

Assembly Bill No. 1671

Passed the Assembly August 31, 2016

Chief Clerk of the Assembly

Passed the Senate August 31, 2016

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2016, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 632, 633.5, and 637.2 of, and to add Section 632.01 to, the Penal Code, relating to confidential communications.

LEGISLATIVE COUNSEL'S DIGEST

AB 1671, Gomez. Confidential communications: disclosure.

(1) Existing law makes it a crime, subject to specified exemptions, 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. Existing law exempts from the prohibition the recording of a confidential communication made for the purpose of obtaining evidence reasonably believed to relate to the commission by another party to the communication of certain crimes, including any felony involving violence against the person making the recording.

This bill additionally would make it a crime for a person who unlawfully eavesdrops upon or records a confidential communication as described above with a health care provider, as defined, to intentionally disclose or distribute the contents of the confidential communication without the consent of all parties to the confidential communication unless specified conditions are met. The bill would make this prohibition subject to the same exemptions as are applicable to the prohibition on eavesdropping upon or recording a confidential communication as described above. The bill would also specify the conduct that constitutes aiding and abetting the commission of those offenses, as specified. The bill would specify, with respect to the exemption for recording communications believed to relate to the commission of a crime by a party to the communication, that a felony involving violence includes human trafficking, as defined. By creating a new crime, this bill would impose a state-mandated local program.

(2) Existing law authorizes any person who has been injured by a violation of the prohibition on eavesdropping upon or recording confidential communications, and related offenses, to bring an action against the person who committed the violation to enjoin and restrain the violation, as well as to bring an action for monetary damages, as specified.

This bill would provide that the monetary damages be imposed per violation of the above-described provisions.

(3) 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.

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

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

632. (a) A person who, intentionally and without the consent of all parties to a confidential communication, uses an electronic amplifying or recording device to eavesdrop upon or record the confidential communication, whether the communication is carried on among the parties in the presence of one another or by means of a telegraph, telephone, or other device, except a radio, shall be

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

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

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

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

(e) This section does not apply (1) to any public utility engaged in the business of providing communications services and facilities, or to the officers, employees, or agents thereof, if the acts otherwise prohibited by this section are for the purpose of construction, maintenance, conduct, or operation of the services and facilities of the public utility, (2) to the use of any instrument, equipment, facility, or service furnished and used pursuant to the tariffs of a public utility, or (3) to any telephonic communication system used for communication exclusively within a state, county, city and county, or city correctional facility.

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

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

632.01. (a) (1) A person who violates subdivision (a) of Section 632 shall be punished pursuant to subdivision (b) if the person intentionally discloses or distributes, in any manner, in any forum, including, but not limited to, Internet Web sites and social media, or for any purpose, the contents of a confidential communication with a health care provider that is obtained by that person in violation of subdivision (a) of Section 632. For purposes of this subdivision, “social media” means an electronic service or account, or electronic content, including, but not limited to, videos or still photographs, blogs, video blogs, podcasts, instant and text messages, email, online services or accounts, or Internet Web site profiles or locations.

(2) Notwithstanding any other provision of law, to aid and abet a violation of paragraph (1), for the purposes of Section 31, the person shall either violate, or aid and abet in a violation of, both Section 632 and paragraph (1).

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

(c) For purposes of this section, “health care provider” means any of the following:

(1) A person licensed or certified pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code.

(2) A person licensed pursuant to the Osteopathic Initiative Act or the Chiropractic Initiative Act.

(3) A person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(4) A clinic, health dispensary, or health facility licensed or exempt from licensure pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.

(5) An employee, volunteer, or contracted agent of any group practice prepayment health care service plan regulated pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code).

(6) An employee, volunteer, independent contractor, or professional student of a clinic, health dispensary, or health care facility or health care provider described in this subdivision.

(7) A professional organization that represents any of the other health care providers described in this subdivision.

(d) (1) Subdivision (a) does not apply to the disclosure or distribution of a confidential communication pursuant to any of the following:

(A) Any party as described in Section 633 acting within the scope of his or her authority overhearing or recording a confidential communication that he or she may lawfully overhear or record pursuant to that section.

(B) Any party as described in Section 633.02 overhearing or recording a confidential communication related to sexual assault or other sexual offense that he or she may lawfully overhear or record pursuant to that section, or using or operating a body-worn camera as authorized pursuant to that section.

(C) A city attorney as described in Section 633.05 overhearing or recording any communication that he or she may lawfully overhear or record pursuant to that section.

(D) An airport law enforcement officer recording a communication received on an incoming telephone line pursuant to Section 633.1.

(E) A party to a confidential communication recording the communication for the purpose of obtaining evidence reasonably believed to relate to the commission by another party to the communication of a crime as specified in Section 633.5.

(F) A victim of domestic violence recording a prohibited communication made to him or her by the perpetrator pursuant to Section 633.6.

(G) A peace officer using electronic amplifying or recording devices to eavesdrop on and record the otherwise confidential oral

communications of individuals within a location when responding to an emergency situation that involves the taking of a hostage or the barricading of a location pursuant to Section 633.8.

(2) This section does not affect the admissibility of any evidence that would otherwise be admissible pursuant to the authority of any section specified in paragraph (1).

SEC. 3. Section 633.5 of the Penal Code is amended to read:

633.5. Nothing in Section 631, 632, 632.5, 632.6, or 632.7 prohibits one party to a confidential communication from recording the communication for the purpose of obtaining evidence reasonably believed to relate to the commission by another party to the communication of the crime of extortion, kidnapping, bribery, any felony involving violence against the person, including, but not limited to, human trafficking, as defined in Section 231.6, or a violation of Section 653m. Sections 631, 632, 632.5, 632.6, and 632.7 do not render any evidence so obtained inadmissible in a prosecution for extortion, kidnapping, bribery, any felony involving violence against the person, including, but not limited to, human trafficking, as defined in Section 231.6, a violation of Section 653m, or any crime in connection therewith.

SEC. 4. Section 637.2 of the Penal Code is amended to read:

637.2. (a) Any person who has been injured by a violation of this chapter may bring an action against the person who committed the violation for the greater of the following amounts:

- (1) Five thousand dollars (\$5,000) per violation.
- (2) Three times the amount of actual damages, if any, sustained by the plaintiff.

(b) Any person may, in accordance with Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, bring an action to enjoin and restrain any violation of this chapter, and may in the same action seek damages as provided by subdivision (a).

(c) It is not a necessary prerequisite to an action pursuant to this section that the plaintiff has suffered, or be threatened with, actual damages.

(d) This section shall not be construed to affect Title 4 (commencing with Section 3425.1) of Part 1 of Division 4 of the Civil Code.

SEC. 5. 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 _____, 2016

Governor