

AMENDED IN ASSEMBLY APRIL 12, 2016

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 of~~, and to add Section 632.01 to, the Penal Code, relating to confidential communications.

LEGISLATIVE COUNSEL'S DIGEST

AB 1671, as amended, Gomez. Confidential 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 *additionally* would make it a crime *for a person who unlawfully eavesdrops upon or records a confidential communication as described above to intentionally use, or attempt to use, or to intentionally disclose, or attempt to disclose, or to intentionally distribute, or attempt to distribute, 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 for any person to aid, abet, employ, or conspire with any the person who unlawfully eavesdrops upon or records a*

confidential communication to unlawfully do, permit, or cause the ~~recording, use, or disclosure or distribution~~ of ~~a~~ *the* 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~~ *the above-specified* fines to be imposed on a per-violation ~~basis~~; *basis and would impose the same penalties prescribed for the unlawful eavesdropping upon or recording of a confidential communication to the disclosure crimes created by the bill. The bill also would make various technical, nonsubstantive changes to existing law.*

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 632 of the Penal Code is amended to
2 read:
3 632. (a) A person who, intentionally and without the consent
4 of all parties to a confidential communication, ~~does any of the~~
5 ~~following shall be punished pursuant to subdivision (b):~~
6 (1) ~~By means of any~~ *uses an* electronic amplifying or recording
7 ~~device, eavesdrops device to eavesdrop upon or records record~~
8 the confidential communication, whether the communication is
9 carried on among the parties in the presence of one another or by
10 means of a telegraph, telephone, or other device, except a ~~radio~~.
11 *radio, shall be punished pursuant to subdivision (b).*

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

5 ~~(3) Aids, employs, or conspires with any person or persons to~~
6 ~~unlawfully do, permit, or cause to be done any of the acts described~~
7 ~~in this subdivision.~~

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

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

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

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~~ *is not* admissible in any judicial, administrative,
37 legislative, or other proceeding.

38 (f) This section does not apply (1) to any public utility engaged
39 in the business of providing communications services and facilities,
40 or to the officers, ~~employees~~ *employees*, or agents thereof, ~~where~~

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

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

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

16 ~~(1) The communication is truthful and regarding a matter of~~
 17 ~~public concern.~~

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

21 ~~(3) The person did not know who was responsible for obtaining~~
 22 ~~the information.~~

23 *SEC. 2. Section 632.01 is added to the Penal Code, to read:*

24 *632.01. (a) A person who violates subdivision (a) of Section*
 25 *632, in addition to any punishment under that section, shall be*
 26 *punished pursuant to subdivision (c) if the person intentionally*
 27 *discloses or attempts to disclose, or distributes or attempts to*
 28 *distribute, in any manner, in any forum, including, but not limited*
 29 *to, Internet Web sites and social media, or for any purpose, the*
 30 *contents of the confidential communication obtained by that person*
 31 *in violation of subdivision (a) of Section 632. For purposes of this*
 32 *subdivision, "social media" means an electronic service or*
 33 *account, or electronic content, including, but not limited to, videos*
 34 *or still photographs, blogs, video blogs, podcasts, instant and text*
 35 *messages, email, online services or accounts, or Internet Web site*
 36 *profiles or locations.*

37 *(b) A person who aids, abets, employs, or conspires with a*
 38 *person or persons to unlawfully do, permit, or cause to be done*
 39 *any act described in subdivision (a) of this section or subdivision*
 40 *(a) of Section 632, shall be punished pursuant to subdivision (c).*

1 (c) A violation of subdivision (a) or (b) shall be punished by a
2 fine not exceeding two thousand five hundred dollars (\$2,500) per
3 violation, or imprisonment in a county jail not exceeding one year,
4 or in the state prison, or by both that fine and imprisonment. If the
5 person has previously been convicted of a violation of this section,
6 the person shall be punished by a fine not exceeding ten thousand
7 dollars (\$10,000) per violation, by imprisonment in a county jail
8 not exceeding one year, or in the state prison, or by both that fine
9 and imprisonment.

10 ~~SEC. 2.~~

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

O