

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1241

Introduced by Assembly Member Calderon

February 27, 2015

An act to amend Section 653w of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 1241, as amended, Calderon. Crimes: audiovisual work: recording.

Existing law makes it a crime for a person to, for commercial advantage or private financial gain, knowingly advertise or offer for sale or resale, or sell or resell, or cause the rental, sale, or resale of, or rent, or manufacture, or possess for these purposes, any recording or audiovisual work, the outside cover, box, jacket, or label of which does not clearly and conspicuously disclose the actual true name and address of the manufacturer of the recording or audiovisual work and the name of the actual author, artist, performer, producer, programmer, or group. *Existing law provides different punishments for different violations of these provisions and provides that the punishment for a first offense for certain violations of these provisions is imprisonment in a county jail not to exceed one year, or a fine not to exceed \$50,000, or both that fine and imprisonment. Existing law provides that the punishment for a 2nd or subsequent offense for those same violations is imprisonment in a county jail not to exceed one year, or imprisonment for a felony, or by a fine not to exceed \$200,000, or by both that fine and imprisonment.*

This bill would provide that the punishment for a 2nd or subsequent offense for those certain violations would be imprisonment in a county

jail not to exceed one year, or imprisonment for a felony, or by a fine of not less than \$1,000, but not to exceed \$200,000, or by both that fine and imprisonment. The bill would also make technical, nonsubstantive changes to that provision.

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

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

1 SECTION 1. Section 653w of the Penal Code is amended to
2 read:

3 653w. (a) (1) A person is guilty of failure to disclose the origin
4 of a recording or audiovisual work if, for commercial advantage
5 or private financial gain, he or she knowingly advertises or offers
6 for sale or resale, or sells or resells, or causes the rental, sale, or
7 resale of, or rents, or manufactures, or possesses for these purposes,
8 any recording or audiovisual work, the outside cover, box, jacket,
9 or label of which does not clearly and conspicuously disclose the
10 actual true name and address of the manufacturer thereof and the
11 name of the actual author, artist, performer, producer, programmer,
12 or group thereon. This section does not require the original
13 manufacturer or authorized licensees of software producers to
14 disclose the contributing authors or programmers.

15 (2) As used in this section, “recording” means any tangible
16 medium upon which information or sounds are recorded or
17 otherwise stored, including, but not limited to, any phonograph
18 record, disc, tape, audio cassette, wire, film, memory card, flash
19 drive, hard drive, data storage device, or other medium on which
20 information or sounds are recorded or otherwise stored, but does
21 not include sounds accompanying a motion picture or other
22 audiovisual work.

23 (3) As used in this section, “audiovisual works” are the physical
24 embodiment of works that consist of related images that are
25 intrinsically intended to be shown using machines or devices, such
26 as projectors, viewers, or electronic equipment, together with
27 accompanying sounds, if any, regardless of the nature of the
28 material objects, such as films, tapes, discs, memory cards, flash
29 drives, hard drives, data storage devices, or other devices, on which
30 the works are embodied.

1 (b) A person who has been convicted of a violation of
2 subdivision (a) shall be punished as follows:

3 (1) If the offense involves the advertisement, offer for sale or
4 resale, sale, rental, manufacture, or possession for these purposes,
5 of at least 100 articles of audio recordings or 100 articles of
6 audiovisual works described in subdivision (a), or the commercial
7 equivalent thereof, the person shall be punished by imprisonment
8 in a county jail not to exceed one year, or by imprisonment
9 pursuant to subdivision (h) of Section 1170 for two, three, or five
10 years, or by a fine not to exceed five hundred thousand dollars
11 (\$500,000), or by both that fine and imprisonment.

12 (2) Any other violation of subdivision (a) not described in
13 paragraph (1) shall, upon a first offense, be punished by
14 imprisonment in a county jail not to exceed one year, or by a fine
15 not to exceed fifty thousand dollars (\$50,000), or by both that fine
16 and imprisonment.

17 (3) A second or subsequent conviction under subdivision (a)
18 not described in paragraph (1) shall be punished by imprisonment
19 in a county jail not to exceed one year or pursuant to subdivision
20 (h) of Section 1170, or by a fine *of not less than one thousand*
21 *dollars (1,000), but* not to exceed two hundred thousand dollars
22 (\$200,000), or by both that fine and imprisonment.