

**ASSEMBLY BILL**

**No. 883**

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**Introduced by Assembly Member Runner**

February 20, 2003

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An act to repeal and amend Section 132.5 of the Penal Code, relating to witnesses.

LEGISLATIVE COUNSEL'S DIGEST

AB 883, as introduced, Runner. Witnesses: compensation for information.

Existing law prohibits a person from accepting or receiving, directly or indirectly, any money or equivalent in consideration for providing information obtained as a result of witnessing an event or occurrence that he or she knows, or reasonably should know, is a crime, or if he or she has personal knowledge of facts that he or she knows, or reasonably should know, may require that person to be called as a witness in a criminal prosecution. Certain rewards and categories of compensation are exempted from this prohibition. This prohibition is also codified in a second provision of law with the same section number, which differs somewhat in enforcement mechanisms, penalties, treatment of compensation or consideration illegally received, and in other regards.

This bill would repeal the version of this prohibition that was enacted earlier, while incorporating certain aspects of that statute in the other version. This bill would thus leave codified a single statute specifically prohibiting this conduct. Changes in the prevailing law would include (1) deleting legislative declarations relating to the purposes and effects of its provisions; (2) making its prohibitions apply to a person who receives any payment or benefit rather than only money or its equivalent; (3) subjecting a person who reasonably should know that

conduct witnessed is a crime to criminal or civil, rather than only civil, sanctions if that person accepts a payment or benefit for sharing the information; (4) setting the maximum fine in a criminal prosecution for violating the prohibition at \$1000 rather than three times the amount of compensation requested, accepted, or received; (5) permitting the Attorney General or a district attorney to bring a civil action for any violation of these prohibitions, rather than only for those violations where a person reasonably should know that the conduct witnessed is a crime; and (6) upon criminal conviction for a violation of these provisions, forfeiting the defendant’s consideration to the Victim Restitution Fund.

By expanding the criminal component of these provisions to cover additional conduct, this bill would impose a state-mandated local program.

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 132.5 of the Penal Code, as amended by  
2 Section 1 of Chapter 210 of the Statutes of 2002, is repealed.  
3 ~~132.5.—(a) A person who is a witness to an event or occurrence~~  
4 ~~that he or she knows, or reasonably should know, is a crime or who~~  
5 ~~has personal knowledge of facts that he or she knows, or~~  
6 ~~reasonably should know, may require that person to be called as a~~  
7 ~~witness in a criminal prosecution shall not accept or receive,~~  
8 ~~directly or indirectly, any payment or benefit in consideration for~~  
9 ~~providing information obtained as result of witnessing the event~~  
10 ~~or occurrence or having personal knowledge of the facts.~~  
11 ~~(b) A violation of this section is a misdemeanor and shall be~~  
12 ~~punished by imprisonment in a county jail for not exceeding six~~  
13 ~~months, by a fine not exceeding one thousand dollars (\$1,000), or~~  
14 ~~by both that imprisonment and fine.~~



1 ~~(c) Upon conviction under this section, in addition to the~~  
2 ~~penalty described in subdivision (b), any compensation received~~  
3 ~~in violation of this section shall be forfeited by the defendant and~~  
4 ~~deposited in the Victim Restitution Fund.~~

5 ~~(d) This section shall not apply if more than one year has~~  
6 ~~elapsed from the date of any criminal act related to the information~~  
7 ~~that is provided under subdivision (a) unless prosecution has~~  
8 ~~commenced for that criminal act. If prosecution has commenced,~~  
9 ~~this section shall remain applicable until the final judgment in the~~  
10 ~~action.~~

11 ~~(e) This section shall not apply to any of the following~~  
12 ~~circumstances:~~

13 ~~(1) Lawful compensation paid to expert witnesses,~~  
14 ~~investigators, employees, or agents by a prosecutor, law~~  
15 ~~enforcement agency, or an attorney employed to represent a person~~  
16 ~~in a criminal matter.~~

17 ~~(2) Lawful compensation provided to an informant by a~~  
18 ~~prosecutor or law enforcement agency.~~

19 ~~(3) Compensation paid to a publisher, editor, reporter, writer,~~  
20 ~~or other person connected with or employed by a newspaper,~~  
21 ~~magazine, or other publication or a television or radio news~~  
22 ~~reporter or other person connected with a television or radio~~  
23 ~~station, for disclosing information obtained in the ordinary course~~  
24 ~~of business.~~

25 ~~(4) Statutorily authorized rewards offered by governmental~~  
26 ~~agencies for information leading to the arrest and conviction of~~  
27 ~~specified offenders.~~

28 ~~(5) Lawful compensation provided to a witness participating in~~  
29 ~~the Witness Protection Program established pursuant to Title 7.5~~  
30 ~~(commencing with Section 14020) of Part 4.~~

31 ~~(f) For purposes of this section, “information” does not~~  
32 ~~include a photograph, videotape, audiotape, or any other direct~~  
33 ~~recording of events or occurrences.~~

34 SEC. 2. Section 132.5 of the Penal Code, as amended by  
35 Section 2 of Chapter 210 of the Statutes of 2002, is amended to  
36 read:

37 132.5. (a) ~~The Legislature supports and affirms the~~  
38 ~~constitutional right of every person to communicate on any~~  
39 ~~subject. This section is intended to preserve the right of every~~  
40 ~~accused person to a fair trial, the right of the people to due process~~



1 of law, and the integrity of judicial proceedings. This section is not  
2 intended to prevent any person from disseminating any  
3 information or opinion.

4 The Legislature hereby finds and declares that the disclosure for  
5 valuable consideration of information relating to crimes by  
6 prospective witnesses can cause the loss of credible evidence in  
7 criminal trials and threatens to erode the reliability of verdicts.

8 The Legislature further finds and declares that the disclosure for  
9 valuable consideration of information relating to crimes by  
10 prospective witnesses creates an appearance of injustice that is  
11 destructive of public confidence.

12 (b) A person who is a witness to an event or occurrence that he  
13 or she knows, or reasonably should know, is a crime or who has  
14 personal knowledge of facts that he or she knows, or reasonably  
15 should know, may require that person to be called as a witness in  
16 a criminal prosecution shall not accept or receive, directly or  
17 indirectly, any money or its equivalent payment or benefit in  
18 consideration for providing information obtained as result of  
19 witnessing the event or occurrence or having personal knowledge  
20 of the facts.

21 (c) Any person who is a witness to an event or occurrence that  
22 he or she reasonably should know is a crime shall not accept or  
23 receive, directly or indirectly, any money or its equivalent in  
24 consideration for providing information obtained as a result of his  
25 or her witnessing the event or occurrence.

26 (d) The Attorney General or the district attorney of the county  
27 in which an alleged violation of subdivision (c) occurs may  
28 institute a civil proceeding. Where a final judgment is rendered in  
29 the civil proceeding, the defendant shall be punished for the  
30 violation of subdivision (c) by a fine equal to 150 percent of the  
31 amount received or contracted for by the person.

32 (e)

33 (b) (1) A violation of subdivision (b) this section is a  
34 misdemeanor punishable by imprisonment in the county jail for a  
35 term not exceeding six months in a county jail, by a fine not  
36 exceeding three times the amount of compensation requested,  
37 accepted, or received one thousand dollars (\$1,000), or both the  
38 that imprisonment and fine.

39 (f)



1 (2) *The Attorney General or the district attorney of the county*  
2 *in which an alleged violation of this section occurs may instead*  
3 *institute a civil proceeding. Where a final judgment is rendered*  
4 *against the defendant in the civil proceeding, the defendant shall*  
5 *be punished for the violation of this section by a fine equal to 150*  
6 *percent of the amount of consideration requested, accepted, or*  
7 *received by the person.*

8 (c) *Upon conviction under this section, in addition to the*  
9 *penalty described in subdivision (b), any consideration received in*  
10 *violation of this section shall be forfeited by the defendant and*  
11 *deposited in the Victim Restitution Fund.*

12 (d) This section does not apply if more than one year has  
13 elapsed from the date of any criminal act related to the information  
14 that is provided under subdivision ~~(b)~~ or ~~(c)~~ (a) unless prosecution  
15 has commenced for that criminal act. If prosecution has  
16 commenced, this section shall remain applicable until the final  
17 judgment in the action.

18 ~~(g)~~

19 (e) This section does not apply to any of the following  
20 circumstances:

21 (1) Lawful compensation paid to expert witnesses,  
22 investigators, employees, or agents by a prosecutor, law  
23 enforcement agency, or an attorney employed to represent a person  
24 in a criminal matter.

25 (2) Lawful compensation provided to an informant by a  
26 prosecutor or law enforcement agency.

27 (3) Compensation paid to a publisher, editor, reporter, writer,  
28 or other person connected with or employed by a newspaper,  
29 magazine, or other publication or a television or radio news  
30 reporter or other person connected with a television or radio  
31 station, for disclosing information obtained in the ordinary course  
32 of business.

33 (4) Statutorily authorized rewards offered by governmental  
34 agencies or private reward programs offered by victims of crimes  
35 for information leading to the arrest and conviction of specified  
36 offenders.

37 (5) Lawful compensation provided to a witness participating in  
38 the Witness Protection Program established pursuant to Title 7.5  
39 (commencing with Section 14020) of Part 4.

40 ~~(h)~~



1 (f) For purposes of this section, “information” does not  
2 include a photograph, videotape, audiotape, or any other direct  
3 recording of an event or occurrence.

4 ~~(i)~~

5 (g) For purposes of this section, “victims of crimes” shall be  
6 construed in a manner consistent with Section 28 of Article I of the  
7 California Constitution, and shall include victims, as defined in  
8 subdivision (3) of Section 136.

9 SEC. 3. No reimbursement is required by this act pursuant to  
10 Section 6 of Article XIII B of the California Constitution because  
11 the only costs that may be incurred by a local agency or school  
12 district will be incurred because this act creates a new crime or  
13 infraction, eliminates a crime or infraction, or changes the penalty  
14 for a crime or infraction, within the meaning of Section 17556 of  
15 the Government Code, or changes the definition of a crime within  
16 the meaning of Section 6 of Article XIII B of the California  
17 Constitution.

