

Assembly Bill No. 1241

Passed the Assembly May 4, 2016

Chief Clerk of the Assembly

Passed the Senate August 1, 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 Section 653w of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 1241, 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 manufacturer, 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.

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

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

653w. (a) (1) A person is guilty of failure to disclose the origin of a recording or audiovisual work if, for commercial advantage or private financial gain, he or she knowingly advertises or offers for sale or resale, or sells or resells, or causes the rental, sale, or resale of, or rents, or manufactures, or possesses 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 thereof and the name of the actual author, artist, performer, producer, programmer, or group thereon. This section does not require the original manufacturer or authorized licensees of software producers to disclose the contributing authors or programmers.

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

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

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

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

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

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

Approved _____, 2016

Governor