

Assembly Bill No. 1127

CHAPTER 554

An act to amend Sections 502.8 and 537e of the Penal Code, relating to crimes.

[Approved by Governor September 28, 1997. Filed with Secretary of State September 29, 1997.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1127, Knox. Telecommunications equipment.

(1) Existing law makes it a crime to use a telecommunications device, as defined, intending to avoid the payment of any lawful charge for service to the device, or to possess or manufacture a telecommunications device with intent to sell or offer to sell the device to another, intending to avoid the payment of any lawful charge for service to the device.

This bill instead would make it a crime to (a) knowingly advertise illegal telecommunications equipment, as defined; (b) possess or use illegal telecommunications equipment intending to avoid the payment of any lawful charge for telecommunications service or to facilitate other criminal conduct; or (c) possess or manufacture illegal telecommunications equipment with intent to sell, transfer, or furnish or offer to sell, transfer, or furnish the equipment to another, intending to avoid the payment of any lawful charge for telecommunications service or to facilitate other criminal conduct. The bill would delete the definition of telecommunications device and instead set forth a definition of illegal telecommunications equipment. The bill would provide that in the event that a person violates these provisions with the intent to avoid the payment of any lawful charge for telecommunications service to a telecommunications service provider, the court shall order the person to pay restitution to the telecommunications service provider, as specified. By creating new crimes, this bill would impose a state-mandated local program.

(2) Existing law provides that it is a crime for any person to knowingly buy, sell, receive, dispose of, conceal, or possess any personal property from which the manufacturer's serial number, or any other distinguishing number or identification mark has been removed, defaced, covered, altered, or destroyed.

This bill would also make it a crime for any person to knowingly buy, sell, receive, dispose of, conceal, or possess any personal property from which the manufacturer's identification number or electronic serial number has been removed, defaced, covered,

altered, or destroyed. By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

(3) 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 502.8 of the Penal Code is amended to read:

502.8. (a) Any person who knowingly advertises illegal telecommunications equipment is guilty of a misdemeanor.

(b) Any person who possesses or uses illegal telecommunications equipment intending to avoid the payment of any lawful charge for telecommunications service or to facilitate other criminal conduct is guilty of a misdemeanor.

(c) Any person found guilty of violating subdivision (b), who has previously been convicted of the same offense, shall be guilty of a felony, punishable by imprisonment in state prison, a fine of up to fifty thousand dollars (\$50,000), or both.

(d) Any person who possesses illegal telecommunications equipment with intent to sell, transfer, or furnish or offer to sell, transfer, or furnish the equipment to another, intending to avoid the payment of any lawful charge for telecommunications service or to facilitate other criminal conduct is guilty of a misdemeanor punishable by one year in a county jail or imprisonment in state prison or a fine of up to ten thousand dollars (\$10,000), or both.

(e) Any person who possesses 10 or more items of illegal telecommunications equipment with intent to sell or offer to sell the equipment to another, intending to avoid payment of any lawful charge for telecommunications service or to facilitate other criminal conduct, is guilty of a felony, punishable by imprisonment in state prison, a fine of up to fifty thousand dollars (\$50,000), or both.

(f) Any person who manufactures 10 or more items of illegal telecommunications equipment with intent to sell or offer to sell the equipment to another, intending to avoid the payment of any lawful charge for telecommunications service or to facilitate other criminal conduct is guilty of a felony punishable by imprisonment in state prison or a fine of up to fifty thousand dollars (\$50,000), or both.

(g) For purposes of this section, “illegal telecommunications equipment” means equipment that operates to evade the lawful charges for any telecommunications service; surreptitiously intercept electronic serial numbers or mobile identification numbers; alter electronic serial numbers; circumvent efforts to confirm legitimate access to a telecommunications account; conceal



from any telecommunications service provider or lawful authority the existence, place of origin, or destination of any telecommunication; or otherwise facilitate any other criminal conduct. “Illegal telecommunications equipment” includes, but is not limited to, any unauthorized electronic serial number or mobile identification number, whether incorporated into a wireless telephone or other device or otherwise. Items specified in this paragraph shall be considered illegal telecommunications equipment notwithstanding any statement or disclaimer that the items are intended for educational, instructional, or similar purposes.

(h) (1) In the event that a person violates the provisions of this section with the intent to avoid the payment of any lawful charge for telecommunications service to a telecommunications service provider, the court shall order the person to pay restitution to the telecommunications service provider in an amount that is the greater of the following:

(A) Five thousand dollars (\$5,000).

(B) Three times the amount of actual damages, if any, sustained by the telecommunications service provider, plus reasonable attorney fees.

(2) It is not a necessary prerequisite to an order of restitution under this section that the telecommunications service provider has suffered, or be threatened with, actual damages.

SEC. 2. Section 537e of the Penal Code is amended to read:

537e. (a) Any person who knowingly buys, sells, receives, disposes of, conceals, or has in his or her possession any personal property from which the manufacturer’s serial number, identification number, electronic serial number, or any other distinguishing number or identification mark has been removed, defaced, covered, altered, or destroyed, is guilty of a public offense, punishable as follows:

(1) If the value of the property does not exceed four hundred dollars (\$400), by imprisonment in a county jail not exceeding six months.

(2) If the value of the property exceeds four hundred dollars (\$400), by imprisonment in a county jail not exceeding one year.

(3) If the property is an integrated computer chip or panel of a value of four hundred dollars (\$400) or more, by imprisonment in the state prison for 16 months, or 2 or 3 years or by imprisonment in a county jail not exceeding one year.

For purposes of this subdivision, “personal property” includes, but is not limited to, the following:

(1) Any television, radio, recorder, phonograph, telephone, piano, or any other musical instrument or sound equipment.

(2) Any washing machine, sewing machine, vacuum cleaner, or other household appliance or furnishings.



(3) Any typewriter, adding machine, dictaphone, or any other office equipment or furnishings.

(4) Any computer, printed circuit, integrated chip or panel, or other part of a computer.

(5) Any tool or similar device, including any technical or scientific equipment.

(6) Any bicycle, exercise equipment, or any other entertainment or recreational equipment.

(7) Any electrical or mechanical equipment, contrivance, material, or piece of apparatus or equipment.

(8) Any clock, watch, watch case, or watch movement.

(9) Any vehicle or vessel, or any component part thereof.

(b) When property described in subdivision (a) comes into the custody of a peace officer it shall become subject to the provision of Chapter 12 (commencing with Section 1407) of Title 10 of Part 2, relating to the disposal of stolen or embezzled property. Property subject to this section shall be considered stolen or embezzled property for the purposes of that chapter, and prior to being disposed of, shall have an identification mark imbedded or engraved in, or permanently affixed to it.

(c) This section does not apply to those cases or instances where any of the changes or alterations enumerated in subdivision (a) have been customarily made or done as an established practice in the ordinary and regular conduct of business, by the original manufacturer, or by his or her duly appointed direct representative, or under specific authorization from the original manufacturer.

SEC. 3. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 4. 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.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

