

Date of Hearing: May 5, 2020

ASSEMBLY COMMITTEE ON COMMUNICATIONS AND CONVEYANCE

Miguel Santiago, Chair

AB 3007 (Chau) – As Amended May 4, 2020

SUBJECT: Telecommunications: automatic dialing-announcing devices: call mitigation technology

SUMMARY: Requires telephone corporations to provide customers with call mitigation technology and an option to block calls and text messages from a particular source free of charge. Specifically, **this bill:**

- 1) Requires a telephone corporation that provides telephone service to customers residing in the state to make call mitigation technology available to any such customer, upon request, and at no additional charge.
- 2) Requires a telephone corporation to offer to the customer an option to have the telephone corporation prevent calls and text messages originating from a particular source from being completed to the customer, upon request, and at no additional charge.
- 3) Defines “call mitigation technology” to mean technology that identifies an incoming call or text message as being, or as probably being, from an automatic dialing-announcing device as specified, and, on that basis, blocks the call or message, diverts it to the called person’s answering system, or otherwise prevents it from being completed to the called person, except that it permits a call or text so identified to be completed when it is identified as being made by a law enforcement or public safety entity, or when it is identified as originating from a caller with respect to whom the called person has provided prior express consent to receive such a call or message and has not revoked that consent.
- 4) Requires the California Public Utilities Commission (CPUC) to implement the requirements of this bill. The CPUC may do either of the following:
 - a) Reasonably delay the imposition of this bill’s requirements for good cause and taking into account the consumer protection purposes of this bill; or,
 - b) Establish procedures for addressing incidents in which a call that was wanted by a customer is prevented from reaching the customer.
- 5) Authorizes a person harmed by a violation of this bill, or of the rules established by the CPUC pursuant to this bill, to bring an action in a court of competent jurisdiction to do one or both of the following:
 - a) To enjoin such a violation; or,
 - b) To recover any actual monetary loss from, or receive \$500 in damages for, such a violation, whichever is greater.

- 6) Specifies if a court finds that a defendant willfully or knowingly violated provisions of this bill, or the rules established by the CPUC pursuant to this bill, the court may, in its discretion, increase the amount of the monetary damages awarded to an amount equal to not more than three times the amount available, as specified.
- 7) Specifies that an action to recover damages for a violation of this bill, or the rules established by the CPUC pursuant to this bill, shall not be brought more than four years after the alleged violation occurred.
- 8) Modifies the current definition of “automatic dialing-announcing device” to mean any automatic equipment that does any of the following:
 - a) Stores telephone numbers and automatically calls, or automatically sends text messages to, telephone numbers taken from those stored telephone numbers, without significant human involvement in the act of calling or sending;
 - b) Generates telephone numbers in a random or sequential order and calls, or sends text messages to, telephone numbers taken from the telephone numbers generated, without significant human involvement in the act of calling or sending; or,
 - c) Makes telephone calls or sends text messages that otherwise include artificial or prerecorded voice or prewritten text messages.
- 9) Specifies that it is the intent of the Legislature that “automatic dialing-announcing device” be interpreted so as to prevent the exclusion of automatic equipment designed to evade specified requirements.
- 10) Deletes the exemption applied to any automatic dialing-announcing device that is not used to randomly or sequentially dial telephone numbers, but that is used solely to transmit a message to an established business associate, customer, or other person having an established relationship with the person using the automatic dialing-announcing device to transmit the message, or to any call generated at the request of the recipient.
- 11) Specifies that automatic dialing-announcing devices may be used to place calls over telephone lines only pursuant to a prior agreement between the persons involved, whereby the person called has expressly consented to receive such calls from the person calling, or as specified. A person’s consent may be revoked at any time and in any reasonable manner, regardless of the context in which the consent was provided.
- 12) Specifies a telephone call, using an automatic dialing-announcing device, made to a telephone number selected from stored numbers obtained from a list of registered voters, to immediately connect the recipient of the call with a person waiting to be connected for a live-voice communication regarding the recipient’s plans to vote in a federal, state, or local election, to be presumed to have the consent of the recipient, provided that the recipient, or the person to whom the number has been assigned, may easily revoke consent by any reasonable means in accordance with this bill.
- 13) Makes additional technical and clarifying changes.

EXISTING LAW:

- 1) Prohibits a person from operating an automatic dialing-announcing device in this state to place a call that is received by a telephone in this state during the hours between 9 p.m. and 9 a.m. California time. (Public Utilities Code (PUC) Section 2872 (c))
- 2) Defines a “automatic dialing-announcing device” to mean any automatic equipment which incorporates a storage capability of telephone numbers to be called or a random or sequential number generator capable of producing numbers to be called and the capability, working alone or in conjunction with other equipment, to disseminate a prerecorded message to the telephone number called. (PUC Section 2871)
- 3) Exempts the prohibition on the use of an automatic dialing-announcing device by any person exclusively on behalf of any of the following:
 - a) A school for purposes of contacting parents or guardians of pupils regarding attendance;
 - b) An specified exempted bank or organization for purposes of contacting its members;
 - c) A privately owned or publicly owned cable television system for purposes of contacting customers or subscribers regarding the previously arranged installation of facilities on the premises of the customer or subscriber;
 - d) A privately owned or publicly owned public utility for purposes of contacting customers or subscribers regarding the previously arranged installation of facilities on the premises of the customer or subscriber or for purposes of contacting employees for emergency actions or repairs required for public safety or to restore services; or,
 - e) A petroleum refinery, chemical processing plant, or nuclear powerplant for purposes of advising residents, public service agencies, and the news media in its vicinity of an actual or potential life-threatening emergency. (PUC Section 2872 (d))
- 4) Specifies that nothing prohibit law enforcement agencies, fire protection agencies, public health agencies, public environmental health agencies, city or county emergency services planning agencies, or any private for-profit agency operating under contract with, and at the direction of, one or more of these agencies, from placing calls through automatic dialing-announcing devices, if those devices are used for any of the following purposes:
 - a) Providing public service information relating to public safety;
 - b) Providing information concerning police or fire emergencies; or,
 - c) Providing warnings of impending or threatened emergencies. (PUC Section 2872 (e))
- 5) Establishes rules for telephone solicitors in order to provide each prospective telephonic sales purchaser with information necessary to make an intelligent decision regarding the offer made, safeguard the public against deceit and financial hardship, insure, foster, and encourage competition and fair dealings among telephonic sellers by requiring adequate

disclosure, and prohibit representations that tend to mislead. (Business and Professions Code (BPC) Section 117511, et seq.)

- 6) Defines a “telephonic seller” or “seller” to mean a person who, on his or her own behalf or through salespersons or through the use of an automatic dialing-announcing device, as specified, causes a telephone solicitation or attempted telephone solicitation to occur which meets the specified criteria’s. (BPC section 17511.1)

FISCAL EFFECT: Unknown. This bill has been keyed fiscal by the Legislative Counsel.

COMMENTS:

- 1) **Authors Statement:** According to the author, “Robocalls are a growing problem in our society [...] These calls are made by debt collectors, telemarketers and, unfortunately, scammers. [...] Unfortunately, the current statutory definition of “automatic dialing-announcing device” leaves out technology that may incorporate auto dialers to connect live humans with the person called, leaving out a consent requirement for a large portion of robocalls. Moreover, robocallers continually develop new technology, including Artificial Intelligence techniques, to attempt to evade the consent requirement. There currently exists technology to block scam robocalls, and many telephone providers offer consumers these type of services, some free of charge [...] AB 3007 addresses these issues by ensuring that callers have to obtain consent from the consumer for most robocalls, and by requiring telecommunication providers to provide effective robocall blocking services at no additional charge.
- 2) **Background:** Caller ID services allow consumers to identify telephone numbers and sometimes the names associated with an incoming call in order for them to decide whether or not to answer the call based on the appearance of who is calling. Caller ID became possible beginning in the early 1980s when technology allowed information from voice signals to include caller ID information to travel across multiple phone carriers. Over time, caller ID has become common place especially with the use of mobile phones.

Current law establishes a number of requirements and restrictions on telemarketers and the use of robocalls. Robocalls are recorded messages delivered to phones by an automatic dialing-announcing device that stores thousands of telephone numbers and then dials them automatically and plays messages. Current law authorizes robocalls only between the hours of 9 a.m. and 9 p.m. California time. In addition, telephonic solicitors, or more commonly referred to as telemarketers, are required to register with the Attorney General by filing specified information and paying a fee in order to do business.

Although many consumers consider robocalls or telemarketers a nuisance, there are legitimate uses of such methods including, by schools to contact parents regarding a pupil’s attendance, a bank to contact its members, or a cable company or utility to contact its customers regarding a previously arranged appointment. Current law also exempts public safety agency from robocall requirements in order to provide public safety information and alerts.

- 3) **Spoofing:** As caller ID services have become more prevalent, so too has the manipulation of the technology for deceptive purposes. Spoofing is the act of altering or manipulating caller

ID information in order to facilitate a call. Again there may be legitimate reasons why callers may wish to alter their caller ID information but in recent years the term has been more closely associated with calls made for malicious purposes, such as identify theft or false emergency situations. With the widespread availability of IP technology and the growth of third-party caller ID spoofing services, the number of malicious spoofing calls has increase dramatically in recent years, and the methods used by scammers to evade our robocalls laws have become increasingly sophisticated.

- 4) **Complaints:** There has been numerous well-published example of spoofing and scam robocalls including scammers targeting immigrant or undocumented communities with urgent calls regarding legal trouble or fraudsters mimicking IRS employees in order to gather personal information. Common scams include: imposter scams; prizes, sweepstakes, and lotteries; travel, vacations, and timeshare plans; mortgage foreclosure relief and debate management; advanced payments for credit services; grants; charitable solicitations; and tax preparations.

The Federal Trade Commission (FTC) manages the National Do Not Call Registry and can take enforcement actions against companies and telemarketers for Do Not Call, abandoned call, robocalls, and Registry violations. The number of consumers registered on the National Do Not Call list has grown substantially over the years to over 239 million in 2019. However, the number of complaints to the FTC for Do Not Call list violations has also substantially increased to approximately 5.4 million. One report by Hiya, a spam monitoring service, found that in 2018 roughly 26.3 billion robocalls were placed to US phone numbers, but many illegal robocalls likely go unreported.

With all the attention on the issue, tracking down and reducing the number of unwanted robocalls and scams has proven to be difficult. The tremendous volume of spam calls, often done with new IP technologies and automatic dialing-announcing devices masking the location of a call, is reducing the value of telephony as more individuals are giving up voice telephony altogether. In addition, illegal spoofed calls can pose a risk to public safety by tying up emergency lines where the calls are made to public safety entities.

- 5) **SHAKEN/STIR:** SHAKEN/STIR is an industry developed system that addresses unlawful spoofing by authenticate caller ID numbers by confirming that a call is actually coming from the number indicated on the caller ID. SHAKEN/STIR uses computer programming to attached a digital signature on calls as they travel through the interconnected phone networks. Calls that are digitally validated by SHAKEN/STIR are handed off between carriers so that the phone company of the consumer receiving the call is able to verify that a call is from the person making it. Although caller ID authentication by itself will not stop all illegal spoofing calls, it is a useful tool in filtering out illegal robocalls and reducing the likelihood of successful spoofing scams. In 2019, the Legislature passed SB 208 (Hueso), Chapter 471, Statutes of 2019, which required all telecommunications service providers to implement SHAKEN/STIR by January 2021.
- 6) **Anti-Robocall Principles:** In 2018, California Attorney General Xavier Becerra along with 40 other state attorneys general formed the Robocall Technologies Working Group with the goal of collaborating with telecommunications providers to make it more difficult for robocall technologies to intrude upon and defraud consumers. In August 2019, Attorney General Becerra announced an agreement with telecommunications providers on a set of

principal intend to limit and prevent robocalls. The anti-robocall principles required telecommunications providers to work with state attorneys general to incorporate certain principles into their business practices. These principles include:

- Offer free call blocking and labeling to stop robocalls before they reach consumers;
- Implement SHAKEN/STIR to prevent illegally spoofing phone numbers and to prevent scammers from providing a number they are not authorized to use;
- Analyze and monitor network traffic to identify and monitor patterns consistent with robocalls;
- Investigate suspicious calls and calling patterns and seek to identify the party and take appropriate action;
- Confirm the identity of commercial customers;
- Require traceback cooperation in call interconnection contracts;
- Cooperate in traceback investigations by dedicating resources to respond to requests from law enforcement and the US Telecom's Industry Traceback Group; and,
- Communicate with state attorneys general about scams and trends in illegal robocalling.

All 50 states, and the District of Columbia, joined the agreement along with the following telecommunication companies: AT&T, Bandwidth, CenturyLink, Charter, Comcast, Consolidated Communications, Frontier, Shentel, Sprint, T-Mobile, Twilio, U.S. Cellular, Verizon, Wabasah, and Windstream.

- 7) **Call Mitigation Technology:** Whereas SHAKEN/STIR can help consumers identify a call as spam and afford the consumer the option to answer the call or not, there are many additional tools that help consumers block calls from a particular number outright. Many smartphones provide call blocking options and there are a number of separate smartphone applications or VoIP technologies that work by maintaining their own list of scam phone numbers. Such applications work through data gathering and analytics to block known numbers suspected of being spam, but due to the advancement in spoofing, new scam numbers consistently arise. Although such technologies are not fail safe, providing consumers with more tools to filter and block spam calls can help mitigate the number of scams calls.

This bill would require telephone corporations to make call mitigation technology and an option to block calls from a particular source available to customers upon request and at no additional charge. The bill would, arguably, hold telephone corporations liable for damages resulting from errors in the technology, including failing to screen out an automatically-dialed spam call or text; erroneously blocking a legitimate call or text; or failing to block calls from a particular source. To the extent that the call mitigation technology sought to be made universally available through this bill isn't completely error-free, telephone

corporations may be opened up to significant legal liability for even a small number of good-faith errors.

In addition, whereas telephone corporations may be able to block a particular number cited by a customer, it is unclear how telephone corporations would be able to consistently block the source of a call given the advancements in spoofing technology and the difficulties in tracking the source of many scam calls. Furthermore, it is unclear who would be responsible for maintain the call blocking list for each consumer and how that list would be transferred should the consumer switch phones or providers.

Conversely, without a further specification of what constitutes effective call mitigation technology, telephone corporations might argue that any technology that mitigates automatically-dialed calls or texts, no matter how minimal its effects, fulfills the requirements in this bill. In order to avoid leaving these issues to the courts, the author may wish to consider establishing a clearer definition of “call mitigation technology” and, perhaps, acceptable standards and error rates for the technology, either in statute or regulation.

This bill requires the CPUC to establish procedures to address incidents in which a call that was wanted by a customer is prevent from reaching the customer and may reasonable delay implementation of certain provisions of the bill for good cause. Given the CPUC’s technical expertise and relationships with industry and consumer groups, the agency may be well-placed to establish these technical and procedural standards; certainly, in a better position than the courts. These definitions could then guide questions of liability.

This bill also creates a private right of action for customers against telephone corporations for failing to provide the call mitigation technology and call blocking options. Given that the CPUC would be able to enforce any violation of its rules or proceedings developed as a result of this bill, arguably, telephone corporations could potentially be exposed to an additional level of liability through the private right of action. It is also unclear how incidents in which the CPUC has determined that a good-faith effort was made by a telephone corporation to comply with this bill, would prevent a consumer from still pursuing a private right of action regardless of the CPUC outcome.

- 8) **Arguments in Support:** According to Consumer Reports, the sponsor of this bill, “Consumers need immediate relief from robocalls [...] Many of these robocalls are from scammers, who take advantage of gaps in the law to evade detection and prosecution. By requiring providers to offer advanced robocall-blocking tools to all of their customers, this bill will enable consumers to take simple, effective action to protect themselves from these unwanted robocalls. While several phone companies have begun to offer call-blocking tools to at least some of their customers, many consumers, particularly traditional landline users, still lack access to these tools [...] This bill will be an important protection alongside federal laws and the ongoing efforts at the FCC. Whatever might eventually become of those federal efforts, this bill will ensure that California consumers have strong protections now.”
- 9) **Arguments in Opposition:** According to CTIA, “CTIA, the trade association for the wireless communications industry, and the entire wireless industry support aggressive work to address illegal and unwanted robocalls. There are multiple efforts underway, including a federal mandate on voice service providers to use call-authentication technology and

enforcement tools to police the misuse of autodialer technology. Substantial network-level mitigation technology is also being used to protect consumers from illegal robocalls, and the industry is pressing ahead on efforts like “traceback” to find the source of illegal calls. This multipronged effort to protect consumers should not be taken off course by new state mandates such as AB 3007, which suffers from substantial technical flaws.”

- 10) **Related Legislation:** SB 208 (Hueso) of 2019 requires telecommunication service providers to implement the SHAKEN/STIR protocol or alternative technology that verify callerID calls by January 1, 2021. *Status: Chaptered by the Secretary of State - Chapter 471, Statutes of 2019.*

AB 1132 (Gabriel) of 2019 prohibits an individual from using false government information in a caller ID system with the intent to mislead, cause harm, deceive, or defraud the recipient of a call. *Status: Chaptered by the Secretary of State – Chapter 452, Statutes of 2019.*

REGISTERED SUPPORT / OPPOSITION:

Support

Consumer Reports (sponsor)
 Communications Workers of America, District 9
 Consumer Action
 Consumer Attorneys of California
 Consumer Federation of America
 Consumer Federation of California
 Media Alliance
 Privacy Rights Clearinghouse
 The Utility Reform Network

Opposition

AT&T
 Association of National Advertisers
 California Association of Collectors
 California Cable & Telecommunications Association
 California Chamber of Commerce
 California Communications Association
 California Independent Telephone Companies
 California Land Title Association
 California Retailers Association
 Civil Justice Association of California
 CompTIA
 Consolidated Communications Inc.
 CTIA
 Encore Capital Group
 HMS
 Insights Association

TechNet
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