
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair
2021 - 2022 Regular

Bill No: SB 1272 **Hearing Date:** April 26, 2022
Author: Becker
Version: March 15, 2022
Urgency: No **Fiscal:** No
Consultant: MK

Subject: *Crimes: intercepting telephone communications*

HISTORY

Source: Ring Central

Prior Legislation: None

Support: Cloud Communication Alliance; CTIA; Silicon Valley Leadership Group;
Technet; Von Coalition

Opposition: None known

PURPOSE

The purpose of this bill is to clarify that for the exemption from wiretapping for maintenance and operation purposes, applies to a telephone company as well as a utility.

Existing law makes it a wobbler for any person to intentionally tapping into a telephonic communication system (wiretapping) without the consent of all parties. (Penal Code Section 631(a))

Existing law provides that the general prohibition against wiretapping does not apply to any public utility engaged in the business of providing communications, for the purpose of construction, maintenance, conduct or operation of the services and facilities of the public utility. (Penal Code Section 631(b))

Existing law makes it a misdemeanor to, without the consent of all parties, intercept or receive and intentionally record a communication between two cellular phones. (Penal Code Section 632.7(a))

Existing law provides that the prohibition against recording a cellular phone call without consent does not apply to a public utility engaged in the business of providing communication services and facilities, for the purpose of construction, maintenance, conduct, or operation of the services and facilities of the public utility. (Penal Code Section 632.7)

This bill exempts a “telephone company” from the wiretap provisions in addition to a public utility.

COMMENTS

1. Need for This Bill

According to the author:

The problem of current law is not one of substantive policy or normative intention, but rather of scope. Since 1967, California law has recognized that telephone companies engaged in the provision of communications services should be exempt from wiretapping laws insofar as the laws are inconsistent with the provision of those services to consumers. Yet, as time has passed, the number of technologies that provide telephonic communication services has increased, but the scope of the law's exemption has not expanded to embrace them. This bill simply recognizes that as technology changes, so too must our codes.

As a result, firms that provide telephonic communications services by modern means find themselves subject to legal uncertainty for violation of a law that plainly intended to exempt the types of services they provide, if not the means by which they provide them (since the current technologies did not yet exist at the time the exemption was drafted).

This bill solves this problem by applying the existing definition of "telephone corporation", already embraced within the Penal Code to ensure that the original intent of Sections 631 and 632.7 continue to be embraced.

2. Telephone company

Existing law generally makes it illegal for anyone to install a wiretap on a phone line or listen into a cellular phone call without both parties permission. There is an exception for a public utility for the purposes of constructing and maintaining the communications system. This bill updates the reference to utility to include "telephone company"

3. Argument in Support

Cloud Communication Alliance; CTIA; RingCentral; Silicon Valley Leadership Group; Technet; and, Von Coalition support this bill stating:

Sections 631 and 632.7 of the Penal Code, which provide the liability bar for telephone companies, were adopted in 1967 and last substantively revised in the early 1990s. Given that these rules were adopted in a pre/nascent-internet environment, this update is warranted to ensure that the legislature's original intent is preserved in the internet age.

Existing law protects Californian's privacy by forbidding the recording, tapping, or reading of communications without consent. This bill does not change the consent requirement in any way. Nor does the bill abridge any privacy rights in any way.

The existing eavesdropping law requires that someone be listening or recording or reading the communication for liability to accrue. Existing law also ensures that telephone companies will not face potential liability for violation of these laws through the normal course of their provision of communications services or facilities. In other words, if no one is listening, its not eavesdropping.

Senate Bill 1272 updates the language of the statute to incorporate modern forms of communications, such as communications via internet protocol (VoIP), satellite, and broadband. This bill thus confirms that all companies that offer communications services or facilities can provide their services or facilities to the public without fear of liability while continuing to protect Californian's privacy rights.

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