

ASSEMBLY BILL

No. 2721

Introduced by Assembly Member Wesson

February 25, 2000

An act to amend Section 1770 of the Civil Code, and to amend Sections 2872 and 2874 of, and to add Section 2875.5 to, the Public Utilities Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 2721, as introduced, Wesson. Automatic dialing-announcing devices.

(1) Existing law authorizes the Public Utilities Commission to control and regulate the use of automatic dialing-announcing devices and specifies the hours during which the devices may not be operated. Existing law also provides for exemptions from regulation and time-of-use limitations in various situations, including the contacting of an established business associate, customer or other person having an established relationship with the person using the automatic dialing-announcement device. Existing law also permits the device to be operated if an unrecorded, natural voice announcement has been made to the person called by the person calling.

This bill would delete the exemption for the situation described above.

The bill would prohibit a prerecorded message from being left on an answering machine, voicemail, or other message recording device. The bill would prohibit, on and after July 1, 2001, any person operating an automatic dialing-announcing

device from making a telephone connection for which no person, acting as an agent or telemarketer, is available to contact the person called.

(2) The Consumers Legal Remedies Act prohibits any person in a transaction intended to result, or which results, in the sale or lease of goods or services to disseminate an unsolicited prerecorded message by telephone without an unrecorded, natural voice first informing the person answering the telephone of the name of the caller or the organization being represented, and either the address or the telephone number of the caller, and without obtaining the consent of that person to listen to the prerecorded message. The act exempts from that prohibition a message disseminated to a business associate, customer, or other person having an established relationship with the person or organization making the call.

This bill would delete that exemption.

(3) The bill would make related legislative findings and declarations.

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

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

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

3 (a) The use of the telephone to market goods and
4 services to the home and other businesses is now
5 pervasive due to the increased use of cost-effective
6 telemarketing techniques.

7 (b) Unrestricted telemarketing, however, can be an
8 intrusive invasion of privacy, and, when an emergency or
9 medical assistance telephone line is seized, a risk to public
10 safety.

11 (c) Many consumers are outraged over the
12 proliferation of intrusive nuisance calls to their homes
13 from telemarketers, including, but not limited to,
14 prerecorded messages and abandoned calls.



(d) It is the intent of the Legislature in enacting this act to balance individual privacy rights and public safety concerns with commercial free speech rights.

SEC. 2. Section 1770 of the Civil Code is amended to read:

1770. (a) The following unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer are unlawful:

(1) Passing off goods or services as those of another.

(2) Misrepresenting the source, sponsorship, approval, or certification of goods or services.

(3) Misrepresenting the affiliation, connection, or association with, or certification by, another.

(4) Using deceptive representations or designations of geographic origin in connection with goods or services.

(5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he or she does not have.

(6) Representing that goods are original or new if they have deteriorated unreasonably or are altered, reconditioned, reclaimed, used, or secondhand.

(7) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another.

(8) Disparaging the goods, services, or business of another by false or misleading representation of fact.

(9) Advertising goods or services with intent not to sell them as advertised.

(10) Advertising goods or services with intent not to supply reasonably expectable demand, unless the advertisement discloses a limitation of quantity.

(11) Advertising furniture without clearly indicating that it is unassembled if that is the case.

(12) Advertising the price of unassembled furniture without clearly indicating the assembled price of that

1 furniture if the same furniture is available assembled
2 from the seller.

3 (13) Making false or misleading statements of fact
4 concerning reasons for, existence of, or amounts of price
5 reductions.

6 (14) Representing that a transaction confers or
7 involves rights, remedies, or obligations which it does not
8 have or involve, or which are prohibited by law.

9 (15) Representing that a part, replacement, or repair
10 service is needed when it is not.

11 (16) Representing that the subject of a transaction has
12 been supplied in accordance with a previous
13 representation when it has not.

14 (17) Representing that the consumer will receive a
15 rebate, discount, or other economic benefit, if the earning
16 of the benefit is contingent on an event to occur
17 subsequent to the consummation of the transaction.

18 (18) Misrepresenting the authority of a salesperson,
19 representative, or agent to negotiate the final terms of a
20 transaction with a consumer.

21 (19) Inserting an unconscionable provision in the
22 contract.

23 (20) Advertising that a product is being offered at a
24 specific price plus a specific percentage of that price
25 unless (1) the total price is set forth in the advertisement,
26 which may include, but is not limited to, shelf tags,
27 displays, and media advertising, in a size larger than any
28 other price in that advertisement, and (2) the specific
29 price plus a specific percentage of that price represents
30 a markup from the seller's costs or from the wholesale
31 price of the product. This subdivision shall not apply to
32 in-store advertising by businesses which are open only to
33 members or cooperative organizations organized
34 pursuant to Division 3 (commencing with Section 12000)
35 of Title 1 of the Corporations Code where more than 50
36 percent of purchases are made at the specific price set
37 forth in the advertisement.

38 (21) Selling or leasing goods in violation of Chapter 4
39 (commencing with Section 1797.8) of Title 1.7.



(22) (A) Disseminating an unsolicited prerecorded message by telephone without an unrecorded, natural voice first informing the person answering the telephone of the name of the caller or the organization being represented, and either the address or the telephone number of the caller, and without obtaining the consent of that person to listen to the prerecorded message.

(B) This subdivision does not apply to a ~~message disseminated to a business associate, customer, or other person having an established relationship with the person or organization making the call, to a~~ *either of the following:*

(i) A call for the purpose of collecting an existing obligation, ~~or to any~~.

(ii) Any call generated at the request of the recipient.

(23) The home solicitation, as defined in subdivision (h) of Section 1761, of a consumer who is a senior citizen where a loan is made encumbering the primary residence of that consumer for the purposes of paying for home improvements and where the transaction is part of a pattern or practice in violation of either subsection (h) or (i) of Section 1639 of Title 15 of the United States Code or subsection (e) of Section 226.32 of Title 12 of the Code of Federal Regulations.

A third party shall not be liable under this subdivision unless (1) there was an agency relationship between the party who engaged in home solicitation and the third party or (2) the third party had actual knowledge of, or participated in, the unfair or deceptive transaction. A third party who is a holder in due course under a home solicitation transaction shall not be liable under this subdivision.

(b) (1) It is an unfair or deceptive act or practice for a mortgage broker or lender, directly or indirectly, to use a home improvement contractor to negotiate the terms of any loan that is secured, whether in whole or in part, by the residence of the borrower and which is used to finance a home improvement contract or any portion thereof. For purposes of this subdivision, "mortgage broker or lender" includes a finance lender licensed

1 pursuant to the California Finance Lenders Law
2 (Division 9 (commencing with Section 22000) of the
3 Financial Code), a residential mortgage lender licensed
4 pursuant to the California Residential Mortgage Lending
5 Act (Division 20 (commencing with Section 50000) of the
6 Financial Code), or a real estate broker licensed under
7 the Real Estate Law (Division 4 (commencing with
8 Section 10000) of the Business and Professions Code).

9 (2) This section shall not be construed to either
10 authorize or prohibit a home improvement contractor
11 from referring a consumer to a mortgage broker or
12 lender by this subdivision. However, a home
13 improvement contractor may refer a consumer to a
14 mortgage lender or broker if that referral does not violate
15 Section 7157 of the Business and Professions Code or any
16 other provision of law. A mortgage lender or broker may
17 purchase an executed home improvement contract if
18 that purchase does not violate Section 7157 of the Business
19 and Professions Code or any other provision of law.
20 Nothing in this paragraph shall have any effect on the
21 application of Chapter 1 (commencing with Section
22 1801) of Title 2 to a home improvement transaction or the
23 financing thereof.

24 SEC. 3. Section 2872 of the Public Utilities Code is
25 amended to read:

26 2872. (a) The connection of automatic
27 dialing-announcing devices to a telephone line is subject
28 to this article and to the jurisdiction, control, and
29 regulation of the commission.

30 (b) No person shall operate an automatic
31 dialing-announcing device except in accordance with this
32 article. The use of such a device by any person, either
33 individually or acting as an officer, agent, or employee of
34 a person or corporation operating automatic
35 dialing-announcing devices, is subject to this article.

36 (c) No person shall operate an automatic
37 dialing-announcing device in this state to place a call that
38 is received by a telephone in this state during the hours
39 between 9 p.m. and 9 a.m. California time.



(d) This article does not prohibit the use of an automatic dialing-announcing device by any person exclusively on behalf of any of the following:

(1) A school for purposes of contacting parents or guardians of pupils regarding attendance.

(2) An exempt organization under the Bank and Corporation Tax Law (Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code) for purposes of contacting its members.

(3) A privately owned or publicly owned cable television system for purposes of contacting customers or subscribers regarding the previously arranged installation of facilities on the premises of the customer or subscriber.

(4) A privately owned or publicly owned public utility for purposes of contacting customers or subscribers regarding the previously arranged installation of facilities on the premises of the customer or subscriber or for purposes of contacting employees for emergency actions or repairs required for public safety or to restore services.

(5) A petroleum refinery, chemical processing plant, or nuclear powerplant for purposes of advising residents, public service agencies, and the news media in its vicinity of an actual or potential life-threatening emergency.

(e) This article does not prohibit law enforcement agencies, fire protection agencies, public health agencies, public environmental health agencies, city or county emergency services planning agencies, or any private for-profit agency operating under contract with, and at the direction of, one or more of these agencies, from placing calls through automatic dialing-announcing devices, if those devices are used for any of the following purposes:

(1) Providing public service information relating to public safety.

(2) Providing information concerning police or fire emergencies.

(3) Providing warnings of impending or threatened emergencies.

These calls shall not be subject to Section 2874.

~~(f) This article does not apply to any automatic dialing-announcing device that is not used to randomly or sequentially dial telephone numbers but that is used solely to transmit a message to an established business associate, customer, or other person having an established relationship with the person using the automatic dialing-announcing device to transmit the message, or to any call generated at the request of the recipient.~~

(g) The commission may determine any question of fact arising under this section.

SEC. 4. Section 2874 of the Public Utilities Code is amended to read:

2874. (a) ~~Whenever~~ *If* telephone calls are placed through the use of an automatic dialing-announcing device, the device may be operated only after an unrecorded, natural voice announcement has been made to the person called by the person calling. The announcement shall do all of the following:

(1) State the nature of the call and the name, address, and telephone number of the business or organization being represented, if any.

(2) Inquire as to whether the person called consents to hear the prerecorded message of the person calling.

(b) The calling person described in subdivision (a) shall disconnect the automatic dialing-announcing device from the telephone line upon the termination of the call by either the person calling or the person called.

(c) It does not constitute consent of the person called to hear the prerecorded message of the calling person if the calling person connects to an answering machine, voicemail, or other message recording device, and the prerecorded message may not be left on the answering machine, voicemail, or other message recording device.

SEC. 5. Section 2875.5 is added to the Public Utilities Code, to read:

2875.5. On and after July 1, 2001, no person operating an automatic dialing-announcing device may make a telephone connection for which no person, acting as an

1 agent or telemarketer, is available to contact the person
2 called.

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