

AMENDED IN ASSEMBLY APRIL 8, 2014  
AMENDED IN ASSEMBLY MARCH 28, 2014  
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2468**

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**Introduced by Assembly Member Donnelly**

February 21, 2014

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An act to add Section ~~143~~ 1524.8 to the Penal Code, relating to ~~airport security~~ search warrants.

LEGISLATIVE COUNSEL'S DIGEST

AB 2468, as amended, Donnelly. ~~Airport security: offenses. Search warrants: privacy.~~

*Existing law provides that a search warrant may only be issued upon probable cause, supported by affidavit, naming or describing the person to be searched or searched for, and particularly describing the property, thing or things, and the place to be searched.*

*Existing federal law authorizes, except as specified, the Attorney General of the United States and Director of National Intelligence to authorize, for a period of up to one year, the targeting of persons reasonably believed to be located outside the United States to acquire foreign intelligence information. Existing federal law authorizes the Director of the Federal Bureau of Investigation, or his or her designee, to make an application for an order requiring the production of any tangible things, as specified, for an investigation to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism or clandestine intelligence activities.*

*This bill would prohibit a state agency, political subdivision of the state, or officer or employee thereof, or a corporation providing services on behalf of the state or a political subdivision from providing services to, or utilizing any assets, state funds, or funds allocated by the state to local entities to engage in activities that aid a federal agency, federal agent, or corporation providing services to the federal government involved in the collection of electronic data or metadata of any person pursuant to an action not based on a valid warrant, as specified. The bill would also prohibit those entities from providing material support, participation, or assistance to a federal agency or pursuant to federal law that purports to authorize the collection of that same data without a valid warrant.*

*The bill would establish specified penalties for violations of its provisions, including withholding state grant funds from a political subdivision of the state that adopts an ordinance, resolution, or policy in violation of the provisions described above.*

*This bill would provide that its provisions are severable.*

~~Existing law makes it a misdemeanor for a public officer, or person pretending to be a public officer, under the pretense or color of any process or other legal authority, to take specified actions without a regular process or other lawful authority, including arresting or detaining a person against his or her will.~~

~~This bill would prohibit a public servant, acting under color of his or her office or employment, as part of a determination of whether to grant a person access to a publicly accessible venue or form of transportation, from intentionally and without probable cause operating body imaging scanning equipment either in direct contact with a passenger, pilot, or crew member, or from remotely viewing images captured through the operation of that equipment. The bill would make a violation of its provisions an infraction punishable by a fine of \$1,000 for each violation. The bill would also define “public servant” and “body imaging scanning equipment” for those purposes. By creating a new crime, the bill would impose a state-mandated local program.~~

~~This bill would provide that its provisions are severable.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes-no.

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

1     SECTION 1. Section 1524.8 is added to the Penal Code, to  
2 read:

3     1524.8. (a) It is the policy of the state to refuse to provide  
4 material support, participation, or assistance to a federal agency,  
5 or pursuant to a federal law, rule, regulation, or order, that  
6 purports to authorize the collection of electronic data or metadata  
7 of a person pursuant to an action not based on a warrant that is  
8 issued upon probable cause and that particularly describes the  
9 persons, places, and things to be searched or seized.

10    (b) Notwithstanding any law, rule, regulation, or order, a state  
11 agency, political subdivision of the state, or officer or employee  
12 thereof acting in his or her official capacity, or corporation  
13 providing services on behalf of the state or a political subdivision  
14 of the state shall not do any of the following:

15    (1) Provide, in any form, material support, participation, or  
16 assistance to a federal agency, or pursuant to a federal law, rule,  
17 regulation, or order, that purports to authorize the collection of  
18 electronic data or metadata of a person pursuant to an action not  
19 based on a warrant that is issued upon probable cause and that  
20 particularly describes the persons, places, and things to be  
21 searched or seized.

22    (2) Utilize any assets, state funds, or funds allocated by the state  
23 to local entities on or after January 1, 2015, in whole or in part,  
24 to engage in an activity that aids a federal agency, federal agent,  
25 or corporation providing services to the federal government in the  
26 collection of electronic data or metadata of a person pursuant to  
27 an action not based on a warrant that is issued upon probable  
28 cause and that particularly describes the persons, places, and  
29 things to be searched or seized.

30    (3) Provide services, or participate or assist in any way in  
31 providing services, to a federal agency, federal agent, or  
32 corporation providing services to the federal government that is  
33 involved in the collection of electronic data or metadata of any  
34 person pursuant to an action not based on a warrant that is issued

1 upon probable cause and that particularly describes the persons,  
2 places, and things to be searched or seized.

3 (4) Use in a criminal investigation or prosecution any  
4 information provided by a federal agency, federal agent, or  
5 corporation providing services to the federal government that was  
6 obtained through the collection of electronic data or metadata of  
7 any person pursuant to an action not based on a warrant that is  
8 issued upon probable cause and that particularly describes the  
9 persons, places, and things to be searched or seized.

10 (c) The Attorney General may bring an action in court to enforce  
11 this section.

12 (d) (1) (A) State grant funds shall be withheld from a political  
13 subdivision of the state that adopts an ordinance, resolution, or  
14 policy in violation of subdivision (b) during the first full fiscal year  
15 immediately following the year in which a final judicial  
16 determination is made that the political subdivision has violated  
17 subdivision (b) in an action brought under this section.

18 (B) For purposes of this paragraph, “state grant funds” means  
19 funds that are awarded to a political subdivision of the state  
20 pursuant to a state grant program.

21 (2) An officer or employee of the state or a political subdivision  
22 of the state who is found to have violated subdivision (b) in a final  
23 judicial determination shall be deemed to have resigned from his  
24 or her office or employment, and he or she shall thereafter be  
25 ineligible to serve in any public office or public employment within  
26 this state.

27 (3) A corporation providing services on behalf of the state or  
28 a political subdivision of the state that is found to have violated  
29 subdivision (b) in a final judicial determination shall be ineligible  
30 to provide services on behalf of, or provide services to, the state  
31 or a political subdivision of the state.

32 SEC. 2. The provisions of this act are severable. If any  
33 provision of this act or its application is held invalid, that invalidity  
34 shall not affect other provisions or applications that can be given  
35 effect without the invalid provision or application.

36 SECTION 1. ~~Section 143 is added to the Penal Code, to read:~~

37 143. (a) ~~A public servant acting under color of his or her office~~  
38 ~~or employment shall not, as part of a determination of whether to~~  
39 ~~grant a person access to a publicly accessible venue or form of~~  
40 ~~transportation, intentionally and without probable cause operate~~

1 ~~body imaging scanning equipment either in direct contact with a~~  
2 ~~passenger, pilot, or crew member, or remotely view images~~  
3 ~~captured through the operation of that equipment.~~

4 (b) ~~For purposes of this section, the following definitions shall~~  
5 ~~apply:~~

6 (1) ~~“Body imaging scanning equipment” means equipment that~~  
7 ~~uses either backscatter technology, millimeter wave technology,~~  
8 ~~or any other technology that produces an image with equal or~~  
9 ~~increased level of anatomical detail of the image created by~~  
10 ~~backscatter and millimeter wave technologies.~~

11 (2) ~~“Public servant” means a person who is any of the following:~~

12 (A) ~~An officer, employee, or agent of the United States; a~~  
13 ~~branch, department, or agency of the United States; or another~~  
14 ~~person acting under contract with a branch, department, or agency~~  
15 ~~of the United States to provide security or law enforcement~~  
16 ~~services.~~

17 (B) ~~Another person acting under color of federal law.~~

18 (e) ~~Violation of this section is an infraction punishable by a fine~~  
19 ~~of one thousand dollars (\$1,000) for each violation.~~

20 (d) ~~This section shall be construed to be enforceable up to, but~~  
21 ~~no further than, the maximum possible extent consistent with~~  
22 ~~federal constitutional requirements, even if that construction is not~~  
23 ~~readily apparent. Alternative constructions are authorized only to~~  
24 ~~the extent necessary to save the statute from judicial invalidation.~~

25 SEC. 2. ~~The provisions of this act are severable. If any~~  
26 ~~provision of this act or its application is held invalid, that invalidity~~  
27 ~~shall not affect other provisions or applications that can be given~~  
28 ~~effect without the invalid provision or application.~~

29 SEC. 3. ~~No reimbursement is required by this act pursuant to~~  
30 ~~Section 6 of Article XIII B of the California Constitution because~~  
31 ~~the only costs that may be incurred by a local agency or school~~  
32 ~~district will be incurred because this act creates a new crime or~~  
33 ~~infraction, eliminates a crime or infraction, or changes the penalty~~  
34 ~~for a crime or infraction, within the meaning of Section 17556 of~~  
35 ~~the Government Code, or changes the definition of a crime within~~  
36 ~~the meaning of Section 6 of Article XIII B of the California~~  
37 ~~Constitution.~~

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