

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: April 9, 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>Wiehle</u>  | <u>Moody</u>          | <u>JU</u>        | <u>Favorable/CS</u> |
| 3. | _____          | _____                 | _____            | _____               |
| 4. | _____          | _____                 | _____            | _____               |
| 5. | _____          | _____                 | _____            | _____               |

**I. Summary:**

The bill 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 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.

This bill substantially amends section 365.171, Florida Statutes.

**II. Present Situation:**

Section 365.171, F.S., is the "Florida Emergency Telephone Act." The purpose of the act is to establish and implement a cohesive statewide emergency telephone number "911" plan which will provide citizens with rapid direct access to public safety agencies by dialing the telephone number "911" with the objective of reducing the response time to situations requiring law enforcement, fire, medical, rescue, and other emergency services.

The section provides that the Department of Management Services (the Department) is to develop a statewide emergency telephone number “911” system plan. The plan must provide for the establishment of the public agency emergency telephone communications requirements for each entity of local government in the state. The Department is responsible for the implementation and coordination of the plan.

The Department is required to coordinate with the Florida Public Service Commission, which is required to encourage the Florida telephone industry to activate facility modification plans for a timely implementation.

The “911” system may be partially funded by a local fee as follows. Following approval by referendum or following approval by a majority vote of its board of county commissioners, a county may impose a “911” fee to be paid by the local exchange subscribers within its boundaries served by the “911” service. At the request of the county subscribing to “911” service, the telephone company must, insofar as is practicable, bill the “911” fee 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 per account bill rendered). Fees collected by the telephone company must be returned to the county, less the costs of administration.

The section authorizes all local governments 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 to 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 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. s. 365.171(14), F.S.

Subsection 365.171(15), F.S., provides for confidentiality of any record, or information, or portions thereof, obtained by a public agency or a public safety agency for the purpose of providing services in an emergency and which reveals the name, address, telephone number, or personal information about, or information which may identify any person requesting emergency service or reporting an emergency by accessing an emergency telephone number “911” system. It also provides that a telephone company is not liable for damages to any person resulting from or in connection with such telephone company’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 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 telephone company acted in a wanton and willful manner.

Commercial mobile radio service providers, or “wireless” telephone service providers, do not appear to be included in the exemptions from liability specified in s. 365.171(14) and (15), F.S.

The term “telephone company” is not defined except for purposes of providing for liability on the part of the county subscribing to “911” service to the telephone company for any “911” service, equipment, operation, or maintenance charge owed by the county to the telephone company. For these purposes, “telephone company” means an exchange telephone service provider of “911” service or equipment to any county within its certificated area.

Chapter 364, F.S., provides for the regulation of telecommunications companies. In defining the term “telecommunications company” for purposes of that chapter, the definition expressly excludes a commercial mobile radio service provider. s. 364.02(12), F.S. “Commercial mobile radio service provider” is defined to mean a commercial mobile radio service provider as defined by and pursuant to 47 U.S.C. ss. 153(n) and 332(d). s. 364.02(3), F.S. It appears that those telephone companies using wires or land lines are regulated by the Florida Public Service Commission pursuant to ch. 364, F.S., and that those using wireless technology are regulated by the Federal Communications Commission.

### **III. Effect of Proposed Changes:**

The bill 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 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.

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 s. 21, Art. I, Fla. Const., 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 Florida Supreme Court has interpreted this provision to prohibit the Legislature from abolishing a statutory cause of action or right of access to the courts which existed prior to the adoption of the Declaration of Rights of the State Constitution or a right of access which has become a part of the common law pursuant to s. 2.01, F.S., 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). There has been no such reported challenge to the existing provisions of s. 365.171, F.S., which was enacted in 1974.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The bill provides protection from civil liability to wireless telecommunications service providers in connection with the provision of "911" services. Individuals seeking damages as a result of death or injury or damage to property allegedly resulting from the acts or failure to act of wireless service providers 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.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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