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SB-1272 Crimes: intercepting telephone communications. (2021-2022)

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Senate Bill No. 1272

CHAPTER 27

An act to amend Sections 631 and 632.7 of the Penal Code, relating to crimes.

[Approved by Governor June 20, 2022. Filed with Secretary of State June 20, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1272, Becker. Crimes: intercepting telephone communications.

Existing law prohibits tapping any communication wire or intercepting or recording any telephone communication, as specified, without the consent of all parties. Existing law exempts specified communication intercepts including those made by a public utility if required for utility maintenance purposes. A violation of these provisions is punishable as either a misdemeanor or a felony.

This bill would exempt from these provisions any telephone company engaged in the business of providing communications services and facilities, as specified.

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

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

SECTION 1. Section 631 of the Penal Code is amended to read:

631. (a) Any person who, by means of any machine, instrument, or contrivance, or in any other manner, intentionally taps, or makes any unauthorized connection, whether physically, electrically, acoustically, inductively, or otherwise, with any telegraph or telephone wire, line, cable, or instrument, including the wire, line, cable, or instrument of any internal telephonic communication system, or who willfully and without the consent of all parties to the communication, or in any unauthorized manner, reads, or attempts to read, or to learn the contents or meaning of any message, report, or communication while the same is in transit or passing over any wire, line, or cable, or is being sent from, or received at any place within this state; or who uses, or attempts to use, in any manner, or for any purpose, or to communicate in any way, any information so obtained, or who aids, agrees with, employs, or conspires with any person or persons to unlawfully do, or permit, or cause to be done any of the acts or things mentioned above in this section, is punishable by a fine not exceeding two thousand five hundred dollars (\$2,500), or by imprisonment in the county jail not exceeding one year, or by imprisonment pursuant to subdivision (h) of Section 1170, or by both a fine and imprisonment in the county jail or pursuant to subdivision (h) of Section 1170. If the person has previously been convicted of a violation of this section or Section 632, 632.5, 632.6, 632.7, or 636, the offense is punishable by a fine not exceeding ten thousand dollars (\$10,000), or by imprisonment in the county jail not exceeding one year, or by imprisonment pursuant to subdivision (h) of Section 1170, or by both that fine and imprisonment.

(b) This section shall not apply to any of the following:

(1) Any public utility, or telephone company, engaged in the business of providing communications services and facilities, or to the officers, employees or agents thereof, where the acts otherwise prohibited herein are for the purpose of construction, maintenance, conduct or operation of the services and facilities of the public utility or telephone company.

(2) The use of any instrument, equipment, facility, or service furnished and used pursuant to the tariffs of a public utility.

(3) Any telephonic communication system used for communication exclusively within a state, county, city and county, or city correctional facility.

(c) For purposes of this section, "telephone company" is defined in paragraph (3) of subdivision (c) of Section 638.

(d) Except as proof in an action or prosecution for violation of this section, no evidence obtained in violation of this section shall be admissible in any judicial, administrative, legislative, or other proceeding.

SEC. 2. Section 632.7 of the Penal Code is amended to read:

632.7. (a) Every person who, without the consent of all of the parties to a communication, intercepts or receives and intentionally records, or assists in the interception or reception and intentional recordation of, a communication transmitted between two cellular radio telephones, a cellular radio telephone and a landline telephone, two cordless telephones, a cordless telephone and a landline telephone, or a cordless telephone and a cellular radio telephone, shall be punished by a fine not exceeding two thousand five hundred dollars (\$2,500), or by imprisonment in a county jail not exceeding one year, or in the state prison, or by both that fine and imprisonment. If the person has been convicted previously of a violation of this section or of Section 631, 632, 632.5, 632.6, or 636, the person shall be punished by a fine not exceeding ten thousand dollars (\$10,000), by imprisonment in a county jail not exceeding one year, or in the state prison, or by both that fine and imprisonment.

(b) This section shall not apply to any of the following:

(1) Any public utility, or telephone company, engaged in the business of providing communications services and facilities, or to the officers, employees, or agents thereof, where the acts otherwise prohibited are for the purpose of construction, maintenance, conduct, or operation of the services and facilities of the public utility or telephone company.

(2) The use of any instrument, equipment, facility, or service furnished and used pursuant to the tariffs of the public utility.

(3) Any telephonic communication system used for communication exclusively within a state, county, city and county, or city correctional facility.

(c) For purposes of this section, "telephone company" is defined in paragraph (3) of subdivision (c) of Section 638.

(d) As used in this section, each of the following terms have the following meaning:

(1) "Cellular radio telephone" means a wireless telephone authorized by the Federal Communications Commission to operate in the frequency bandwidth reserved for cellular radio telephones.

(2) "Cordless telephone" means a two-way, low power communication system consisting of two parts, a "base" unit which connects to the public switched telephone network and a handset or "remote" unit, that are connected by a radio link and authorized by the Federal Communications Commission to operate in the frequency bandwidths reserved for cordless telephones.

(3) "Communication" includes, but is not limited to, communications transmitted by voice, data, or image, including facsimile.