

AMENDED IN ASSEMBLY AUGUST 31, 2015

AMENDED IN ASSEMBLY AUGUST 17, 2015

AMENDED IN ASSEMBLY JUNE 24, 2015

AMENDED IN SENATE MAY 19, 2015

SENATE BILL

No. 741

**Introduced by Senator Hill
(Coauthors: Senators Anderson and Leno)**

February 27, 2015

An act to add Article 11 (commencing with Section 53166) to Chapter 1 of Part 1 of Division 2 of Title 5 of the Government Code, relating to communications.

LEGISLATIVE COUNSEL'S DIGEST

SB 741, as amended, Hill. Mobile communications: privacy.

Existing law makes it a crime to manufacture, assemble, sell, advertise for sale, possess, transport, import, or furnish to another a device that is primarily or exclusively designed or intended for eavesdropping upon the communication of another, or any device that is primarily or exclusively designed or intended for the unauthorized interception of reception of communications between a cellular radio telephone, as defined, and a landline telephone or other cellular radio telephone. Existing law additionally makes it a crime to purchase, sell, offer to purchase or sell, or conspire to purchase or sell, any telephone calling pattern record or list, without the written consent of the subscriber, or to procure, obtain, attempt to obtain, or conspire to obtain, any calling pattern record or list through fraud or deceit. Existing law contains certain exemptions from these crimes for law enforcement agencies.

This bill would require every local agency that operates cellular communications interception technology, as defined, to maintain reasonable operational, administrative, technical, and physical safeguards to protect information gathered through use of the technology from unauthorized access, destruction, use, modification, or disclosure and implement a usage and privacy policy, as specified, to ensure that the collection, use, maintenance, sharing, and dissemination of information gathered through use of the technology complies with applicable law and is consistent with respect for an individual's privacy and civil liberties. The bill ~~would~~ *would, except as provided*, prohibit a local agency from acquiring cellular communications interception technology unless that acquisition is approved by a resolution or ordinance adopted by its ~~legislature~~ *legislative* body at a regularly scheduled public meeting of the legislative body held pursuant to a specified open meetings law. The bill would require that the resolution or ordinance set forth the policies of the local agency. The bill would require that the local agency make the usage and privacy policy available in writing to the public and if the local agency maintains an Internet Web site, to conspicuously post the usage and privacy policies on that site. The bill would, in addition to any other sanctions, penalties, or remedies provided by law, authorize an individual who has been harmed by a violation of these provisions to bring a civil action in any court of competent jurisdiction against a person who knowingly caused that violation.

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

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

1 SECTION 1. Article 11 (commencing with Section 53166) is
2 added to Chapter 1 of Part 1 of Division 2 of Title 5 of the
3 Government Code, to read:

4

5 Article 11. Cellular Communications Interception

6

7 53166. (a) For purposes of this article, the following terms
8 have the following meanings:

9 (1) "Cellular communications interception technology" means
10 any device that intercepts mobile telephony calling information
11 or content, including an international mobile subscriber identity

1 catcher or other virtual base transceiver station that masquerades
2 as a cellular station and logs mobile telephony calling information.

3 (2) “Local agency” means any city, county, city and county,
4 special district, authority, or other political subdivision of the state,
5 and includes every county sheriff and city police department.

6 (b) Every local agency that operates cellular communications
7 interception technology shall do both of the following:

8 (1) Maintain reasonable security procedures and practices,
9 including operational, administrative, technical, and physical
10 safeguards, to protect information gathered through the use of
11 cellular communications interception technology from unauthorized
12 access, destruction, use, modification, or disclosure.

13 (2) Implement a usage and privacy policy to ensure that the
14 collection, use, maintenance, sharing, and dissemination of
15 information gathered through the use of cellular communications
16 interception technology complies with all applicable law and is
17 consistent with respect for an individual’s privacy and civil
18 liberties. This usage and privacy policy shall be available in writing
19 to the public, and, if the local agency has an Internet Web site, the
20 usage and privacy policy shall be posted conspicuously on that
21 Internet Web site. The usage and privacy policy shall, at a
22 minimum, include all of the following:

23 (A) The authorized purposes for using cellular communications
24 interception technology and for collecting information using that
25 technology.

26 (B) A description of the job title or other designation of the
27 employees who are authorized to use, or access information
28 collected through the use of, cellular communications interception
29 technology. The policy shall identify the training requirements
30 necessary for those authorized employees.

31 (C) A description of how the local agency will monitor its own
32 use of cellular communications interception technology to ensure
33 the accuracy of the information collected and compliance with all
34 applicable laws, including laws providing for process and time
35 period system audits.

36 (D) The existence of a memorandum of understanding or other
37 agreement with another local agency or any other party for the
38 shared use of cellular communications interception technology or
39 the sharing of information collected through its use, including the
40 identity of signatory parties.

1 (E) The purpose of, process for, and restrictions on, the sharing
 2 of information gathered through the use of cellular communications
 3 interception technology with other local agencies and persons.

4 (F) The length of time information gathered through the use of
 5 cellular communications interception technology will be retained,
 6 and the process the local agency will utilize to determine if and
 7 when to destroy retained information.

8 (c) ~~No~~(1) *Except as provided in paragraph (2), a local agency*
 9 ~~may~~ *shall not* acquire cellular communications interception
 10 technology unless approved by its legislative body by adoption,
 11 at a regularly scheduled public meeting held pursuant to the Ralph
 12 M. Brown Act (Chapter 9 (commencing with Section 54950) of
 13 Part 1 of Division 2 of Title 5 of the Government Code), of a
 14 resolution or ordinance authorizing that acquisition ~~or use~~ and the
 15 usage and privacy policy required by this section.

16 (2) *Notwithstanding paragraph (1), the county sheriff shall not*
 17 *acquire cellular communications interception technology unless*
 18 *the sheriff provides public notice of the acquisition, which shall*
 19 *be posted conspicuously on his or her department's Internet Web*
 20 *site, and his or her department has a usage and privacy policy*
 21 *required by this section.*

22 (d) In addition to any other sanctions, penalties, or remedies
 23 provided by law, an individual who has been harmed by a violation
 24 of this section may bring a civil action in any court of competent
 25 jurisdiction against a person who knowingly caused that violation.
 26 The court may award a combination of any one or more of the
 27 following:

28 (1) Actual damages, but not less than liquidated damages in the
 29 amount of two thousand five hundred dollars (\$2,500).

30 (2) Punitive damages upon proof of willful or reckless disregard
 31 of the law.

32 (3) Reasonable attorney's fees and other litigation costs
 33 reasonably incurred.

34 (4) Other preliminary and equitable relief as the court determines
 35 to be appropriate.