

Date of Hearing: April 30, 2019

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Ed Chau, Chair

AB 956 (Diep) – As Amended April 25, 2019

**SUBJECT:** Telecommunications: automatic dialing-announcing devices: residential subscriber information: emergency alert notifications

**SUMMARY:** Among other things, this bill would expressly provide that the use of automatic dialing-announcing devices by certain public entities to test the enhanced 911 (e911) emergency telephone system for data accuracy and emergency alert notification system capabilities are not prohibited. Specifically, **this bill would:**

- 1) Exempt from the existing prohibition on automatic dialing-announcing devices, 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 for testing the e911 emergency telephone system for data accuracy and emergency alert notification system capabilities.
- 2) Specify that a telephone or telegraph corporation may make certain personal information available to an emergency service agency for the purpose of issuing an emergency alert notification to communicate an imminent threat to life or property, or for the purpose of testing the emergency alert notification system, without first obtaining the residential subscriber's written consent.
- 3) Make various technical and non-substantive changes.

**EXISTING LAW:**

- 1) Establishes the Warren-911 Emergency Assistance Act, which establishes the number "911" as the primary emergency telephone number for use in this state and encourages local government, as specified, to develop and improve emergency communication procedures and facilities in such a manner as to be able to quickly respond to any person "911" seeking police, fire, medical, rescue, and other emergency services. (Gov. Code Sec. 53100 et seq.)
- 2) Prohibits a person from operating 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. (Pub. Util. Code Sec. 2872(c).)
- 3) Defines a "automatic dialing-announcing device" to mean any automatic equipment which incorporates a storage capability of telephone numbers to be called or a random or sequential number generator capable of producing numbers to be called and the capability, working alone or in conjunction with other equipment, to disseminate a prerecorded message to the telephone number called. (Pub. Util. Code Sec. 2871.)
- 4) Exempts the prohibition on the use of an automatic dialing-announcing device by any person exclusively on behalf of any of the following:

- a school for purposes of contacting parents or guardians of pupils regarding attendance;
  - an specified exempted bank or organization for purposes of contacting its members;
  - 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;
  - 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; or,
  - 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. (Pub. Util. Code Sec 2872(d).)
- 5) Specifies that nothing prohibits 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:
- providing public service information relating to public safety;
  - providing information concerning police or fire emergencies; or,
  - providing warnings of impending or threatened emergencies. (Pub. Util. Code Sec. 2872(e).)
- 6) Prohibits a telephone or telegraph corporation from making available to any other person or corporation, without first obtaining the residential subscriber's consent, in writing, any of the following information:
- the subscriber's personal calling patterns, including any listing of the telephone or other access numbers called by the subscriber, but excluding the identification to the person called of the person calling and the telephone number from which the call was placed, subject to specified restrictions, and also excluding billing information concerning the person calling which federal law or regulation requires a telephone corporation to provide to the person called;
  - the residential subscriber's credit or other personal financial information, as specified;
  - the services which the residential subscriber purchases from the corporation or from independent suppliers of information services who use the corporation's telephone or telegraph line to provide service to the residential subscriber; or,

- demographic information about individual residential subscribers, or aggregate information from which individual identities and characteristics have not been removed. (Pub. Util. Code Sec. 2891(a).)
- 7) Provides that the prohibition on releasing specified personal information about a noncommercial subscriber does not apply to any of the following:
- information provided by residential subscribers for inclusion in the corporation's directory of subscribers;
  - information customarily provided by the corporation through directory assistance services;
  - postal ZIP Code information;
  - information provided under supervision of the CPUC to a collection agency by the telephone corporation exclusively for the collection of unpaid debts;
  - information provided to an emergency service agency responding to a 911 telephone call or any other call communicating an imminent threat to life or property;
  - information provided to a law enforcement agency in response to lawful process;
  - information which is required by the CPUC pursuant to its jurisdiction and control over telephone and telegraph corporations;
  - information transmitted between telephone or telegraph corporations pursuant to the furnishing of telephone service between or within service areas;
  - information required to be provided by the corporation pursuant to rules and orders of the CPUC or the Federal Communications Commission (FCC) regarding the provision over telephone lines by parties other than the telephone and telegraph corporations of telephone or information services;
  - the name and address of the lifeline customers of a telephone corporation provided by that telephone corporation to a public utility for the sole purpose of low-income ratepayer assistance outreach efforts. The telephone corporation receiving the specified information requested may charge the requesting utility for the cost of the search and release of the requested information; or,
  - information provided in response to a request relating to specified crimes. (Pub. Util. Code Sec. 2891(d).)

**FISCAL EFFECT:** None. This bill has been keyed nonfiscal by the Legislative Counsel.

**COMMENTS:**

- 1) **Purpose of bill:** This bill, among other things, seeks to allow for testing of and notification by e911 data, to ensure that the system is working well in the event of a natural disaster or other emergency. This bill is sponsored by the Orange County Sheriff's Department.
- 2) **Author's statement:** According to the author, "[c]urrently, [enhanced 911 data] (e911 data) is used for real time emergencies. Current law does not allow public safety agencies to conduct emergency testing to landline phones using the e911 system. This bill is needed to make sure all Californians are properly notified during a natural disaster or region-wide emergency, regardless if they have a landline or cellphone. By allowing public safety agencies to test their emergency alert system, we are providing more transparency and safety for families all over California."

The Orange County Sheriff's Department, sponsor, writes:

Regular testing of our public safety alert notification systems is vital to ensuring our local communities are prepared in the event of an emergency. [This bill] ensures that state law will support this important concept. While current law provides for public safety agencies to test the 911 system, the ability to utilize the e911 system is unclear.

Amending the public utility code to specifically state that public safety agencies are authorized to conduct an emergency test of the e911 system remedies this problem. Through annual tests of the system emergency management personnel can have confidence that they will be able to communicate with the public at those crucial moments when life and property are most at risk.

- 3) **Robocalls for public safety:** Existing law establishes a number of requirements and restrictions on telemarketers and the use of robocalls. Robocalls are recorded messages delivered by way of an autodialing device that stores thousands of telephone numbers. Current law authorizes robocalls only between the hours of 9 a.m. and 9 p.m. California time. Although many consumers consider robocalls or telemarketers a nuisance, there are legitimate uses of such methods such as, by schools to contact parents regarding a pupil's attendance, a bank to contact its members, or a cable company or utility to contact its customers regarding a previously arranged appointment. Current law also exempts public safety agency from robocall requirements in order to provide public safety information and alerts. This bill would additionally authorize public safety agencies to use autodialing devices to test their e911 emergency telephone system for data accuracy and emergency alert notification system capabilities.

This bill comes in the wake of a number of devastating wildfires in California, where many individuals who were forced to evacuate their homes did not receive any prior warning from public safety agencies. According to CNN:

When the wildfires in Northern California broke out this week, they spread so fast that many residents were caught off guard.

Some told CNN that the smell of smoke or their dogs whimpering were the only warnings they got before the fires tore through their neighborhoods, forcing them to flee their homes in the middle of the night.

Now local emergency management officials and authorities are facing criticism for how they informed residents of the fires - and how they didn't.

“From what I’ve heard from (friends and family), no one got an alert,” said Sonoma County resident Margaret Curzon, whose parents lost their home to the blaze. “Everyone was blindsided by this.” (Andone, *Californians say they didn't receive emergency wildfire alerts*, CNN (Oct. 15, 2017) <<https://www.cnn.com/2017/10/13/us/california-fires-emergency-alerts/index.html>> [Apr. 24, 2019].)

Arguably, as Californians continue to transition away from landlines and gravitate toward cellular phones, it is important that the effectiveness of the State’s emergency alert system can be tested prior to needing to use it in the event of another natural disaster. The California State Sheriffs write in support:

E911 support is mandated by the U.S. Federal Communications Commission (FCC) for traditional mobile phone service, a system that automatically provides the caller's location to 911 dispatchers. However, current law does not allow public safety agencies to conduct emergency testing to landline phones using the e911 system.

The emergency alert notifications service is a vital part of our State’s emergency response and disaster preparedness system. The ability to test landlines using the e911 system will help public safety officials, telecommunication companies, and individuals be better prepared for a real disaster.

- 4) **Unclear that public safety agencies require access to otherwise private information for the purposes of issuing emergency alerts and testing the emergency alert notification system:** Existing law prohibits a telephone or telegraph corporation from sharing certain personal information about subscribers, absent that subscriber’s informed consent. Specifically, a telephone or telegraph corporation is prohibited from disclosing: (1) the subscriber’s personal calling patterns, including any listing of the telephone or other access numbers called by the subscriber; (2) the subscriber’s credit or other personal financial information; (3) services that the residential subscriber purchases from the corporation; and, (4) demographic information about individual residential subscribers, or aggregate information from which individual identities and characteristics have not been removed. (Pub. Util. Code Sec. 2872.)

Exempted from this provision, among other things, is “information provided to an emergency service agency responding to a 911 telephone call or any other call communicating an imminent threat to life or property,” and “information provided to a law enforcement agency in response to lawful process.” While it is clear that public safety agencies should be able to use any information they can glean from 911 calls to respond to life threatening emergencies, it is not clear that the same should be true for the *testing* of the emergency alert notification system. Existing law reflects the fact that some of the information gleaned from a telephone corporation in relation to a 911 call could be helpful in responding to an emergency, for example who an individual had last called or their credit card number (to see where it had last been used). The same information is arguably not necessary or helpful in the testing of the emergency alert notification system. Further, existing law does not necessarily limit what an agency can do with that information once they receive it through appropriate means. Given the sensitive personal information telephone and telegraph corporations hold about

their subscribers, public agencies should arguably be required to go through an existing and lawful process absent an imminent threat to life or property.

Further, the California Electronic Communications Privacy Act (CalECPA), prohibits any government entity from compelling the production of or access to electronic device information from any person or entity other than the authorized possessor of the device, absent a warrant, as specified. (Pen. Code Sec. 1546 et seq.) Arguably, by allowing access to personal information from an individual's phone or other device for the purposes of testing an emergency alert notification system would undermine CalECPA.

The following amendment would address these concerns by striking Section 2 from the bill, while leaving Section 1 intact. This would ensure that public safety agencies are allowed to auto dial calls for the purposes of testing the e911 system, but would continue to protect individual's personal information as required by CalECPA.

Author's amendment:

Strike Section 2 from the bill.

- 5) **Double-referral:** This bill was double-referred to the Communications and Conveyance Committee, where it was heard on April 24, 2019, and passed on a 8-0 vote.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Orange County Sheriff's Department (sponsor)  
California Fire Chiefs Association  
California State Sheriffs' Association  
Fire Districts Association of California  
County of Orange

**Opposition**

None on file

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