

AMENDED IN ASSEMBLY APRIL 13, 1998

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 2142

Introduced by Assembly Member Brown
*(Coauthors: Assembly Members Ashburn, Bowen, Davis,
and Machado)*
(Coauthors: Senators Hughes and Watson)

February 19, 1998

An act to add ~~Section 2898 to~~ *Article 6 (commencing with Section 2900) to Chapter 10 of Part 2 of Division 1 of the Public Utilities Code*, relating to telecommunications.

LEGISLATIVE COUNSEL'S DIGEST

AB 2142, as amended, Brown. Public utilities: telecommunications truth in billing.

The telecommunications Customer Service Act of 1993 requires the Public Utilities Commission to require telephone corporations to provide customers with sufficient information upon which to make informed choices among telecommunications services and providers, as specified.

This bill would ~~add provisions, entitled~~ *enact* the Truth in Billing Act of 1998 ~~to that act~~ to require any person or corporation, whether a public utility or not, or its billing agent, to *obtain consent from, and to* provide specified information to, local service area telephone subscriber's before causing any product or service to be billed on the subscriber's local service provider bill. The bill would specifically apply the penal provisions of the Public Utilities Act to the

requirements for the specified information of the act thereby expanding the scope of an existing crime and creating a state-mandated local program.

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 2898 is added to the Public~~
2 *SECTION 1. Article 6 (commencing with Section*
3 *2900) is added to Chapter 10 of Part 2 of Division 1 of the*
4 *Public Utilities Code, to read:*

5
6 *Article 6. Truth in Billing Act*
7

8 *2900. This article shall be known and may be cited as*
9 *the Truth in Billing Act of 1998.*

10 *2900.2. For the purpose of this article, "billing agent"*
11 *means the clearinghouse or billing aggregator.*

12 *2900.4. (a) No person or corporation or its billing*
13 *agent shall submit to a billing telephone company charges*
14 *for any product or service to be billed on a subscriber's*
15 *telephone bill unless all of the following have occurred:*

16 *(1) The person or corporation offering the product or*
17 *service has thoroughly informed the subscriber of the*
18 *product or service being offered, including the associated*
19 *charges, and informed the subscriber that the charge for*
20 *the product or service will appear on the subscriber's*
21 *telephone bill.*

22 *(2) The subscriber has consented to obtaining the*
23 *product or service offered and to have the associated*
24 *charge for the product or service appear on the*
25 *subscriber's telephone bill.*



1 (3) *The person or corporation or its billing agent has*
2 *provided the subscriber with a toll-free telephone*
3 *number to call to resolve billing disputes and answer*
4 *questions.*

5 (4) *The person or corporation has verified the*
6 *subscriber's consent to order the product or service as*
7 *required in paragraph (2). The person or corporation*
8 *shall retain any records of the subscriber's consent and*
9 *shall, upon request, provide a copy of the records to the*
10 *subscriber, billing telephone company, and the*
11 *commission.*

12 (5) *The person or corporation providing the product*
13 *or service being billed has provided its name, business*
14 *address, business telephone number, and a list of the type*
15 *of products and services it intends to charge for on the*
16 *telephone bill to the billing telephone company.*

17 (6) *The product or service charged for is clearly*
18 *identified on the subscriber's telephone bill. The*
19 *commission shall establish rules to assure that the charges*
20 *are clearly described.*

21 (7) *The person, corporation, and its billing agent has*
22 *obtained the billing telephone company's consent to bill*
23 *for a product or service on the telephone company's bill*
24 *and has provided the billing telephone company with the*
25 *information required by paragraph (5).*

26 (b) (1) *If the person or corporation originating the*
27 *billing charge cannot provide evidence of the*
28 *subscriber's consent required in paragraph (2) of*
29 *subdivision (a), the subscriber is entitled to an*
30 *adjustment on the subscriber's telephone bill.*

31 (2) *The commission shall establish rules and*
32 *procedures for the prompt resolution of billing disputes*
33 *including procedures the subscriber shall follow to have*
34 *unauthorized charges removed from the subscriber's*
35 *telephone bill.*

36 (c) *Where a person or corporation obtains a written*
37 *order for a product or service, the written order shall be*
38 *a separate document from any solicitation material and*
39 *the sole purpose of the document must be to explain the*
40 *nature and extent of the transaction. Written orders and*



1 written solicitation materials must be unambiguous,
2 legible, and in a minimum 10-point type. Written
3 solicitation materials used to obtain an order for a product
4 or service must be in the same language as the written
5 order.

6 2901. (a) No person or corporation shall
7 misrepresent its association or affiliation with a telephone
8 subscriber's local service provider or a telephone
9 subscriber's presubscribed interexchange carrier when
10 soliciting, inducing, or otherwise implementing the
11 subscriber's agreement to purchase the products or
12 services of the person or corporation, and have the charge
13 for the product or service appear on the subscriber's
14 telephone bill.

15 (b) If the commission finds that a person or
16 corporation or its billing agent that is a nonpublic utility,
17 and is subject to the provisions of this article, has violated
18 any requirement of this article, or knowingly provided
19 false information to the commission on matters subject to
20 this article, the commission may enforce Sections 2102,
21 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, and 2114
22 against those persons, corporations, and billing agents as
23 if the persons, corporations, or billing agents were a
24 public utility. Neither this authority, nor any other
25 provision of this article grants the commission jurisdiction
26 to regulate persons or corporations or their billing agents
27 who are not otherwise subject to commission regulation,
28 other than as specifically set forth in this article.

29 (c) If the commission finds that a person, corporation,
30 or billing agent is operating in violation of any provision
31 of this article, the commission may order the billing
32 telephone company to terminate the billing and
33 collection services for that person, corporation, or billing
34 agent.

35 (d) The commission shall require each billing
36 telephone company to provide the commission, on a
37 continuing basis, with reports on billing complaints
38 received for each person, corporation, and billing agent
39 billing for a product or service on the telephone bills of
40 that billing telephone company. Nothing in the article



1 precludes a billing telephone company from taking
2 action on its own to terminate billing and collection
3 services.

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

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

15 (g) Nothing in this article is intended to apply to
16 customer initiated, operator services, or other services,
17 carried over an interexchange carrier network as long as
18 the actual dialed digits are displayed on the subscriber's
19 telephone bill. If recurring charges arise from use of those
20 customer initiated services, the recurring charges are
21 subject to the provisions of this article.

22 (h) Information required to be provided under this
23 article by a third party to the billing telephone company
24 is the property of the third party. Any use or disclosure of
25 that information for purposes other than rendering
26 subscriber bills or responding to subscriber inquiries or
27 complaints relating thereto is prohibited.

28 (i) This article does not obligate a billing telephone
29 company to provide billing and collection services to a
30 billing agent.

31 (j) The commission may adopt rules, regulations and
32 issue decisions and orders, as necessary, to safeguard the
33 rights of consumers and to enforce the provisions of this
34 article.

35 Utilities Code, to read:

36 ~~2898. (a) No person or corporation or its billing agent~~
37 ~~shall cause any product or service to be billed on a~~
38 ~~subscriber's local service provider bill unless the person~~
39 ~~or corporation has done all of the following:~~



1 ~~(1) Thoroughly informed the subscriber of the~~
2 ~~product or service being offered, and that the charges for~~
3 ~~the product or service will appear on the subscriber's~~
4 ~~local service provider bill.~~

5 ~~(2) Established that the subscriber has assented to~~
6 ~~obtain the product or service offered, and to have the~~
7 ~~associated charges for the product or service appear on~~
8 ~~the subscriber's local service provider bill.~~

9 ~~(3) Clearly identified the product or service on the~~
10 ~~subscriber's local service provider bill.~~

11 ~~(4) Provided its name, business address, business~~
12 ~~telephone number, and a list of products and services it~~
13 ~~intends to charge for on the local service bill to the local~~
14 ~~service provider billing for the product or service.~~

15 ~~(5) Verified the subscriber's intent to order the~~
16 ~~product or service as described in paragraph (2).~~

17 ~~(b) There is a rebuttable presumption of lack of~~
18 ~~authorization if the person or corporation does not have~~
19 ~~the subscriber's written consent or a recording of the~~
20 ~~subscriber's oral consent.~~

21 ~~(A) For written consent, the consent document must~~
22 ~~thoroughly inform the subscriber of the product or~~
23 ~~service ordered and the name, address, and telephone~~
24 ~~number of the person or corporation providing the~~
25 ~~product or service. The sole purpose of any written~~
26 ~~consent is to verify the subscriber's intent to obtain the~~
27 ~~product or service offered and to have the charges~~
28 ~~associated with the product or service appear on the~~
29 ~~subscriber's local service provider bill. The subscriber~~
30 ~~shall be furnished with a copy of the signed consent~~
31 ~~document prior to being billed for any product or service.~~

32 ~~(B) For oral consent, prior to recording the consent~~
33 ~~the person or corporation shall obtain the subscriber's~~
34 ~~authorization to record the conversation. The person or~~
35 ~~corporation shall send the subscriber written~~
36 ~~confirmation of the transaction prior to billing for any~~
37 ~~product or service. The written confirmation shall~~
38 ~~contain the name, address, and telephone number of the~~
39 ~~person or corporation providing the product or service~~
40 ~~and a description of the products or services ordered.~~



1 ~~(C) The person or corporation shall retain, for a period~~
2 ~~of two years, the written consent or recording of the~~
3 ~~subscriber's oral consent, and provide a copy or recording~~
4 ~~of the consent to the commission upon request.~~

5 ~~(e) If a person or corporation obtains a written order~~
6 ~~for a product or service, that written order shall be a~~
7 ~~separate document from any solicitation material and the~~
8 ~~sole purpose of the document shall be to explain the~~
9 ~~nature and extent of the transaction.~~

10 ~~(e) No person or corporation shall misrepresent its~~
11 ~~association or affiliation with the subscriber's local service~~
12 ~~provider or the subscriber's presubscribed interexchange~~
13 ~~carrier when soliciting, inducing, or otherwise~~
14 ~~implementing the subscriber's agreement to purchase~~
15 ~~the person's or corporation's product or service and have~~
16 ~~the charge for the product or service billed appear on the~~
17 ~~subscriber's local service provider bill.~~

18 ~~(d) If a subscriber certifies to the local service~~
19 ~~provider that the subscriber did not order the product or~~
20 ~~service billed on the subscriber's local service provider~~
21 ~~bill, the local service provider shall remove the charge~~
22 ~~from the subscriber's bill. The local service provider may~~
23 ~~offset the amount removed against any deposit or funds~~
24 ~~it holds from the person or corporation charging for the~~
25 ~~product or service.~~

26 ~~(e) If a person or corporation engages in activity~~
27 ~~subject to this section and is not a public utility regulated~~
28 ~~by the commission, then for purposes of this section, they~~
29 ~~shall be a public utility and Sections 2102, 2103, 2104, 2105,~~
30 ~~2106, 2107, 2108, 2109, 2110, 2111, and 2114 are applicable.~~
31 ~~Nothing in this section authorizes the commission to~~
32 ~~regulate these persons or corporations or their billing~~
33 ~~agents other than as to the activities specifically set forth~~
34 ~~in this section.~~

35 ~~(f) If the commission finds that a person, corporation,~~
36 ~~or billing agent is violating the provisions of this section,~~
37 ~~the commission may order the local service provider to~~
38 ~~cease billing for that person, corporation, or billing agent.~~

39 ~~(g) Failure by a person, corporation, or billing agent~~
40 ~~to respond to commission staff requests for information is~~



1 ~~grounds for the commission to order the local service~~
2 ~~provider to cease billing for the person, corporation, or~~
3 ~~billing agent.~~

4 ~~(h) A local service provider shall be required to~~
5 ~~comply with the requirements of subdivision (a) only for~~
6 ~~nontelecommunications products or services offered by~~
7 ~~the local service provider, its agents, or representatives~~
8 ~~and billed to the subscriber on the local service provider~~
9 ~~bill.~~

10 ~~(i) Local service providers shall cooperate with the~~
11 ~~commission in the commission's efforts to enforce the~~
12 ~~requirements of this section.~~

13 ~~(j) This section is not applicable to 10XXX dialing or to~~
14 ~~measured toll service provided by a subscriber's~~
15 ~~presubscribed interexchange carrier. The commission~~
16 ~~may establish rules to apply to 10XXX dialing, as~~
17 ~~necessary.~~

18 ~~(k) The commission may establish additional rules as~~
19 ~~necessary to safeguard the rights of consumers and to~~
20 ~~ensure that the provisions of this section are followed.~~

21 ~~(l) This section may be cited as the Truth in Billing~~
22 ~~Act.~~

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

33 Notwithstanding Section 17580 of the Government
34 Code, unless otherwise specified, the provisions of this act
35 shall become operative on the same date that the act
36 takes effect pursuant to the California Constitution.

