

RESOLUTION 05-10-2016

DIGEST

Public Utilities: Definitions for Theft

Amends Civil Code section 1882 to add definitions for terms regarding power theft.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Civil Code section 1882 to read as follows:

§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, a partnership, firm, association, limited liability company, 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.
- (h) "Commits" means to intentionally and knowingly perform an act proscribed by Civil Code section 1882.1.
- (i) "Authorizes" means to intentionally and knowingly give permission or approval for performance of an act proscribed by Section 1882.1 of the Civil Code.
- (j) "Solicits" means to intentionally and knowingly request or ask that an act be performed which is proscribed by Section 1882.1 of the Civil Code.
- (j) "Aids" and "Abets" means to intentionally, knowingly, and substantially assist another in performing an act proscribed by Section 1882.1 of the Civil Code.
- (k) "Attempts" means to intentionally and knowingly make an effort to do, accomplish, solve, or effect the performance of an act proscribed by Section 1882.1 of the Civil Code.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Sacramento County Bar Association

STATEMENT OF REASONS

The Problem: Civil Code section 1882 defines some of the terms used in Civil Code section 1882.1. Civil Code section 1882.1 authorizes utility companies to file lawsuits to recover damages caused by power theft. That statute was taken from Penal Code section 498, and was enacted by the Legislature to penalize, prevent, and deter people from engaging in power theft. The lack of some specific definitions for terms in Civil Code section 1882.1 causes confusion as to who may be liable for power theft.

Because Civil Code section 1882.1, does not use the exact term “aids *and* abets,” and because Civil Code section 1882 does not define the terms “commits, authorizes, solicits, aids, abets, or attempts,” utility companies can sue customers for power theft even if they unknowingly “aid” in power theft.

The Solution: When the Legislature enacted Civil Code section 1882.1 its intent was to allow utility companies to recover damages “from individuals who steal gas, electricity or water through diversion or by tampering with meters.” (Assem. Com. on Utilities and Energy, Rep. on Assem. Bill No. 1285 (1981-1982 Reg. Sess.) April 27, 1981, p. 1; see also Sen. Comm. on Judiciary, Analysis of Assem. Bill No. 1285 (1981-1982 Reg. Sess.) p. 1.) The Legislature wanted those persons participating in power theft to be held liable and deterred from future misconduct.

The statutory language of Civil Code section 1882.1, is virtually identical to Penal Code section 498 (the criminal power theft statute). Both statutes hold a person responsible for power theft if that person “commits, authorizes, solicits, aids, abets, or attempts” any of the specified types of power theft. The basic lay definitions for “commit,” “authorize,” “solicit,” and “attempt” all require intentional conduct. Likewise, the definition for “aiding and abetting” used in criminal law (like Penal Code section 498) requires that the person both have knowledge of the perpetrator’s misconduct and encourage that perpetrator. (*People v. Beeman* (1984) 35 Cal.3d 547, 556.) A person cannot be liable for negligently “aiding and abetting.” (*Id.* at 560.) Similarly, the Judicial Counsel of California Civil Jury Instructions number 3610, on liability for “aiding and abetting” requires that the defendant know misconduct will be committed and substantially assist in that misconduct.

This resolution defines the terms used in Civil Code section 1882.1 to ensure that the meaning of those terms is consistent with the legislative intent behind that statute; to hold people who intentionally participated in power theft liable. This resolution will resolve the ambiguity in Civil Code section 1882.1, and ensure that innocent people are not held liable for unwittingly aiding a criminal’s secret misconduct.

IMPACT STATEMENT

This resolution would affect the definitions of terms used in Civil Code section 1882.1.

CURRENT OR PRIOR RELATED LEGISLATION

AB 1285 (1981-1982 Reg. Session)

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RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends section 1882 to add definitions for terms regarding power theft. This resolution should be approved in principle because it will provide greater clarity to section 1882.1, which permits a utility to bring a civil action for damages when services are diverted or tampered with.

Section 1882.1 provides for damages against “any person who commits, authorizes, solicits, aids, abets, or attempts” certain acts of diverting or tampering with utility services or property. While section 1882 defines other terms used in the statute, it does not define the ones included in this resolution, and there has been no judicial interpretation to clarify their use. This has created confusion as to who may be held liable for power theft, particularly with respect to “aiding” and “abetting,” which are listed in the disjunctive in the statute. This resolution would provide commonly understood definitions so that both utility companies and potential defendants will understand exactly what is prohibited, and make apparent that liability will be found only where there has been intentional conduct.