

Assembly Bill No. 2122

Passed the Assembly April 24, 2014

Chief Clerk of the Assembly

Passed the Senate August 11, 2014

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2014, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 653w of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 2122, Bocanegra. Crimes: audiovisual work: recordings.

Existing law makes it a crime for a person who knowingly advertises or offers for sale or resale, or sells or resells, or causes the rental, sale, or resale of, or rents, or manufacturers, or possesses for these purposes, any recording or audiovisual work, the outside cover, box, jacket, or label of which does not clearly and conspicuously disclose the actual true name and address of the manufacturer of the recording or audiovisual work and the name of the actual author, artist, performer, producer, programmer, or group, as specified. If the offense involves at least 100 articles of audio recordings or 100 articles of audiovisual works, existing law makes the offense punishable as a misdemeanor or a felony.

This bill would make the above provisions applicable to the commercial equivalent of 100 articles of audio recordings or 100 articles of audiovisual works. By expanding the definition of a crime, 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.

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

SECTION 1. Section 653w of the Penal Code is amended to read:

653w. (a) (1) A person is guilty of failure to disclose the origin of a recording or audiovisual work if, for commercial advantage or private financial gain, he or she knowingly advertises or offers for sale or resale, or sells or resells, or causes the rental, sale, or resale of, or rents, or manufactures, or possesses for these purposes,

any recording or audiovisual work, the outside cover, box, jacket, or label of which does not clearly and conspicuously disclose the actual true name and address of the manufacturer thereof and the name of the actual author, artist, performer, producer, programmer, or group thereon. This section does not require the original manufacturer or authorized licensees of software producers to disclose the contributing authors or programmers.

(2) As used in this section, “recording” means any tangible medium upon which information or sounds are recorded or otherwise stored, including, but not limited to, any phonograph record, disc, tape, audio cassette, wire, film, memory card, flash drive, hard drive, data storage device, or other medium on which information or sounds are recorded or otherwise stored, but does not include sounds accompanying a motion picture or other audiovisual work.

(3) As used in this section, “audiovisual works” are the physical embodiment of works that consist of related images that are intrinsically intended to be shown using machines or devices, such as projectors, viewers, or electronic equipment, together with accompanying sounds, if any, regardless of the nature of the material objects, such as films, tapes, discs, memory cards, flash drives, hard drives, data storage devices, or other devices, on which the works are embodied.

(b) A person who has been convicted of a violation of subdivision (a) shall be punished as follows:

(1) If the offense involves the advertisement, offer for sale or resale, sale, rental, manufacture, or possession for these purposes, of at least 100 articles of audio recordings or 100 articles of audiovisual works described in subdivision (a), or the commercial equivalent thereof, the person shall be punished by imprisonment in a county jail not to exceed one year, or by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or five years, or by a fine not to exceed five hundred thousand dollars (\$500,000), or by both that fine and imprisonment.

(2) Any other violation of subdivision (a) not described in paragraph (1), shall, upon a first offense, be punished by imprisonment in a county jail not to exceed one year, or by a fine not to exceed fifty thousand dollars (\$50,000), or by both that fine and imprisonment.

(3) A second or subsequent conviction under subdivision (a) not described in paragraph (1), shall be punished by imprisonment in a county jail not to exceed one year or pursuant to subdivision (h) of Section 1170, or by a fine not to exceed two hundred thousand dollars (\$200,000), or by both that fine and imprisonment.

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.

Approved _____, 2014

Governor