

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4149 Regulation of Electronic Communications

SPONSOR(S): Porter

TIED BILLS: None **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	14 Y, 0 N	Helpling	Collins
2) State Affairs Committee			

SUMMARY ANALYSIS

This bill repeals the entirety of chapter 363, F.S., which establishes penalties and liability provisions related to the transmission of messages by telegraph. As telegraph service appears no longer to be provided in Florida, the provisions of chapter 363, F.S., appear to be outdated and no longer applicable.

The bill also repeals s. 364.059, F.S., which provides procedures available to substantially interested parties in the event a local exchange telecommunications company elects, pursuant to s. 364.051(6), F.S., to have its basic local telecommunications services treated the same as its nonbasic services. Section 364.051(6), F.S., was repealed in 2007, so the election provided under that section is no longer available to local exchange telecommunications companies. Thus, the provisions of s. 364.059, F.S., are no longer effective.

The bill has no fiscal impact on state or local governments.

The effective date of the bill is July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Repeal of Chapter 363, F.S.

Chapter 363, F.S., establishes penalties and liability provisions related to the transmission of messages by telegraph. Sections 363.02 through 363.05, F.S., establish penalties and liability provisions for a telegraph company that negligently fails to promptly transmit and deliver messages or refuses to receive for transmission any legible messages provided to the company for transmission. Further, section 363.06, F.S., provides that persons engaged in the business of sending telegrams are liable for damages for mental anguish and physical suffering resulting from negligent failure to promptly and correctly transmit or deliver a telegram. Section 363.08, F.S., establishes liability for persons engaged in the business of sending telegrams in cipher for negligent failure to promptly transmit and deliver a telegram in cipher. Section 363.10, F.S., provides that contractual provisions intended to limit the liability imposed in this chapter are illegal and void. The provisions of this chapter do not apply to interstate transmissions of telegraph messages.¹

The current provisions of ch. 363, F.S., have remained substantively unchanged in the law since at least 1913.² Sections 363.02, 363.03, and 363.05, F.S., were adopted in 1907 and have remained in law since then without amendment. Section 363.04, F.S., was adopted in 1907 and was changed once, in 1945, with a one word technical amendment. Sections 363.06-.10, F.S., were adopted in 1913 and have remained in law since then without amendment. No court opinions related to these provisions have been published since 1945.

Samuel Morse, inventor of the Morse code, sent the first telegram from Washington to Baltimore on May 26, 1844, to his partner Alfred Vail to usher in the telegram era that displaced the Pony Express. It read "WHAT HATH GOD WROUGHT?"³ We now have a more modern answer to that question, as transmitting and receiving messages by telegraph has been replaced by the speed and widespread availability of e-mail, faxes, inexpensive long-distance telephone service, instant messaging,⁴ Twitter, and Facebook. Western Union Telegraph Company, perhaps the most well-known telegraph service provider, sent its last telegram on January 27, 2006.⁵ As a result, it appears that the provisions of chapter 363, F.S., are outdated and no longer applicable.⁶

The bill repeals the provisions of Chapter 363, F.S.

Repeal of Section 364.059, F.S.

Section 364.059, F.S., provides procedures available to substantially interested parties in the event a local exchange telecommunications company elects, pursuant to s. 364.051(6), F.S., to have its basic local telecommunications services treated the same as its nonbasic services.

In 2007, subsections (6), (7), and (8) of s. 364.051, F.S., were repealed by s. 10, ch. 2007-29, L.O.F. Thus, the election available in s. 364.051(6), F.S., is no longer available to local exchange

¹ *Price v. Western Union Tel. Co.*, 23 So.2d 491 (Fla. 1945) ("sending of a telegraph message from one state into another is a transaction in interstate commerce").

² Former s. 363.01, F.S., adopted in 1885, established a per-word rate cap for telegraph messages. This provision was repealed in 2000.

³ <http://www.wired.com/science/discoveries/news/2006/02/70147>

⁴ <http://en.wikipedia.org/wiki/Telegraphy>; <http://www.npr.org/templates/story/story.php?storyId=5186113>

⁵ <http://www.npr.org/templates/story/story.php?storyId=5186113>; <http://www.wired.com/science/discoveries/news/2006/02/70147>

⁶ Staff is unable to identify any company registered in Florida that provides telegram service.

telecommunications companies, making the procedures in s. 364.059, F.S., without effect and obsolete.

The bill repeals s. 364.059, F.S.

B. SECTION DIRECTORY:

Section 1. Repeals ss. 363.02, 363.03, 363.04, 363.05, 363.06, 363.07, 363.08, 363.09, and 363.10, F.S., relating to liability and damages for failure to transmit or deliver telegraph messages.

Section 2. Repeals s. 364.059, F.S., relating to procedures for petitions to stay implementation of price changes due to a local exchange telecommunications company electing to have its basic local exchange telecommunications services treated the same as its nonbasic services.

Section 3. Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal government.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None provided.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES