telephone company an administrative fee equal to 1 percent of the "911" fee collected by the telephone company. The "911" fee, imposed pursuant to s. 365.171(13), F.S., therefore, represents a fixed payment for the charges for service and equipment which is imposed and collected by the county via the telephone company from local exchange subscribers.

Subsection (14) of s. 365.171, F.S., provides that all local governments are authorized to indemnify the telephone company against liability in accordance with the telephone company's lawfully filed tariffs. Regardless of any indemnification agreement, the telephone company is not liable for damages resulting from or in connection with "911" service or identification of the telephone number, address, or name associated with any person accessing "911" service, unless the telephone company acted with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property in providing such services.

Subsection (15) of s. 365.171, F.S., declares that telephone companies are not liable for damages to persons "resulting from or in connection with such telephone company's provision of any lawful assistance" to law enforcement officers unless the entity, in providing such assistance, "acted in a wanton and willful manner."

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Commercial mobile radio service providers, or "wireless" telephone service providers, are not included in the general exemption from liability specified in s. 365.171(14) and (15), F.S.

B. EFFECT OF PROPOSED CHANGES:

This bill creates s. 365.171(17), F.S. It specifies that commercial mobile radio service providers, also known as wireless/cellular telephone service providers, as well as local governments, public agencies, public safety agencies, or local exchange telecommunications companies, or any employee, director, officer, or agent of any such entities, are not liable for damages in a civil action nor subject to criminal prosecution as a result of death or injury to, or damage to property incurred by, any person in connection with establishing, implementing, maintaining, and providing access or any failure to establish, implement, maintain, operate, or provide access to wireless "911" service, enhanced "911" service, or any other wireless service intended to help persons obtain emergency assistance. Like the provision in s. 365.171(14), F.S., the limitation of liability does not apply if "such failure resulted from a malicious purpose or a wanton and willful disregard of human rights, safety, or property."

In addition, wireless providers and local exchange telecommunications companies are not liable for damages to persons "resulting from or in connection with such entity's provision of any lawful assistance" to law enforcement officers unless the entity, in providing such assistance, "acted in a manner exhibiting wanton and willful disregard of human rights, safety, or property."

These provisions grant wireless telephone providers substantially the same limitation of liability provided to land line local exchanges in connection with "911" services.

The act takes effect upon becoming a law.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

N/A

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

c. Does the bill reduce total taxes, both rates and revenues?

N/A

d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

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- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Amends s. 365.171, F.S.

E. SECTION-BY-SECTION RESEARCH:

Omitted.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Individuals seeking damages as a result of death or injury or damage to property allegedly resulting from wireless service providers acts or failures to act may be precluded from recovering damages unless the injured party can demonstrate a malicious purpose or a wanton and willful disregard of human rights, safety, or property.

2. Direct Private Sector Benefits:

The bill provides protection from civil liability and from criminal prosecution to wireless telecommunications service providers whose service is designed to help persons to obtain emergency assistance.

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

N/A

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill would not reduce the percentage of a state tax shared with counties or municipalities. Therefore, it would not contravene the requirements of Article VII, Section 18, of the state constitution.

V. COMMENTS:

The provisions of the bill limiting the liability of certain service providers may implicate Article I, Section 21, State Constitution, which provides, "The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay." The State Supreme Court has interpreted this provision to prohibit the Legislature from abolishing a common law or statutory right of access to the courts which existed prior to the adoption of the Declaration of Rights of the State Constitution, unless the Legislature provides an alternative means of redress or shows an overriding public necessity for abolishing the right. Kluger v. White, 281 So.2d 1 (Fla. 1973). In Kluger, the court struck down a statute which abolished the cause of action in tort for property damage arising from an automobile accident. Id. at 2. This bill is distinguishable from the statute in Kluger, in that it limits the liability of a potential defendant, rather than eliminating a cause of action, and only applies to a narrow range of circumstances.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Civil Justice and Claims adopted one strike everything amendment which adds commercial mobile radio service providers, also known as wireless/cellular telephone service providers, to the existing provisions on limitation of liability in connection with the provision of "911" services. As such, a commercial mobile radio service provider will not be liable for damages resulting from or in connection with "911" service or identification of the telephone number, address, or name associated with any person accessing "911" service, unless the commercial mobile radio service provider acted with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property in providing such services. Additionally, a commercial mobile radio service provider will not be liable for damages to any person resulting from or in connection with the commercial mobile radio service provider's provision of any lawful assistance to any investigative or law enforcement officer of the State of Florida or political subdivisions thereof, of the United

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States, or of any other state or political subdivision thereof, in connection with any lawful investigation or other law enforcement activity by such law enforcement officer unless the commercial mobile radio service provider acted in a wanton and willful manner.

VII. SIGNATURES:

COMMITTEE ON Civil Justice and Claims:

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