

AMENDED IN SENATE JUNE 26, 2000  
AMENDED IN ASSEMBLY MAY 22, 2000  
AMENDED IN ASSEMBLY MAY 10, 2000  
AMENDED IN ASSEMBLY APRIL 5, 2000  
AMENDED IN ASSEMBLY MARCH 29, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2721**

**Introduced by Assembly Member Wesson**  
**(Principal coauthor: Assembly Member Longville)**  
**(Coauthor: Assembly ~~Member~~ Members Alquist and**  
**Havice)**  
(Coauthor: Senator Murray)

February 25, 2000

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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 amended, 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.

This bill would expand the exemptions, as prescribed. The bill would also state that the requirement that an automatic dialing announcement message be preceded by an unrecorded natural voice message does not apply to specified situations.

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 specified automatic calling equipment from making a telephone connection for which no person, acting as an agent or telemarketer, or prerecorded message, is available for 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 restate that exemption, limit an established relationship, as prescribed, and add an exemption for a call for the purpose of fraud prevention.~~

~~(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:



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

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

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

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

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

18 ~~1770. (a) The following unfair methods of~~  
19 ~~competition and unfair or deceptive acts or practices~~  
20 ~~undertaken by any person in a transaction intended to~~  
21 ~~result or which results in the sale or lease of goods or~~  
22 ~~services to any consumer are unlawful:~~

- 23 (1) ~~Passing off goods or services as those of another.~~
- 24 (2) ~~Misrepresenting the source, sponsorship, approval,~~  
25 ~~or certification of goods or services.~~
- 26 (3) ~~Misrepresenting the affiliation, connection, or~~  
27 ~~association with, or certification by, another.~~
- 28 (4) ~~Using deceptive representations or designations of~~  
29 ~~geographic origin in connection with goods or services.~~
- 30 (5) ~~Representing that goods or services have~~  
31 ~~sponsorship, approval, characteristics, ingredients, uses,~~  
32 ~~benefits, or quantities which they do not have or that a~~  
33 ~~person has a sponsorship, approval, status, affiliation, or~~  
34 ~~connection which he or she does not have.~~
- 35 (6) ~~Representing that goods are original or new if they~~  
36 ~~have deteriorated unreasonably or are altered,~~  
37 ~~reconditioned, reclaimed, used, or secondhand.~~
- 38 (7) ~~Representing that goods or services are of a~~  
39 ~~particular standard, quality, or grade, or that goods are of~~  
40 ~~a particular style or model, if they are of another.~~



- 1     ~~(8) Disparaging the goods, services, or business of~~  
2 ~~another by false or misleading representation of fact.~~
- 3     ~~(9) Advertising goods or services with intent not to sell~~  
4 ~~them as advertised.~~
- 5     ~~(10) Advertising goods or services with intent not to~~  
6 ~~supply reasonably expectable demand, unless the~~  
7 ~~advertisement discloses a limitation of quantity.~~
- 8     ~~(11) Advertising furniture without clearly indicating~~  
9 ~~that it is unassembled if that is the case.~~
- 10    ~~(12) Advertising the price of unassembled furniture~~  
11 ~~without clearly indicating the assembled price of that~~  
12 ~~furniture if the same furniture is available assembled~~  
13 ~~from the seller.~~
- 14    ~~(13) Making false or misleading statements of fact~~  
15 ~~concerning reasons for, existence of, or amounts of price~~  
16 ~~reductions.~~
- 17    ~~(14) Representing that a transaction confers or~~  
18 ~~involves rights, remedies, or obligations which it does not~~  
19 ~~have or involve, or which are prohibited by law.~~
- 20    ~~(15) Representing that a part, replacement, or repair~~  
21 ~~service is needed when it is not.~~
- 22    ~~(16) Representing that the subject of a transaction has~~  
23 ~~been supplied in accordance with a previous~~  
24 ~~representation when it has not.~~
- 25    ~~(17) Representing that the consumer will receive a~~  
26 ~~rebate, discount, or other economic benefit, if the earning~~  
27 ~~of the benefit is contingent on an event to occur~~  
28 ~~subsequent to the consummation of the transaction.~~
- 29    ~~(18) Misrepresenting the authority of a salesperson,~~  
30 ~~representative, or agent to negotiate the final terms of a~~  
31 ~~transaction with a consumer.~~
- 32    ~~(19) Inserting an unconscionable provision in the~~  
33 ~~contract.~~
- 34    ~~(20) Advertising that a product is being offered at a~~  
35 ~~specific price plus a specific percentage of that price~~  
36 ~~unless (1) the total price is set forth in the advertisement,~~  
37 ~~which may include, but is not limited to, shelf tags,~~  
38 ~~displays, and media advertising, in a size larger than any~~  
39 ~~other price in that advertisement, and (2) the specific~~  
40 ~~price plus a specific percentage of that price represents~~



1 a markup from the seller's costs or from the wholesale  
2 price of the product. This subdivision shall not apply to  
3 in-store advertising by businesses which are open only to  
4 members or cooperative organizations organized  
5 pursuant to Division 3 (commencing with Section 12000)  
6 of Title 1 of the Corporations Code where more than 50  
7 percent of purchases are made at the specific price set  
8 forth in the advertisement.

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

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

18 (B) This subdivision does not apply to any of the  
19 following:

20 (i) A call for the purpose of collecting an existing  
21 obligation.

22 (ii) A call for the purpose of fraud prevention.

23 (iii) Any call generated at the request of the recipient.

24 (iv) Any call generated by an automatic  
25 dialing-announcing device that is not used to randomly or  
26 sequentially dial telephone numbers, but that is used to  
27 transmit a message in furtherance of an established  
28 relationship to a business associate, customer, or other  
29 person having a direct, established relationship with the  
30 person using the automatic dialing-announcing device to  
31 transmit the message. A message in furtherance of an  
32 established relationship does not include a message  
33 pertaining to a new commercial transaction that is  
34 unrelated to any product or service currently within the  
35 scope of the established relationship.

36 (23) The home solicitation, as defined in subdivision  
37 (h) of Section 1761, of a consumer who is a senior citizen  
38 where a loan is made encumbering the primary residence  
39 of that consumer for the purposes of paying for home  
40 improvements and where the transaction is part of a



1 ~~pattern or practice in violation of either subsection (h) or~~  
2 ~~(i) of Section 1639 of Title 15 of the United States Code~~  
3 ~~or subsection (e) of Section 226.32 of Title 12 of the Code~~  
4 ~~of Federal Regulations.~~

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

13 ~~(b) (1) It is an unfair or deceptive act or practice for~~  
14 ~~a mortgage broker or lender, directly or indirectly, to use~~  
15 ~~a home improvement contractor to negotiate the terms~~  
16 ~~of any loan that is secured, whether in whole or in part,~~  
17 ~~by the residence of the borrower and which is used to~~  
18 ~~finance a home improvement contract or any portion~~  
19 ~~thereof. For purposes of this subdivision, “mortgage~~  
20 ~~broker or lender” includes a finance lender licensed~~  
21 ~~pursuant to the California Finance Lenders Law~~  
22 ~~(Division 9 (commencing with Section 22000) of the~~  
23 ~~Financial Code), a residential mortgage lender licensed~~  
24 ~~pursuant to the California Residential Mortgage Lending~~  
25 ~~Act (Division 20 (commencing with Section 50000) of the~~  
26 ~~Financial Code), or a real estate broker licensed under~~  
27 ~~the Real Estate Law (Division 4 (commencing with~~  
28 ~~Section 10000) of the Business and Professions Code).~~

29 ~~(2) This section shall not be construed to either~~  
30 ~~authorize or prohibit a home improvement contractor~~  
31 ~~from referring a consumer to a mortgage broker or~~  
32 ~~lender by this subdivision. However, a home~~  
33 ~~improvement contractor may refer a consumer to a~~  
34 ~~mortgage lender or broker if that referral does not violate~~  
35 ~~Section 7157 of the Business and Professions Code or any~~  
36 ~~other provision of law. A mortgage lender or broker may~~  
37 ~~purchase an executed home improvement contract if~~  
38 ~~that purchase does not violate Section 7157 of the Business~~  
39 ~~and Professions Code or any other provision of law.~~  
40 ~~Nothing in this paragraph shall have any effect on the~~



1 application of Chapter 1 (commencing with Section  
2 1801) of Title 2 to a home improvement transaction or the  
3 financing thereof.

4 ~~SEC. 3.~~

5 SEC. 2. Section 2872 of the Public Utilities Code is  
6 amended to read:

7 2872. (a) The connection of automatic  
8 dialing-announcing devices to a telephone line is subject  
9 to this article and to the jurisdiction, control, and  
10 regulation of the commission.

11 (b) No person shall operate an automatic  
12 dialing-announcing device except in accordance with this  
13 article. The use of such a device by any person, either  
14 individually or acting as an officer, agent, or employee of  
15 a person or corporation operating automatic  
16 dialing-announcing devices, is subject to this article.

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

21 (d) This article does not prohibit the use of an  
22 automatic dialing-announcing device for any of the  
23 following purposes:

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

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

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

35 (4) A privately owned or publicly owned public utility  
36 or its affiliate for purposes of contacting customers or  
37 subscribers regarding the previously arranged  
38 installation or ongoing operation of facilities or services  
39 on the premises of the customer or subscriber or for



1 purposes of contacting employees for emergency actions  
2 or repairs required for public safety or to restore services.

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

7 (6) A law enforcement agency, fire protection agency,  
8 public health agency, public environmental health  
9 agency, city or county emergency services planning  
10 agency, or any private for-profit agency operating under  
11 contract with, and at the direction of, one or more of these  
12 agencies, placing calls through automatic  
13 dialing-announcing devices, if those devices are used for  
14 any of the following purposes:

15 (A) Providing public service information relating to  
16 public safety.

17 (B) Providing information concerning police or fire  
18 emergencies.

19 (C) Providing warnings of impending or threatened  
20 emergencies.

21 (7) A call generated at the request of the recipient.

22 (8) A call for the purpose of collecting an existing  
23 obligation.

24 ~~(9) A call for the purpose of fraud prevention.~~

25 ~~(10)~~

26 (9) A call that is not made for a commercial purpose.

27 (e) This article does not apply to any automatic  
28 dialing-announcing device that is not used to randomly or  
29 sequentially dial telephone numbers, but that is used to  
30 transmit a message ~~in furtherance of~~ to an established  
31 relationship to a business associate, customer, or other  
32 person having a ~~direct,~~ *an* established relationship with  
33 the person using the automatic dialing-announcing  
34 device to transmit the message. ~~A message in furtherance~~  
35 ~~of an established relationship does not include a message~~  
36 ~~pertaining to a new commercial transaction that is~~  
37 ~~unrelated to any product or service currently within the~~  
38 ~~scope of the established relationship.~~

39 (f) The commission may determine any question of  
40 fact arising under this section.



1 ~~SEC. 4.—~~

2 *SEC. 3.* Section 2874 of the Public Utilities Code is  
3 amended to read:

4 2874. (a) Except as provided in subdivision (d) or  
5 (e) of Section 2872, if telephone calls are placed through  
6 the use of an automatic dialing-announcing device, the  
7 device may be operated only after an unrecorded, natural  
8 voice announcement has been made to the person called  
9 by the person calling. The announcement shall do all of  
10 the following:

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

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

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

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

26 ~~SEC. 5.—~~

27 *SEC. 4.* Section 2875.5 is added to the Public Utilities  
28 Code, to read:

29 2875.5. On and after July 1, 2001, no person operating  
30 any automatic equipment that incorporates a storage  
31 capability of telephone numbers to be called or a random  
32 or sequential number generator capable of producing  
33 numbers to be called may make a telephone connection  
34 for which no person, acting as an agent or telemarketer,  
35 or prerecorded message, as set forth in subdivision (d) of  
36 Section 2872, is available for the person called.

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