

AMENDED IN ASSEMBLY APRIL 16, 2002

AMENDED IN ASSEMBLY APRIL 11, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 2820

**Introduced by Assembly Members Cardenas, Correa, and
Wiggins
(Coauthor: Assembly Member Wyman)**

February 25, 2002

An act to amend Sections 17538.4 and 17592 of, *and to add Section 17592.5 to*, the Business and Professions Code, relating to facsimiles.

LEGISLATIVE COUNSEL'S DIGEST

AB 2820, as amended, Cardenas. Unsolicited facsimiles.

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

This bill would delete the state law provisions governing unsolicited advertising faxes.

Existing law requires the Attorney General, not later than January 1, 2003, to maintain a “do not call” list containing the telephone numbers and ZIP Codes of residential or wireless telephone subscribers who do not wish to receive unsolicited and unwanted telephone calls from telephone solicitors.

~~Existing state law requires all unsolicited advertising faxes to include a statement, meeting specified criteria, informing the recipient of a toll-free telephone number or return address that the recipient may~~

~~contact to notify the sender not to send any further unsolicited advertising materials.~~

This bill would require that ~~the statement also identify~~ *all unsolicited advertising faxes include a statement that identifies* the state-designated Internet Web site and toll-free telephone number for the “do not call” list.

~~Existing state law prohibits a person or entity conducting business in the state from faxing or causing to be faxed or e-mailing or causing to be e-mailed any unsolicited documents to a person who has requested not to receive any further unsolicited faxed or e-mailed documents.~~

~~This bill would, in the case of a fax, permit a recipient to send a request not to receive further unsolicited faxes by placing himself or herself on the “do not call” list.~~

Existing law prohibits, subject to certain exceptions, a telephone solicitor from calling any telephone number, beginning on or after the 31st day after the then current “do not call” list becomes available, to, among other things, seek to offer a prize, to rent, sell, exchange, promote, gift, or lease any goods or services, to offer or solicit credit, to seek certain marketing information, or to seek to sell or promote any investment, insurance, or financial services. Existing law also prohibits persons who sell, lease, exchange, or rents telephone solicitation lists, except for directory assistance and telephone directories sold by telephone companies, from including in their lists telephone numbers that appear on the then current “do not call” list. Existing law includes in the definition of a “telephone solicitor” any person or entity who, on his or her own behalf or through salespersons or agents, announcing devices, or otherwise, makes or causes certain types of telephone calls to be made to a California telephone number.

This bill would include within the definition of a telephone solicitor a person or entity using a facsimile transmission and would apply these provisions to specified facsimile transmissions to a California telephone number.

Existing law makes it a crime to violate any of the provisions governing advertising. By adding the requirement that ~~the mandatory specified faxes contain a statement—contain~~ *containing* certain information, and the requirement that advertisers recognize placement on the “do not call” list as a request not to receive further unsolicited facsimile documents, the bill would expand the scope of an existing crime, thereby imposing 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 the
2 following:

3 (a) Chapter 695 of the Statutes of 2001 requires that the
4 Attorney General create a “do not call” list composed of telephone
5 numbers of all telephone subscribers who do not wish to receive
6 unsolicited advertising telephone calls. Further, those telephone
7 solicitors are required therein to refrain from making further
8 telephone solicitations to telephone numbers on that list.

9 (b) Each person who transmits unsolicited advertising material
10 by facsimile is *currently* required by Section 17538.4 of the
11 Business ~~an~~ and Professions Code to provide a toll-free telephone
12 number on each facsimile sent. Further, any recipient request to
13 not send further unsolicited advertising material by facsimile must
14 also be honored. Nonetheless, many recipients who have made
15 these requests have continued to receive facsimile transmissions
16 from the many other persons who have received no request,
17 thereby engendering misdirected enmity toward the very persons
18 who have properly stopped sending the facsimile transmissions.

19 (c) Persons who receive unwanted advertising material by
20 facsimile transmission are not provided an explicit civil remedy to
21 enforce Section 17538.4 of the Business and Professions Code.

22 (d) Telephone subscribers who are recipients of unsolicited
23 advertising material by facsimile transmission will likely become
24 more confused unless the law governing those facsimile
25 transmissions is made to conform to the new law governing
26 telephone solicitors.

27 (e) In order to eliminate unnecessary confusion, telephone
28 subscribers should be able to place both their facsimile and voice



1 telephone numbers on the same “do not call” list to indicate that
2 they do not wish to receive unsolicited advertising material

3 (f) It is intent of the Legislature to include facsimile telephone
4 numbers on the “do not call” list administered by the Attorney
5 General.

6 (g) It is further the intent of the Legislature to provide one
7 toll-free telephone number to call and one simple remedy to pursue
8 in small claims court for California telephone subscribers that
9 receive unwanted advertising material by facsimile transmission.

10 SEC. 2. Section 17538.4 of the Business and Professions
11 Code is amended to read:

12 17538.4. (a) No person or entity conducting business in this
13 state shall ~~facsimile (fax) or cause to be faxed, or~~ electronically
14 mail (e-mail) or cause to be e-mailed, documents consisting of
15 unsolicited advertising material for the lease, sale, rental, gift
16 offer, or other disposition of any realty, goods, services, or
17 extension of credit unless:

18 ~~(1) In the case of a fax, that person or entity establishes a~~
19 ~~toll-free telephone number that a recipient of the unsolicited faxed~~
20 ~~documents may call to notify the sender not to fax the recipient any~~
21 ~~further unsolicited documents.~~

22 ~~(2) In the case of e-mail, that person or entity establishes a~~
23 ~~toll-free telephone number or valid sender operated return e-mail~~
24 ~~address that the recipient of the unsolicited documents may call or~~
25 ~~e-mail to notify the sender not to e-mail any further unsolicited~~
26 ~~documents.~~

27 (b) All unsolicited ~~faxed or~~ e-mailed documents subject to this
28 section shall include a statement informing the recipient of the
29 toll-free telephone number that the recipient may call, or a valid
30 return address to which the recipient may write or e-mail, as the
31 case may be, notifying the sender not to ~~fax or~~ e-mail the recipient
32 any further unsolicited documents to the ~~fax number, or numbers,~~
33 ~~or~~ e-mail address; or addresses; specified by the recipient.

34 ~~In the case of faxed material, the statement shall be in at least~~
35 ~~nine point type and shall also identify the state designated Internet~~
36 ~~Web site and the toll-free telephone number for the “do not call”~~
37 ~~list referenced in Section 17591. In the case of e-mail, the~~ *The*
38 statement shall be the first text in the body of the message and shall
39 be of the same size as the majority of the text of the message.



1 (c) Upon notification by a recipient of his or her request not to
2 receive any further unsolicited ~~faxed or~~ e-mailed documents, no
3 person or entity conducting business in this state shall ~~fax or cause~~
4 ~~to be faxed or~~ e-mail or cause to be e-mailed any unsolicited
5 documents to that recipient. ~~In the case of fax, the recipient may,~~
6 ~~at his or her election, effectuate notification in the manner~~
7 ~~specified by subdivision (b) of Section 17591.~~

8 (d) ~~In the case of e-mail, this~~ *This* section shall apply when the
9 unsolicited e-mailed documents are delivered to a California
10 resident via an electronic mail service provider’s service or
11 equipment located in this state. For these purposes “electronic
12 mail service provider” means any business or organization
13 qualified to do business in this state that provides individuals,
14 corporations, or other entities the ability to send or receive
15 electronic mail through equipment located in this state and that is
16 an intermediary in sending or receiving electronic mail.

17 (e) As used in this section, “unsolicited e-mailed documents”
18 means any e-mailed document or documents ~~consisting of that~~
19 *consists* advertising material for the lease, sale, rental, gift offer,
20 or other disposition of any realty, goods, services, or extension of
21 credit that meet both of the following requirements:

22 (1) The documents are addressed to a recipient with whom the
23 initiator does not have an existing business or personal
24 relationship.

25 (2) The documents are not sent at the request of, or with the
26 express consent of, the recipient.

27 (f) As used in this section, ~~“fax” or “cause to be faxed” or~~
28 ~~“e-mail” or “cause to be e-mailed”~~ does not include or refer to the
29 transmission of any documents by a telecommunications utility or
30 Internet service provider to the extent that the telecommunications
31 utility or Internet service provider merely carries that transmission
32 over its network.

33 (g) In the case of e-mail that consists of unsolicited advertising
34 material for the lease, sale, rental, gift offer, or other disposition
35 of any realty, goods, services, or extension of credit, the subject
36 line of each and every message shall include “ADV:” as the first
37 four characters. If these messages contain information that
38 consists of unsolicited advertising material for the lease, sale,
39 rental, gift offer, or other disposition of any realty, goods, services,
40 or extension of credit, that may only be viewed, purchased, rented,



1 leased, or held in possession by an individual 18 years of age and
2 older, the subject line of each and every message shall include
3 “ADV:ADLT” as the first eight characters.

4 (h) An employer who is the registered owner of more than one
5 e-mail address may notify the person or entity conducting business
6 in this state e-mailing or causing to be e-mailed, documents
7 consisting of unsolicited advertising material for the lease, sale,
8 rental, gift offer, or other disposition of any realty, goods, services,
9 or extension of credit of the desire to cease e-mailing on behalf of
10 all of the employees who may use employer-provided and
11 employer-controlled e-mail addresses.

12 (i) This section, or any part of this section, shall become
13 inoperative on and after the date that federal law is enacted that
14 prohibits or otherwise regulates the transmission of unsolicited
15 advertising by electronic mail (e-mail).

16 SEC. 3. Section 17592 of the Business and Professions Code
17 is amended to read:

18 17592. (a) For purposes of this article, a “telephone
19 solicitor” means any person or entity who, on his or her own
20 behalf or through salespersons or agents, announcing devices,
21 facsimile transmission, or otherwise, makes or causes a telephone
22 call or a facsimile transmission to be made to a California
23 telephone number, that does any of the following:

24 (1) Seeks to offer a prize or to rent, sell, exchange, promote,
25 gift, or lease goods or services or documents that can be used to
26 obtain goods or services.

27 (2) Offers or solicits or seeks to offer or solicit any extension
28 of credit for personal, family, or household purposes.

29 (3) Seeks marketing information that will or may be used for
30 the direct solicitation of a sale of goods or services to the
31 subscriber.

32 (4) Seeks to sell or promote any investment, insurance, or
33 financial services.

34 (5) Seeks to make any telephone solicitation or attempted
35 telephone solicitation as described in Section 17511.1.

36 (b) A person or entity does not necessarily qualify as a
37 telephone solicitor if the products or services of the person or
38 entity are sold or marketed by an independent contractor whose
39 business practices are not controlled by the person or entity.



1 (c) Except for telephone calls and facsimile transmissions
2 described in subdivision (e), beginning on the 31st day after the
3 current “do not call” list becomes available, no telephone solicitor
4 shall call any telephone number or send a transmission to any
5 facsimile number on the then current “do not call” list and do any
6 of the following:

7 (1) Seek to offer a prize or to rent, sell, exchange, promote, gift,
8 or lease goods or services or documents that can be used to obtain
9 goods or services.

10 (2) Offer or solicit or seeks to offer or solicit any extension of
11 credit for personal, family, or household purposes.

12 (3) Seek marketing information that will or may be used for the
13 direct solicitation of a sale of goods or services to the subscriber.

14 (4) Seek to sell or promote any investment, insurance, or
15 financial services.

16 (5) Seek to make any telephone solicitation or attempted
17 telephone solicitation as described in Section 17511.1.

18 Between the time that a new “do not call” list becomes
19 available and the 31st day thereafter when it becomes effective,
20 telephone solicitors shall not call any telephone number or make
21 a transmission to any facsimile number on the previously available
22 “do not call” list, if there was a list.

23 (d) No person or entity that sells, leases, exchanges, or rents
24 telephone or facsimile solicitation lists, except for directory
25 assistance and telephone directories sold by telephone companies
26 or their affiliates, shall include in those lists those telephone
27 numbers or facsimile numbers that appear on the current “do not
28 call” list.

29 (e) Subdivision (c) shall not apply to any of the following:

30 (1) Telephone calls or facsimile transmissions made in
31 response to the express request of the subscriber called, if the
32 request was made prior to the telephone call or facsimile
33 transmission to the subscriber; an advertisement by the subscriber;
34 or in response to the express, written or electronically written
35 permission of the subscriber obtained pursuant to subdivision (f).
36 “Express request” or “prior written permission” does not include
37 any consent or permission included in any contract of adhesion.
38 “Express request” may include a telephone call from a person or
39 entity who has been provided the subscriber’s telephone number
40 and name as a referral from a solicitor with which the subscriber



1 has an established business relationship, if that solicitor has
2 obtained the subscriber's express request for the referral. A
3 telephone call or facsimile transmission is presumed not to be
4 made at the express request of a subscriber if one of the following
5 occurs, as applicable:

6 (A) The call or transmission is made 30 business days after the
7 last date on which the subscriber contacted a business with the
8 purpose of inquiring about the potential purchase of goods or
9 services.

10 (B) The call or transmission is made 30 business days after the
11 last date on which the subscriber consented to be contacted.

12 (C) The call or transmission is made after the subscriber has
13 requested that no further telephone calls be made or that no further
14 facsimile transmissions be sent to him or her.

15 (D) The call or transmission is made 30 business days after a
16 product or service becomes available, where the subscriber has
17 made a request to the business for that product or service that is not
18 then available and requests a call or facsimile when the product or
19 service becomes available.

20 (2) Telephone calls or facsimile transmissions made in
21 connection with the collection of a debt or the offer by a creditor
22 to the subscriber of an extension of credit to pay a delinquent
23 obligation owed by the subscriber to that creditor.

24 (3) Telephone calls or facsimile transmissions that the
25 subscriber excluded from the coverage of the "do not call" list as
26 provided in subdivision (b) of Section 17591.

27 (4) Telephone calls or facsimile transmissions made to a
28 subscriber if the telephone solicitor has an established business
29 relationship with the subscriber.

30 (A) As used in this article, "established business relationship"
31 means:

32 (i) A relationship formed by a voluntary, two-way
33 communication between a telephone solicitor and a subscriber
34 with or without an exchange of consideration, on the basis of an
35 application, purchase, rental, lease, or transaction if the
36 relationship has not been terminated by the subscriber or the
37 solicitor.

38 (ii) A relationship with a nonprofit entity formed through
39 means such as previous donations to the nonprofit entity or



1 participation in or attendance at, events held by the nonprofit
2 entity.

3 (iii) If a subscriber purchases or obtains a product or service
4 through a licensed agent or broker, an established business
5 relationship is created with the licensed agent or broker
6 individually, apart from and in addition to any established business
7 relationship that may have been created by a licensed agent or
8 broker acting on behalf of another, and the licensed agent or broker
9 is a telephone solicitor, as defined in subdivision (a).

10 (B) Notwithstanding the provisions of this paragraph, an
11 established business relationship does not exist between the
12 subscriber and any separate legal entity associated with the
13 telephone solicitor not acting as an agent or vendor on behalf of the
14 telephone solicitor, as defined in subdivision (a), unless the
15 separate legal entity shares the brand name of a business with
16 which the subscriber has an otherwise established business
17 relationship. If a separate legal entity with which a subscriber does
18 not otherwise have an established business relationship telephones
19 a subscriber on the basis that the entity shares the brand name, and
20 the subscriber instructs the entity to place the subscriber on the
21 entity's "do not call" list pursuant to Section 64.1200 of Title 47
22 of the Code of Federal Regulations and Part 310 of Title 16 of the
23 Code of Federal Regulations, that instruction shall be binding on
24 the entity with which the subscriber has the established business
25 relationship, with the entity that has the shared brand name, and
26 with all other entities that share that brand name. Separate legal
27 entities include, but are not limited to, any parent company or
28 entity, any subsidiary company or entity, any partnership or
29 copartner, any joint venture or venturer, association member, or
30 comember, or any affiliated company or entity.

31 (5) Telephone calls or facsimile transmissions made by an
32 individual businessperson or a small business if the individual
33 businessperson or small business employs no more than five full
34 or part-time employees or independent contractors, the individual
35 businessperson or a principal of the small business makes the
36 telephone calls himself or herself for the sale of goods or services
37 offered by that individual businessperson or small business, and
38 the telephone calls or facsimile transmissions are made to
39 subscribers within a 50-mile radius of the location of the individual
40 businessperson or small business. For purposes of this section, the



1 services offered by the individual businessperson or small
2 business cannot be telemarketing services. For purposes of this
3 section, those independent contractors and employees with whom
4 an individual businessperson or a small business is required to
5 have a written independent contractor or employment agreement
6 pursuant to a regulatory scheme to ensure regulatory
7 accountability of those independent contractors or employees are
8 not counted against the total referenced above.

9 (6) A telephone call or facsimile transmission made solely to
10 verify that a subscriber, and not an unauthorized third party, has
11 terminated an established business relationship.

12 (7) Telephone calls or facsimile transmissions made by a
13 tax-exempt charitable organization.

14 (f) Nothing in this section prohibits a telephone solicitor from
15 contacting by mail a subscriber whose telephone number or
16 facsimile number appears on the “do not call” list to obtain the
17 subscriber’s express written permission allowing the telephone
18 solicitor to make the calls or transmissions described in
19 subdivision (c). In any dispute regarding whether a subscriber has
20 provided this express written permission, the telephone solicitor
21 has the burden of proving that the subscriber has provided this
22 permission by producing the original or a facsimile document,
23 signed by the subscriber, evidencing that permission.

24 SEC. 4. *Section 17592.5 is added to the Business and*
25 *Professions Code, to read:*

26 *17592.5. All facsimile transmissions subject to Section 17592*
27 *shall include a statement informing the recipient of the*
28 *state-designated Internet Web site and the state-designated*
29 *toll-free number for the “do not call list” referred to in Section*
30 *17591 and identifying the telephone solicitor sending the*
31 *transmission. The statement shall be in at least twelve-point type.*

32 SEC. 5. No reimbursement is required by this act pursuant to
33 Section 6 of Article XIII B of the California Constitution because
34 the only costs that may be incurred by a local agency or school
35 district will be incurred because this act creates a new crime or
36 infraction, eliminates a crime or infraction, or changes the penalty
37 for a crime or infraction, within the meaning of Section 17556 of
38 the Government Code, or changes the definition of a crime within



1 the meaning of Section 6 of Article XIII B of the California
2 Constitution.

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