

AMENDED IN SENATE MAY 21, 2002

AMENDED IN ASSEMBLY APRIL 1, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 2145

Introduced by Assembly Member Chu

February 20, 2002

An act to amend Section 538c of the Penal Code, relating to theft.

LEGISLATIVE COUNSEL'S DIGEST

AB 2145, as amended, Chu. Theft: advertising services.

Under existing law, the attachment or insertion of any unauthorized advertisement, as defined, into, and the actual or intended redistribution of, a newspaper that is offered for retail sale or is distributed without charge, except with the consent of the publisher or authorized distributor, is a misdemeanor. Existing law also makes it a misdemeanor to act in concert with another to distribute newspapers with unauthorized advertisements, in violation of this provision.

This bill would expand these provisions by including in the crime the attachment or insertion of unauthorized advertisement into magazines, periodicals, or other publications.

By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

This bill would also recast and renumber these provisions to correct an inaccurate cross-reference, and to specify that these provisions do not apply to a ~~person~~ distributor who attaches or inserts an unauthorized advertisement if the ~~person~~ distributor has been directed to insert or attach the advertisement by, ~~or has written permission from another~~

~~person reasonably believed to be a publisher or authorized distributor with authority to consent to the attachment or insertion~~ *the person or company supplying the newspapers, as specified, and the distributor is not aware that the advertisement is unauthorized.*

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.

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

1 SECTION 1. Section 538c of the Penal Code is amended to
2 read:

3 538c. (a) Except as provided in subdivision (c), any person
4 who attaches or inserts an unauthorized advertisement in a
5 newspaper, whether alone or in concert with another, and who
6 redistributes it to the public or who has the intent to redistribute it
7 to the public, is guilty of the crime of theft of advertising services
8 which shall be punishable as a misdemeanor.

9 (b) As used in this section:

10 (1) "Unauthorized advertisement" means any form of
11 representation or communication, including any handbill,
12 newsletter, pamphlet, or notice that contains any letters, words, or
13 pictorial representation that is attached to or inserted in a
14 newspaper without a contractual agreement between the publisher
15 and an advertiser.

16 (2) "Newspaper" includes any newspaper, magazine,
17 periodical, or other tangible publication, whether offered for retail
18 sale or distributed without charge.

19 (c) This section does not apply ~~to a person who has been~~
20 ~~directed, or who has received written permission to insert or attach~~
21 ~~an advertisement, if the person reasonably believes that the~~
22 ~~direction or written permission is from a~~ *if the publisher or*
23 *authorized distributor* ~~with authority to consent~~ *of the newspaper*
24 *consents to the attachment or insertion of the advertisement.*



1 *(d) This section does not apply to a newspaper distributor who*
2 *is directed to insert an unauthorized advertisement by a person or*
3 *company supplying the newspapers, and who is not aware that the*
4 *advertisement is unauthorized.*

5 SEC. 2. No reimbursement is required by this act pursuant to
6 Section 6 of Article XIII B of the California Constitution because
7 the only costs that may be incurred by a local agency or school
8 district will be incurred because this act creates a new crime or
9 infraction, eliminates a crime or infraction, or changes the penalty
10 for a crime or infraction, within the meaning of Section 17556 of
11 the Government Code, or changes the definition of a crime within
12 the meaning of Section 6 of Article XIII B of the California
13 Constitution.

