

## Assembly Bill No. 2145

### CHAPTER 1134

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

[Approved by Governor September 30, 2002. Filed  
with Secretary of State September 30, 2002.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 2145, 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 advertisements 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 distributor who attaches or inserts an unauthorized advertisement if the distributor has been directed to insert or attach the advertisement by the person or company supplying the newspapers, as specified, and the distributor is not aware that the advertisement is unauthorized. The bill would further specify that a conviction for this crime shall not constitute a conviction for petty theft.

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.

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

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

538c. (a) Except as provided in subdivision (c), any person who attaches or inserts an unauthorized advertisement in a newspaper,



whether alone or in concert with another, and who redistributes it to the public or who has the intent to redistribute it to the public, is guilty of the crime of theft of advertising services which shall be punishable as a misdemeanor.

(b) As used in this section:

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

(2) “Newspaper” includes any newspaper, magazine, periodical, or other tangible publication, whether offered for retail sale or distributed without charge.

(c) This section does not apply if the publisher or authorized distributor of the newspaper consents to the attachment or insertion of the advertisement.

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

(e) A conviction under this section shall not constitute a conviction for petty theft.

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

