

Assembly Bill No. 1733

CHAPTER 753

An act to amend Section 2891.1 of the Public Utilities Code, relating to telecommunications.

[Approved by Governor September 24, 2004. Filed with Secretary of State September 24, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1733, Reyes. Telecommunications: selling or licensing lists of subscribers.

Under existing law, the Federal Communications Commission licenses and partially regulates providers of commercial mobile radio service, including providers of cellular radiotelephone service, broadband Personal Communications Services (PCS), and digital Specialized Mobile Radio (SMR) services (collectively, mobile telephony service providers). Under existing law, no state or local government may regulate the entry of, or the rates charged by, any commercial mobile radio service, but is generally not prohibited from regulating the other terms and conditions of commercial mobile radio service.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including telephone corporations. Existing law authorizes the commission to regulate telecommunications services and rates of telephone corporations, except to the extent regulation of commercial mobile radio service is preempted by federal regulation. Existing law prohibits a telephone corporation selling or licensing lists of residential subscribers, from including the telephone number of any subscriber assigned an unpublished or unlisted access number, as defined, without his or her written waiver of this protection.

This bill would permit a subscriber to waive the above-described prohibition against including the telephone number of a subscriber assigned an unpublished or unlisted access number. The bill would prohibit a provider of mobile telephony services, as defined, or any affiliate or agent of the provider, providing the name and dialing number of a subscriber for inclusion in a directory or directory database, from including the dialing number of any subscriber without first obtaining the express consent of that subscriber. The bill would establish certain requirements for the provider's form for obtaining the subscriber's express consent. A subscriber would be permitted to revoke his or her consent to inclusion in a directory and would require that the mobile

telephony services provider comply with the subscriber's request to opt out within a reasonable period of time, not to exceed 60 days. The bill would create an exception from the above provisions for a telephone corporation transferring a customer's assigned telephone number to a new provider.

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

SECTION 1. Section 2891.1 of the Public Utilities Code is amended to read:

2891.1. (a) Notwithstanding Section 2891, a telephone corporation selling or licensing lists of residential subscribers shall not include the telephone number of any subscriber assigned an unlisted or unpublished access number. A subscriber may waive all or part of the protection provided by this subdivision through written notice to the telephone corporation.

(b) Notwithstanding Section 2891, a provider of mobile telephony services, or any direct or indirect affiliate or agent of a provider, providing the name and dialing number of a subscriber for inclusion in any directory of any form, or selling the contents of any directory database, or any portion or segment thereof, shall not include the dialing number of any subscriber without first obtaining the express consent of that subscriber. The provider's form for obtaining the subscriber's express consent shall meet all of the following requirements:

(1) It shall be a separate document that is not attached to any other document.

(2) It shall be signed and dated by the subscriber.

(3) It shall be unambiguous, legible, and conspicuously disclose that, by signing, the subscriber is consenting to have the subscriber's dialing number sold or licensed as part of a list of subscribers and the subscriber's dialing number may be included in a publicly available directory.

(4) If under the subscriber's calling plan the subscriber may be billed for receiving unsolicited calls or text messaging from a telemarketer, the provider's form shall include a disclosure, which shall be unambiguous, legible, and that by consenting to have the subscriber's dialing number sold or licensed as part of a list of subscribers or be included in a publicly available directory, the subscriber may incur additional charges for receiving unsolicited calls or text messages.

(c) A subscriber who provides express prior consent pursuant to subdivision (b) may revoke that consent at any time. A provider of mobile telephony services shall comply with the subscriber's request to opt out within a reasonable period of time, not to exceed 60 days.



(d) A subscriber shall not be charged for making the choice to not be listed in a directory.

(e) This section does not apply to the provision of telephone numbers to the following parties for the purposes indicated:

(1) To a collection agency, to the extent disclosures made by the agency are supervised by the commission, exclusively for the collection of unpaid debts.

(2) (A) To any law enforcement agency, fire protection agency, public health agency, public environmental health agency, city or county emergency services planning agency, or private for-profit agency operating under contract with, and at the direction of, one or more of these agencies, for the exclusive purpose of responding to a 911 call or communicating an imminent threat to life or property.

(B) Any information or records provided to a private for-profit agency pursuant to this subdivision shall be held in confidence by that agency and by any individual employed by or associated with that agency. This information or these records shall not be open to examination for any purpose not directly connected with the administration of the services specified in subdivision (e) of Section 2872 or this paragraph.

(3) To a lawful process issued under state or federal law.

(4) To a telephone corporation providing service between service areas for the provision to the subscriber of telephone service between service areas, or to third parties for the limited purpose of providing billing services.

(5) To a telephone corporation to effectuate a customer's request to transfer the customer's assigned telephone number from the customer's existing provider of telecommunications services to a new provider of telecommunications services.

(6) To the commission pursuant to its jurisdiction and control over telephone and telegraph corporations.

(f) Every deliberate violation of this section is grounds for a civil suit by the aggrieved subscriber against the organization or corporation and its employees responsible for the violation.

(g) For purposes of this section, "unpublished or unlisted access number" means a telephone, telex, teletex, facsimile, computer modem, or any other code number that is assigned to a subscriber by a telephone or telegraph corporation for the receipt of communications initiated by other telephone or telegraph customers and that the subscriber has requested that the telephone or telegraph corporation keep in confidence.

(h) No telephone corporation, nor any official or employee thereof, shall be subject to criminal or civil liability for the release of customer information as authorized by this section.



(i) The provisions of this section are severable. If any provision of this section or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of this section that can be given effect without the invalid provision or application.

(j) For purposes of this section, “mobile telephony services” means commercially available interconnected mobile phone services that provide access to the public switched telephone network (PSTN) via mobile communication devices employing radio wave technology to transmit calls, including cellular radiotelephone, broadband Personal Communications Services (PCS), and digital Specialized Mobile Radio (SMR). “Mobile telephony services” does not include mobile satellite services or mobile data services used exclusively for the delivery of nonvoice information to a mobile device.

