

**Introduced by Senator Bowen**

February 23, 2001

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An act to amend Section 637.5 of the Penal Code, relating to privacy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1090, as introduced, Bowen. Privacy: video providers.

Existing law prohibits, with prescribed exceptions, a person who owns, controls, operates, or manages a cable television corporation or leases channels on a cable system from using electronic devices to observe, listen to, record, or monitor events or conversations inside a subscriber's residence, workplace, or place of business without the subscriber's written consent. Existing law also prohibits that person from providing any other person with individually identifiable information, as specified, regarding any subscriber.

This bill would instead make the above provisions applicable to a video provider, which it would define as a person, company, or service that provides video programming services to a residence for a fee paid by the subscriber to the video provider. The bill also would specify persons or entities that are not considered video providers. Since a violation of these provisions is, among other things, a crime, the bill would impose a state-mandated local program by expanding the definition of a crime.

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.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 637.5 of the Penal Code is amended to  
2 read:  
3 637.5. (a) No person who owns, controls, operates, or  
4 manages a ~~cable television corporation, or who leases channels on~~  
5 ~~a cable system~~ video provider, or who leases channels from a video  
6 provider shall in the course of providing video provider services:  
7 (1) Use any electronic device to record, transmit, or observe  
8 any events or listen to, record, or monitor any conversations which  
9 take place inside a subscriber’s residence, workplace, or place of  
10 business, without obtaining the express written *or electronic*  
11 consent of the subscriber. A ~~cable television corporation~~ video  
12 provider may conduct electronic sweeps of subscriber households  
13 to monitor for signal quality.  
14 (2) Provide any person with any individually identifiable  
15 information regarding any of its subscribers, including, but not  
16 limited to, the subscriber’s television viewing habits, shopping  
17 choices, interests, opinions, energy uses, medical information,  
18 banking data or information, or any other personal or private  
19 information, without the subscriber’s express written consent.  
20 (b) Individual subscriber viewing responses or other  
21 individually identifiable information derived from *its* subscribers  
22 may be retained and used by a ~~cable television corporation~~ video  
23 provider only to the extent reasonably necessary for billing  
24 purposes and internal business practices, ~~and to provide services~~  
25 ~~requested by the subscriber, or to monitor for unauthorized~~  
26 reception of services. A ~~cable television corporation~~ video  
27 provider may compile, maintain, and distribute a list containing  
28 the names and addresses of its subscribers if the list contains no  
29 ~~other~~ individually identifiable information *other than the*  
30 *subscriber’s name and address*, and if subscribers are afforded the  
31 right to elect not to be included on ~~such~~ *those* lists. ~~However, a~~  
32 ~~cable television corporation~~ A video provider shall maintain  
33 adequate safeguards to ensure the physical security and  
34 confidentiality of any such subscriber information *that is in their*  
35 *possession, custody, or control.*



1 (c) A ~~cable television corporation~~ *video provider* shall not  
2 make individual subscriber information available to government  
3 agencies *without the subscriber's consent* in the absence of legal  
4 compulsion, including, but not limited to, a court order, *warrant*,  
5 or subpoena. If requests for ~~such~~ *this* information are made, a ~~cable~~  
6 ~~television corporation~~ *video provider* shall promptly notify the  
7 subscriber of the nature of the request and what government  
8 agency has requested the information prior to responding, unless  
9 otherwise prohibited from doing so by law.

10 Nothing in this section shall be construed to prevent local  
11 franchising authorities from obtaining information necessary to  
12 monitor franchise compliance pursuant to franchise or license  
13 agreements. ~~This~~ *However, this* information shall be provided so  
14 as to omit individually identifiable subscriber information  
15 ~~whenever possible~~. Information obtained by local franchising  
16 authorities shall be used solely for monitoring franchise  
17 compliance and shall not be subject to the California Public  
18 Records Act (Chapter 3.5 (commencing with Section 6250); *of*  
19 *Division 7; of Title 1; of the Government Code*).

20 (d) Any individually identifiable subscriber information  
21 gathered by a ~~cable television corporation~~ *video provider* shall be  
22 made available for subscriber examination within 30 days of  
23 receiving a request by a subscriber to examine ~~such~~ *the*  
24 information on the premises of the corporation *or through another*  
25 *reasonable mechanism*. Upon a reasonable showing by the  
26 subscriber that the information is inaccurate, a ~~cable television~~  
27 ~~corporation~~ *video provider* shall correct ~~such~~ *the* information  
28 *within 30 days and shall send written or electronic confirmation*  
29 *to the subscriber*. ~~Subscribers shall bear all costs of copying any~~  
30 ~~records or information gathered by the cable television~~  
31 ~~corporation and supplied to the subscriber~~.

32 (e) Upon a subscriber's application for ~~cable television~~ *video*  
33 *provider* service, including, but not limited to, interactive service,  
34 a ~~cable television corporation~~ *video provider* shall provide the  
35 applicant with a separate notice in an appropriate form explaining  
36 the subscriber's right to privacy protection afforded by this  
37 section.

38 (f) As used in this section:

39 (1) ~~"Cable television corporation" shall have the same~~  
40 ~~meaning as that term is given by Section 215.5 of the Public~~



1 ~~Utilities Code.~~ “Video provider” means any person, company, or  
2 service that provides video programming to a residence, including  
3 a home, condominium, apartment, or mobilehome, where a fee is  
4 paid specifically for that service by the subscriber to the video  
5 provider, whether directly or included in dues or rental charges,  
6 regardless of the method used to deliver the video programming.  
7 A “video provider” shall include, but not be limited to, a provider  
8 of cable television, master antenna television, satellite master  
9 antenna television, direct broadcast satellite, multipoint  
10 distribution service, and any other method of providing video  
11 programming regardless of the technology used. A video provider  
12 shall not include an Internet service provider unless that Internet  
13 service provider is directly providing video provider services. A  
14 video provider shall not include a person, company, or service that  
15 provides other services and where any video content provided is  
16 merely ancillary to the primary services, such as a video tutorial  
17 on how to use a product or service, or a video promotional piece.

18 (2) “Individually identifiable information” means any  
19 information identifying ~~an individual~~ a subscriber or his or her use  
20 of any service provided by a ~~cable system~~ video provider; other  
21 than the mere fact that ~~such~~ the individual is a ~~cable television~~  
22 subscriber. “Individually identifiable information” shall not  
23 include anonymous, aggregate, or any other information that does  
24 not identify an individual subscriber of a video provider service.

25 (3) “Person” ~~includes~~ means an individual, business,  
26 association, partnership, corporation, limited liability company, or  
27 other legal entity, ~~and~~ or an individual acting or purporting to act  
28 for or on behalf of any government, or subdivision thereof,  
29 whether federal, state, or local.

30 (4) “Interactive service” means any service offered by a ~~cable~~  
31 ~~television corporation~~ video provider involving the collection,  
32 reception, aggregation, storage, or use of electronic information  
33 transmitted from a subscriber to any other receiving point under  
34 the control of the ~~cable television corporation~~ video provider, or  
35 vice versa.

36 (5) “Subscriber” means an individual who purchases and  
37 receives video provider services.

38 (g) Nothing in this section shall be construed to limit the ability  
39 of a ~~cable television corporation~~ video provider to market ~~cable~~



1 ~~television~~ *video provider services* or ancillary services to its  
2 subscribers.

3 (h) Any person receiving subscriber information from a ~~cable~~  
4 ~~television corporation~~ *video provider* shall be subject to the  
5 provisions of this section.

6 (i) Any aggrieved person may commence a civil action for  
7 damages *or injunctive relief* for invasion of privacy against any  
8 ~~cable television corporation~~ *video provider*, service provider, or  
9 person that leases a channel or channels ~~on a cable television~~  
10 ~~system~~ *from a video provider* that violates the provisions of this  
11 section.

12 (j) Any person who violates the provisions of this section is  
13 guilty of a misdemeanor punishable by a fine not exceeding three  
14 thousand dollars (\$3,000), or by imprisonment in the county jail  
15 not exceeding one year, or by both such fine and imprisonment.

16 (k) The penalties and remedies provided by subdivisions (i)  
17 and (j) are cumulative, and shall not be construed as restricting any  
18 penalty or remedy, provisional or otherwise, provided by law for  
19 the benefit of any person, and no judgment under this section shall  
20 preclude any person from obtaining additional relief based upon  
21 the same facts.

22 (l) The provisions of this section are intended to set forth  
23 minimum state standards for protecting the privacy of subscribers  
24 to cable television services and are not intended to preempt more  
25 restrictive local standards.

26 SEC. 2. No reimbursement is required by this act pursuant to  
27 Section 6 of Article XIII B of the California Constitution because  
28 the only costs that may be incurred by a local agency or school  
29 district will be incurred because this act creates a new crime or  
30 infraction, eliminates a crime or infraction, or changes the penalty  
31 for a crime or infraction, within the meaning of Section 17556 of  
32 the Government Code, or changes the definition of a crime within  
33 the meaning of Section 6 of Article XIII B of the California  
34 Constitution.

