

ASSEMBLY BILL

No. 839

Introduced by Assembly Member Lowenthal

February 22, 2001

An act to add Section 17538.43 to the Business and Professions Code, relating to advertising.

LEGISLATIVE COUNSEL'S DIGEST

AB 839, as introduced, Lowenthal. Advertising: facsimile machine.

Existing law prohibits a person conducting business in this state from faxing unsolicited advertising material, unless certain conditions are met.

This bill would prohibit a person from transmitting unsolicited advertising material to a facsimile machine located in this state, with specified exceptions.

Because a violation of the prohibition against faxing advertising materials into the state would be a misdemeanor, this bill would create a state-mandated local program.

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. The Legislature hereby finds and declares that
2 unlike other forms of advertising media, the use of a fax machine
3 to transmit unsolicited advertising and promotional material
4 imposes a real cost on the recipient of the transmission. Every fax
5 transmission creates expense for the recipient in the form of paper,
6 ink, and wear and tear on a fax machine. Unsolicited fax
7 advertising imposes this cost without the knowledge or permission
8 of the recipient.

9 SEC. 2. Section 17538.43 is added to the Business and
10 Professions Code, to read:

11 17538.43. (a) No person or entity shall send an unsolicited
12 advertisement via any telephone facsimile machine, computer, or
13 other device, to make an electronic or telephonic transmission to
14 a telephone facsimile machine located in California by means of
15 any connection with a telephone network for the purpose of
16 transmitting a commercial solicitation.

17 (b) For purposes of this section, “telephone facsimile
18 machine” means equipment that has the capacity to either:

19 (1) Transcribe text or images or both from paper into an
20 electronic signal, and transmit that signal over a regular telephone
21 line.

22 (2) Transcribe text or images or both onto paper from an
23 electronic signal received over a regular telephone line.

24 (c) For purposes of this section, “commercial solicitation”
25 means an electronic or telephonic transmission to a facsimile
26 device of unsolicited advertising material for the lease, sale, rental,
27 gift, offer, or other disposition of any realty, goods, services, or
28 extension of credit.

29 (d) For purposes of this section, “commercial solicitation”
30 does not include an electronic or telephonic transmission to a
31 facsimile device that is any of the following:

32 (1) Made in the course of prior negotiations between the party
33 sending and the party receiving the materials.

34 (2) Made to a party with whom the sender has a prior business
35 relationship or an existing business relationship.

36 (3) Made in the course of a followup sales call.

37 SEC. 3. No reimbursement is required by this act pursuant to
38 Section 6 of Article XIII B of the California Constitution because



1 the only costs that may be incurred by a local agency or school
2 district will be incurred because this act creates a new crime or
3 infraction, eliminates a crime or infraction, or changes the penalty
4 for a crime or infraction, within the meaning of Section 17556 of
5 the Government Code, or changes the definition of a crime within
6 the meaning of Section 6 of Article XIII B of the California
7 Constitution.

O

