

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: SB 962

INTRODUCER: Senator Grimsley

SUBJECT: Telephone Solicitation

DATE: January 8, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 962 allows telephone service providers to block certain phone calls from ringing through to a telephone service subscriber's phone, if authorized by the subscriber.

Telephone service providers may block "spoofed" calls that are made from:

- A phone number that a telephone subscriber has requested be blocked;
- An invalid phone number;
- A phone number that has not been allocated to a provider by the North American Numbering Plan Administrator; and
- A phone number that has not been assigned to a telephone subscriber.

Telephone service providers may only block calls in a manner that is consistent with authorization from federal laws and rules.

On November 17, 2017, the Federal Communications Commission adopted a rule that provides similar safe harbor provisions to telephone service providers who preemptively block suspected robocalls.

II. Present Situation:

Robocalls

A robocall is a phone call that answers with a pre-recorded message, instead of a live person, or any auto dialed phone call.^{1,2} The rise of inexpensive technology, such as voice over internet protocol (VoIP) and auto dialers, has allowed robocallers to manipulate telephone technologies

¹ Federal Trade Commission, *Consumer Information: Robocalls*, <https://www.consumer.ftc.gov/features/feature-0025-robocalls> (last visited Jan. 2, 2018).

²An auto dialer is equipment that has the capacity to produce or store phone numbers using a random or sequential number generator, and to call those phone numbers. 47 U.S.C. § 227(a)(1).

to contact a large volume of consumers, and to misrepresent (“spoof”) the phone number from which they are calling. Such robocalls are intended to trick the consumer into accepting a scam sales call, and are usually illegal.³

Unwanted phone calls, including robocalls, are consistently among the top consumer complaints filed with the Federal Communications Commission (FCC) and the Federal Trade Commission (FTC).⁴ During 2017, the FCC received 181,631 consumer complaints about robocalls, including federal Do Not Call List violations, call spoofing, and solicitations made by an automated recording;⁵ the FTC received 3.5 million complaints.⁶ One organization estimates that in November 2017, 2.7 billion robocalls were made to U.S. consumers.⁷ Florida residents filed 588,021 Do Not Call Registry complaints with the FTC in 2017.⁸

Regulation of Telephone Service Providers

Chapter 364, F.S., establishes the Public Service Commission’s (PSC) jurisdiction to regulate telecommunications services. However, it is the Legislature’s intent that “the competitive provision of telecommunications services ... is in the public interest and has provided customers with freedom of choice, encouraged the introduction of new telecommunications service, encouraged technological innovation, and encouraged investment in telecommunications infrastructure.”⁹ The following telecommunications services are generally exempt from PSC regulation:¹⁰

- Intrastate interexchange telecommunications services;
- Broadband services;
- VoIP;
- Wireless telecommunications;
- Basic service; and
- Nonbasic services.

The Federal Telecommunications Act (1996) provides a general framework under which telephone service providers operate.¹¹

³ 47 U.S.C. § 227.

⁴ Federal Communications Commission, *Stop Unwanted Calls and Texts* (Dec. 5, 2017), <https://www.fcc.gov/consumers/guides/stop-unwanted-calls-and-texts> (last visited Jan. 2, 2018).

⁵ *Id.*, see also, Federal Communications Commission, *Consumer Complaints Data- Unwanted Calls*, <https://opendata.fcc.gov/Consumer/Consumer-Complaints-Data-Unwanted-Calls/vakf-fz8e> (last visited Jan. 2, 2018).

⁶ Federal Trade Commission, *FTC Testifies Before U.S. Senate Special Committee on Aging on the Continuing Fight to Combat Illegal Robocalls* (Oct. 4, 2017), <https://www.ftc.gov/news-events/press-releases/2017/10/ftc-testifies-us-senate-special-committee-aging-continuing-fight> (last visited Jan. 1, 2018).

⁷ YouMail, *Robocall Index*, <https://robocallindex.com/> (last visited Jan. 3, 2018).

⁸ *Florida Ranks No. 3 for Rate of Do Not Call Complaints in 2017*, The Tampa Bay Times, Jan. 3, 2018, http://www.tampabay.com/news/business/corporate/Florida-ranks-No-3-for-rate-of-Do-Not-Call-complaints-in-2017_163965427 (last visited Jan. 2, 2018).

⁹ Section 364.01(3), F.S.

¹⁰ Section 364.011, F.S.

¹¹ See, 47 USC § 201-261.

Telephone Solicitation (Robocall) Laws

The federal Telephone Consumer Protection Act of 1991 (TCPA) restricts the use of auto dialers, prerecorded sales messages, and unsolicited sales calls, text messages, or faxes.

- The National Do Not Call Program (Program), administered by the FTC, in concert with the FCC under the TCPA,¹² prohibits telephone solicitors from contacting a consumer who participates in the Program, unless the calls are:¹³
 - Made with a consumer’s prior, express permission;
 - Informational in nature, such as those made to convey a utility outage, school closing, or flight information; or
 - Made by a tax-exempt organization.
- The Florida Department of Agriculture and Consumer Services administers the Florida Do Not Call Act, which prohibits unsolicited phone calls and text messages to a cell phone, and prohibits most prerecorded calls to a landline phone.¹⁴

The federal Truth in Caller ID Act of 2009 bans most call spoofing by prohibiting the transmission of misleading or inaccurate caller ID information with the intent to defraud, cause harm, or wrongfully obtain anything of value.¹⁵

Industry Actions to Combat Robocalls

Robocall Strike Force

Many robocalls are made without regard to the laws in place to prevent them. As a result, the Chairman of the FCC called upon the telephone service industry (industry) to develop and implement responses that could more quickly react to the developments of the robocall problem.¹⁶ In response, the Robocall Strike Force (Strike Force) was created in 2016.¹⁷ The Strike Force, which consists of representatives from the industry, issued a report on its efforts in October 2016.¹⁸ The Strike Force’s report outlined:¹⁹

- Steps the industry had taken to implement telephone service provider authentication of caller identification for calls made over VoIP networks;
- Methods for consumer education about robocalls and the solutions currently available to telephone subscribers on the market, such as the app “nomorobo;”
- The industry’s trial implementation of a “Do Not Originate” list, a compilation of numbers known to be illegitimate, and therefore likely to be used by a robocaller, from which

¹² Federal Communications Commission, *Stop Unwanted Calls and Texts—The National Do Not Call List*, <https://www.fcc.gov/consumers/guides/stop-unwanted-calls-and-texts> (last visited Jan. 3, 2018).

¹³ 47 U.S.C. § 227(a)(4); *See also*, 47 C.F.R. § 64.1200 (2012).

¹⁴ *See*, s. 501.059, F.S.. Florida Department of Agriculture and Consumer Services, *Florida Do Not Call*, <http://www.freshfromflorida.com/Consumer-Resources/Florida-Do-Not-Call> (last visited Jan. 3, 2018).

¹⁵ 47 U.S.C. § 227 (e).

¹⁶ Tom Wheeler, Chairman of the Federal Communications Commission, *Cutting off Robocalls* (Jul. 22, 2016), <https://www.fcc.gov/news-events/blog/2016/07/22/cutting-robocalls> (last visited Jan. 2, 2018).

¹⁷ Federal Communications Commission, *First Meeting of Industry-Led Robocall Strike Force*, <https://www.fcc.gov/news-events/events/2016/08/first-meeting-industry-led-robocall-strike-force> (last visited Jan. 3, 2018).

¹⁸ *Robocall Strike Force Report* at p. 2 (Oct. 26, 2016), available at: <https://transition.fcc.gov/cgb/Robocall-Strike-Force-Final-Report.pdf> (last visited Jan. 2, 2018).

¹⁹ *Id.*

telephone service providers could pull numbers that it would block from being able to complete calls to subscribers.

Do Not Originate List

On November 17, 2017, the FCC adopted a rule that implements the Strike Force’s Do-Not-Originate (DNO) list proposal.²⁰ The rule permits telephone service providers to block phone calls made from a number that appears on a DNO list before they reach subscribers’ phones. Only the following types of phone numbers may be placed on the DNO list:

- An inbound services-only number that is assigned to a subscriber who requests that the number be blocked;
- A number that is invalid under the North American Number Plan (NANP), such as a single digit repeated (000-000-0000), or one without the required number of digits;²¹
- A number that has not yet been allocated to a telephone services provider by the NANP Administrator; and
- A number that is allocated to a telephone services provider, but has not yet been assigned to a telephone subscriber.

Market Options

The telephone service industry offers various products for consumers to block robocalls from ringing through to his or her phone.²² These methods include phone software, apps to install on a phone, and services offered by telephone service providers to block suspected robocalls. The FTC promotes the development of solutions by hosting technology challenges, such as the 2015 ‘DetectaRobo Contest’ that offer rewards to those who design tools to block robocalls.²³

III. Effect of Proposed Changes:

Section 1 of the bill permits telephone service providers to preemptively block certain phone calls from ringing through to a telephone service subscriber’s phone, if so authorized by the subscriber.

Telephone service providers may block “spoofed” calls that are made from:

- A phone number that a telephone subscriber has requested be blocked;
- An invalid phone number, such as “111-111-1111”;
- A phone number that has not been allocated to a provider by the NANP Administrator or pooling administrator; and

²⁰ Federal Communications Commission, *Advanced Methods to Target and Eliminate Unlawful Robocalls*, FCC Docket No. 17-59, Report and Order and Further Notice of Proposed Rulemaking, at para. 9 (Nov. 16, 2017), available at: <https://www.fcc.gov/document/fcc-adopts-rules-help-block-illegal-robocalls-0> (last visited Jan. 3, 2018).

²¹ The NANP was created to organize the nationwide assignment of phone numbers in order to make direct dialing of long distance calls possible, and to eliminate the need for operators. Area codes are an innovation of the NANP. The NANP also pools numbers into numerical blocks of 1,000 numbers each and then allocates those numbers to service providers. See generally, North American Numbering Plan Administrator, *About the North American Numbering Plan*, https://www.nationalnanpa.com/about_us/abt_nanp.html (last visited Jan. 2, 2018); 47 CFR § 52.20.

²² Federal Trade Commission, *Consumer Information: Blocking Unwanted Calls* (June 2016) <https://www.consumer.ftc.gov/articles/0548-blocking-unwanted-calls> (last visited Jan. 3, 2018). See also, Federal Communications Commission, *Stop Unwanted Calls and Texts: Web Resources for Blocking Robocalls*, *supra* at 4.

²³ See note 1, *supra*.

- A phone number that has not been assigned to a telephone subscriber.

The bill also permits telephone service providers to rely on a phone number as reflected on a caller identification service for purposes of blocking that number.

Additionally, the bill provides that telephone service providers may only block such calls in a manner that is consistent with authorization from federal laws and rules.

While some telephone service providers already block such calls,²⁴ this bill clarifies that such actions will not result in penalties under Florida law.

On November 17, 2017, the Federal Communications Commission adopted a rule that provides similar safe harbor provisions to telephone service providers who preemptively block suspected robocalls.

Section 2 provides an effective date of July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Economic harm to victims of fraudulent schemes carried out on spoofed phone calls may be reduced.

C. Government Sector Impact:

None.

²⁴ Federal Communications Commission, *Stop Unwanted Calls and Texts—Call Blocking Resources*, <https://www.fcc.gov/consumers/guides/stop-unwanted-calls-and-texts> (last visited Jan. 3, 2018).

VI. Technical Deficiencies:

None.

VII. Related Issues:

The FCC has generally found call blocking by telephone service providers to be unlawful as an unjust and unreasonable practice.²⁵ Call blocking is permitted in “rare and limited” circumstances.²⁶ Most recently, the FCC adopted a rule (*see*, “Do Not Originate List,” *supra*) that explicitly permits telephone service providers to block calls from numbers that “are highly likely to be illegitimate” or illegal.²⁷ However, this rule is narrowly tailored to allow telephone service providers to block an active, assigned telephone number only when (1) it is exclusively an outgoing number, and (2) the number’s owner has requested that the number be blocked.²⁸

The language of SB 962 closely tracks the FCC’s recently adopted rule, but allows telephone service providers to block active phone numbers without the subscriber’s knowledge. This may result in the disabling of phone numbers of innocent parties, whose phone numbers were spoofed by bad actors. There is no method of recourse for such injured parties in the bill.

VIII. Statutes Affected:

This bill creates section 364.246 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

²⁵ 47 U.S.C. §201(b) (“All charges, practices, classifications, and regulations for and in connection with such communications service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is hereby declared to be unlawful ...”). *See, Establishing Just and Reasonable Rates for Local Exchange Carriers*, FCC Docket No. 07-135, Declaratory Ruling and Order (Jun. 28, 2007), available at: https://apps.fcc.gov/edocs_public/attachmatch/DA-07-2863A1.pdf (last visited Jan. 3, 2018).

²⁶ *See, e.g., Total Telecomm. Servs., Inc. and Atlas Telephone Co., Inc. v. AT&T Corp.*, File No. E-97-003, Memorandum Opinion and Order, 16 FCC Rcd. 5726 (2001), holding that a telephone services provider could block calls to a sham company that engaged in an unreasonable scheme to inflate the access fees charged to it.

²⁷ *See, supra* note 18, at para. 9.

²⁸ *Id.* At paras. 10-16.