

AMENDED IN ASSEMBLY MARCH 17, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1671

Introduced by Assembly Member Gomez

January 15, 2016

An act to amend Section 632 of the Penal Code, relating to confidential communications.

LEGISLATIVE COUNSEL'S DIGEST

AB 1671, as amended, Gomez. Confidential-~~video~~ communications: disclosure.

(1) Existing law makes it a crime for a person to intentionally eavesdrop upon or record a confidential communication by means of an electronic amplifying or recording device without the consent of all parties to the confidential communication. Existing law defines a confidential communication as any communication carried on in circumstances that reasonably indicate that any party to the communication desires it to be confined to the parties thereto.

This bill would make it a crime to intentionally use, or attempt to use, or to intentionally disclose, or attempt to disclose, the contents of a confidential communication without the consent of all parties to the confidential communication unless specified conditions are met. The bill would also make it a crime to aid, employ, or conspire with any person to unlawfully do, permit, or cause the recordation, use, or disclosure of a confidential communication. By creating new crimes, this bill would impose a state-mandated local program.

(2) Existing law makes the above-specified crime of eavesdropping punishable by a fine not to exceed \$2,500 or imprisonment in a county jail not exceeding one year, or in the state prison for 16 months or 2

or 3 years. If the person has previously been convicted of eavesdropping, or has previously been convicted of specified invasion of privacy crimes, existing law requires the person to be punished by a fine not exceeding \$10,000, by imprisonment in a county jail not exceeding one year, or in the state prison for 16 months or 2 or 3 years.

This bill would require the-above specified fines to be imposed on a per-violation basis.

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.

~~Existing law, with specified exemptions, makes it a crime to intentionally record a confidential communication without the consent of all parties to the communication.~~

~~This bill would declare the intent of the Legislature to enact legislation to prohibit any person from intentionally video recording a confidential communication, or disclosing or distributing that communication, without obtaining the consent of all parties to the communication.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes. State-mandated local program: ~~no~~-yes.

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

1 SECTION 1. Section 632 of the Penal Code is amended to
2 read:

3 632. (a) ~~Every~~A person who, intentionally and without the
4 consent of all parties to a confidential-communication, by
5 communication, does any of the following shall be punished
6 pursuant to subdivision (b):

7 (1) By means of any electronic amplifying or recording device,
8 eavesdrops upon or records the confidential communication,
9 whether the communication is carried on among the parties in the
10 presence of one another or by means of a telegraph, telephone, or
11 other device, except a ~~radio~~, radio.

12 (2) Uses, attempts to use, discloses, or attempts to disclose, in
13 any manner, or for any purpose, the contents of any confidential
14 communication knowing or having reason to know the information
15 was obtained in violation of paragraph (1).

1 (3) *Aids, employs, or conspires with any person or persons to*
2 *unlawfully do, permit, or cause to be done any of the acts described*
3 *in this subdivision.*

4 (b) *A violation of subdivision (a) shall be punished by a fine not*
5 *exceeding two thousand five hundred dollars—(~~\$2,500~~), (\$2,500)*
6 *per violation, or imprisonment in—the a county jail not exceeding*
7 *one year, or in the state prison, or by both that fine and*
8 *imprisonment. If the person has previously been convicted of a*
9 *violation of this section or Section 631, 632.5, 632.6, 632.7, or*
10 *636, the person shall be punished by a fine not exceeding ten*
11 *thousand dollars—(~~\$10,000~~), (\$10,000) per violation, by*
12 *imprisonment in—the a county jail not exceeding one year, or in*
13 *the state prison, or by both that fine and imprisonment.*

14 ~~(b) The term “person” includes~~

15 (c) *For the purposes of this section, “person” means an*
16 *individual, business association, partnership, corporation, limited*
17 *liability company, or other legal entity, and an individual acting*
18 *or purporting to act for or on behalf of any government or*
19 *subdivision thereof, whether federal, state, or local, but excludes*
20 *an individual known by all parties to a confidential communication*
21 *to be overhearing or recording the communication.*

22 ~~(e) The term “confidential communication” includes~~

23 (d) *For the purposes of this section, “confidential*
24 *communication” means any communication carried on in*
25 *circumstances as may reasonably indicate that any party to the*
26 *communication desires it to be confined to the parties thereto, but*
27 *excludes a communication made in a public gathering or in any*
28 *legislative, judicial, executive or administrative proceeding open*
29 *to the public, or in any other circumstance in which the parties to*
30 *the communication may reasonably expect that the communication*
31 *may be overheard or recorded.*

32 ~~(d)~~

33 (e) *Except as proof in an action or prosecution for violation of*
34 *this section, no evidence obtained as a result of eavesdropping*
35 *upon or recording a confidential communication in violation of*
36 *this section shall be admissible in any judicial, administrative,*
37 *legislative, or other proceeding.*

38 ~~(e)~~

39 (f) *This section does not apply (1) to any public utility engaged*
40 *in the business of providing communications services and facilities,*

1 or to the officers, employees or agents thereof, where the acts
2 otherwise prohibited by this section are for the purpose of
3 construction, maintenance, conduct or operation of the services
4 and facilities of the public utility, or (2) to the use of any
5 instrument, equipment, facility, or service furnished and used
6 pursuant to the tariffs of a public utility, or (3) to any telephonic
7 communication system used for communication exclusively within
8 a state, county, city and county, or city correctional facility.

9 (f)

10 (g) This section does not apply to the use of hearing aids and
11 similar devices, by persons afflicted with impaired hearing, for
12 the purpose of overcoming the impairment to permit the hearing
13 of sounds ordinarily audible to the human ear.

14 (h) Paragraph (2) of subdivision (a) does not apply to any
15 member of the media who uses, attempts to use, discloses, or
16 attempts to disclose, a confidential communication if all of the
17 following are true:

18 (1) The communication is truthful and regarding a matter of
19 public concern.

20 (2) The communication was obtained lawfully by the member
21 of the media and not obtained by him or her in violation of
22 paragraph (1) of subdivision (a).

23 (3) The person did not know who was responsible for obtaining
24 the information.

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

34 SECTION 1. ~~It is the intent of the Legislature to enact~~
35 ~~legislation to prohibit any person from intentionally video recording~~
36 ~~a confidential communication, or disclosing or distributing that~~
37 ~~video recording communication, without obtaining the consent of~~
38 ~~all parties to the communication.~~

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