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MEMO TO: All Staff
FROM: Tom Dalzell
DATE: January 25, 1982

Assembly Bill No. 1285

CHAPTER 981

An act to add Title 3.5 (commencing with Section 1882) to Part 4 of the Civil Code, relating to utility services.

[Approved by Governor September 29, 1981. Filed with Secretary of State September 29, 1981.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1285, McAlister. Utilities: unlawfully obtained services.

Existing law provides for the furnishing of electricity, gas, water, and other utility services and commodities by privately owned public utilities subject to regulation by the Public Utilities Commission and by various public agencies subject to regulation by their governing bodies.

This bill would give the utility the right to bring a civil action for damages for the unauthorized taking or diversion of electricity, gas, or water without being properly metered or otherwise authorized by the utility, and would specify that damages shall be 3 times the amount of actual damages plus specified costs.

The bill would also permit a utility to bring action to enjoin any of these prohibited practices without having suffered, or being threatened with, monetary damages.

The people of the State of California do enact as follows:

SECTION 1. Title 3.5 (commencing with Section 1882) is added to Part 4 of the Civil Code, to read:

TITLE 3.5. UTILITY SERVICES

1882. Unless the context requires otherwise, the following definitions govern the construction of this title:

- (a) "Customer" means the person in whose name a utility service is provided.
- (b) "Divert" means to change the intended course or path of electricity, gas, or water without the authorization or consent of the utility.
- (c) "Person" means any individual, any partnership, firm, association, or corporation.
- (d) "Reconnection" means the commencement of utility service to a customer or other person after service has been lawfully discontinued by the utility.
- (e) "Tamper" means to rearrange, injure, alter, interfere with, or otherwise to prevent from performing normal or customary function.

(f) "Utility" means any electrical, gas, or water corporation as those terms are defined in the Public Utilities Code and includes any electrical, gas, or water system operated by any public agency.

(g) "Utility service" means the provision of electricity, gas, water, or any other service or commodity furnished by the utility for compensation.

1882.1. A utility may bring a civil action for damages against any person who commits, authorizes, solicits, aids, abets, or attempts any of the following acts:

(a) Diverts, or causes to be diverted, utility services by any means whatsoever.

(b) Makes, or causes to be made, any connection or reconnection with property owned or used by the utility to provide utility service without the authorization or consent of the utility.

(c) Prevents any utility meter, or other device used in determining the charge for utility services, from accurately performing its measuring function by tampering or by any other means.

(d) Tampers with any property owned or used by the utility to provide utility services.

(e) Uses or receives the direct benefit of all, or a portion, of the utility service with knowledge of, or reason to believe that, the diversion, tampering, or unauthorized connection existed at the time of the use, or that the use or receipt, was without the authorization or consent of the utility.

1882.2. In any civil action brought pursuant to Section 1882.1, the utility may recover as damages three times the amount of actual damages, if any, plus the cost of the suit and reasonable attorney's fees.

1882.3. There is a rebuttable presumption that there is a violation of Section 1882.1 if, on premises controlled by the customer or by the person using or receiving the direct benefit of utility service, there is either, or both, of the following:

(a) Any instrument, apparatus, or device primarily designed to be used to obtain utility service without paying the full lawful charge therefor.

(b) Any meter that has been altered, tampered with, or bypassed so as to cause no measurement or inaccurate measurement of utility services.

1882.4. A utility may, in accordance with Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, bring an action to enjoin and restrain any of the acts specified in Section 1882.1.

The utility may, in the same action, seek damages for any of the acts specified in Section 1882.1.

1882.5. It is not a necessary prerequisite to an action pursuant to Section 1882.4 that the utility have suffered, or be threatened with, monetary damages.

1882.6. Any damages recovered pursuant to this title in excess of the actual damages sustained by the utility may be taken into account by the Public Utilities Commission or other applicable ratemaking agency in establishing utility rates.