

## CHAPTER 365

## USE OF TELEPHONES AND FACSIMILE MACHINES

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**365.15 Party lines, emergency calls.—**

(1) Any person who shall willfully refuse to immediately relinquish a party line when informed that such line is needed for an emergency call, and in fact such line is needed for an emergency call, to a fire department or police department or for medical aid or ambulance service, or any person who shall secure the use of a party line by falsely stating that such line is needed for an emergency call, is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2)(a) "Party line" as used in this section means a subscriber's line telephone circuit, consisting of two or more main telephone stations connected therewith, each station with a distinctive ring or telephone number.

(b) "Emergency" as used in this section means a situation in which property or human life is in jeopardy and in which the prompt summoning of aid is essential.

(3) Every telephone directory hereafter published and distributed to the members of the general public in this state or in any portion thereof which lists the calling numbers of telephones of any telephone exchange located in this state shall contain a notice which explains the offense provided for in this section; such notice shall be printed in type which is not smaller than the smallest type appearing on the same page and shall be preceded by the word "warning" printed in boldfaced type. However, such notice is not required to be printed in those directories distributed solely for business advertising purposes, commonly known as classified directories, or in any telephone directory heretofore distributed to the general public. Any person, firm, or corporation providing telephone service which distributes or causes to be distributed in this state copies of a telephone directory which is subject to the provisions of this section and which does not contain the notice herein provided for is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 1, ch. 63-54; s. 275, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 2, 4, ch. 80-275.

**365.16 Obscene or harassing telephone calls.—**

(1) Whoever:

(a) Makes a telephone call to a location at which the person receiving the call has a reasonable expectation of privacy; during such call makes any comment, request, suggestion, or proposal which is obscene, lewd, lascivious, filthy, vulgar, or indecent; and by such call or such language intends to offend, annoy, abuse, threaten, or harass any person at the called number;

(b) Makes a telephone call, whether or not conversation ensues, without disclosing his or her identity and with intent to annoy, abuse, threaten, or harass any person at the called number;

(c) Makes or causes the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number; or

(d) Makes repeated telephone calls, during which conversation ensues, solely to harass any person at the called number,

is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) Whoever knowingly permits any telephone under his or her control to be used for any purpose prohibited by this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(3) Each telephone directory hereafter published for distribution to the members of the general public shall contain a notice which explains this law; such notice shall be printed in type which is no smaller than the smallest type on the same page and shall be preceded by the word "warning." The provisions of this section shall not apply to directories solely for business advertising purposes, commonly known as classified directories.

(4) Each telephone company in this state shall cooperate with the law enforcement agencies of this state in using its facilities and personnel to detect and prevent violations of this section.

(5) Nothing contained in this section shall apply to telephone calls made in good faith in the ordinary course of business or commerce.

**History.**—ss. 1, 2, ch. 63-51; s. 1, ch. 69-25; s. 276, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 1, 2, ch. 79-270; ss. 2, 4, ch. 80-275; s. 550, ch. 95-148.

**365.161 Prohibition of certain obscene telephone communications; penalty.—**

(1) For purposes of this section, the term:

(a) "Obscene" means that status of a communication which:

1. The average person applying contemporary community standards would find, taken as a whole, appeals to the prurient interests;

2. Describes, in a patently offensive way, deviate sexual intercourse, sadomasochistic abuse, sexual battery, bestiality, sexual conduct, or sexual excitement; and

3. Taken as a whole, lacks serious literary, artistic, political, or scientific value.

(b) "Deviate sexual intercourse" means sexual conduct between persons consisting of contact between the penis and the anus, the mouth and the penis, or the mouth and the vulva.

(c) "Sadomasochistic abuse" means flagellation or torture by or upon a person, or the condition of being fettered, bound, or otherwise physically restrained, for the purpose of deriving sexual satisfaction from inflicting harm on another or receiving such harm oneself.

(d) "Sexual battery" means oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object.

(e) "Sexual bestiality" means any sexual act between a person and an animal involving the sex organ of the one and the mouth, anus, or vagina of the other.

(f) "Sexual conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; or any act or conduct which constitutes sexual battery.

(g) "Sexual excitement" means the condition of the human male or female genitals when in a state of sexual stimulation or arousal.

(2)(a) A subscriber of a telephone service who makes any obscene or indecent communication by means of a telephone, in person or through an electronic recording device, in exchange for remuneration is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, regardless of whether he or she placed, initiated, or received the telephone call.

(b) A subscriber of telephone service who knowingly permits the use of a telephone or a telephone facility under his or her control to make any obscene or indecent communication prohibited under paragraph (a) is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, if the telephone or telephone facility is connected to a local exchange telephone.

(c) For purposes of this subsection, each day of a violation constitutes a separate offense.

(d) Any telephone company which transmits any public announcement service over the telephone network and bills for such service on its regular telephone bills to its subscribers shall have the right (but not the obligation) to approve any and all advertising, by whatever means, of such public announcement service. Failure of any public announcement service provider to obtain the approval of the telephone company for its advertising of any public announcement service transmitted over the telephone network shall be full and sufficient grounds for immediate disconnection by the telephone company of the public announcement service provider's telephone service. No telephone company shall be liable for any damages, penalty, or forfeiture, whether civil or criminal, for disconnecting such public announcement service subscriber who violates this subsection.

(3) This section does not apply to a telephone communication that crosses state lines.

**History.**—s. 23, ch. 88-381; s. 551, ch. 95-148.

**365.1657 Intrastate use of facsimile machine for unsolicited advertising; prohibition; penalties; injunctive relief.—**

(1) It is unlawful for any person to use a machine that electronically transmits facsimiles of documents through connection with a telephone network to transmit within this state unsolicited advertising material for the sale of any real property, goods, or services.

(2) The Attorney General may bring an action to impose a civil penalty and to seek injunctive relief. The

civil penalty shall not exceed \$500 per violation. Each transmission shall be considered a separate violation.

**History.**—s. 1, ch. 89-95.

**365.171 Emergency telephone number "911."—**

(1) **SHORT TITLE.**—This section shall be known and cited as the "Florida Emergency Telephone Act."

(2) **LEGISLATIVE INTENT.**—The Legislature hereby finds and declares that it is in the public interest to shorten the time required for a citizen to request and receive emergency aid. There currently exist thousands of different emergency phone numbers throughout the state. Provision for a single, primary three-digit emergency number through which emergency services can be quickly and efficiently obtained would provide a significant contribution to law enforcement and other public service efforts by making it easier to notify public safety personnel. Such a simplified means of procuring emergency services will result in the saving of life, a reduction in the destruction of property, and quicker apprehension of criminals. It is the intent of the Legislature 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.

(3) **DEFINITIONS.**—As used in this section:

(a) "Department" means the Department of Management Services.

(b) "Division" means the Division of Communications of the department.

(c) "Local government" means any city, county, or political subdivision of the state and its agencies.

(d) "Public agency" means the state and any city, county, city and county, municipal corporation, chartered organization, public district, or public authority located in whole or in part within this state which provides, or has authority to provide, firefighting, law enforcement, ambulance, medical, or other emergency services.

(e) "Public safety agency" means a functional division of a public agency which provides firefighting, law enforcement, medical, or other emergency services.

(4) **STATE PLAN.**—The division shall develop a statewide emergency telephone number "911" system plan. The plan shall provide for:

(a) The establishment of the public agency emergency telephone communications requirements for each entity of local government in the state.

(b) A system to meet specific local government requirements. Such system shall include law enforcement, firefighting, and emergency medical services and may include other emergency services such as poison control, suicide prevention, and emergency management services.

(c) Identification of the mutual aid agreements necessary to obtain an effective "911" system.

(d) A funding provision which shall identify the cost necessary to implement the "911" system.

(e) A firm implementation schedule which shall include the installation of the "911" system in a local com-

munity within 24 months after the designated agency of the local government gives a firm order to the telephone utility for a "911" system.

The division shall be responsible for the implementation and coordination of such plan. The division shall adopt any necessary rules and schedules related to public agencies for implementing and coordinating such plan, pursuant to chapter 120. The public agency designated in the plan shall order such system within 6 months after publication date of the plan if the public agency is in receipt of funds appropriated by the Legislature for the implementation and maintenance of the "911" system. Any jurisdiction which has utilized local funding as of July 1, 1976, to begin the implementation of the state plan as set forth in this section shall be eligible for at least a partial reimbursement of its direct cost when, and if, state funds are available for such reimbursement.

(5) **SYSTEM DIRECTOR.**—The director of the division is designated as the director of the statewide emergency telephone number "911" system and, for the purpose of carrying out the provisions of this section, is authorized to coordinate the activities of the system with state, county, local, and private agencies. The director is authorized to employ not less than five persons, three of whom will be at the professional level, one at the secretarial level, and one to fill a fiscal position, for the purpose of carrying out the provisions of this section. The director in implementing the system shall consult, cooperate, and coordinate with local law enforcement agencies.

(6) **REGIONAL SYSTEMS.**—Nothing in this section shall be construed to prohibit or discourage the formation of multijurisdictional or regional systems; and any system established pursuant to this section may include the jurisdiction, or any portion thereof, of more than one public agency.

(7) **TELEPHONE INDUSTRY COORDINATION.**—The division shall coordinate with the Florida Public Service Commission which shall encourage the Florida telephone industry to activate facility modification plans for a timely "911" implementation.

(8) **COIN TELEPHONES.**—The Florida Public Service Commission shall establish rules to be followed by the telephone utilities in this state designed toward encouraging the provision of coin-free dialing of "911" calls wherever economically practicable and in the public interest.

(9) **SYSTEM APPROVAL.**—No emergency telephone number "911" system shall be established and no present system shall be expanded without prior approval of the Division of Communications.

(10) **COMPLIANCE.**—All public agencies shall assist the division in their efforts to carry out the intent of this section, and such agencies shall comply with the developed plan.

(11) **EXISTING EMERGENCY TELEPHONE SERVICE.** Any emergency telephone number established by any local government or state agency prior to July 1, 1974, using a number other than "911" shall be changed to "911" on the same implementation schedule provided in paragraph (4)(e).

(12) **FEDERAL ASSISTANCE.**—The director of the division is authorized to apply for and accept federal funding assistance in the development and implementation of a statewide emergency telephone number "911" system.

(13) **"911" FEE.**—

(a) Following approval by referendum as set forth in paragraph (b), 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. Proceeds from the "911" fee shall be used only for "911" expenditures as set forth in subparagraph 6. The manner of imposing and collecting said payment shall be as follows:

1. At the request of the county subscribing to "911" service, the telephone company shall, 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). However, the fee may not be assessed on any pay telephone in this state. A county collecting the fee for the first time may collect the fee for no longer than 36 months without initiating the acquisition of its "911" equipment.

2. Fees collected by the telephone company pursuant to subparagraph 1. shall be returned to the county, less the costs of administration retained pursuant to paragraph (c). The county shall provide a minimum of 90 days' written notice to the telephone company prior to the collection of any "911" fees.

3. Any county that currently has an operational "911" system or that is actively pursuing the implementation of a "911" system shall establish a fund to be used exclusively for receipt and expenditure of "911" fee revenues collected pursuant to this section. All fees placed in said fund, and any interest accrued thereupon, shall be used solely for "911" costs described in subparagraph 6. The money collected and interest earned in this fund shall be appropriated for "911" purposes by the county commissioners and incorporated into the annual county budget. The county shall annually have a financial audit performed on this fund, in accordance with s. 11.45. A report of the audit shall be forwarded to the Division of Communications within 60 days of its completion. A county may carry forward on an annual basis unspent moneys in the fund for expenditures allowed by this section, or it may reduce its fee. However, in no event shall a county carry forward more than 10 percent of the "911" fee billed for the prior year. The amount of moneys carried forward each year may be accumulated in order to allow for capital improvements described in this subsection. The carryover shall be documented by resolution of the board of county commissioners expressing the purpose of the carryover or by an adopted capital improvement program identifying projected expansion or replacement expenditures for "911" equipment and service features, or both. In no event shall the "911" fee carryover surplus moneys be used for any purpose other than for the "911" equipment, service features, and installation charges authorized in subparagraph 6. Nothing in this section shall prohibit a

county from using other sources of revenue for improvements, replacements, or expansions of its "911" system. A county may increase its fee for purposes authorized in this section. However, in no case shall the fee exceed 50 cents per month per line. All current "911" fees shall be reported to the Division of Communications within 30 days of the start of each county's fiscal period. Any fee adjustment made by a county shall be reported to the Division of Communications. A county shall give the telephone company a 90-day written notice of such fee adjustment.

4. The telephone company shall have no obligation to take any legal action to enforce collection of the "911" fee. The telephone company shall provide quarterly to the county a list of the names, addresses, and telephone numbers of any and all subscribers who have identified to the telephone company their refusal to pay the "911" fee.

5. The county subscribing to "911" service shall remain liable to the telephone company for any "911" service, equipment, operation, or maintenance charge owed by the county to the telephone company.

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.

6. It is the intent of the Legislature that the "911" fee authorized by this section to be imposed by counties will not necessarily provide the total funding required for establishing or providing the "911" service. For purposes of this section, "911" service includes the functions of database management, call taking, location verification, and call transfer. The following costs directly attributable to the establishment and/or provision of "911" service are eligible for expenditure of moneys derived from imposition of the "911" fee authorized by this section: the acquisition, implementation, and maintenance of Public Safety Answering Point (PSAP) equipment and "911" service features, as defined in the Florida Public Service Commission's lawfully approved "911" and related tariffs and/or the acquisition, installation, and maintenance of other "911" equipment, including call answering equipment, call transfer equipment, ANI controllers, ALI controllers, ANI displays, ALI displays, station instruments, "911" telecommunications systems, teleprinters, logging recorders, instant playback recorders, telephone devices for the deaf (TDD) used in the "911" system, PSAP backup power systems, consoles, automatic call distributors, and interfaces (hardware and software) for computer-aided dispatch (CAD) systems; salary and associated expenses for "911" call takers for that portion of their time spent taking and transferring "911" calls; salary and associated expenses for a county to employ a full-time equivalent "911" coordinator position and a full-time equivalent staff assistant position per county for the portion of their time spent administering the "911" system; training costs for PSAP call takers in the proper methods and techniques used in taking and transferring "911" calls; and expenses required to develop and maintain all information (ALI and ANI databases and other information source repositories) necessary to properly inform call takers as to location address, type of emergency, and other information directly relevant to the

"911" call-taking and transferring function. The "911" fee revenues shall not be used to pay for any item not listed, including, but not limited to, any capital or operational costs for emergency responses which occur after the call transfer to the responding public safety entity and the costs for constructing buildings, leasing buildings, maintaining buildings, or renovating buildings, except for those building modifications necessary to maintain the security and environmental integrity of the PSAP and "911" equipment rooms.

7. It is the goal of the Legislature that enhanced "911" service be available throughout the state. Expenditure by counties of the "911" fees authorized by this section should support this goal to the greatest extent feasible within the context of local service needs and fiscal capability. Nothing in this section shall be construed to prohibit two or more counties from establishing a combined emergency "911" telephone service by interlocal agreement and utilizing the "911" fees authorized by this section for such combined "911" service.

(b) If a county elects to obtain approval of a "911" fee by referendum, it shall arrange to place a question on the ballot at the next regular or special election to be held within the county, substantially as follows:

\_\_\_\_ I am in favor of the "911" emergency telephone system fee.

\_\_\_\_ I am against the "911" emergency telephone system fee.

If a majority of the electors voting on the question approve the fee, it may be imposed by the county.

(c) Any county imposing a "911" fee in accordance with the provisions of this subsection shall allow the telephone company to retain as an administrative fee an amount equal to 1 percent of the total "911" fee collected by the telephone company.

(14) INDEMNIFICATION AND LIMITATION OF LIABILITY.—All local governments are authorized to undertake 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 shall 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 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.

(15) CONFIDENTIALITY OF RECORDS.—Any record, recording, 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 is confidential and exempt from the provisions of s. 119.07(1), except that such record or information may be disclosed to a public safety agency. The exemption applies only to the name, address, or telephone number of any person reporting

an emergency while such information is in the custody of the public agency or public safety agency which receives the initial "911" telephone call. A telephone company shall not be 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. This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

(16) FALSE "911" CALLS.—Whoever accesses the

number "911" for the purpose of making a false alarm or complaint or reporting false information which could result in the emergency response of any public safety agency is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—History.—ss. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, ch. 74-357; s. 3, ch. 76-168; ss. 1, 2, ch. 76-272; s. 1, ch. 77-457; ss. 3, 4, ch. 80-275; s. 38, ch. 83-334; ss. 1, 2, ch. 85-317; s. 24, ch. 87-225; s. 1, ch. 87-259; s. 1, ch. 88-231; s. 1, ch. 89-264; s. 3, ch. 90-305; s. 110, ch. 90-360; s. 1, ch. 91-100; s. 297, ch. 92-279; s. 55, ch. 92-326; s. 1, ch. 93-171.

**Note.**—

A. Repealed by s. 1, ch. 95-217.

B. Section 4, ch. 95-217, provides that "[n]otwithstanding any provision of law to the contrary, exemptions from chapter 119, Florida Statutes, or chapter 286, Florida Statutes, which are prescribed by law and are specifically made subject to the Open Government Sunset Review Act in accordance with section 119.14, Florida Statutes, are not subject to review under that act, and are not abrogated by the operation of that act, after October 1, 1995."