

**Senate Bill No. 1090**

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Passed the Senate    May 29, 2001

\_\_\_\_\_  
*Secretary of the Senate*

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Passed the Assembly    September 4, 2001

\_\_\_\_\_  
*Chief Clerk of the Assembly*

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This bill was received by the Governor this \_\_\_\_\_ day of  
\_\_\_\_\_, 2001, at \_\_\_\_\_ o'clock \_\_M.

\_\_\_\_\_  
*Private Secretary of the Governor*



## CHAPTER \_\_\_\_\_

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

## LEGISLATIVE COUNSEL'S DIGEST

SB 1090, 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 make the above provisions applicable to a person who owns, controls, operates, or manages a satellite television corporation or leases channels on a satellite system. The bill would also provide exceptions to the meaning of the term "individually identifiable information." 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.

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

SECTION 1. Section 637.5 of the Penal Code is amended to read:

637.5. (a) No person who owns, controls, operates, or manages a satellite or cable television corporation, or who leases channels on a satellite or cable system shall:



(1) Use any electronic device to record, transmit, or observe any events or listen to, record, or monitor any conversations which take place inside a subscriber's residence, workplace, or place of business, without obtaining the express written consent of the subscriber. A satellite or cable television corporation may conduct electronic sweeps of subscriber households to monitor for signal quality.

(2) Provide any person with any individually identifiable information regarding any of its subscribers, including, but not limited to, the subscriber's television viewing habits, shopping choices, interests, opinions, energy uses, medical information, banking data or information, or any other personal or private information, without the subscriber's express written consent.

(b) Individual subscriber viewing responses or other individually identifiable information derived from subscribers may be retained and used by a satellite or cable television corporation only to the extent reasonably necessary for billing purposes and internal business practices, and to monitor for unauthorized reception of services. A satellite or cable television corporation may compile, maintain, and distribute a list containing the names and addresses of its subscribers if the list contains no other individually identifiable information and if subscribers are afforded the right to elect not to be included on such a list. However, a satellite or cable television corporation shall maintain adequate safeguards to ensure the physical security and confidentiality of any such subscriber information.

(c) A satellite or cable television corporation shall not make individual subscriber information available to government agencies in the absence of legal compulsion, including, but not limited to, a court order or subpoena. If requests for such information are made, a satellite or cable television corporation shall promptly notify the subscriber of the nature of the request and what government agency has requested the information prior to responding unless otherwise prohibited from doing so by law.

Nothing in this section shall be construed to prevent local franchising authorities from obtaining information necessary to monitor franchise compliance pursuant to franchise or license agreements. This information shall be provided so as to omit individually identifiable subscriber information whenever possible. Information obtained by local franchising authorities



shall be used solely for monitoring franchise compliance and shall not be subject to the California Public Records Act (Chapter 3.5 (commencing with Section 6250), Division 7, Title 1, Government Code).

(d) Any individually identifiable subscriber information gathered by a satellite or cable television corporation shall be made available for subscriber examination within 30 days of receiving a request by a subscriber to examine such information on the premises of the corporation. Upon a reasonable showing by the subscriber that the information is inaccurate, a satellite or cable television corporation shall correct such information.

(e) Upon a subscriber's application for satellite or cable television service, including, but not limited to, interactive service, a satellite or cable television corporation shall provide the applicant with a separate notice in an appropriate form explaining the subscriber's right to privacy protection afforded by this section.

(f) As used in this section:

(1) "Cable television corporation" shall have the same meaning as that term is given by Section 215.5 of the Public Utilities Code.

(2) "Individually identifiable information" means any information identifying an individual or his or her use of any service provided by a satellite or cable system other than the mere fact that such individual is a satellite or cable television subscriber. "Individually identifiable information" shall not include anonymous, aggregate, or any other information that does not identify an individual subscriber of a video provider service.

(3) "Person" includes an individual, business association, partnership, corporation, limited liability company, or other legal entity, and an individual acting or purporting to act for or on behalf of any government, or subdivision thereof, whether federal, state, or local.

(4) "Interactive service" means any service offered by a satellite or cable television corporation involving the collection, reception, aggregation, storage, or use of electronic information transmitted from a subscriber to any other receiving point under the control of the satellite or cable television corporation, or vice versa.



(g) Nothing in this section shall be construed to limit the ability of a satellite or cable television corporation to market satellite or cable television or ancillary services to its subscribers.

(h) Any person receiving subscriber information from a satellite or cable television corporation shall be subject to the provisions of this section.

(i) Any aggrieved person may commence a civil action for damages for invasion of privacy against any satellite or cable television corporation, service provider, or person that leases a channel or channels on a satellite or cable television system that violates the provisions of this section.

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

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

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

SEC. 2. 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.



Approved \_\_\_\_\_, 2001

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*Governor*

