

AMENDED IN ASSEMBLY APRIL 25, 2016

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, 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 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 the~~ *employ or direct any person who unlawfully*

~~eavesdrops upon or records a confidential communication to unlawfully do, permit, or cause the disclosure or distribution of the confidential communication.~~ *to commit those acts.* 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 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, uses an electronic
5 amplifying or recording device to eavesdrop upon or record the
6 confidential communication, whether the communication is carried
7 on among the parties in the presence of one another or by means
8 of a telegraph, telephone, or other device, except a radio, shall be
9 punished pursuant to subdivision (b).

10 ~~(b) A violation of subdivision (a) shall be punished by a fine~~
11 ~~not exceeding two thousand five hundred dollars (\$2,500) per~~
12 ~~violation, or imprisonment in a county jail not exceeding one year,~~

1 or in the state prison, or by both that fine and imprisonment. If the
2 person has previously been convicted of a violation of this section
3 or Section 631, 632.5, 632.6, 632.7, or 636, the person shall be
4 punished by a fine not exceeding ten thousand dollars (\$10,000)
5 per violation, by imprisonment in a county jail not exceeding one
6 year, or in the state prison, or by both that fine and imprisonment.

7 ~~(e)~~

8 *(b)* For the purposes of this section, “person” means an
9 individual, business association, partnership, corporation, limited
10 liability company, or other legal entity, and an individual acting
11 or purporting to act for or on behalf of any government or
12 subdivision thereof, whether federal, state, or local, but excludes
13 an individual known by all parties to a confidential communication
14 to be overhearing or recording the communication.

15 ~~(d)~~

16 *(c)* For the purposes of this section, “confidential
17 communication” means any communication carried on in
18 circumstances as may reasonably indicate that any party to the
19 communication desires it to be confined to the parties thereto, but
20 excludes a communication made in a public gathering or in any
21 legislative, judicial, executive, or administrative proceeding open
22 to the public, or in any other circumstance in which the parties to
23 the communication may reasonably expect that the communication
24 may be overheard or recorded.

25 ~~(e)~~

26 *(d)* Except as proof in an action or prosecution for violation of
27 this section, evidence obtained as a result of eavesdropping upon
28 or recording a confidential communication in violation of this
29 section is not admissible in any judicial, administrative, legislative,
30 or other proceeding.

31 ~~(f)~~

32 *(e)* This section does not apply (1) to any public utility engaged
33 in the business of providing communications services and facilities,
34 or to the officers, employees, or agents thereof, if the acts otherwise
35 prohibited by this section are for the purpose of construction,
36 maintenance, conduct, or operation of the services and facilities
37 of the public utility, (2) to the use of any instrument, equipment,
38 facility, or service furnished and used pursuant to the tariffs of a
39 public utility, or (3) to any telephonic communication system used

1 for communication exclusively within a state, county, city and
2 county, or city correctional facility.

3 ~~(g)~~

4 (f) This section does not apply to the use of hearing aids and
5 similar devices, by persons afflicted with impaired hearing, for
6 the purpose of overcoming the impairment to permit the hearing
7 of sounds ordinarily audible to the human ear.

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

9 632.01. (a) A person who violates subdivision (a) of Section
10 ~~632, in addition to any punishment under that section, 632~~ shall
11 be punished pursuant to subdivision (c) if the person intentionally
12 discloses or attempts to disclose, or distributes or attempts to
13 distribute, in any manner, in any forum, including, but not limited
14 to, Internet Web sites and social media, or for any purpose, the
15 contents of the confidential communication obtained by that person
16 in violation of subdivision (a) of Section 632. For purposes of this
17 subdivision, "social media" means an electronic service or account,
18 or electronic content, including, but not limited to, videos or still
19 photographs, blogs, video blogs, podcasts, instant and text
20 messages, email, online services or accounts, or Internet Web site
21 profiles or locations.

22 (b) A person who ~~aids, abets, employs, or conspires with a~~
23 ~~employs or directs any person or persons to unlawfully do, permit,~~
24 ~~or cause to be done~~ commit any act described in subdivision (a)
25 of this section or subdivision (a) of Section ~~632, 632~~ shall be
26 punished pursuant to subdivision (c).

27 (c) A violation of subdivision (a) or (b) shall be punished by a
28 fine not exceeding two thousand five hundred dollars (\$2,500) per
29 violation, or imprisonment in a county jail not exceeding one year,
30 or in the state prison, or by both that fine and imprisonment. If the
31 person has previously been convicted of a violation of this section,
32 the person shall be punished by a fine not exceeding ten thousand
33 dollars (\$10,000) per violation, by imprisonment in a county jail
34 not exceeding one year, or in the state prison, or by both that fine
35 and imprisonment.

36 SEC. 3. No reimbursement is required by this act pursuant to
37 Section 6 of Article XIII B of the California Constitution because
38 the only costs that may be incurred by a local agency or school
39 district will be incurred because this act creates a new crime or
40 infraction, eliminates a crime or infraction, or changes the penalty

1 for a crime or infraction, within the meaning of Section 17556 of
2 the Government Code, or changes the definition of a crime within
3 the meaning of Section 6 of Article XIII B of the California
4 Constitution.

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