



April 27, 2015

Assembly member Bill Quirk, Chair
Assembly Committee on Public
Safety
1020 N Street, Room 111
Sacramento, CA 95814



RE: AB 925 (Low) - Oppose

The undersigned organizations oppose AB 925, which would allow corporations to secretly monitor or record phone conversations with customers.

Currently, Penal Code § 632.7 provides that all parties to a phone conversation must be informed of or consent to the recording of the conversation. This is often called “two party consent.” This law does not preclude recording; it merely prohibits a party from secretly or surreptitiously recording the conversation, that is, from recording the conversation without first informing all parties to the conversation that the conversation is being recorded. Almost all California businesses comply with this law by announcing, usually in a pre-recorded statement at the beginning of the call, that the call “may be recorded.” This standard introductory announcement is sufficient to establish notice and consent for the recording or monitoring of the conversation that follows that announcement.

Under AB 925, however, this provision would no longer apply to the recording of nonconfidential communications between a person or business and a current or former customer of the person or business, or a person reasonably believed to be a current or former customer, regarding their business relationship. We understand that the intent of the bill is to permit businesses to record customer service calls without informing the customer that the call was being recorded, although the phrase “business relationship” seems to include much more than customer service calls.

Accordingly, AB 925 would sacrifice well-established privacy interests: A unanimous state Supreme Court wrote that California has a “strong and continuing interest in the full and vigorous application of the section of Section 632 prohibiting the recording the telephone conversations without the knowledge or consent of all the parties to the conversation.” *Kearney v. Salomon Smith Barney, Inc.*, 39 Cal. 4th 95 (2006) (California Invasion of Privacy Act applies even when one party to the conversation is outside California in a state that authorizes recording with the consent of a single party to the call). Indeed, California decisions repeatedly have invoked and vigorously enforced the provisions of Section 632 (see, e.g., *Flanagan v. Flanagan*, 27 Cal.4th 766 (2002) (“the Privacy Act ... protects against intentional, nonconsensual recording of telephone conversations regardless of the content of the conversation or the type of telephone involved”); *Ribas v. Clark*, 38 Cal.3d 355 (1985) (“secret monitoring denies the speaker an important aspect of privacy of communication — the right to control the nature and extent of the firsthand dissemination of his statements”).

Moreover, California's explicit constitutional privacy provision (Cal. Const., art. I, § 1) was enacted in part specifically to protect Californians from overly intrusive business practices that were seen to pose a significant and increasing threat to personal privacy. See, e.g., *Hill v. National Collegiate Athletic Assn.*, 7 Cal.4th 1, 15-20 (1994); *White v. Davis*, 13 Cal.3d 757, 775 (1975); cf. *Rattray v. City of National City*, 51 F.3d 793, 797 (9th Cir.1994) (“Having one's personal conversations secretly recorded may well infringe upon the right to privacy guaranteed by the California Constitution”).

Virtually all California businesses, and most out-of-state businesses have no difficulty complying with the two party consent laws that exist in California and several other states. AB 925 would eliminate an important and non-burdensome privacy protection. We urge your “No” vote on AB 925.

Sincerely,

Richard Holober

Consumer Federation of California

Kevin Baker

American Civil Liberties Union of California

Prescott Cole

California Advocates for Nursing Home Reform

Hene Kelly

California Alliance for Retired Americans

Robert Shireman

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Kendra Harris

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Noe Paramo

California Rural Legal Assistance Foundation

Deanna Johnston
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Cc: members of the Assembly Committee on Public Safety
Assemblyman Low