

AMENDED IN SENATE APRIL 6, 2005

SENATE BILL

No. 402

Introduced by Senator Campbell

February 17, 2005

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

LEGISLATIVE COUNSEL'S DIGEST

SB 402, as amended, Campbell. Telecommunications.

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or licensing lists of residential subscribers, from including the telephone number of any subscriber assigned an unpublished or unlisted access number, as defined, without his or her written waiver of this protection. ~~Existing law permits a subscriber to waive this later provision.~~ Existing law prohibits 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. Existing law establishes certain requirements for the provider's form for obtaining the subscriber's express consent, *including that the form be a separate document that is not attached to any other document, that the form be signed by the subscriber, and if the subscriber may be billed for unsolicited calls or text messages from a telemarketer, a requirement that the form unambiguously disclose that by consenting to having his or her dialing number included in a publicly available directory, the subscriber may incur additional charges for receiving unsolicited calls or text messages.*

~~This bill would state the intent of the Legislature to amend these subscriber privacy requirements to make them consistent with modern business practices that allow subscribers to activate mobile telephony services over the telephone and over the Internet~~ *revise the existing requirements for a provider of mobile telephony services to obtain the subscriber's express consent for inclusion of the dialing number of the subscriber in a directory, by additionally allowing the express consent to be a response made on a separate field on an Internet Web site, or a response to a separate question asked of the subscriber that calls a customer service center. The bill would delete the requirements that the form be signed by the subscriber and the requirement that for those subscribers that may be billed for unsolicited calls or text messages from a telemarketer, that the form unambiguously disclose that by consenting to having his or her dialing number included in a publicly available directory, the subscriber may incur additional charges for receiving unsolicited calls or text messages.*

Existing law prohibits a subscriber from being charged for making the choice to not be listed in a directory.

This bill would instead prohibit a subscriber from being charged for making the choice to not be listed in a publicly available directory assistance database.

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

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

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

3 2891.1. (a) Notwithstanding Section 2891, a telephone
4 corporation selling or licensing lists of residential subscribers
5 shall not include the telephone number of any subscriber
6 assigned an unlisted or unpublished access number. A subscriber
7 may waive all or part of the protection provided by this
8 subdivision through written notice to the telephone corporation.

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

18 (1) It shall be a separate document that is not attached to any
19 other document, *a response made on a separate field on an*
20 *Internet Web site, or a response to a separate question asked of*
21 *the subscriber that calls a customer service center.*

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

23 ~~(3)~~

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

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

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

6 (d) A subscriber shall not be charged for making the choice to
7 not be listed in a ~~directory~~ *publicly available directory assistance*
8 *database*.

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

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

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

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

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

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

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

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

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

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

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

14 ~~(i) It is the intent of the Legislature to amend this section to~~
15 ~~make it consistent with modern business practices that allow~~
16 ~~subscribers to activate mobile telephony services over the~~
17 ~~telephone and over the Internet.~~

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