

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: March 19, 1998 Revised: _____

Subject: Emergency Telephone Services "911"

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Cooper</u>	<u>Yeatman</u>	<u>CA</u>	<u>Favorable</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill provides limitation of liability for wireless telecommunications service providers in conjunction with the provision of "911" services.

This bill substantially amends section 365.171, Florida Statutes.

II. Present Situation:

The Florida Emergency Telephone Act, s. 365.171, F.S., provides for a simplified means of procuring emergency services by the implementation and coordination of a statewide emergency telephone number "911" plan that 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.

As used in this paragraph, “telephone company” means an exchange telephone service provider of “911” service or equipment to any county within its certificated area.

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.

Thus, the “911” fee imposed pursuant to s. 365.171(13), F.S., 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 undertake to indemnify the telephone company against liability in accordance with the telephone company’s lawfully filed tariffs. Despite 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.”

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.

III. Effect of Proposed Changes:

SB 2164 creates s. 365.171(17) F.S., to specify that commercial mobile radio service providers, also known as wireless/cellular telephone service providers, as well as local governments, a public agency, public safety agency, or local exchange telecommunications company, or any employee, director, officer, or agent of any such entity, *is 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.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The provisions of the bill limiting the liability of certain service providers may conflict with 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 it provides an alternative means of redress or shows an overpowering 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 proposed act is distinguishable from the statute in the *Kluger* case in that it limits the liability of a potential defendant, rather than eliminating a cause of action. Some of the issues to be considered in a challenge to this statute would include whether a statutory or common law cause of action existed prior to the Declaration of Rights (i.e., the wrong to be redressed concerns failure to provide or maintain access to a wireless service); whether limiting liability is a constructive elimination of a cause of action; and whether the waiver of limited liability in

the case of malicious purpose or a wanton or willful disregard of human rights, safety or property provides an alternative means of redress.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

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.

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.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.