

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1267 Telephone Solicitation
SPONSOR(S): Energy & Utilities Subcommittee; Killebrew
TIED BILLS: IDEN./SIM. **BILLS:** CS/SB 962

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	12 Y, 0 N, As CS	Keating	Keating
2) Commerce Committee	24 Y, 0 N	Keating	Hamon

SUMMARY ANALYSIS

Unscrupulous persons are able to use current technology, such as auto dialers and Voice over Internet Protocol, to contact large volumes of consumers by phone and to misrepresent, or “spoof,” the phone number from which they are calling, with the ultimate intent to defraud the consumer. To reduce this activity, the Federal Communications Commission (FCC), in November 2017, adopted a rule that permits providers of voice communications services to block phone calls made from certain numbers – numbers that a consumer has requested to be blocked and numbers that have not been assigned under the North American Numbering Plan (NANP) – before they reach consumers’ phones.

Consistent with the FCC’s rule, the bill authorizes telecommunications companies who provide voice communications services to customers in Florida to preemptively block certain phone calls from reaching a customer’s phone. In particular, consistent with federal law and FCC rules, such service providers may block calls:

- When the customer to which an originating number is assigned has requested that calls purporting to originate from that number be blocked because the number is used for inbound calls only.
- Originating from a number that is not a valid NANP phone number.
- Originating from a valid NANP phone number that has not been allocated to a telephone service provider by the NANP Administrator or pooling administrator.
- Originating from a valid NANP phone number that has been allocated to a telephone service provider but is unused, as confirmed by the provider blocking the calls.

The bill provides that a service provider may not block a voice call from either of the first two categories listed above if the call is an emergency call placed to 911.

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

The bill does not appear to have a fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Unwanted telephone calls, including “robocalls,” are consistently among the top problems consumers cite when filing complaints with the Federal Communications Commission (FCC) each year.¹ Further, the top complaint category at the Federal Trade Commission (FTC) is unwanted telephone calls, with 5.3 million complaints lodged by consumers in 2016.²

A robocall is a phone call that answers with a pre-recorded message, instead of a live person, or any auto dialed phone call.³ Inexpensive technology, such as Voice over Internet Protocol (VoIP) and auto dialers,⁴ has allowed robocallers to manipulate telephone technologies to contact a large volume of consumers and to misrepresent, or “spoof,” the phone number from which they are calling.⁵ These calls are often intended to trick the consumer into accepting a scam sales call and to give away valuable personal information.⁶

Federal law restricts the use of auto dialers, prerecorded sales messages, spoofing, and unsolicited sales calls, text messages, or faxes. In particular, the law prohibits unsolicited, prerecorded telemarketing calls to landline home telephones, and all autodialed or prerecorded calls or text messages to wireless numbers, emergency numbers, and patient rooms at health care facilities.⁷ Further, federal law prohibits any person or entity from transmitting misleading or inaccurate caller ID information with the intent to defraud, cause harm, or wrongly obtain anything of value.⁸

The National Do Not Call Program (Program), administered by the FTC in concert with the FCC, prohibits telephone solicitors from contacting a consumer who registers to participate in the Program, unless the calls are made with a consumer’s prior, express permission, are informational in nature, such as those made to convey a utility outage, school closing, or flight information, or are made by a tax-exempt organization.⁹

Florida law prohibits telemarketers from making telephone sales calls or sending text messages by using auto dialers with prerecorded messages. The law also prohibits telemarketers from making unsolicited sales calls to landline home telephones or wireless phones if the phone number is included on Florida’s Do Not Call List, which is administered by the Florida Department of Agriculture and Consumer Services.¹⁰ The law does not prohibit unsolicited calls from research or survey companies seeking opinions or from charitable organizations or political candidates or parties seeking donations.¹¹

¹ Federal Communications Commission, *Stop Unwanted Calls and Texts*, <https://www.fcc.gov/consumers/guides/stop-unwanted-calls-and-texts> (last visited January 21, 2018).

² Phoning It In: Unwanted Calls Are No. 1 Complaint with FTC, *The Wall Street Journal* (Sept. 8, 2017), <https://www.wsj.com/articles/phoning-it-in-unwanted-calls-are-no-1-complaint-with-ftc-1504879201> (last visited January 21, 2018).

³ Federal Trade Commission, *Consumer Information: Robocalls*, <https://www.consumer.ftc.gov/features/feature-0025-robocalls> (last visited Jan. 21, 2018).

⁴ An 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).

⁵ *Supra* notes 1 and 3. “Spoofing” occurs when a caller deliberately falsifies the information transmitted to a consumer’s caller ID display to disguise the caller’s identity.

⁶ *Supra* notes 1 and 3.

⁷ 47 U.S.C. § 227(b).

⁸ 47 U.S.C. § 227(e).

⁹ 47 C.F.R. § 64.1200 (2012).

¹⁰ s. 501.059, F.S.; see also Florida Department of Agriculture and Consumer Services, *Florida Do Not Call*, <http://www.freshfromflorida.com/Consumer-Resources/Florida-Do-Not-Call> (last visited Jan. 21, 2018).

¹¹ *Id.*

Many robocalls and spoofed calls 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 to develop and implement responses that could more quickly react to this problem.¹² In response, the Robocall Strike Force (Strike Force) was created in 2016.¹³ The Strike Force, which consists of representatives from the industry, issued a report on its efforts in October 2016, which included:¹⁴

- 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; and
- The industry's trial implementation of a "Do-Not-Originate" (DNO) list, a compilation of numbers known to be illegitimate, and therefore likely to be used by a robocaller, from which telephone service providers could pull numbers that it would block from being able to complete calls to subscribers.

On November 17, 2017, the FCC adopted a rule that implements the Strike Force's DNO list proposal.¹⁵ The rule permits telephone service providers to block phone calls made from a number that appears on a DNO list before they reach customers' phones. The following types of phone numbers may be placed on the DNO list:

- An inbound services-only number that is assigned to a customer who requests that the number be blocked.
- A number that is invalid under the North American Number Plan¹⁶ (NANP), such as a single digit repeated (000-000-0000), or one without the required number of digits.
- A number that has not yet been allocated to a telephone services provider by the NANP Administrator.
- A number that is allocated to a telephone services provider, but has not yet been assigned to a telephone customer.

According to the FCC, the use of an invalid, unallocated, or unassigned number provides a strong indication that the calling party is spoofing the caller ID to potentially defraud and harm a telephone service customer.¹⁷

Effect of Proposed Changes

The bill authorizes telecommunications companies who provide voice communications services to customers in Florida to preemptively block certain phone calls from reaching a customer's phone. In particular, consistent with federal law and FCC rules, such service providers may block calls:

¹² 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. 21, 2018).

¹³ 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. 21, 2018).

¹⁴ *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. 21, 2018).

¹⁵ 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. 21, 2018).

¹⁶ 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. 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. 21, 2018).

¹⁷ *Supra* note 15, at p. 8.

- When the customer to which an originating number is assigned has requested that calls purporting to originate from that number be blocked because the number is used for inbound calls only.
- Originating from a number than is not a valid NANP phone number.
- Originating from a valid NANP phone number that has not been allocated to a telephone service provider by the NANP Administrator or pooling administrator¹⁸.
- Originating from a valid NANP phone number that has been allocated to a telephone service provider but is unused, if the provider blocking the calls: was allocated the number and confirms that the number is unused; or has obtained verification from the allocatee that the number is unused.

The bill provides that a service provider may not block a voice call from either of the first two categories listed above if the call is an emergency call placed to 911.

The bill permits telephone service providers to rely on a phone number as reflected on a caller identification service¹⁹ for purposes of blocking that number.

B. SECTION DIRECTORY:

Section 1. Creates s. 365.176, F.S., to be cited as the “Florida Call-Blocking Act.”

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

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:

According to the FCC, the use of an invalid, unallocated, or unassigned number provides a strong indication that the calling party is spoofing the caller ID to potentially defraud and harm a telephone

¹⁸ The bill defines “pooling administrator” as “the Thousands-Block Pooling Administrator as identified in 47 C.F.R. s. 52.20.” Thousands-block number pooling is a process designed to optimize the allocation of phone numbers. Under this process, 10,000 phone numbers are assigned to an individual geographic center, then split into ten blocks of a thousand numbers each. Each block can then be assigned to a service provider by a neutral number pooling administrator. *See* 47 C.F.R. s. 52.20.

¹⁹ The bill defines “caller identification service” as “a service that allows a telephone subscriber to have the telephone number and, if available, the name of the calling party transmitted contemporaneously with the telephone call and displayed on a device in or connected to the subscriber’s telephone.”

service customer. By authorizing telephone service providers to block such calls, the bill may reduce economic harm to victims of fraudulent schemes effectuated through spoofed telephone calls.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 24, 2018, the Energy & Utilities Subcommittee adopted a strike-all amendment to the bill and reported the bill favorably as a committee substitute. The strike-all amendment:

- Made technical changes to the description of the types of calls that service providers may block under the bill.
- Provided that service providers may not block certain calls otherwise subject to blocking if such calls are placed to 911.

This analysis addresses the committee substitute.