

ASSEMBLY THIRD READING
AB 2631 (Bauer-Kahan)
As Amended April 6, 2026
Majority vote

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.

Major Provisions

- 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.

COMMENTS

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."

Arguments in Support

According to *Oakland Privacy*, "Assembly Bill 2631 is an expansion of existing California shield laws which currently protect providers and patients of reproductive and gender-affirming medical care from out of state warrants designed to seek information and/or enforce local laws that criminalize behavior that is legal and protected under California state law. AB 2631 adds to that list First Amendment-protected activities related to freedom of assembly and freedom of speech that protect peaceful dissent and the seeking of redress from public officials for harms and grievances by the people of the state." "While nominally First Amendment activities are protected by the federal constitution for all Americans, and no state should be attempting to criminalize fundamental rights protected by the federal constitution, in practice we have seen some erosion in those rights around certain controversial issues, in particular immigration. Such

efforts have been incited by disturbing language from the executive branch seeking to redefine protected activities, like protesting the way the federal government is carrying out immigration enforcement, into "terrorism" or other dangerous and illegal activities. "In particular, executive order NSPM-7 equates a litany of beliefs with political violence and domestic terrorism including: "Anti-Americanism, anti-capitalism, and anti-Christianity," "support for the overthrow of" the federal government, "extremism on migration, race, and gender," and opposition to "traditional American views on family, religion, and morality." "This profound muddying of the waters of basic Constitutional freedoms that Americans have taken for granted for centuries, as well as the implicit encouragement in the memo to go after any civil society institutions perceived to embrace any of these beliefs creates a dangerous situation for public dissent and First-Amendment protected acts of protest. It is basically a red flag for more conservative states to act to enforce limitations on the First Amendment. "Assembly Bill 2631 seeks to ensure that California will not be complicit with any attempts to criminalize First Amendment protections for freedom of speech and assembly. "It is sad that this expansion is needed, but it is clear that it is."

Arguments in Opposition

None submitted.

FISCAL COMMENTS

According to the Assembly Appropriations Committee:

- 1) Minor, absorbable costs to the Department of Justice (DOJ) and local prosecutors (General Fund, local funds) to apply the expanded "prohibited violation" definition in wiretap order applications. Because wiretap orders under existing law are limited to enumerated serious felonies (drug trafficking, murder, gang crimes, human trafficking, and child sexual exploitation), the DOJ expects the incremental workload from adding First Amendment-protected activity to be minimal.
- 2) Cost pressures (Trial Court Trust Fund, General Fund) of an unknown but potentially significant amount to the courts to adjudicate matters under the bill. Most communications evidence sought through warrants, subpoenas, or other legal process implicates First Amendment-protected activity at some level, which increases the universe of federal and out-of-state investigations potentially affected by the bill and the corresponding court workload. One hour of court time has an estimated cost of approximately \$1,000; even a small number of contested matters could generate court costs exceeding the \$150,000 suspense threshold. Although courts are not funded on the basis of workload, increased pressure on the Trial Court Trust Fund may create a need for increased funding for courts from the General Fund.

The state budget provides annual General Fund backfills to the Trial Court Trust Fund to offset revenue reductions, totaling approximately \$117.3 million in 2025-26. The Legislative Analyst's Office recently warned of General Fund structural deficits of around \$35 billion per year beginning in the 2027-28 fiscal year.

VOTES

ASM PUBLIC SAFETY: 7-1-1

YES: Schultz, Mark González, Haney, Harabedian, Nguyen, Ramos, Sharp-Collins

NO: Lackey

ABS, ABST OR NV: Alanis

ASM APPROPRIATIONS: 11-4-0

YES: Wicks, Aguiar-Curry, Calderon, Caloza, Fong, Mark González, Krell, Pacheco, Pellerin, Sharp-Collins, Solache

NO: Hoover, Dixon, Ta, Tangipa

UPDATED

VERSION: April 6, 2026

CONSULTANT: Mary Kennedy / PUB. S. / (916) 319-3744

FN: 0002877