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AB-1034 Government interruption of communications. (2017-2018)

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Assembly Bill No. 1034

CHAPTER 322

An act to add Article 7 (commencing with Section 11470) to Chapter 3 of Title 1 of Part 4 of the Penal Code, and to repeal Sections 7907 and 7908 of the Public Utilities Code, relating to criminal procedure.

[Approved by Governor September 27, 2017. Filed with Secretary of State September 27, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1034, Chau. Government interruption of communications.

Existing law authorizes a supervising law enforcement official with probable cause to believe that a person is holding hostages and is committing a crime, or is barricaded and is resisting apprehension through the use or threatened use of force, to order a telephone corporation security employee to arrange to cut, reroute, or divert telephone lines for the purpose of preventing telephone communication by the suspected person with any person other than a peace officer or person authorized by a peace officer. Existing law, until January 1, 2020, prohibits a governmental entity and a provider of communications service acting at the request of a governmental entity from interrupting communications service for the purpose of protecting public safety or preventing the use of communications service for an illegal purpose, except pursuant to an order signed by a judicial officer, as specified. Existing law allows the order to authorize an interruption of communications service only for as long as is reasonably necessary, requires that the interruption cease once the danger that justified the interruption is abated, and requires the order to specify a process to immediately serve notice on the communications service provider to cease the interruption. Existing law authorizes interruption of a communications service without first obtaining a court order under extreme emergency situations, as specified.

This bill would repeal all of those provisions. This bill would instead prohibit any government entity, or service provider acting at the request of a government entity, from interrupting a communication service either to prevent the communications service from being used for an illegal purpose or to protect public health, safety, or welfare. The bill would authorize a government entity to interrupt a communications service for either of those purposes in an extreme emergency situation, as specified, or if the interruption is authorized by a court order. The bill would require the application for a court order under its provisions to require specified information, and would authorize the court to grant the order if specified conditions are met, including, among other things, there is probable cause that the communication is being or will be used for an unlawful purpose and that absent immediate and summary action to interrupt the communication service, serious, direct, and immediate danger to public health, safety, or welfare will result. The bill would require the order to contain specified information, including a statement of the duration of the authorized interruption.

The bill would require a government entity interrupting a communications service due to an extreme emergency situation to apply for a court order without delay, and if possible, to file the application within 6 hours after commencement of interruption. The bill would require the government entity, if it does not apply for an application within 6 hours, to apply within 24 hours after

commencement of the interruption and include a declaration under penalty of perjury stating the reason for the delay. By expanding the crime of perjury, this bill would create a state-mandated local program.

The bill would provide that good faith reliance by a service provider on a court order issued pursuant to these provisions is a defense for the service provider against any action brought as a result of the interruption of a communications service authorized by that order. The bill would allow a person whose communications service has been interrupted pursuant to these provisions to petition the superior court to contest the grounds for interruption and restore the interrupted service.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Article 7 (commencing with Section 11470) is added to Chapter 3 of Title 1 of Part 4 of the Penal Code, to read:

Article 7. Interruption of Communication

11470. For the purposes of this article, the following terms have the following meanings:

(a) "Communication service" means any communication service that interconnects with the public switched telephone network and is required by the Federal Communications Commission to provide customers with 911 access to emergency services.

(b) "Government entity" means every local government, including a city, county, city and county, a transit, joint powers, special, or other district, the state, and every agency, department, commission, board, bureau, or other political subdivision of the state, or any authorized agent thereof.

(c) "Interrupt communication service" means to knowingly or intentionally suspend, disconnect, interrupt, or disrupt a communication service to one or more particular customers or all customers in a geographical area.

(d) "Judicial officer" means a magistrate, judge, commissioner, referee, or any person appointed by a court to serve in one of these capacities, of a superior court.

(e) "Service provider" means a person or entity, including a government entity, that offers a communication service.

11471. (a) Except as authorized by this article, no government entity, and no service provider acting at the request of a government entity, shall interrupt a communication service for either of the following purposes:

- (1) To prevent the communication service from being used for an illegal purpose.
- (2) To protect public health, safety, or welfare.

(b) A government entity may interrupt a communication service for a purpose stated in subdivision (a) in any of the following circumstances:

- (1) The interruption is authorized by a court order pursuant to Section 11473.

(2) The government entity reasonably determines that (A) the interruption is required to address an extreme emergency situation that involves immediate danger of death or great bodily injury, (B) there is insufficient time, with due diligence, to first obtain a court order under Section 11473, and (C) the interruption meets the grounds for issuance of a court order under Section 11473. A government entity acting pursuant to this paragraph shall comply with Section 11475.

(3) Notwithstanding Section 591, 631, or 632, or Section 7906 of the Public Utilities Code, a supervising law enforcement official with jurisdiction may require that a service provider interrupt a communication service that is available to a person if (A) the law enforcement official has probable cause to believe that the person is holding hostages and is committing a crime, or is barricaded and is resisting apprehension through the use or threatened use of force, and (B) the purpose of the interruption is to prevent the person from communicating with anyone other than a peace officer or a person authorized by a peace officer. This paragraph does not authorize the interruption of communication service to a wireless device other than a wireless device used or available for use by the person or persons involved in a hostage or barricade situation.

11472. (a) An application by a government entity for a court order authorizing the interruption of a communication service shall be made in writing upon the personal oath or affirmation of the chief executive of the government entity or his or her designee, to the

presiding judge of the superior court or a judicial officer designated by the presiding judge for that purpose.

(b) Each application shall include all of the following information:

(1) The identity of the government entity making the application.

(2) A statement attesting to a review of the application and the circumstances in support of the application by the chief executive officer of the government entity making the application, or his or her designee. This statement shall state the name and office of the person who effected this review.

(3) A full and complete statement of the facts and circumstances relied on by the government entity to justify a reasonable belief that the order should be issued, including the facts and circumstances that support the statements made in paragraphs (4) to (7), inclusive.

(4) A statement that probable cause exists to believe that the communication service to be interrupted is being used or will be used for an unlawful purpose or to assist in a violation of the law. The statement shall expressly identify the unlawful purpose or violation of the law.

(5) A statement that immediate and summary action is needed to avoid serious, direct, and immediate danger to public health, safety, or welfare.

(6) A statement that the proposed interruption is narrowly tailored to the specific circumstances under which the order is made and would not interfere with more communication than is necessary to achieve the purposes of the order.

(7) A statement that the proposed interruption would leave open ample alternative means of communication.

(8) A statement that the government entity has considered the practical disadvantages of the proposed interruption, including any disruption of emergency communication service.

(9) A description of the scope and duration of the proposed interruption. The application shall clearly describe the specific communication service to be interrupted with sufficient detail as to customer, cell sector, central office, or geographical area affected.

(c) The judicial officer may require the applicant to furnish additional testimony or documentary evidence in support of an application for an order under this section.

(d) The judicial officer shall accept a facsimile copy of the signature of any person required to give a personal oath or affirmation pursuant to subdivision (a) as an original signature to the application.

11473. Upon application made under Section 11472, the judicial officer may enter an ex parte order, as requested or modified, authorizing interruption of a communication service in the territorial jurisdiction in which the judicial officer is sitting, if the judicial officer determines, on the basis of the facts submitted by the applicant, that all of the following requirements are satisfied:

(a) There is probable cause that the communication service is being or will be used for an unlawful purpose or to assist in a violation of the law.

(b) Absent immediate and summary action to interrupt the communication service, serious, direct, and immediate danger to public health, safety, or welfare will result.

(c) The interruption of communication service is narrowly tailored to prevent unlawful infringement of speech that is protected by the First Amendment to the United States Constitution or Section 2 of Article I of the California Constitution, or a violation of any other rights under federal or state law.

(d) The interruption of a communication service would leave open ample alternative means of communication.

11474. An order authorizing an interruption of a communication service shall include all of the following:

(a) A statement of the court's findings required by Section 11473.

(b) A clear description of the communication service to be interrupted, with specific detail as to the affected service, service provider, and customer or geographical area.

(c) A statement of the period of time during which the interruption is authorized. The order may provide for a fixed duration or require that the government end the interruption when it determines that the interruption is no longer reasonably necessary because the danger that justified the interruption has abated. If the judicial officer finds that probable cause exists that a particular

communication service is being used or will be used as part of a continuing criminal enterprise, the court may order the permanent termination of that service and require that the terminated service not be referred to another communication service.

(d) A requirement that the government entity immediately serve notice on the service provider when the interruption is to cease.

11475. A government entity that interrupts a communication service pursuant to paragraph (2) of subdivision (b) of Section 11471 shall take all of the following steps:

(a) Apply for a court order under Section 11472 without delay. If possible, the application shall be filed within six hours after commencement of the interruption. If that is not possible, the application shall be filed at the first reasonably available opportunity, but in no event later than 24 hours after commencement of an interruption of a communication service. If an application is filed more than six hours after commencement of an interruption of a communication service, the application shall include a declaration, made under penalty of perjury, stating the reason for the delay.

(b) Prepare a signed statement of intent to apply for a court order. The statement of intent shall clearly describe the extreme emergency situation and the specific communication service to be interrupted. If a government entity does not apply for a court order within six hours, the government entity shall submit a copy of the signed statement of intent to the court within six hours.

(c) Provide conspicuous notice of the application for a court order on the government entity's Internet Web site without delay, unless the circumstances that justify an interruption of a communication service without first obtaining a court order also justify not providing the notice.

11476. (a) If an order issued pursuant to Section 11473 or a signed statement of intent prepared pursuant to Section 11475 would authorize the interruption of a communication service for all customers of the interrupted communication service within a geographical area, the government entity shall serve the order or statement on the Governor's Office of Emergency Services.

(b) The Governor's Office of Emergency Services shall have policy discretion on whether to request that the federal government authorize and effect the proposed interruption.

11477. If an order issued pursuant to Section 11473 or a signed statement of intent prepared pursuant to Section 11475 is not governed by Section 11476, the government entity shall serve the order or statement on both of the following persons:

(a) The appropriate service provider's contact for receiving requests from law enforcement, including receipt of state or federal warrants, orders, or subpoenas.

(b) The affected customer, if the identity of the customer is known. When serving an affected customer, the government entity shall provide notice of the opportunity for judicial review under Section 11479.

11478. (a) Good faith reliance by a service provider on a court order issued pursuant to Section 11473, a signed statement of intent prepared pursuant to Section 11475, or the instruction of a supervising law enforcement officer acting pursuant to paragraph (3) of subdivision (b) of Section 11471 shall constitute a complete defense for the service provider against any action brought as a result of the interruption of a communication service authorized by that court order, statement of intent, or instruction.

(b) A communications service provider shall designate a security employee and an alternate security employee, to provide all required assistance to law enforcement officials to carry out the purposes of this article.

(c) A service provider that intentionally interrupts communication service pursuant to this article shall comply with any rule or notification requirement of the Public Utilities Commission or Federal Communications Commission, or both, and any other applicable provision or requirement of state or federal law.

11479. (a) A person whose communication service has been interrupted pursuant to this article may petition the superior court to contest the grounds for the interruption and restore the interrupted service.

(b) The remedy provided in this section is not exclusive. Other laws may provide a remedy for a person who is aggrieved by an interruption of a communication service authorized by this chapter.

11480. The Legislature finds and declares that ensuring that California users of any communication service not have that service interrupted, and thereby be deprived of 911 access to emergency services or a means to engage in constitutionally protected expression, is a matter of statewide concern and not a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution.

11481. (a) This article does not apply to any of the following actions:

- (1) The interruption of a communication service with the consent of the affected customer.
- (2) The interruption of a communication service pursuant to a customer service agreement, contract, or tariff.
- (3) The interruption of a communication service to protect the security of the communication network or other computing resources of a government entity or service provider.
- (4) The interruption of a communication service to prevent unauthorized wireless communication by a prisoner in a state or local correctional facility, including a juvenile facility.
- (5) The interruption of a communication service to transmit an emergency notice that includes, but is not limited to, an Amber Alert, a message transmitted through the federal Emergency Alert System, or a message transmitted through the federal Wireless Emergency Alert System.
- (6) An interruption of a communication service pursuant to a statute that expressly authorizes an interruption of a communication service, including Sections 149 and 7099.10 of the Business and Professions Code and Sections 2876, 5322, and 5371.6 of the Public Utilities Code.
- (7) An interruption of communication service that results from the execution of a search warrant.

(b) Nothing in this section provides authority for an action of a type listed in subdivision (a) or limits any remedy that may be available under law if an action of a type listed in subdivision (a) is taken unlawfully.

11482. This article does not restrict, expand, or otherwise modify the authority of the Public Utilities Commission.

SEC. 2. Section 7907 of the Public Utilities Code is repealed.

SEC. 3. Section 7908 of the Public Utilities Code is repealed.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.