

AMENDED IN ASSEMBLY APRIL 18, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 1934

Introduced by Assembly Member Corbett

February 12, 2002

An act to ~~add Section 7910~~ amend Section 1105 of the Penal Code, and to add Sections 7910 and 7911 to the Public Utilities Code, relating to telephone corporations.

LEGISLATIVE COUNSEL'S DIGEST

AB 1934, as amended, Corbett. Telephone corporations: background security checks.

Existing

(1) *Existing* law permits telephone corporations to construct, own, control, operate and manage telephone lines and to provide telephone service for compensation in the state, subject to regulation by the Public Utilities Commission.

This bill would require telephone corporations to conduct an investigation into the background of an applicant for employment to determine whether the applicant is a threat to the security of the telecommunications system. The bill would require the investigation to include whether the applicant has a criminal background which would require the submission of fingerprints and any requested related information, to the Department of Justice to obtain summary criminal history information. The bill would require the applicant to submit fingerprints and requested related information to the telephone corporation, to allow the telephone corporation to obtain summary criminal history information and subsequent arrest service from the

Department of Justice and the Federal Bureau of Investigation. The bill would require the Department of Justice to expeditiously review the state summary criminal history information in its possession, and any summary criminal history information it obtains from the Federal Bureau of Investigation, and provide a summary criminal history information to the requesting telephone corporation. The bill would authorize the Department of Justice to charge a reasonable fee for furnishing state summary criminal history information. The bill would require that the summary criminal history information obtained from the Department of Justice be confidential.

This bill would also require every person performing service under a personal services contract to a telephone corporation, including independent contractors, vendors, and their employees, to provide the telephone corporation with the same background check, including the summary criminal history information. The bill would require the telephone corporation, independent contractor, or vendor to ensure the confidentiality of the summary criminal history information received under these provisions.

The bill would provide that its provisions do not apply to persons that do not have contact or access to critical elements of the telephone network.

Since an unauthorized disclosure of state summary criminal history information is a crime under existing provisions of law, this bill, by including telephone corporations as entities to which this prohibition is applicable, would impose a state-mandated local program by expanding the definition of a crime.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~*This bill would require telephone corporations to conduct an investigation into the background of applicants for employment and persons hired under a personal services contract sufficient to determine whether the person is a threat to the security of the telecommunications services provided by the telephone corporation. The background investigation of persons hired under a personal services contract would be required to be equivalent to that conducted for regular employees of the telephone corporation.*~~



Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

~~SECTION 1. The Legislature finds and declares all of the following:~~

SECTION 1. Section 11105 of the Penal Code is amended to read:

11105. (a) (1) The Department of Justice shall maintain state summary criminal history information.

(2) As used in this section:

(A) “State summary criminal history information” means the master record of information compiled by the Attorney General pertaining to the identification and criminal history of any person, such as name, date of birth, physical description, fingerprints, photographs, date of arrests, arresting agencies and booking numbers, charges, dispositions, and similar data about the person.

(B) “State summary criminal history information” does not refer to records and data compiled by criminal justice agencies other than the Attorney General, nor does it refer to records of complaints to or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice.

(b) The Attorney General shall furnish state summary criminal history information to any of the following, if needed in the course of their duties, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any entity, in fulfilling employment, certification, or licensing duties, Chapter 1321 of the Statutes of 1974 and of Section 432.7 of the Labor Code shall apply:

(1) The courts of the state.

(2) Peace officers of the state as defined in Section 830.1, subdivisions (a) and (e) of Section 830.2, subdivision (a) of Section 830.3, subdivisions (a) and (b) of Section 830.5, and subdivision (a) of Section 830.31.

(3) District attorneys of the state.

(4) Prosecuting city attorneys of any city within the state.

(5) Probation officers of the state.

(6) Parole officers of the state.

1 (7) A public defender or attorney of record when representing
2 a person in proceedings upon a petition for a certificate of
3 rehabilitation and pardon pursuant to Section 4852.08.

4 (8) A public defender or attorney of record when representing
5 a person in a criminal case and if authorized access by statutory or
6 decisional law.

7 (9) Any agency, officer, or official of the state if the criminal
8 history information is required to implement a statute or regulation
9 that expressly refers to specific criminal conduct applicable to the
10 subject person of the state summary criminal history information,
11 and contains requirements or exclusions, or both, expressly based
12 upon that specified criminal conduct.

13 (10) Any city or county, or city and county, or district, or any
14 officer, or official thereof if access is needed in order to assist that
15 agency, officer, or official in fulfilling employment, certification,
16 or licensing duties, and if the access is specifically authorized by
17 the city council, board of supervisors, or governing board of the
18 city, county, or district if the criminal history information is
19 required to implement a statute, ordinance, or regulation that
20 expressly refers to specific criminal conduct applicable to the
21 subject person of the state summary criminal history information,
22 and contains requirements or exclusions, or both, expressly based
23 upon that specified criminal conduct.

24 (11) The subject of the state summary criminal history
25 information under procedures established under Article 5
26 (commencing with Section 11120) of Chapter 1 of Title 1 of Part
27 4.

28 (12) Any person or entity when access is expressly authorized
29 by statute if the criminal history information is required to
30 implement a statute or regulation that expressly refers to specific
31 criminal conduct applicable to the subject person of the state
32 summary criminal history information, and contains requirements
33 or exclusions, or both, expressly based upon that specified
34 criminal conduct.

35 (13) Health officers of a city, county, or city and county, or
36 district, when in the performance of their official duties enforcing
37 Section 120175 of the Health and Safety Code.

38 (14) Any managing or supervising correctional officer of a
39 county jail or other county correctional facility.

1 (15) Any humane society, or society for the prevention of
2 cruelty to animals, for the specific purpose of complying with
3 Section 14502 of the Corporations Code for the appointment of
4 level 1 humane officers.

5 (16) Local child support agencies established by Section 17304
6 of the Family Code. When a local child support agency closes a
7 support enforcement case containing summary criminal history
8 information, the agency shall delete or purge from the file and
9 destroy any documents or information concerning or arising from
10 offenses for or of which the parent has been arrested, charged, or
11 convicted, other than for offenses related to the parent's having
12 failed to provide support for minor children, consistent with the
13 requirements of Section 17531 of the Family Code.

14 (17) County child welfare agency personnel who have been
15 delegated the authority of county probation officers to access state
16 summary criminal history information pursuant to Section 272 of
17 the Welfare and Institutions Code for the purposes specified in
18 Section 16504.5 of the Welfare and Institutions Code. Information
19 from criminal history records provided pursuant to this
20 subdivision shall not be used for any purposes other than those
21 specified in this section and Section 16504.5 of the Welfare and
22 Institutions Code. When an agency obtains records obtained both
23 on the basis of name checks and fingerprint checks, final
24 placement decisions shall be based only on the records obtained
25 pursuant to the fingerprint check.

26 (18) (A) *A telephone corporation, when requested for the*
27 *purpose of conducting an investigation into the background of*
28 *applicants pursuant to Section 7910 of the Public Utilities Code.*

29 (B) *A person performing service under a personal services*
30 *contract with a telephone corporation, including independent*
31 *contractors, vendors, and their employees, when requested for the*
32 *purpose of conducting a background investigation pursuant to*
33 *Section 7911 of the Public Utilities Code.*

34 (c) The Attorney General may furnish state summary criminal
35 history information upon a showing of a compelling need to any
36 of the following, provided that when information is furnished to
37 assist an agency, officer, or official of state or local government,
38 a public utility, or any entity, in fulfilling employment,
39 certification, or licensing duties, Chapter 1321 of the Statutes of
40 1974 and of Section 432.7 of the Labor Code shall apply:

1 (1) Any public utility as defined in Section 216 of the Public
2 Utilities Code that operates a nuclear energy facility when access
3 is needed in order to assist in employing persons to work at the
4 facility, provided that, if the Attorney General supplies the data,
5 he or she shall furnish a copy of the data to the person to whom the
6 data relates.

7 (2) To a peace officer of the state other than those included in
8 subdivision (b).

9 (3) To a peace officer of another country.

10 (4) To public officers (other than peace officers) of the United
11 States, other states, or possessions or territories of the United
12 States, provided that access to records similar to state summary
13 criminal history information is expressly authorized by a statute of
14 the United States, other states, or possessions or territories of the
15 United States if the information is needed for the performance of
16 their official duties.

17 (5) To any person when disclosure is requested by a probation,
18 parole, or peace officer with the consent of the subject of the state
19 summary criminal history information and for purposes of
20 furthering the rehabilitation of the subject.

21 (6) The courts of the United States, other states, or territories
22 or possessions of the United States.

23 (7) Peace officers of the United States, other states, or
24 territories or possessions of the United States.

25 (8) To any individual who is the subject of the record requested
26 if needed in conjunction with an application to enter the United
27 States or any foreign nation.

28 (9) Any public utility as defined in Section 216 of the Public
29 Utilities Code, if access is needed in order to assist in employing
30 current or prospective employees who in the course of their
31 employment may be seeking entrance to private residences. The
32 information provided shall be limited to the record of convictions
33 and any arrest for which the person is released on bail or on his or
34 her own recognizance pending trial.

35 If the Attorney General supplies the data pursuant to this
36 paragraph, the Attorney General shall furnish a copy of the data to
37 the current or prospective employee to whom the data relates.

38 Any information obtained from the state summary criminal
39 history is confidential and the receiving public utility shall not
40 disclose its contents, other than for the purpose for which it was

1 acquired. The state summary criminal history information in the
2 possession of the public utility and all copies made from it shall be
3 destroyed not more than 30 days after employment or promotion
4 or transfer is denied or granted, except for those cases where a
5 current or prospective employee is out on bail or on his or her own
6 recognizance pending trial, in which case the state summary
7 criminal history information and all copies shall be destroyed not
8 more than 30 days after the case is resolved.

9 A violation of this paragraph is a misdemeanor, and shall give
10 the current or prospective employee who is injured by the violation
11 a cause of action against the public utility to recover damages
12 proximately caused by the violations. Any public utility's request
13 for state summary criminal history information for purposes of
14 employing current or prospective employees who may be seeking
15 entrance to private residences in the course of their employment
16 shall be deemed a "compelling need" as required to be shown in
17 this subdivision.

18 Nothing in this section shall be construed as imposing any duty
19 upon public utilities to request state summary criminal history
20 information on any current or prospective employees.

21 (10) To any campus of the California State University or the
22 University of California, or any four-year college or university
23 accredited by a regional accreditation organization approved by
24 the United States Department of Education, if needed in
25 conjunction with an application for admission by a convicted felon
26 to any special education program for convicted felons, including,
27 but not limited to, university alternatives and halfway houses.
28 Only conviction information shall be furnished. The college or
29 university may require the convicted felon to be fingerprinted, and
30 any inquiry to the department under this section shall include the
31 convicted felon's fingerprints and any other information specified
32 by the department.

33 (d) Whenever an authorized request for state summary criminal
34 history information pertains to a person whose fingerprints are on
35 file with the Department of Justice and the department has no
36 criminal history of that person, and the information is to be used
37 for employment, licensing, or certification purposes, the
38 fingerprint card accompanying the request for information, if any,
39 may be stamped "no criminal record" and returned to the person
40 or entity making the request.

1 (e) Whenever state summary criminal history information is
2 furnished as the result of an application and is to be used for
3 employment, licensing, or certification purposes, the Department
4 of Justice may charge the person or entity making the request a fee
5 that it determines to be sufficient to reimburse the department for
6 the cost of furnishing the information. In addition, the Department
7 of Justice may add a surcharge to the fee to fund maintenance and
8 improvements to the systems from which the information is
9 obtained. Notwithstanding any other law, any person or entity
10 required to pay a fee to the department for information received
11 under this section may charge the applicant a fee sufficient to
12 reimburse the person or entity for this expense. All moneys
13 received by the department pursuant to this section, Sections
14 11105.3 and 12054 of the Penal Code, and Section 13588 of the
15 Education Code shall be deposited in a special account in the
16 General Fund to be available for expenditure by the department to
17 offset costs incurred pursuant to those sections and for
18 maintenance and improvements to the systems from which the
19 information is obtained upon appropriation by the Legislature.

20 (f) Whenever there is a conflict, the processing of criminal
21 fingerprints and fingerprints of applicants for security guard or
22 alarm agent registrations or firearms qualification permits
23 submitted pursuant to Section 7514 of the Business and
24 Professions Code shall take priority over the processing of
25 applicant fingerprints.

26 (g) It is not a violation of this section to disseminate statistical
27 or research information obtained from a record, provided that the
28 identity of the subject of the record is not disclosed.

29 (h) It is not a violation of this section to include information
30 obtained from a record in (1) a transcript or record of a judicial or
31 administrative proceeding or (2) any other public record if the
32 inclusion of the information in the public record is authorized by
33 a court, statute, or decisional law.

34 (i) Notwithstanding any other law, the Department of Justice or
35 any state or local law enforcement agency may require the
36 submission of fingerprints for the purpose of conducting summary
37 criminal history information checks that are authorized by law.

38 (j) The state summary criminal history information shall
39 include any finding of mental incompetence pursuant to Chapter



1 6 (commencing with Section 1367) of Title 10 of Part 2 arising out
2 of a complaint charging a felony offense specified in Section 290.

3 *SEC. 2. Section 7910 is added to the Public Utilities Code, to*
4 *read:*

5 *7910. (a) A telephone corporation shall conduct an*
6 *investigation into the background of applicants for employment.*
7 *The background check shall include whether the applicant has any*
8 *arrests pending adjudication for, has entered a plea of guilty or*
9 *nolo contendere to, or been found guilty or convicted of, a felony*
10 *or a misdemeanor relevant to whether the applicant would be a*
11 *threat to the security of the telecommunications system, regardless*
12 *of whether the conviction has been expunged. The criminal*
13 *background investigation shall include the submission of*
14 *fingerprints and any requested related information, to the*
15 *Department of Justice, and the obtaining of summary criminal*
16 *history information, pursuant to this section. For purposes of this*
17 *section, "arrests pending adjudication" include outstanding*
18 *arrest warrants, arrests for offenses where the applicant is*
19 *presently awaiting the settling of a trial date, arrests where the*
20 *applicant is presently awaiting trial, whether the applicant is*
21 *incarcerated, escaped incarceration, or has been released on bail*
22 *or on his or her own recognizance. "Arrests pending*
23 *adjudication" do not include arrests where no complaint was filed*
24 *or a complaint was filed and dismissed.*

25 *(b) Upon request by the telephone corporation, the applicant*
26 *shall submit fingerprints and requested related information to the*
27 *telephone corporation, to allow the telephone corporation to*
28 *obtain summary criminal history information and subsequent*
29 *arrest service from the Department of Justice and the Federal*
30 *Bureau of Investigation, pursuant to Section 11105 and 11105.2 of*
31 *the Penal Code. The telephone corporation shall submit*
32 *fingerprints of the applicant, along with any requested related*
33 *information, to the Department of Justice, for the purpose of*
34 *obtaining summary criminal history information from the*
35 *Department of Justice and the Federal Bureau of Investigation*
36 *relevant to the background investigation required in subdivision*
37 *(a). The Department of Justice shall forward requests for federal*
38 *level summary criminal history information to the Federal Bureau*
39 *of Investigation. Fingerprints submitted pursuant to this section*

1 *include fingerprints taken by the use of live scan technology or an*
2 *electronic fingerprinting system.*

3 *(c) The Department of Justice shall expeditiously review the*
4 *state summary criminal history information in its possession, and*
5 *any criminal history information it obtains from the Federal*
6 *Bureau of Investigation, and provide a summary criminal history*
7 *information pursuant to Section 11105 of the Penal Code to the*
8 *requesting telephone corporation.*

9 *(d) The Department of Justice may charge a reasonable fee for*
10 *furnishing state summary criminal history information, pursuant*
11 *to subdivision (e) of Section 11105 of the Penal Code, as well as*
12 *a fee that may not exceed its actual costs incurred in obtaining*
13 *information from the Federal Bureau of Investigation.*

14 *(e) All summary criminal history information obtained from the*
15 *Department of Justice is confidential. Each telephone corporation*
16 *receiving criminal history information shall ensure the following:*

17 *(1) No person receiving the summary criminal history*
18 *information shall disclose its contents other than to discuss the*
19 *results with the applicant, or provide copies of the information.*

20 *(2) The summary criminal history information shall be stored*
21 *in a secure place, accessible only to persons responsible for the*
22 *screening of applicants.*

23 *(3) The summary criminal history information shall be*
24 *destroyed in a secure manner, including shredding, promptly after*
25 *the hiring determination is made.*

26 *(f) This section does not apply to persons that do not have*
27 *contact or access to critical elements of the telecommunications*
28 *network.*

29 *SEC. 3. Section 7911 is added to the Public Utilities Code, to*
30 *read:*

31 *7911. (a) Every person performing service under a personal*
32 *services contract with a telephone corporation, including*
33 *independent contractors, vendors, and their employees, shall*
34 *provide the telephone corporation with a background check. The*
35 *background check shall include whether the person has any arrests*
36 *pending adjudication for, has entered a plea of guilty or nolo*
37 *contendere to, or been found guilty or convicted of, a felony or a*
38 *misdemeanor relevant to whether the applicant would be a threat*
39 *to the security of the telecommunications system, regardless of*
40 *whether the conviction has been expunged. The criminal*

1 background investigation shall include the submission of
2 fingerprints and any requested related information, to the
3 Department of Justice, and the obtaining of summary criminal
4 history information, pursuant to this section. For purposes of this
5 section, “arrests pending adjudication” include outstanding
6 arrest warrants, arrests for offenses where the person is presently
7 awaiting the settling of a trial date, arrests where the person is
8 presently awaiting trial, whether the person is incarcerated,
9 escaped incarceration, or has been released on bail or on his or her
10 own recognizance. “Arrests pending adjudication” do not include
11 arrests where no complaint was filed or a complaint was filed and
12 dismissed.

13 (b) The person described in subdivision (a) shall submit
14 fingerprints and requested related information to the Department
15 of Justice, for the purpose of obtaining summary criminal history
16 information from the Department of Justice and the Federal
17 Bureau of Investigation relevant to the background investigation
18 required in subdivision (a). The Department of Justice shall
19 forward requests for federal level summary criminal history
20 information to the Federal Bureau of Investigation. Fingerprints
21 submitted pursuant to this section include fingerprints taken by the
22 use of live scan technology or an electronic fingerprinting system.

23 (c) The Department of Justice shall expeditiously review the
24 state summary criminal history information in its possession, and
25 any criminal history information it obtains from the Federal
26 Bureau of Investigation, and provide a summary criminal history
27 information pursuant to Section 11105 of the Penal Code to the
28 person requesting the information pursuant to subdivision (a).
29 That information shall be provided to the telephone corporation
30 for whom services are being performed.

31 (d) The Department of Justice may charge a reasonable fee for
32 furnishing state summary criminal history information, pursuant
33 to subdivision (e) of Section 11105 of the Penal Code, as well as
34 a fee that may not exceed its actual costs incurred in obtaining
35 information from the Federal Bureau of Investigation.

36 (e) All summary criminal history information obtained from the
37 Department of Justice is confidential. Each telephone
38 corporation, independent contractor, or vendor receiving
39 summary criminal history information shall ensure the following:

1 (1) No person receiving the summary criminal history
2 information shall disclose its contents other than to discuss the
3 results with the applicant, or provide copies of the information.

4 (2) The summary criminal history information shall be stored
5 in a secure place, accessible only to persons responsible for the
6 screening of applicants.

7 (3) The summary criminal history information shall be
8 destroyed in a secure manner, including shredding, promptly after
9 the personal services contract has been completed or terminated.

10 (f) This section does not apply to persons that do not have
11 contact or access to critical elements of the telephone network.

12 SEC. 4. No reimbursement is required by this act pursuant to
13 Section 6 of Article XIII B of the California Constitution because
14 the only costs that may be incurred by a local agency or school
15 district will be incurred because this act creates a new crime or
16 infraction, eliminates a crime or infraction, or changes the penalty
17 for a crime or infraction, within the meaning of Section 17556 of
18 the Government Code, or changes the definition of a crime within
19 the meaning of Section 6 of Article XIII B of the California
20 Constitution.

21 ~~(a) Telephone corporations generally subject their employees~~
22 ~~to background checks to determine their suitability for the job.~~

23 ~~(b) These security checks generally ascertain the criminal~~
24 ~~background history of employees and other information that may~~
25 ~~bear on whether the employee may present a risk to the security of~~
26 ~~the telecommunications system.~~

27 ~~(c) Telephone corporations often hire persons under personal~~
28 ~~services contracts to do or perform specific functions where they~~
29 ~~come in contact with the telecommunications system.~~

30 ~~(d) These persons hired under personal services contracts are~~
31 ~~not subject to the same background checks as regular employees~~
32 ~~of the telephone corporation.~~

33 ~~(e) It is the Legislature's intent that telephone corporations~~
34 ~~retain flexibility and discretion in their hiring and retention~~
35 ~~practices aimed at eliminating risks to the security of the~~
36 ~~telecommunications system, subject to regulation by the Public~~
37 ~~Utilities Commission, but that all persons that are in a position to~~
38 ~~present a security risk be subjected to the same standards without~~
39 ~~regard to their status as a regular employee, contract worker,~~
40 ~~independent contractor or vendor.~~

1 ~~SEC. 2.—Section 7910 is added to the Public Utilities Code, to~~
2 ~~read:~~

3 ~~7910. (a) Telephone corporations shall conduct an~~
4 ~~investigation into the background of applicants for employment~~
5 ~~sufficient to determine whether they are a threat to the security of~~
6 ~~the telecommunications system of the telephone corporation.~~

7 ~~(b) Telephone corporations shall ensure that an investigation is~~
8 ~~conducted into the background of any person hired under a~~
9 ~~personal services contract, including independent contractors and~~
10 ~~vendors and employees of independent contractors and vendors,~~
11 ~~that is sufficient to determine whether the person is a threat to the~~
12 ~~security of the telecommunications system of the telephone~~
13 ~~corporation. The background investigation shall be equivalent to~~
14 ~~that conducted for regular employees of the telephone corporation.~~

15 ~~(c) This section is inapplicable to persons that do not have~~
16 ~~contact or access to telephone system equipment, the telephone~~
17 ~~corporation's central office, or customer premises.~~