

AMENDED IN SENATE MAY 22, 2002

AMENDED IN ASSEMBLY MARCH 20, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1769**

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**Introduced by Assembly Member Leslie**  
**(Coauthors: Assembly Members Aanestad, Harman, La Suer,**  
**Longville, Robert Pacheco, Pescetti, and Salinas)**  
(Coauthors: Senators Johannessen and Morrow)

January 9, 2002

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An act to add Section 17538.41 to the Business and Professions Code, relating to advertising.

LEGISLATIVE COUNSEL'S DIGEST

AB 1769, as amended, Leslie. Advertising: unsolicited cellular telephone and pager text messages.

Existing law provides for the regulation of advertising and specifically prohibits a person conducting business in this state from faxing or electronically mailing unsolicited advertising material, unless certain conditions are satisfied. Existing law provides that a violation of the provisions regulating advertising is a misdemeanor, and also provides for imposition of civil penalties and injunctive relief.

This bill would, subject to certain exceptions, generally prohibit a person or entity conducting business in this state from transmitting or causing to be transmitted a text message consisting of unsolicited advertising material to a cellular telephone or pager equipped with short message capability or any similar capability allowing the transmission

of text messages. By creating a new crime, the bill would impose 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. Section 17538.41 is added to the Business and  
2 Professions Code, to read:

3 17538.41. (a) (1) Except as provided in subdivision (b), no  
4 person or entity conducting business in this state shall transmit or  
5 cause to be transmitted a text message consisting of unsolicited  
6 advertising material for the lease, sale, rental, gift offer, or other  
7 disposition of any realty, goods, services, or extension of credit to  
8 a cellular telephone or pager equipped with short message  
9 capability or any similar capability allowing the transmission of  
10 text messages.

11 (2) This section shall apply when an unsolicited text message  
12 is transmitted to a telephone number assigned for cellular  
13 telephone or pager service to a California resident.

14 (b) This section does not apply to text messages transmitted ~~by~~  
15 ~~or~~ at the direction of a person or entity offering cellular telephone  
16 or pager service if the subscriber is offered an option to not receive  
17 those text messages.

18 (c) *Subdivision (a) shall not impose an obligation on a person*  
19 *or entity offering cellular or pager service to control the*  
20 *transmission of a text message unless the message is transmitted*  
21 *at the direction of that person or entity.*

22 SEC. 2. No reimbursement is required by this act pursuant to  
23 Section 6 of Article XIII B of the California Constitution because  
24 the only costs that may be incurred by a local agency or school  
25 district will be incurred because this act creates a new crime or  
26 infraction, eliminates a crime or infraction, or changes the penalty  
27 for a crime or infraction, within the meaning of Section 17556 of



1 the Government Code, or changes the definition of a crime within  
2 the meaning of Section 6 of Article XIII B of the California  
3 Constitution.

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