

Date of Hearing: April 14, 2026

Counsel: Mary Kennedy

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Nick Schultz, Chair

AB 2631 (Bauer-Kahan) – As Amended April 6, 2026

SUMMARY: Adds exercising any rights protected by the First Amendment of the United States Constitution to the prohibited violations for which an order for a warrant for the interception of a wire may not be issued. Specifically, **this bill:**

- 1) Expands the definition of a prohibited violation to include exercising any rights protected by the First Amendment of the United States Constitution
- 2) Clarifies that a California Corporation that provides electronic communication services or remote computing services shall not produce records when served with a warrant seeking a prohibited violation by a federal court as well as a state court.

EXISTING LAW:

- 1) Provides that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. (U.S. Const., 1st Amend.)
- 2) Authorizes the Attorney General, chief deputy attorney general, chief assistant attorney general, district attorney or the district attorney's designee to apply to the presiding judge of the superior court for an order authorizing the interception of wire or electronic communications under specified circumstances. (Pen. Code, § 629.50, et. seq.)
- 3) Defines a number of terms for the purposes of sections relating to the interception of a wire communication including "prohibited violation" which means any violation of law that creates liability arising for, or arising out of either of the following: Providing, facilitating, or obtaining an abortion that is lawful under California law; or, intending or attempting to provide, facilitate, or obtain an abortion that is lawful under California law. (Pen. Code, § 629.51)
- 4) Provides that the court may grant oral approval for an emergency interception of wire, electronic pager or electronic cellular telephone communications without an order as specified. Approval for an oral interception shall be conditioned upon filing with the court, within 48 hours of the oral approval, a written application for an order. Approval of the ex parte order shall be conditioned upon filing with the judge within 48 hours of the oral approval. (Pen. Code, § 629.56.)
- 5) Provides that no order entered under this chapter shall authorize the interception of any wire, electronic pager or electronic cellular telephone or electronic communication for any period

longer than is necessary to achieve the objective of the authorization, nor in any event longer than 30 days. (Pen. Code, § 629.58.)

- 6) Requires that written reports showing what progress has been made toward the achievement of the authorized objective, including the number of intercepted communications, be submitted at least every 10 days to the judge who issued the order allowing the interception. (Pen. Code, § 629.60.)
- 7) Requires the Attorney General to prepare and submit an annual report to the Legislature, the Judicial Council and the Director of the Administrative Office of the United States Court on interceptions conducted under the authority of the wiretap provisions and specifies what the report shall include. (Pen. Code, § 629.62.)
- 8) Provides that a California corporation that provides electronic communication services or remote computing services shall not comply with a warrant issued by another state if it is related to a prohibited violation. (Pen. Code, § 1524.2.)
- 9) Provides that a California corporation or a corporation whose principal offices are located in California that provides electronic communications services shall not, in California, provide information or assistance with the terms of a warrant, court order, subpoena or wiretap order that relates to the investigation or enforcement of a prohibited violation. (Pen. Code, § 1546.5.)

FISCAL EFFECT:

COMMENTS:

- 1) **Author Statement:** According to the author, “The First Amendment's protection of free speech and anonymous political expression is not merely an abstract legal principle, it is the foundation of a functioning democracy. The Department of Homeland Security has issued hundreds of administrative subpoenas to major tech companies, including Google, Meta, Reddit, and Discord demanding names, email addresses, phone numbers, and other identifying data tied to social media accounts that track or criticize ICE. The ACLU has argued that the ability to criticize the government anonymously is "baked into" First Amendment rights, and yet people have reportedly faced real-world consequences, including having immigration agents appear at their homes, simply for speaking out online. When users believe their identity may be exposed for criticizing government agencies, they may self-censor, and this chilling effect does not require arrests or prosecutions to take hold. If the government can unmask and retaliate against those who document or criticize its actions, it effectively silences the public watchdogs that democracy depends on. AB 2631 protects First Amendment rights by preventing California corporations from being compelled to hand over records related to first amendment protected activities.”
- 2) **Federal Wiretapping Law**
 - a) The Fourth Amendment Protects Telephone Communications.

The United States Supreme Court ruled in *Katz v. United States* (1967) 389 U.S. 347, that telephone conversations were protected by the Fourth Amendment to the United States Constitution. Intercepting a conversation is a search and seizure similar to the search of a

citizen's home. Thus, law enforcement is constitutionally required to obtain a warrant based on probable cause and to give notice and inventory of the search.

b) Title III Allows Wiretapping Under Strict Conditions

In 1968, Congress authorized wiretapping by enacting Title III of the Omnibus Crime Control and Safe Streets Act. (See 18 U.S.C. § 2510 et seq.) Out of concern that telephonic interceptions do not limit the search and seizure to only the party named in the warrant, federal law prohibits electronic surveillance except under carefully defined circumstances. The procedural steps provided in the Act require "strict adherence." (*United States v. Kalustian* (9th Cir. 1976) 529 F.2d 585, 588), and "utmost scrutiny must be exercised to determine whether wiretap orders conform to Title III." Several of the relevant statutory requirements may be summarized as follows:

- i. Unlawfully intercepted communications or non-conformity with the order of authorization may result in the suppression of evidence.
- ii. Civil and criminal penalties for statutory violations.
- iii. Wiretapping is limited to enumerated serious felonies.
- iv. Only the highest ranking prosecutor may apply for a wiretap order.
- v. Notice and inventory of a wiretap shall be served on specified persons within a reasonable time but not later than 90 days after the expiration of the order or denial of the application.
- vi. Judges are required to report each individual interception. Prosecutors are required to report interceptions and statistics to allow public monitoring of government wiretapping.

c) The Necessity Requirement

Have Other Investigative Techniques Been Tried Before Applying to the Court for a Wiretap Order?

- 3) **Wire or Electronic Communication:** Under existing law, the Attorney General or a district attorney may make an application to a judge of the superior court for an application authorizing the interception of a wire, electronic pager or electronic cellular telephone. The law regulates the issuance, duration and monitoring of these orders and imposes safeguards to protect the public from unreasonable interceptions. The law also limits which crimes for which an interception may be sought to the following:

- i) Importation, possession for sale, transportation or sale of controlled substances;
- ii) Murder or solicitation of murder or commission of a felony involving a destructive device;

- c) A felony in violation of prohibitions on criminal street gangs;
 - d) Possession or use of a weapon of mass destruction;
 - e) A violation of human trafficking and,
 - f) Sexual exploitation of a minor under Penal Code Sec. 311.4.
 - g) An attempt or conspiracy to commit any of the above.
- 4) **Prohibited violation:** Existing law provides that no magistrate shall enter an order authorizing interception of wire or electronic communications for the purpose of investigating or recovering evidence of a prohibited violation. The law also prohibits a corporation from complying with a warrant that seeks information relating to a prohibited violation. Prohibited violation is currently defined as providing, facilitating, or obtaining, or intending to do any of those things, related to a legally protected health care activity.

This bill would expand the definition of “prohibited violation” to include exercising any rights protected by the First Amendment of the United States Constitution

- 5) **Applies to Federal warrants and subpoenas:** This bill extends to subpoenas, warrants etc. issued by the federal government to existing provisions prohibiting the compliance with subpoenas, warrants, etc. by California electronic communications corporations when the subpoena, warrant, etc. is seeking information on a prohibited violation.

Federal administrative subpoenas have been sent to tech companies in an attempt to obtain the content of communications as well as subscriber information and other user information. The information being sought is often regarding people who have accounts tracking ICE agents or criticizing their activities. Administrative subpoenas do not require a court order review and they do not need to be complied with, but some companies have responded or are unsure of how to act and there is not clear statutory basis on which they can rely. This bill would clarify that they should not release information relating to a prohibited violation.¹

- 6) **Argument in Support:** None submitted
- 7) **Argument in Opposition:** None submitted
- 8) **Related Legislation:** None
- 9) **Prior Legislation:**
- a) AB 1242 (Bauer-Kahan), Chapter 627, Statutes of 2022, in part prohibited the issuance of an order for interception of wire for a prohibited violation, defining a prohibited violation as providing, facilitating, or obtaining an abortion.

¹ See Frenckel et al., *Homeland Security Wants Social Media Sites to Expose Anti-ICE Accounts*, N.Y. Times (Feb. 13, 2026).

- b) AB 1356 (Bauer-Kahan), Chapter 191, Statutes of 2021, prohibited a person, business, or association from knowingly publicly posting, displaying, disclosing, or distributing the personal information or image of a reproductive health services patient, provider, or assistant without that person's consent.

- c) SB 54 (de Leon), Chapter 495, Statutes of 2017, prohibited state and local law enforcement agencies from using money to investigate, interrogate, detain, detect, or arrest persons for immigration enforcement purposes and proscribed other activities or conduct in connection with immigration officials.

REGISTERED SUPPORT / OPPOSITION:

Support

None submitted.

Opposition

None submitted.

Analysis Prepared by: Mary Kennedy / PUB. S. / (916) 319-3744