

AMENDED IN SENATE MARCH 24, 2011

SENATE BILL

No. 905

Introduced by Senator Wolk

February 18, 2011

An act to amend ~~Section 275.6~~ *Sections 2889.9 and 2890* of the Public Utilities Code, relating to telecommunications.

LEGISLATIVE COUNSEL'S DIGEST

SB 905, as amended, Wolk. Telecommunications: universal service.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including telephone corporations, as defined. Existing law requires a telephone bill to only contain charges for products or services, the purchase of which the subscriber has authorized. Existing law establishes various requirements for billing telephone corporations. Pursuant to these requirements, the commission has adopted rules to specify the responsibilities and procedures that must be followed to address and report cramming-related issues. Cramming occurs when an unauthorized charge is placed on a subscriber's telephone bill.

This bill, except for telephone corporations that either provide service only to business or wholesale customers or offer mobile telephony services through a prepaid or pay-in-advance method, would require that the reporting requirements and standards relative to cramming complaints be uniform for all billing telephone corporations, as defined. The bill would require that the commission annually report to the Legislature, on or before June 1 of each year, on any investigation commenced by the commission's consumer protection and safety division when the commission receives more than 100 complaints regarding unauthorized telephone charges in any 90-day period as to a person,

corporation, or billing agent, as defined. The bill would require the commission to impose a civil penalty and order a billing telephone corporation to cease to provide billing services for a service provider, as defined, or billing agent whenever the incidence of meritorious subscriber complaints of unauthorized billings, as defined, exceeds 5% of the customer accounts that were billed on behalf of a service provider or billing agent. The bill would require a billing telephone corporation to notify its subscribers whenever this 5% meritorious complaint penalty and termination requirement is invoked, identifying the service provider or billing agent with a clear and informative description of the nature of the charges that were unauthorized, and would authorize any subscriber that made or makes a meritorious complaint with respect to that service provider or billing agent, to terminate without financial or other penalty, the remaining term of a service contract with the billing telephone corporation. The bill would require the commission to make certain information relative to cramming available to the public over the Internet and in bill inserts to be included with billings by billing telephone corporations.

Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because certain provisions of this bill incorporate those criminal provisions of the act with respect to a telephone corporation and because a violation of an order or decision of the commission implementing the bill's requirements would be 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.

Existing law authorizes the Public Utilities Commission to supervise and regulate every public utility in the state, including telephone corporations, and to fix just and reasonable rates and charges for the public utility. Existing law establishes the California High-Cost Fund-A Administrative Committee Fund and the California High-Cost Fund-B Administrative Committee Fund in the State Treasury, and requires that moneys in the funds are the proceeds of rates and are held in trust for

~~the benefit of ratepayers, and to compensate telephone corporations for their costs of providing universal service and may be expended only to accomplish specified telecommunications universal service programs, upon appropriation in the annual Budget Act or upon supplemental appropriation.~~

~~Existing law also requires the commission, until January 1, 2013, to develop, implement, and maintain a suitable program to establish a fair and equitable local rate structure aided by universal service rate support to small independent telephone corporations that serve rural areas and are subject to a rate of return regulation by the commission.~~

~~This bill would make technical, nonsubstantive changes to that requirement.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

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

1 SECTION 1. *It is the intent of the Legislature that Sections*
2 *2889.9 and 2890 of the Public Utilities Code be read together and*
3 *serve as a deterrent to “cramming,” which occurs when an*
4 *unauthorized charge is placed on a subscriber’s telephone bill.*

5 SEC. 2. *Section 2889.9 of the Public Utilities Code is amended*
6 *to read:*

7 2889.9. (a) ~~No~~ *For purposes of this section the following terms*
8 *have the following meanings:*

9 (1) *“Billing agent” means any agent that provides billing*
10 *services for service providers directly or indirectly through a*
11 *billing telephone corporation.*

12 (2) *“Billing telephone corporation” means a telephone*
13 *corporation or reseller that bills a subscriber for products or*
14 *services.*

15 (3) *“Complaint” means any written or oral communication*
16 *from a subscriber alleging that an unauthorized charge was*
17 *included in the billing telephone corporation’s bill to the*
18 *subscriber.*

19 (4) *“Service provider” means a person, corporation, or other*
20 *entity other than a billing telephone corporation, that originates*
21 *the charge or charges that are billed to the subscriber of the billing*
22 *telephone corporation.*

1 (5) “Unauthorized charge” means any charge placed upon or
2 included in a subscriber’s telephone bill for services or products
3 that the subscriber did not agree to purchase, including any
4 charges that resulted from false, misleading, or deceptive
5 representations.

6 (b) (1) A person or corporation shall not misrepresent its
7 association or affiliation with a telephone-carrier corporation when
8 soliciting, inducing, or otherwise implementing the subscriber’s
9 agreement to purchase the products or services of the person or
10 corporation, and have the charge for the product or service appear
11 on the subscriber’s telephone bill.

12 (2) A telephone corporation shall not misrepresent its
13 association or affiliation with another person or corporation when
14 soliciting, inducing, or otherwise implementing the subscriber’s
15 agreement to purchase the products or services of the person or
16 corporation, and have the charge for the product or service appear
17 on the subscriber’s telephone bill.

18 (3) A billing telephone corporation shall resolve complaints,
19 billing inquiries, and refund requests from its subscribers, and
20 shall not refer its subscribers’ complaints, inquiries, or requests
21 to a service provider, billing agent, or billing aggregator.

22 (b)

23 (c) The ~~provisions of~~ authority and jurisdiction of the
24 commission, pursuant to Chapter 11 (commencing with Section
25 2100) of Part 1 of Division 1, apply to a public utility subject to
26 this section and Section 2890. If the commission finds that a person
27 or corporation or its billing agent that is ~~a nonpublic~~ not a public
28 utility, as defined in Section 216, and is subject to ~~the provisions~~
29 of this section and Section 2890, has violated any requirement of
30 this article, or knowingly provided false information to the
31 commission on matters subject to this section and Section 2890,
32 the commission may enforce Sections 2102, 2103, 2104, 2105,
33 2106, 2107, 2108, 2109, 2110, 2111, and 2114 against those
34 persons, corporations, and billing agents as if the persons,
35 corporations, or billing agents were a public utility. Neither this
36 authority nor any other provision of this article grants the
37 commission jurisdiction to regulate persons or corporations or
38 their billing agents who are not otherwise subject to commission
39 regulation, other than as specifically set forth in this section and
40 Section 2890.

1 (e)

2 (d) If the commission finds that a person, corporation, or billing
3 agent is operating in violation of any provision of this section and
4 Section 2890, the commission may order the billing telephone
5 ~~company corporation~~ to terminate the billing and collection
6 services for that person, corporation, or billing agent. ~~Nothing in~~
7 ~~this~~ This section and Section 2890 ~~precludes~~ *do not preclude* a
8 billing telephone ~~company corporation~~ from taking action on its
9 own to terminate billing and collection services.

10 (d)

11 (e) The commission shall establish rules that require each billing
12 telephone ~~company corporation~~, billing agent, and company that
13 provides products or services that are charged on subscribers'
14 telephone bills, to provide the commission with *monthly* reports
15 of complaints made by subscribers regarding the billing for
16 products or services that are charged on their telephone bills as a
17 result of the billing and collection services that the billing telephone
18 ~~company corporation~~ provides to third parties, including affiliates
19 of the billing telephone ~~company corporation~~. *Except for telephone*
20 *corporations that either provide service only to business or*
21 *wholesale customers or offer mobile telephony services through*
22 *a prepaid or pay-in-advance method, reporting requirements and*
23 *standards for all billing telephone corporations shall be uniform.*

24 (e)

25 (f) If the commission receives more than 100 complaints
26 regarding unauthorized telephone charges in any 90-day period as
27 to a person, corporation, *including a telephone corporation*, or
28 billing agent's activities that are subject to Section 2890 and this
29 section, the commission's ~~consumer services~~ *protection and safety*
30 division shall commence a formal or informal investigation. The
31 commission, to further the purposes of Section 2890 and this
32 section, may change the number of complaints in any 90-day period
33 that initiates the commencement of an investigation. *On or before*
34 *June 1 of each year, the commission shall report to the Legislature*
35 *on any investigation commenced by the commission's consumer*
36 *protection and safety division pursuant to this subdivision. On a*
37 *quarterly basis, the commission shall post in a conspicuous manner*
38 *on its Internet Web site, the number of investigations commenced*
39 *by the consumer protection and safety division. This subdivision*
40 ~~does not prohibit the commission's consumer services division~~

1 *commission* from opening any investigation it deems necessary to
2 enforce Section 2890 or this section.

3 (f)

4 (g) Failure by a *telephone corporation*, person, corporation, or
5 billing agent to respond to commission staff requests for
6 information is grounds for the commission to order the billing
7 ~~telephone company or companies that are~~ *corporation that is*
8 providing billing and collection services to cease billing and
9 collection services for the person, corporation, or billing agent.

10 (g)

11 (h) Persons or corporations originating charges for products or
12 services, their billing agents, and telephone corporations billing
13 for these products or services shall cooperate with the commission
14 in the commission's efforts to enforce the provisions of this article.

15 (h)

16 (i) This section and Section 2890 do not obligate a billing
17 ~~telephone company~~ *corporation* to provide billing and collection
18 services to a billing agent.

19 (i)

20 (j) The commission ~~may~~ *shall* adopt rules, ~~regulations~~ and issue
21 decisions and orders, as necessary, to safeguard the rights of
22 consumers and to enforce the provisions of this article. *The*
23 *commission shall impose a civil penalty and order a billing*
24 *telephone corporation to cease to provide billing services for a*
25 *service provider or billing agent whenever the incidence of*
26 *meritorious subscriber complaints of unauthorized billings exceeds*
27 *5 percent of the customer accounts that were billed on behalf of*
28 *a service provider or billing agent. The commission may determine*
29 *an appropriate threshold number of billings, not to exceed 200,*
30 *that must be made before this 5 percent meritorious complaint*
31 *penalty and termination requirement becomes applicable. The*
32 *telephone corporation shall be required to notify its subscribers*
33 *whenever this 5 percent meritorious complaint penalty and*
34 *termination requirement is invoked, identifying the service provider*
35 *or billing agent with a clear and informative description of the*
36 *nature of the charges that were unauthorized. The commission's*
37 *consumer protection and safety division may require that the*
38 *division approve of the notification prior to it being sent to*
39 *subscribers. Any subscriber that made or makes a meritorious*
40 *complaint with respect to that service provider or billing agent*

1 *may, within 45 days of the date the complaint was made, terminate*
2 *without financial or other penalty, the remaining term of a service*
3 *contract with the billing telephone corporation.*

4 ~~(j) For the purposes of this section, “billing agent” means the~~
5 ~~clearinghouse or billing aggregator.~~

6 *(k) The commission shall require a billing telephone corporation*
7 *to report complaints for services they provide to subscribers on a*
8 *monthly basis.*

9 *(l) The commission shall make a summary of complaints,*
10 *reported to the commission pursuant to subdivision (e), readily*
11 *available on its Internet Web site.*

12 *(m) (1) The requirement for submitting a report imposed under*
13 *subdivision (f) is inoperative on June 1, 2016, pursuant to Section*
14 *10231.5 of the Government Code.*

15 *(2) A report submitted pursuant to subdivision (f) shall be*
16 *submitted in compliance with Section 9795 of the Government*
17 *Code.*

18 *SEC. 3. Section 2890 of the Public Utilities Code is amended*
19 *to read:*

20 *2890. (a) For purposes of this section, “billing agent,” “billing*
21 *telephone corporation,” “complaint,” “service provider,” and*
22 *“unauthorized charge” have the same meaning as defined in*
23 *Section 2889.9.*

24 *(b) (1) A telephone bill may only contain charges for products*
25 *or services, the purchase of which the subscriber has authorized.*

26 *(2) The requirements of this subdivision are applicable to any*
27 *charge placed on a telephone bill, whether placed on behalf of a*
28 *service provider, billing agent, or the telephone corporation.*

29 ~~(b)~~

30 *(c) When a person or corporation obtains a written order for a*
31 *product or service, the written order shall be a separate document*
32 *from any solicitation material. The sole purpose of the document*
33 *is to explain the nature and extent of the transaction. Written orders*
34 *and written solicitation materials shall be unambiguous, legible,*
35 *and in a minimum 10-point type. Written or oral solicitation*
36 *materials used to obtain an order for a product or service shall be*
37 *in the same language as the written order. Written orders may not*
38 *be used as entry forms for sweepstakes, contests, or any other*
39 *program that offers prizes or gifts.*

40 ~~(e)~~

1 (d) The commission may only permit a subscriber's local
 2 telephone service to be disconnected for nonpayment of charges
 3 relating to the subscriber's basic local exchange telephone service,
 4 long-distance telephone service within a local access and transport
 5 area (intraLATA), long-distance telephone service between local
 6 access and transport areas (interLATA), and international telephone
 7 service.

8 ~~(d)~~

9 (e) (1) A billing telephone company shall clearly identify, and
 10 use a separate billing section for, each person, corporation, or
 11 billing agent that generates a charge on a subscriber's telephone
 12 bill. A billing telephone company may not bill for a person,
 13 corporation, or billing agent, unless that person, corporation or
 14 billing agent complies with paragraph (2).

15 (2) ~~Any~~ A person, corporation, or billing agent that charges
 16 subscribers for products or services on a telephone bill shall do all
 17 of the following:

18 (A) Include, or cause to be included, in the telephone bill the
 19 amount being charged for each product or service, including any
 20 taxes or surcharges, and a clear and concise description of the
 21 service, product, or other offering for which a charge has been
 22 imposed.

23 (B) Include, or cause to be included, for each *person or* entity
 24 that charges for a product or service, ~~information with regard to~~
 25 ~~how to resolve any dispute about that charge, including the name~~
 26 ~~of the party responsible for generating the charge and a toll-free~~
 27 ~~telephone number or other no cost means of contacting the entity~~
 28 ~~responsible for resolving disputes regarding the charge and a~~
 29 ~~description of the manner in which a dispute regarding the charge~~
 30 ~~may be addressed~~ *specific, clear, and conspicuous information*
 31 *identifying the person or entity making each charge and the service*
 32 *provided by the person or entity for which the charge is being*
 33 *made*. Each telephone bill shall include the appropriate telephone
 34 number of the commission that a subscriber may use to register a
 35 complaint.

36 (C) Establish, maintain, and staff a toll-free telephone number
 37 to respond to questions or disputes about its charges and to provide
 38 the appropriate addresses to which written questions or complaints
 39 may be sent. The person, corporation, or billing agent that generates
 40 a charge may also contract with a third party, including, but not

1 limited to, the billing telephone corporation, to provide that service
2 on behalf of the person, corporation or billing agent.

3 (D) Provide a means for expeditiously resolving subscriber
4 disputes over charges for a product or service, the purchase of
5 which was not authorized by the subscriber. In the case of a dispute,
6 there is a rebuttable presumption that an unverified charge for a
7 product or service was not authorized by the subscriber and that
8 the subscriber is not responsible for that charge. With regard to
9 direct dialed telecommunications services, evidence that a call was
10 dialed is prima facie evidence of authorization. If recurring charges
11 arise from the use of those subscriber-initiated services, the
12 recurring charges are subject to this section.

13 (f) (1) *The commission, in consultation with billing telephone*
14 *corporations, shall develop materials, including information placed*
15 *on the CalPhoneInfo Internet Web site, to educate consumers on*
16 *how to avoid and detect unauthorized charges on their telephone*
17 *bills.*

18 (2) *The commission shall require all billing telephone*
19 *corporations to distribute bill inserts, prepared by the commission,*
20 *with clear and concise information on the manner in which to*
21 *dispute an unauthorized charge, a summary of the responsibilities*
22 *of a billing telephone corporation to avoid including unauthorized*
23 *charges on telephone bills, and any other information the*
24 *commission determines would be appropriate to assist subscribers*
25 *in avoiding unauthorized charges.*

26 (3) *The commission shall issue a press release whenever the*
27 *commission imposes a civil penalty and orders the termination of*
28 *billing services, pursuant to subdivision (j) of Section 2889.9, as*
29 *a result of the incidence of meritorious subscriber complaints of*
30 *unauthorized billings exceeding 5 percent of the customer accounts*
31 *that were billed on behalf of a service provider or billing agent*
32 *by a billing telephone corporation.*

33 (e)

34 (g) If an entity responsible for generating a charge on a
35 telephone bill receives a complaint from a subscriber that the
36 subscriber did not authorize the purchase of the product or service
37 associated with that charge, the entity, not later than 30 days from
38 the date on which the complaint is received, shall verify the
39 subscriber's authorization of that charge or undertake to resolve
40 the billing dispute to the subscriber's satisfaction.

1 ~~(f)~~
 2 (h) For purposes of this section, “billing agent” is the
 3 clearinghouse or billing aggregator.

4 ~~(g) This section shall become operative on July 1, 2001.~~

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

14 SECTION 1. ~~Section 275.6 of the Public Utilities Code is~~
 15 ~~amended to read:~~

16 ~~275.6. (a) The commission shall develop, implement, and~~
 17 ~~maintain a suitable program to establish a fair and equitable local~~
 18 ~~rate structure aided by universal service rate support to small~~
 19 ~~independent telephone corporations that serve rural areas and are~~
 20 ~~subject to rate-of-return regulation by the commission. The purpose~~
 21 ~~of the program shall be to promote the goals of universal telephone~~
 22 ~~service and to reduce disparities in the rates charged by those~~
 23 ~~companies.~~

24 ~~(b) For purposes of this section, “small independent telephone~~
 25 ~~corporations” means those independent telephone corporations~~
 26 ~~serving rural areas that are subject to rate-of-return regulation by~~
 27 ~~the commission, as determined by the commission.~~

28 ~~(c) The commission shall structure the programs required by~~
 29 ~~this section so that a charge imposed to promote the goals of~~
 30 ~~universal service reasonably equals the value of the benefits of~~
 31 ~~universal service to contributing entities and their subscribers.~~

32 ~~(d) This section shall remain in effect only until January 1, 2013,~~
 33 ~~and as of that date is repealed, unless a later enacted statute, that~~
 34 ~~is enacted before January 1, 2013, deletes or extends that date.~~