

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

JEREMIAH SMITH,
Plaintiff and Appellant,

v.

LOANME, INC.,
Defendant and Appellee.

Supreme Court
No. S260391

Court of Appeal
No. E069752

Superior Court
No. RIC1612501

APPELLANT’S REQUEST FOR JUDICIAL NOTICE;
MEMORANDUM OF POINTS AND AUTHORITIES;
DECLARATION; PROPOSED ORDER

Todd M. Friedman (216752)

tfriedman@toddfllaw.com

Adrian R. Bacon (280332)

abacon@toddfllaw.com

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

21550 Oxnard St., Suite 780

Woodland Hills, CA 91367

Phone: (877) 206-4741

Fax: (866)633-0228

Attorneys for Appellant/Plaintiff, Jeremiah Smith

TABLE OF CONTENTS

TABLE OF CONTENTS 2

TABLE OF AUTHORITIES 3

APPELLANT’S REQUEST FOR JUDICIAL NOTICE 4

MEMORANDUM OF POINTS AND AUTHORITIES 5

CERTIFICATION PURSUANT TO Cal. R. Ct. 8.883 7

DECLARATION OF TODD M. FRIEDMAN 8

EXHIBIT 1 10

EXHIBIT 2 16

EXHIBIT 3 20

EXHIBIT 4 33

EXHIBIT 5 37

EXHIBIT 6 43

PROPOSED ORDER 47

PROOF OF SERVICE 48

TABLE OF AUTHORITIES

Cases

Committee for Green Foothills v. Santa Clara County Bd. Of Supervisors
(2011) 48 Cal.4th 32 5

Day v. City of Fontana (2001) 25 Cal.4th 268 5

Rules

Cal. R. Ct. r. 8.252 6

APPELLANT’S REQUEST FOR JUDICIAL NOTICE


Pursuant to California Evidence Code sections 452 through 459, and California Rules of Court, Rules 8.252(a) and 8.520(g), plaintiff and appellate Jeremiah Smith respectfully requests this Court take judicial notice of the following documents from the legislative history behind Cal. Pen. C. § 632.7:

- Exhibit 1: Financial Analysis Prepared For AB 2465
- Exhibit 2: February 6, 1992 Letter from Gene Erbin, Counsel for Lloyd G. Connelly, regarding AB 2465
- Exhibit 3: December 17, 1991 Legislative Counsel of California Analysis re: Invasion of Privacy
- Exhibit 4: AB 2465 Author’s Statement of Intent
- Exhibit 5: Senate Floor Analyses of AB 2465
- Exhibit 6: AB 2465 Author’s Statement of Intent Draft

This request is based on the attached Memorandum of Points and Authorities and the Declaration of Todd M. Friedman, Esq. and attached exhibits.

Dated: May 1, 2020

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By 

Todd M. Friedman, Esq.
Attorneys for Appellant/Plaintiff

MEMORANDUM OF POINTS AND AUTHORITIES

On June 25, 2019, the Court of Appeal issued an Order requesting more briefing pursuant to Cal. Gov. C. § 68081 regarding whether “[g]iven the language of Penal Code section 632.7, its legislative history, and its relationship to other provisions of the California Invasion of Privacy Act (Pen. C. § 630, et.s eq.) should Penal Code section 632.7 be interpreted as applying only to the recording of a wireless communication that was “hacked” or “pirated” by someone who was not a party to the communication?” (emphasis added). Plaintiff/appellant Jeremiah Smith (“Appellant”) requests judicial notice of excerpts from the legislative history as was incorporated into his supplemental letter brief in the Court of Appeal as well as his Petition for Review and Opening Brief before the California Supreme Court. Legislative history may be reviewed to determine legislative intent. *Committee for Green Foothills v. Santa Clara County Bd. Of Supervisors* (2011) 48 Cal.4th 32, 45 (legislative history may be consulted where statute’s language is “reasonably subject to multiple interpretations”); *Day v. City of Fontana* (2001) 25 Cal.4th 268, 272 (“If, however, the statutory terms are ambiguous, then we may resort to extrinsic sources, including the ostensible objects to be achieved and the legislative history.”). Appellant reserves any actual argument as to whether Cal. Pen. C. § 632.7 is actually ambiguous for the briefing.

Appellant requests judicial notice as to the following legislative materials:

- Exhibit 1: Financial Analysis Prepared For AB 2465
- Exhibit 2: February 6, 1992 Letter from Gene Erbin, Counsel for Lloyd G. Connelly, regarding AB 2465
- Exhibit 3: December 17, 1991 Legislative Counsel of California Analysis re: Invasion of Privacy
- Exhibit 4: AB 2465 Author’s Statement of Intent

Exhibit 5: Senate Floor Analyses of AB 2465

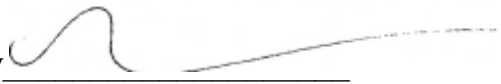
Exhibit 6: AB 2465 Author's Statement of Intent Draft

These documents are true and correct copies of documents obtained by LRI History LLC for the legislative history of AB 2465. These documents are relevant because they discuss the intent and meaning the Legislature intended when drafting Cal. Pen. C. § 632.7. Cal. R. Ct. r. 8.252(a). These documents were not presented to the trial court. Cal. R. Ct. r. 8.252(b). These documents are subject to judicial notice pursuant to Cal. Evid. C. § 451(a) as legislative histories of the Legislature of California. Cal. R. Ct. r. 8.252(c). These documents do not relate to proceedings occurring after the judgment that is subject of this appeal. Cal. R. Ct. r. 8.252(d).

Therefore, Appellant respectfully ask the Court to take judicial notice of these legislative history materials.

Dated: May 1, 2020

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By 

Todd M. Friedman, Esq.
Attorneys for Appellant/Plaintiff

CERTIFICATION PURSUANT TO Cal. R. Ct. 8.883

Appellant, Jeremiah Smith, hereby certifies that the word count for this brief, inclusive of footnotes and exclusive of information listed on the cover page, any table of contents or table of authorities, the certificate under subsection one or any signature blocks, is 425 words.

Dated: May 1, 2020

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By 

Todd M. Friedman, Esq.
Attorneys for Appellant/Plaintiff

DECLARATION OF TODD M. FRIEDMAN

I, TODD M. FRIEDMAN, declare:

1. I am an attorney at law and an active member of the State Bar of California. I am the name partner at the Law Offices of Todd M. Friedman, counsel for plaintiff/appellant Jeremiah Smith in this appeal.

2. On June 25, 2019, following the Court of Appeal's order requesting a supplemental letter brief, I directed the purchase of the legislative history of AB 2465 through LRI History LLC.

3. LRI History LLC forwarded me its compiled legislative history on AB 2465 of 1992, along with an authenticating declaration from its president Lisa Hampton. I have attached a true and correct copy of Ms. Hampton's declaration to the front of Exhibit A. For all other Exhibits, I have attached LRI History LLC's authentication regarding the source of materials to the front of the Exhibits.

4. The history produced by LRI History LLC was consecutively numbered 1 to 339. I have excerpted portions from this history and categorized them under the following Exhibit Numbers. I have taken the full document from which the excerpt was pulled to ensure the context of the excerpt was preserved:

Exhibit 1: Financial Analysis Prepared For AB 2465

Exhibit 2: February 6, 1992 Letter from Gene Erbin, Counsel for
Lloyd G. Connelly, regarding AB 2465

Exhibit 3: December 17, 1991 Legislative Counsel of California
Analysis re: Invasion of Privacy

Exhibit 4: AB 2465 Author's Statement of Intent


Exhibit 5: Senate Floor Analyses of AB 2465

Exhibit 6: AB 2465 Author's Statement of Intent Draft

5. The full legislative history provided by LRI History LLC was 347 pages long including certifications. In the interests of not presenting hundreds of pages of irrelevant documents, I am only requesting judicial notice of the 31 pages used in Appellant's Opening Brief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on May 1, 2020 at Woodland Hills, California.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By 

Todd M. Friedman, Esq.
Attorneys for Appellant/Plaintiff

EXHIBIT 1



LRI History LLC

intent@lrihistory.com
www.lrihistory.com
(916) 442.7660

Department of Finance Materials

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BILL ANALYSIS

YOUTH AND ADULT CORRECTIONAL AGENCY

STATE OF CALIFORNIA
CDC 853-A (6/91)

233

DEPARTMENT CORRECTIONS	AUTHOR Connelly	BILL NUMBER AB 2465
SPONSORED BY	RELATED BILLS	DATE LAST AMENDED 6/1
SUBJECT INTERCEPTING AND RECEIVING CELLULAR TELEPHONE SIGNALS		

Summary

Expands existing law related to invasion of privacy to include recording intercepted communications between cordless, cellular and landline telephones.

Analysis

Existing law provides that any person who, by means of any machine, instrument, or contrivance, or in any other manner, intentionally taps, or makes any unauthorized connection, be it physically, electrically, acoustically, inductively, or otherwise, with any telephone or telegraph wire, line, cable, or instrument, shall be punishable by a fine not exceeding \$2,500, or by imprisonment in the county jail for not more than 1 year or in state prison for 16 months, 2 or 3 years, or by both fine and imprisonment [Penal Code (PC) § 631].

Existing law provides that any person who, except as specified, intentionally and without consent of all parties to a confidential communication, by means of any electronic amplifying or recording device, eavesdrops upon or records a confidential communication, shall be punishable by a fine not exceeding \$2,500, or by imprisonment in the county jail not exceeding 1 year or in state prison for 16 months, 2 or 3 years, or by both fine and imprisonment [PC § 632].

Existing law provides that any person who, except as specified, maliciously and without consent of all parties to the communication, intercepts, receives or assists in intercepting or receiving a communication transmitted between cellular radio telephones, or between any cellular radio telephone and a

DEPARTMENT DIRECTOR'S POSITION	AGENCY SECRETARY'S POSITION	GOVERNOR'S OFFICE USE
<input type="checkbox"/> S <input type="checkbox"/> O <input type="checkbox"/> SA <input type="checkbox"/> OUA <input type="checkbox"/> N <input type="checkbox"/> NP <input type="checkbox"/> NA <input type="checkbox"/> NAR	<input type="checkbox"/> S <input type="checkbox"/> O <input type="checkbox"/> SA <input type="checkbox"/> OUA <input checked="" type="checkbox"/> N <input type="checkbox"/> NP <input type="checkbox"/> NA <input type="checkbox"/> NAR	<input type="checkbox"/> POSITION APPROVED <input type="checkbox"/> POSITION DISAPPROVED <input type="checkbox"/> POSITION NOTED COMMENTS:
LEGISLATIVE LIAISON _____ DATE JUL - 6 1992	AGENCY SECRETARY <i>Carolyn J...</i> DATE 7/8/92	BY _____ DATE _____

landline telephone, shall be punished by a fine not exceeding \$2,500, or by imprisonment in county jail not exceeding 1 year or in state prison for 16 months, 2 or 3 years, or by both fine and imprisonment [PC § 632.5].

Existing law provides that any person who, except as specified, maliciously and without consent of all parties to the communication, intercepts, receives, or assists in intercepting or receiving, a communication transmitted between cordless telephones, or between any cordless telephone and a landline telephone, or between any cordless telephone and a cellular telephone, shall be punished by a fine not exceeding \$2,500, or by imprisonment in county jail not exceeding 1 year or in state prison for 16 months, 2 or 3 years, or by both fine and imprisonment [PC § 632.6].

Existing law provides that any person who trespasses on property for the purpose of committing, or attempting to commit, a violation of specified offenses [PC § 631, 632, 632.5, 632.6 or 636], shall be punished by a fine not exceeding \$2,500, or by imprisonment in county jail not exceeding 1 year or in state prison for 16 months, 2 or 3 years, or by both fine and imprisonment [PC § 634].

Each of these sections of law [PC §§ 631, 632, 632.5, 632.6 and 634] provides that if the defendant has been previously convicted for specified offenses, the amount of the fine is increased to \$10,000.

This bill expands existing law so that the list of specified offenses is the same [PC §§ 631, 632, 632.5, 632.6, 636 and proposed 632.7] in each section (refer to COMMENTS section). Because the state prison sentencing option remains the same, these portions of the bill would not impact the state prison system.

The bill, as introduced, would have created new law to provide that any person who, except as specified, without the consent of all parties to a communication, intercepts or receives, and intentionally records, or assists in the interception or reception, and intentional recordation of, a communication transmitted between two cellular telephones, a cellular telephone and a landline telephone, two cordless telephones, a cordless telephone and a landline telephone, or a cordless telephone and a cellular telephone, shall be punished by a fine not exceeding \$2,500, or imprisonment in county jail not exceeding 1 year or in state prison for 16 months, 2 or 3 years, or by both fine and imprisonment. If the person has previously been convicted of similar offenses, the punishment options remain the same, except the fine cannot exceed \$10,000. (Proposed PC § 632.7)

This bill retains these provisions and expands the list of specified offenses to match the list proposed for the other sections of law.

Existing law exempts law enforcement, as specified, from the prohibitions against wiretapping or eavesdropping [PC §§ 633 and 633.1].

This bill amends existing law to reflect the addition of recent law [PC § 632.6] and proposed law [PC § 632.7].

Existing law exempts one party to a confidential communication from the prohibition against recording that communication, for the purpose of obtaining evidence, as specified [PC § 633.5].

This bill amends existing law to reflect the addition of proposed law [PC § 632.7].

Existing law provides that any person injured by an illegal invasion of privacy may bring an action against the person who committed the violation for the amount of \$3,000 or three times the amount of actual damages, whichever is greater [PC § 637.2].

This bill amends existing law to increase the amount specified to \$5,000 or three times the amount of actual damages, whichever is greater. This portion of the bill would not impact the state prison system.

Existing law provides that any person who, except as specified, without permission from all parties to the conversation, eavesdrops on or records by means of an electronic or other device, a conversation between a person who is in custody or who is on the property of a law enforcement agency or other public agency, and that person's attorney, religious advisor, or licensed physician, is guilty of a felony and subject to imprisonment in state prison for 16 months, 2 or 3 years [PC § 636].

Fiscal Findings

Expanding existing law to include the intentional recording of unlawfully intercepted communications between cordless, cellular and landline telephones [proposed PC § 632.7], could result in persons new to prison. However, as stated in the prior analysis, because there is no way to know how many persons would violate these new provisions, the impact of this bill cannot be estimated.

For your information, OBIS CY 1991 prison admissions data show that 2 persons were admitted to prison for violating PC § 631 and 2 persons were admitted for violating PC § 632. No one was admitted for violating PC § 632.5, 632.6, 634 or 636.

Comment

PC § 632.6 is the only one of the specified sections of law [PC §§ 631, 632, 632.5, 632.6 or 634] which does not refer to prior violations of itself for applying the increased fine amount. Future amendments to this bill may want to address this apparent oversight in existing law.

Recommendation

Neutral.

EXHIBIT 2



LRI History LLC

intent@lrihistory.com
www.lrihistory.com
(916) 442.7660

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REPLY TO:

DISTRICT OFFICE
FORT SUTTER BUILDING
2705 K STREET, SUITE 6
SACRAMENTO, CA 95816
(916) 443-1183

CAPITOL OFFICE
STATE CAPITOL
P.O. BOX 942849
SACRAMENTO, CA 94249-0001
(916) 445-2484

Assembly California Legislature

LLOYD G. CONNELLY

MEMBER OF THE LEGISLATURE
SIXTH ASSEMBLY DISTRICT

COMMITTEES

INSURANCE
JUDICIARY
CHAIR, SUBCOMMITTEE ON
THE ADMINISTRATION OF
JUSTICE
NATURAL RESOURCES

February 6, 1992

Honorable Steve White
District Attorney
County of Sacramento
P.O. Box 749
Sacramento, California 95804-0749

Dear District Attorney White:

This letter is written regarding proposed amendments to AB 2465, relating to the recordation of cellular or cordless telephone conversations.

Chapter 1.5, commencing with Section 630, contains numerous criminal prohibitions, including Section 631, relating to unauthorized wire taps; Section 632, relating to the interception or recordation of landline telephone conversations; Section 632.5, relating to the malicious interception of cellular telephone conversations; and Section 632.6, relating to the malicious interception of cordless telephone conversations. The punishment for violation, and subsequent violation, of these sections is prescribed. Basically, a previous violation of any section in the above-mentioned series subjects the offender to increased monetary penalties.

However, I note that there is a lack of uniformity in the cross-references in these sections. Additionally, none of these sections contain a reference to Section 632.7, which is proposed to be added by AB 2465.

On this basis, I suggest the following amendments:

- * Section 631(a) - References to 632.5, 632.6, and 632.7 should be added.
- * Section 632(a) - Reference to 632.7 should be added.
- * Section 632.5(a) - References to Section 632.6 and 632.7 should be added.

February 6, 1992
Page 2

- * Section 632.6(a) - References to 632.5 and 632.7 should be added.

Additionally, the following cross-references should be amended into the bill:

- * Section 633 - Reference to 632.7 should be added in two places.
- * Section 633.1 - Reference to 632.6 and 632.7 should be added in two places.
- * Section 633.5 - Reference to 632.7 should be added.
- * Section 634 - Reference to 632.7 should be added in two place.

Also, AB 2465 should be amended to add references to 632.5 and 632.6 in subdivision (a).

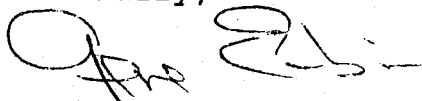
Adoption of the above identified cross-references would produce a correctly cross-referenced chapter. Although the "search" for correct cross-referencing is not critical, I would like to do it as thoroughly as possible.

Lastly, would you object to a modest increase in the civil damages authorized by Section 637.2 from \$3,000 to, perhaps, \$5,000? Section 637.2 has not been amended since enactment in 1967.

Please review my suggestions and let me know what you think. I would like to amend the bill on the 31st day it is in print.

Thank you for your continuing interest and assistance.

Cordially,



GENE ERBIN
Counsel

GE:rs

Enclosure

EXHIBIT 3



LRI History LLC

intent@lrihistory.com
www.lrihistory.com
(916) 442.7660

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Jack I. Horton
Ann Mackey
Chief Deputies

ames L. Ashford
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Jimmie Wing

David D. Alves
John A. Corzine
C. David Dickerson
Robert Cullen Duffy
Robert D. Gronke
Robert G. Miller
Verne L. Oliver
Tracy O. Powell II
Marguerite Roth
Michael H. Upson
Daniel A. Weitzman
Christopher Zirkle
Principal Deputies

State Capitol, Suite 3021
Sacramento, CA 95814-4996
(916) 445-3057
Telecopier: (916) 324-6311

Legislative Counsel of California

BION M. GREGORY

Gerald Ross Adams
Martin L. Anderson
Paul Antilla
Charles C. Asbill
Linda J. Atwood
Joe J. Ayala
Diane F. Boyer-Vine
Eileen J. Buxton
Emilia Cutrer
Ben E. Dale
Jeffrey A. DeLand
Clinton J. deWitt
Frances S. Dorbin
Maureen S. Dunn
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Clay Fuller
Patricia R. Gates
Alvin D. Gress
Jana T. Harrington
Baldev S. Heir
Thomas R. Heuer
Cecilia Jordan
David B. Judson
Michael Kelly

Michael J. Kersten
L. Douglas Kinney
S. Lynne Klein
Victor Kozielski
Eve B. Krotinger
Diana G. Lim
Jennifer Loomis
Romulo I. Lopez
Kirk S. Louie
James A. Marsala
Francisco A. Martir.
Peter Melnicoe
John A. Moger
Eugene L. Paine
Sharon Reilly
Penny Schulz
William K. Stark
Ellen Sward
Mark Franklin Terry
Jeff Thom
Elizabeth M. Warf
Richard B. Weisberg
Thomas D. Whelan
Belinda Whitset
Debra J. Zidich
Deputies

Sacramento, California
December 17, 1991

Honorable Lloyd G. Connelly
3173 State Capitol

Invasion of Privacy - #27958

Dear Mr. Connelly:

You have asked several questions regarding Sections 632, 632.5, and 632.6 of the Penal Code, which are separately stated below.

QUESTION NO. 1

What is the effect of the fact that Section 632 of the Penal Code prohibits the recording of a communication while Sections 632.5 and 632.6 of the Penal Code do not?

OPINION AND ANALYSIS NO. 1

By way of background to this and the following questions, we provide the following legislative history of the sections under discussion:

In 1967, Section 632 of the Penal Code¹ was enacted as part of the California Invasion of Privacy Act which is set forth in Chapter 1.5 (commencing with Section 630) of Title 15 of Part 1. The act was adopted primarily to protect the right of privacy of the people of the state against new devices and techniques developed for the purpose of eavesdropping (Sec. 630; see Warden v. Kahn, 99 Cal. App. 3d 805, 810; Ion Equipment Corp. v. Nelson, 110 Cal. App. 3d 868, 879).

¹ All statutory references are to the Penal Code, unless otherwise specifically indicated.

To this end, Section 632 generally prohibits the eavesdropping upon, or recording of, a confidential communication if done intentionally and without the consent of all parties to the communication, and by means of an electronic amplifying or recording device (see Becker v. Computer Sciences Corp. (S.D. Tex. 1982), 541 F. Supp. 694, 706), whether the communication is carried on among the parties in the presence of one another or by means of a telegraph, telephone, or other device, except a radio. Thus, while Section 632 provides a right of privacy to confidential communications carried over landline telephones, it does not provide a right of privacy to communications carried over radio telephones. ✓

In 1985, in response to a concern that, with the advent of high-technology mobile telecommunications as well as the popularity and availability of electronic scanners which can pick up the specific frequencies used by car telephone customers, "conversations over cellular equipment have not been guaranteed [the same] privacy as the conversations in one's home over landline systems," the Legislature enacted the Cellular Radio Telephone Privacy Act of 1985 (S.B. 1431; Ch. 909, Stats. 1985; see Analysis of S.B. 1431, as amended April 22, 1985, Sen. Comm. Energy and Pub. Util.). According to an express statement of legislative intent, the Cellular Radio Telephone Privacy Act of 1985 was enacted in order to extend the right of privacy, and provide a legal recourse, to those persons whose private cellular radio telephone communications have been maliciously invaded by persons not intended to receive those communications (Sec. 2, Ch. 909, Stats. 1985).

To achieve this goal, Section 632.5 generally prohibits the intercepting or receiving of, or eavesdropping on, a communication transmitted between cellular radio telephones or between any cellular radio telephone and a landline telephone, which is done maliciously and without the consent of all parties to the communication. ✓

"Cellular radio telephone" is defined to mean a wireless telephone authorized by the Federal Communications Commission to operate in the frequency bandwidth reserved for cellular radio telephones (subd. (c), Sec. 632.5).

In 1990, the Legislature enacted Assembly Bill No. 3457 (Ch. 696, Stats. 1990) with the express intent of extending the right of privacy, and providing legal recourse, to those persons whose private cordless telephone communications have been maliciously invaded by persons not intended to receive those communications (Sec. 2, Ch. 696, Stats. 1990).

A primary provision in accomplishing this goal is Section 632.6 which generally prohibits the intercepting or receiving of, or eavesdropping on, a communication transmitted between cordless telephones, between any cordless telephone and a landline telephone, or between a cordless telephone and a cellular telephone, which is done maliciously and without the consent of all parties to the communication.

"Cordless telephone" is defined to mean a two-way low power communication system consisting of two parts--a "base" unit which connects to the public switched telephone network and a handset or "remote" unit--which are connected by a radio link and authorized by the Federal Communications Commission to operate in the frequency bandwidths reserved for cordless telephones (subd. (c), Sec. 632.6).

According to pages 2 and 3 of a report by the Senate Committee on Judiciary analyzing A.B. 3457, as amended April 26, 1990 (hereafter "Analysis of A.B. 3457 by the Senate Judiciary Committee"), the need to specifically protect cordless telephone conversations by providing statutory protection for these communications was made clear "earlier this year when the United States Supreme Court declined to review a federal appeals court decision holding that cordless telephone conversations were not entitled to constitutional protection under the Fourth Amendment (Tyler v. Berodt (8th Cir. 1989), 877 F. 2d 705, cert. den. 107 L. Ed. 2d 743²)" as well as by the fact that "Congress decided to expand the privacy protections enjoyed by telephone users to cellular telephones but not to cordless telephones in the Electronic Communications Privacy Act of 1986."

The legislative history of Sections 632, 632.5, and 632.6 set forth above indicates that the intent of the Legislature in enacting these provisions was to extend a right of privacy, as defined in each section, first to persons who communicate over a landline telephone, then to persons who communicate over a cellular telephone, and finally to persons who communicate over a cordless telephone. ✓

Sections 632.5 and 632.6 do not expressly, nor do we interpret them to, prohibit per se the recording of a communication between two telephones, one of which is a cordless telephone or a cellular telephone. ✓

² Compare, however, United States v. Hall (9th Cir. 1973), 488 F. 2d 193, 198 (if conversation involves landline telephone, it is a wire communication, subject to protection under federal law).

In contrast, Section 632 does specifically prohibit the recording of a confidential communication between landline telephones under certain circumstances.

Thus, if the Legislature had intended to prohibit the recording of a communication between two telephones, one of which is a cordless telephone or a cellular telephone, that intent could easily have been expressed in Section 632.5 or 632.6.

The failure of the Legislature to do so, while specifically prohibiting the recording of a confidential communication between two landline telephones, raises a presumption that the Legislature did not intend to prohibit per se the recording of a communication between two telephones, one of which is a cordless telephone or a cellular telephone. This presumption arises from the rule of statutory construction that "where a statute with reference to one subject contains a given provision, the omission of such provision from a similar statute concerning a related subject is significant to show that a different intention existed" (Lambert v. Conrad, 185 Cal. App. 2d 85, 95).

However, while Sections 632.5 and 632.6 do not expressly prohibit the recording of a communication between two telephones, one of which is a cordless telephone or a cellular telephone, a person who does record such a communication may be subject to sanctions under Section 632.5 or 632.6 since the recording may be evidence of a malicious interception or reception prohibited by these sections (see Analysis No. 3, infra).

QUESTION NO. 2

What is the effect of the fact that Section 632 applies only to "confidential communications" while Sections 632.5 and 632.6 apply to communications?

OPINION NO. 2

The effect of the fact that Section 632 applies only to "confidential communications" while Sections 632.5 and 632.6 apply to "communications" is that a communication for which a speaker may have no justifiable expectation of privacy concerning that communication, and thus which would not be protected under Section 632, would be protected under Section 632.5 or 632.6.

ANALYSIS NO. 2

The issue of whether or not the eavesdropping on, or recording of, a telephone communication constitutes an unlawful act under Section 632 depends, in part, upon whether the parties to the communication have a reasonable expectation of its confidentiality (see People v. Suite, 101 Cal. App. 3d 680, 688).

As defined under subdivision (c) of Section 632, a "confidential communication" includes any communication carried on in circumstances as may reasonably indicate that any party to the communication desires it to be confined to the parties thereto. The term excludes a communication made in a public gathering or in any legislative, judicial, executive, or administrative proceeding open to the public, or in any other circumstance in which the parties to the communication may reasonably expect that the communication may be overheard or recorded.

The question of whether a communication is a "confidential communication" within the meaning of Section 632 turns on the reasonable expectations of the parties judged by an objective standard and not by the subjective assumptions of the parties (O'Laskey v. Sortino, 224 Cal. App. 3d 241, 248) and depends upon all of the circumstances, including the content of the communication and the physical location of the place where the communication took place (see People v. Suite, supra, at p. 688). A communication is confidential and must be protected if "either party reasonably expects the communication to be confined to the parties" (Frio v. Superior Court, 203 Cal. App. 3d 1480, 1488).

Thus, Section 632 applies to "confidential communications" which are communications for which the parties to the communication have a reasonable expectation that the communication will be confined to the parties.

Sections 632.5 and 632.6, on the other hand, apply to any communication transmitted between two telephones, one of which is a cordless telephone or a cellular telephone. The definitions of cellular telephone and cordless telephone set forth above in Opinion and Analysis No. 1 indicate that a communication transmitted between two telephones, one of which is a cordless telephone or a cellular telephone, would be carried in part over radio waves. ✓

The federal courts have held that under the federal wiretap law (18 U.S.C.A. Sec. 2510 and following), a speaker has no justifiable expectation of privacy concerning voice communications transmitted by radio waves (see Edwards v. Bardwell (M.D. La. 1986), 632 F. Supp. 584, 589, aff'd. 808 F. 2d 54, but compare United States v. Hall, supra). ✓

On pages 2 and 3 of the Analysis of A.B. 3457 by the Senate Judiciary Committee, supra, the committee compared cellular, cordless, and wire-to-wire telephone technologies, as follows:

"The technologies compared

"Cordless telephones operate by broadcasting over a narrow but open band of radio frequencies which can be picked up by other cordless telephones and scanners. Cellular telephone technology differs slightly in that scores of low-powered receiver transmitters are used to pick up conversations as users drive from 'cell' to 'cell.' Monitoring of cellular phone conversations over the radio frequencies is possible with very sophisticated scanning equipment. Wire-to-wire telephone communications over a 'closed' system offer the most privacy protection.

"Comparing the 'openness' of cordless telephone communications which could be picked up by other cordless telephones in the vicinity with the comparatively more secure cellular and wire-to-wire systems, one can see why a court may rule that cordless telephone communications do not carry the same expectations of privacy as a wire-to-wire telephone communication. For perhaps the same reasons, Congress decided to expand the privacy protections enjoyed by telephone users to cellular telephones but not to cordless telephones in the Electronic Communications Privacy Act of 1986.

"Proponents [of A.B. 3457] respond that people expect their telephone conversations to be private, notwithstanding the form of transmitter used, and that all telephone communications should be protected."

Based on the legislative history of Sections 632.5 and 632.6, we conclude that the Legislature wanted to extend privacy rights to communications transmitted between two telephones, one of which is a cordless telephone or a cellular telephone, and that in order to do this, where the technologies involved make the communications inherently public rather than confidential, the Legislature had to eliminate the requirement that a communication must be confidential before it will be protected from eavesdropping.

Accordingly, we conclude that the effect of the fact that Section 632 applies only to "confidential communications" while Sections 632.5 and 632.6 apply to "communications" is that a communication for which a speaker may have no justifiable expectation of privacy concerning that communication, and thus which would not be protected under Section 632, would be protected under Section 632.5 or 632.6.

QUESTION NO. 3

What is the effect of the fact that Sections 632.5 and 632.6 apply to malicious interceptions of communications while Section 632 is not limited to malicious interceptions?

OPINION NO. 3

The effect of the fact that Sections 632.5 and 632.6 apply to malicious interceptions of communications while Section 632 is not limited to malicious interceptions is that an interception that is merely intentional is proscribed under Section 632 but is not proscribed under Section 632.5 or 632.6.

ANALYSIS NO. 3

Section 632 only proscribes eavesdropping or recordation that is intentional as opposed to inadvertent (People v. Buchanan, 26 Cal. App. 3d 274, 287).

Sections 632.5 and 632.6 proscribe interception or reception of communications that is done maliciously. "Maliciously" is defined in Section 7 of the Penal Code to mean "a wish to vex, annoy, or injure another person, or an intent to do a wrongful act, established either by proof or presumption of law."

In affirming the order of the trial court denying a new trial to the plaintiff who was convicted of wilfully and intentionally injuring a public jail, the court in People v. McCree (128 Cal. App. 2d 196) discussed the word "maliciously" at page 202, with emphasis added, as follows:

"Section 7, subdivision 4, of the Penal Code defines malice as follows: 'The words "malice" and "maliciously" import a wish to vex, annoy, or injure another person, or an intent to do a wrongful act, established either by proof or presumption of law.' Section 7, subdivision 1, of the Penal Code states that the word 'willfully,' when applied to the intent with which an act is done or omitted, implies simply 'a purpose or

willingness to commit the act, or make the omission referred to. It does not require any intent to violate law, or to injure another, or to acquire any advantage.' The word 'intentional' is defined 'done with intention of purpose, intended, designed.' (Webster's Internat. Dict., Black's Law Dict., 2d ed., Funk and Wagnalls New Standard Dictionary of the English Language, p. 1277.) 'Intentionally' is often used as synonymous with 'knowingly,' and when so used an act is intentional if the person who does it is conscious of what he is doing, and its probable consequences, without regard to the motive which induced him to act. The fact an act was done intentionally or knowingly does not result in the conclusion that it was done maliciously. Moreover, an act wilfully done is not necessarily a malicious act. (Royal Indemnity Co. v. Sherman, 124 Cal. App. 2d 512 [269 P. 2d 163].) In the case of In re Carneross, 114 F.Supp. 119, the court, considering the identical contention which the appellant presses in the instant case, i.e., 'Are the terms "malicious" and "intentionally" synonymous,' held as follows: 'The words malicious and intentionally are not synonymous; nor does the one include the other. Something more than an intention to do the thing afterwards pronounced as a wrong and inexcusable is necessary to constitute malice.' To the same effect also is State v. Willing, 129 Iowa 72 [105 N.W. 355]."

According to the legislative history of S.B. 1431, the word "maliciously" was substituted for the word "intentionally" in the proscription of Section 632.5 in order to require a special intent to commit the crime thereunder, so that innocent inadvertent interception would not be prohibited (see Analysis of S.B. 1431, as amended June 24, 1985, by the Assembly Committee on Public Safety, at p. 5). ✓

Proponents of the enactment of Section 632.6 asserted that "the 'malicious' conduct requirement would preclude the prosecution of neighbors who innocently and unintentionally overheard a cordless telephone conversation on their cordless telephone" (see Analysis of A.B. 3457 by the Senate Judiciary Committee, at p. 3). ✓

Furthermore, according to the expressed intent of the Legislature when adding Sections 632.5 and 632.6, it is not the intent of the Legislature to prohibit the interception or reception of radio frequencies other than the unauthorized malicious interception or reception of cellular or cordless telephone radio frequencies (see Sec. 2, Ch. 909, Stats. 1985, and subd. (f), Sec. 2, Ch. 696, Stats. 1990).

Based on the legislative history of Sections 632.5 and 632.6 and pertinent case law, we conclude that the Legislature did not want to prohibit innocent, inadvertent interception of communications transmitted between two telephones, one of which is a cordless telephone or a cellular telephone, and that in order to ensure this, where under the technologies involved an innocent, inadvertent interception of communications may still evidence an intent to intercept, the Legislature had to add a requirement that the interception must be made maliciously before it will be prohibited as eavesdropping under Section 632.5 or 632.6.

Accordingly, the effect of the fact that Sections 632.5 and 632.6 apply to malicious interceptions while Section 632 is not limited to malicious interceptions is that an interception that is merely intentional is proscribed under Section 632 but is not proscribed under Section 632.5 or 632.6.

QUESTION NO. 4

What is the significance of the use in Sections 632, 632.5, and 632.6 of varying terms, discussed below, to describe the telephone systems over which communications are protected from interception?

OPINION NO. 4

There is no significance to the use in Sections 632, 632.5, and 632.6 of varying terms, discussed below, to describe the telephone systems over which communications are protected from interception.

ANALYSIS NO. 4

Section 632 protects from interception communications carried on by means of a "telephone, or other device, except a radio" (subd. (a), Sec. 632).

Section 632.5 protects from interception communications transmitted between "cellular radio telephones or between any cellular radio telephone and a landline telephone" (subd. (a), Sec. 632.5).

Section 632.6 protects from interception communications transmitted between "cordless telephones ..., between any cordless telephone and a landline telephone, or between a cordless telephone and a cellular telephone" (subd. (a), Sec. 632.6).

As stated in Opinion and Analysis No. 1, the legislative history of Sections 632, 632.5, and 632.6 indicates that the intent of the Legislature in enacting these provisions was to extend the right of privacy, as defined in each section, first to persons who communicate over a landline telephone (Sec. 632), then to persons who communicate over a cellular telephone (Sec. 632.5), and finally to persons who communicate over a cordless telephone (Sec. 632.6). ✓

Sections 632, 632.5, and 632.6 utilize varying terms to describe the telephone systems over which communications are protected from interception. To describe a telephone system over which communications are not transmitted in part by radio, Section 632 uses the phrase "telephone ..., except a radio" while Sections 632.5 and 632.6 use the phrase "landline telephone." In describing a cellular telephone system, Section 632.5 uses the phrase "cellular radio telephone" while Section 632.6 uses the phrase "cellular telephone."

The express language and legislative history of Sections 632, 632.5, and 632.6 are silent regarding any legislative intent behind the use of these varying terms.

In such a case, we turn for guidance to the rules of statutory construction.

A statute is to be given a reasonable and commonsense construction in accordance with the apparent purpose and intention of the lawmaker (County of Alameda v. Kuchel, 32 Cal. 2d 193, 199; see also Select Base Materials, Inc. v. Board of Equal., 51 Cal. 2d 640, 645); and is to be construed so as to harmonize, if possible, with other laws relating to the same subject (Isobe v. Unemployment Ins. Appeals Bd., 12 Cal. 3d 584, 590).

With respect to harmonizing, the courts have held that, where the context or other considerations show that a word is erroneously used for another word which, if substituted, would harmonize the subject with its obvious purpose and intent, the statute must be read as though the intended word had been used (Southern Pacific Co. v. County of Riverside, 35 Cal. App. 2d 380, 388); and that similar phrases or sentences used in different code sections or provisions relating to the same subject matter will be given the same interpretation (Hunstock v. Estate Development Corp., 22 Cal. 2d 205, 210-211).

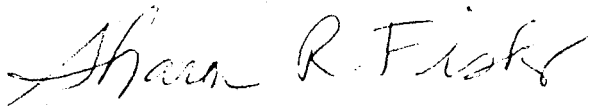
Honorable Lloyd G. Connelly - p. 11 - #27958

We think the courts would utilize the above rules of statutory construction so as to construe the phrase "telephone, except a radio" used in Section 632 to be identical to the phrase "landline telephone" used in Sections 632.5 and 632.6, and to construe the phrase "cellular telephone" used in Section 632.6 to be identical to the phrase "cellular radio telephone" used in Section 632.5.

As a result, there is no significance to the use in Sections 632, 632.5, and 632.6 of varying terms, discussed above, to describe the telephone systems over which communications are protected from interception.

Very truly yours,

Bion M. Gregory
Legislative Counsel

By 
Sharon R. Fisher
Deputy Legislative Counsel

SRF:jdg

EXHIBIT 4



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www.lrihistory.com
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DISTRICT OFFICE
FORT SUTTER BUILDING
2705 K STREET, SUITE 6
SACRAMENTO, CA 95816
(916) 443-1183

CAPITOL OFFICE
STATE CAPITOL
P.O. BOX 942849
SACRAMENTO, CA 94249-0001
(916) 445-2484

Assembly California Legislature

LLOYD G. CONNELLY

MEMBER OF THE LEGISLATURE
SIXTH ASSEMBLY DISTRICT

COMMITTEES:

INSURANCE
JUDICIARY
CHAIR, SUBCOMMITTEE ON
THE ADMINISTRATION OF
JUSTICE
NATURAL RESOURCES

AB 2465: AUTHOR'S STATEMENT OF INTENT

The primary intent of this measure is to provide a greater degree of privacy and security to persons who use cellular or cordless telephones. Specifically, AB 2465 prohibits persons from recording conversations transmitted between cellular or cordless telephones.

Under current law, it is only illegal to "maliciously" intercept a conversation transmitted between the above-identified telephones. There is no prohibition against recording a conversation transmitted between cellular or cordless telephones. (See Penal Code Section 632 and Section 632.5.)

By comparison, it is currently illegal to "intentionally" intercept or record a conversation transmitted between landline, or traditional, telephones. (See Penal Code Section 632.)

AB 2465 recognizes the distinction between traditional, landline telephones and inherently, less secure (or more public) non-traditional cellular and cordless telephones. Most simply, landline telephones employ "closed" wire-to-wire systems, whereas cellular and cordless telephones employ radio waves. Generally, there is a greater expectation of privacy with regard to the former technology than the latter technology.

However, this does not mean that persons who use cellular or cordless telephones may reasonably anticipate that their conversations will be both intercepted and recorded. While there may be utility in retaining relatively unimpeded access to the public "air waves," there is no value in permitting private telephone conversations that employ the "air waves" to be indiscriminately record.

AB 2465 strikes the appropriate balance. The innocent, merely curious, or non-malicious interception of cellular or cordless telephone conversation will remain legal. However, it will be illegal to record the same conversations. Henceforth, persons using cellular or cordless telephones may do so knowing that their conversations are not being recorded.

This measure is increasingly important in light of the rapidly growing popularity of cellular and cordless telephones. As the use of this technology continues to grow, the opportunity for

unscrupulous individuals to intercept and record conversations grows. It is estimated that as many 10 million cellular and cordless telephones will be in operation in California by the end of the century. Clearly, cellular and cordless telephone conversations require greater protection than that currently afforded by law.

AB 2465 is written in reliance on the December 17, 1991 Legislative Counsel opinion on this subject. (See Legislative Counsel opinion #27958, Invasion of Privacy.) AB 2465 comports with the evolution of our privacy laws as discussed in the opinion. Among other things, AB 2465 specifically relies on the conclusion in Question No. 4 of the above-mentioned opinion, namely, no significance should be attached to the use of "varying" terms and definitions in Chapter 1.5, commencing with Section 630.

A secondary purpose of AB 2465 is to make uniform the numerous cross-references in Chapter 1.5, commencing with Section 630, relating to increased penalties for subsequent violations of the chapter.

Lastly, it should be noted that AB 2465 comports with Section 2 of Chapter 909 of the Statutes of 1985 and Section 2 of Chapter 3457 of the Statutes of 1990.

EXHIBIT 5



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www.lrihistory.com
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SPECIAL CONSENT

<p>SENATE RULES COMMITTEE</p> <p>Office of Senate Floor Analyses 1020 N Street, Suite 524 445-6614</p>	<p>Bill No. AB 2465</p> <p>Author: Connolly (D), et al</p> <p>Amended: 6/1/92 in Senate</p> <p>Vote Required: 21</p>
---	--

Committee Votes:

Senate Floor Vote:

COMMITTEE: JUDICIARY		
BILL NO.: AB 2465		
DATE OF HEARING: 6-9-92		
SENATORS:	AYE	NO
Calderon	✓	
Leslie	✓	
Marks	✓	
Petris	✓	
Presley	✓	
Roberti	✓	
Royce	✓	
Torres	✓	
Watson		
Davis (VC)	✓	
Lockyer (Ch)	✓	
TOTAL:	10	0

COMMITTEE: APPROPRIATIONS		
BILL NO.: AB 2465		
DATE OF HEARING: 6-22-92		
SENATORS:	AYE	NO
Alquist	✓	
Avala	✓	
Bergeson	✓	
Davis	✓	
Dills	✓	
L. Greene	✓	
Johnston	✓	
Killea	✓	
Leonard	✓	
Lockyer	✓	
Beverly (VC)	✓	
Presley (Ch)	✓	
TOTAL:	100	

Assembly Floor Vote: 71-0, p. 6518, 4/23/92
(Passed Assembly on Consent)

SUBJECT: Invasion of privacy: recording communications

SOURCE: Sacramento County District Attorney

DIGEST: This bill would amend The Cordless and Cellular Radio Telephone Privacy Act of 1985 to prohibit the recording of communications transmitted between cordless phones and cellular phones.

ANALYSIS: Existing law provides specified criminal penalties for persons who intentionally and without the consent of all parties eavesdrops upon or records a confidential communication.

Existing law also provides criminal penalties for persons who maliciously and without the consent of all parties, intercept, receive, or assist in intercepting or receiving, communications transmitted between cellular radio telephones and a landline telephone, between cordless telephones, between any cordless telephone or between a cordless telephone and a cellular telephone.

However, there is currently no statute prohibiting a person from intercepting and intentionally recording a communication transmitted via cellular or cordless telephones.

This bill would subject to criminal charges "every person who, without consent of all parties to a communications, intercepts or receives, and intentionally records, or assist in the interception or reception and intentional" recording of a communication

CONTINUED

- B. "Cordless telephone" means a two-way low power communications system consisting of two parts, a "base" unit which connects to the public switched telephone network and a handset or "remote" unit, which are connected by a radio link and authorized by the FCC to operate in the frequency bandwidths reserved for cordless telephones.
- C. "Communication" includes, but is not limited to, communications transmitted by voice, data, or image, including facsimile.

This last definition is needed, according to the author, to make it illegal to intercept FAX transmissions and cellular transmission of computer data. "The intent ... is to anticipate the introduction of new technology to the marketplace. In this manner, we eliminate the need to return in 3-5 years when this technology is widely employed and unprotected".

FISCAL EFFECT: Appropriation: No Fiscal Committee: Yes Local: Yes

SUPPORT: (Verified 6/23/92)

Sacramento County District Attorney (source)

ARGUMENTS IN SUPPORT: According to the author's office, "The primary intent of this measure is to provide a greater degree of privacy and security to persons who use cellular or cordless telephones. Specifically, AB 2465 prohibits persons from recording conversations transmitted between cellular or cordless telephones.

"Under current law, it is only illegal to 'maliciously' intercept a conversation transmitted between the above-identified telephones. There is no prohibition against recording a conversation transmitted between cellular or cordless telephones.

"By comparison, it is currently illegal to 'intentionally' intercept or record a conversation transmitted between landline, or traditional, telephones.

"AB 2465 recognizes the distinction between traditional, landline telephones and inherently, less secure (or more public) non-traditional cellular and cordless telephones. Most simply, landline telephones employ 'closed' wire-to-wire systems, whereas cellular and cordless telephones employ radio waves. Generally, there is a greater expectation of privacy with regard to the former technology than the latter technology.

"However, this does not mean that persons who use cellular or cordless telephones may reasonably anticipate that their conversations will be both intercepted and recorded. While there may be utility in retaining relatively unimpeded access to the public 'air waves,' there is no value in permitting private telephone conversations that employ the 'air waves' to be indiscriminately record.

"AB 2465 strikes the appropriate balance. The innocent, merely curious, or non-malicious interception of cellular or cordless telephone conversation will remain legal. However, it will be illegal to record the same conversations. Henceforth, persons using cellular or cordless telephones may do so knowing that their conversations are not being recorded.

"This measure is increasingly important in light of the rapidly growing popularity of cellular and cordless telephones. As the use of this technology continues to grow, the opportunity for unscrupulous individuals to intercept and record conversations

CONTINUED

transmitted between two cellular telephones, a cellular telephone and a landline telephone and a landline telephone, or a cordless telephone and a cellular telephone.

The punishment for the above crime would be a fine not exceeding \$2500 or county jail not exceeding one year, or state prison or by both the fine and imprisonment.

In addition, if the person has been previously convicted of any of a number of other crimes within the California Invasion of Privacy Act (noted below), that person shall be punished by a fine not to exceed \$10,000 or county jail not exceeding one year, or state prison or by both the fine and imprisonment:

- Section 631. Wiretapping
- Section 632. Eavesdropping on or recording confidential communications
- Section 632.5 Intercepting or receiving cellular radio telephone communication
- Section 632.6 Intercepting or receiving cordless telephone communication
- Section 636. Eavesdropping on or recording conversation between person in custody and his attorney, religious advisor or physician

This bill would also that if the person has been previously convicted of a violation of certain laws dealing with the interception of cellular radio telephone communications and cordless or cellular telephone communications, or has been previously convicted of the interception and intentional recordation of these communications, the person shall receive the increased punishment specified above.

This bill would also make uniform numerous cross-references in Chapter 1.5, commencing with Section 630, relating to increased penalties for subsequent violations of the chapter.

Existing law provides that any person who has been injured by a violation of specified laws pertaining to eavesdropping or the recording of confidential communications may bring an action against the person who committed the violation for the greater of \$3,000 or three times the amount of actual damages.

This bill would increase the above amount to \$5,000.

The primary purpose of this bill is to provide criminal penalties to persons who intercept or receive and intentionally record, or assist in recording, a communication transmitted via cordless and cellular telephones.

This bill defines the following terms:

- A. "Cellular radio telephone" as a wireless telephone authorized by the Federal Communications Commission (FCC) to operate in the frequency bandwidth reserved for cellular radio telephones exclusively within a state, county, city and county, or city correctional facility.

grows. It is estimated that as many 10 million cellular and cordless telephones will be in operation in California by the end of the century. Clearly, cellular and cordless telephone conversations require greater protection that currently afforded by law."

RJG:ctl 6/23/92 Senate Floor Analyses

EXHIBIT 6



LRI History LLC

intent@lrihistory.com
www.lrihistory.com
(916) 442.7660

Author's File Materials

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DISTRICT OFFICE
FORT SUTTER BUILDING
2705 K STREET, SUITE 6
SACRAMENTO, CA 95816
(916) 443-1183

CAPITOL OFFICE
STATE CAPITOL
P.O. BOX 942849
SACRAMENTO, CA 94249-0001
(916) 445-2484

Assembly California Legislature

LLOYD G. CONNELLY

MEMBER OF THE LEGISLATURE
SIXTH ASSEMBLY DISTRICT

COMMITTEES:

INSURANCE
JUDICIARY
CHAIR, SUBCOMMITTEE ON
THE ADMINISTRATION OF
JUSTICE
NATURAL RESOURCES

AUTHOR'S STATEMENT OF INTENT

The primary intent of this measure is to provide a greater degree of privacy and security to persons who use cellular or cordless telephones. Specifically, AB 2465 prohibits persons from recording conversations transmitted between cellular or cordless telephones. *

In this manner, AB 2465 simply extends to persons who use cellular or cordless telephones the same protection from recordation that persons using "landline" telephones presently enjoy.

Under current law, it is only illegal to "maliciously" intercept a conversation transmitted between the above-identified telephones. There is no prohibition against recording a conversation transmitted between cellular or cordless telephones. (See Penal Code Section 632 and Section 632.5.)

By comparison, it is currently illegal to "intentionally" intercept or record a conversation transmitted between landline, or traditional, telephones. (See Penal Code Section 632. See also Forest E. Olson, Inc. v. Superior Court (1976) 63 Cal.App.3d 188; Warden v. Kahn (1979) 99 Cal.App.3d 805; People v. Suite (1980) 101 Cal.App.3d 680; and Frio v. Superior Court (1988) 203 Cal.App.3d 1480.)

AB 2465 recognizes the distinction between traditional, landline telephones and inherently, less secure (or more public) non-traditional cellular and cordless telephones. Most simply, landline telephones employ "closed" wire-to-wire systems, whereas cellular and cordless telephones employ radio waves. Generally, there is a greater expectation of privacy with regard to the former technology than the latter technology.

However, this does not mean that persons who use cellular or cordless telephones may reasonably anticipate that their conversations will be both intercepted and recorded. While there may be utility in retaining relatively unimpeded access to the public "air waves," there is no value in permitting private telephone conversations that employ the "air waves" to be indiscriminately recorded.

AB 2465 strikes the appropriate balance. The innocent, merely curious, or non-malicious interception of cellular or cordless

telephone conversation will remain legal. However, it will be illegal to record the same conversations. Henceforth, persons using cellular or cordless telephones may do so knowing that their conversations are not being recorded.

This measure is increasingly important in light of the rapidly growing popularity of cellular and cordless telephones. As the use of this technology continues to grow, the opportunity for unscrupulous individuals to intercept and record conversations grows. It is estimated that as many 10 million cellular and cordless telephones will be in operation in California by the end of the century. Clearly, cellular and cordless telephone conversations require greater protection than that currently afforded by law.

AB 2465 is written in reliance on the December 17, 1991 Legislative Counsel opinion on this subject. (See Legislative Counsel opinion #27958, Invasion of Privacy.) AB 2465 comports with the evolution of our privacy laws as discussed in the opinion. Among other things, AB 2465 specifically relies on the conclusion in Question No. 4 of the above-mentioned opinion, namely, no significance should be attached to the use of "varying" terms and definitions in Chapter 1.5, commencing with Section 630.

A secondary purpose of AB 2465 is to make uniform the numerous cross-references in Chapter 1.5, commencing with Section 630, relating to increased penalties for subsequent violations of the chapter.

Lastly, it should be noted that AB 2465 comports with Section 2 of Chapter 909 of the Statutes of 1985 and Section 2 of Chapter 3457 of the Statutes of 1990.

- - - - -

* As amended in the Senate, AB 2465 was expanded to prohibit the interception and recordation of computer data and FAX transmissions. Both computer data and FAX documents can be transmitted by means of cellular technology. Predictably, both computer data and FAX transmissions may be intercepted.

Presently, the equipment required to intercept computer data and FAX transmissions is very sophisticated and expensive. However, it is expected that "intercept" equipment will quickly evolve and rapidly become less expensive and more commonplace.

AB 2465 anticipates the development of this technology and eliminates the need to amend the privacy laws in 3-5 years when interception of computer data and FAX transmissions may occur more frequently.

[PROPOSED ORDER]

Good cause appearing, therefore,

IT IS HEREBY ORDERED that the Supreme Court will take judicial notice of the following documents:

Exhibit 1: Financial Analysis Prepared For AB 2465

Exhibit 2: February 6, 1992 Letter from Gene Erbin, Counsel for Lloyd G. Connelly, regarding AB 2465

Exhibit 3: December 17, 1991 Legislative Counsel of California Analysis re: Invasion of Privacy

Exhibit 4: AB 2465 Author's Statement of Intent

Exhibit 5: Senate Floor Analyses of AB 2465

Exhibit 6: AB 2465 Author's Statement of Intent Draft

Dated: _____

The Honorable Chief Justice or
Associate Justice of the California
Supreme Court

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business Address is 21550 Oxnard St., Ste. 780, Woodland Hills, CA 91367. On May 1, 2020 I served the following document(s) described as: APPELLANT’S REQUEST FOR JUDICIAL NOTICE; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION on all interested parties in this action by placing a true copy:

[X] BY ESERVICE THROUGH TRUEFILING, on

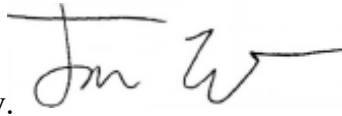
The Supreme Court of the State of California

Fourth Appellate District, Second Division, County of Riverside

Jared Toffer & Matthew Lilly
Attorneys for Respondent LoanMe, Inc.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on May 1, 2020, at Los Angeles, California.

By. 
Thomas Wheeler

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **SMITH v.
LOANME**

Case Number: **S260391**

Lower Court Case Number: **E069752**

1. At the time of service I was at least 18 years of age and not a party to this legal action.
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3. I served by email a copy of the following document(s) indicated below:

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