AMENDED IN SENATE AUGUST 25, 2000

AMENDED IN SENATE JULY 5, 2000

AMENDED IN SENATE JUNE 26, 2000

AMENDED IN ASSEMBLY MAY 22, 2000

AMENDED IN ASSEMBLY MAY 10, 2000

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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 Members Alquist and Havice)
(Coauthor: Senator Murray)

February 25, 2000

An act 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*, as prescribed. The bill would authorize the commission to require any person operating that specified equipment to maintain prescribed records for submission to the commission.*

(2) 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:

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

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

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

(c) Many consumers are outraged over the proliferation of intrusive nuisance calls to their homes from telemarketers, including, but not limited to, 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 2872 of the Public Utilities Code is amended to read:

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

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

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

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

(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 or its affiliate for purposes of contacting customers or subscribers regarding the previously arranged installation or ongoing operation of facilities or services 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.

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

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

(B) Providing information concerning police or fire emergencies.

(C) Providing warnings of impending or threatened emergencies.

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

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

(e) 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 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.

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

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

2874. (a) Except as provided in subdivision (d) or (e) of Section 2872, 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. 4. Section 2875.5 is added to the Public Utilities Code, to read:

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

(b) Notwithstanding subdivision (a), the commission may establish an acceptable error rate for telephone connections made in violation of subdivision (a).

(c) The commission may require any person operating automatic dialing announcing devices to maintain records of telephone connections made for which no person, acting as an agent or telemarketer, or prerecorded message, as set forth in subdivision (d) of Section 2872, is available for the person called. The

commission may require copies of those records to be submitted to the commission.

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