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AMENDED IN SENATE MARCH 29, 2001

**SENATE BILL**

**No. 771**

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**Introduced by Senator Figueroa and Assembly Member John  
Campbell**

**(Principal coauthor: Senator Burton)**

~~(Principal coauthor: Assembly Member John Campbell)~~

**(Coauthor: Senator Karnette)**

(Coauthors: Assembly Members Alquist, Aroner, *Correa*, *Daucher*,  
*Harman*, *Havice*, *Keeley*, *Richman*, *Shelley*, *Strickland*, and  
*Strom-Martin*)

February 23, 2001

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An act to add Article 8 (commencing with Section 17590) to Chapter 1 of Part 3 of Division 7 of the Business and Professions Code, relating to advertising.

LEGISLATIVE COUNSEL'S DIGEST

SB 771, as amended, Figueroa. Unsolicited and unwanted telephone solicitations.

Existing law prohibits certain unfair business practices, including certain advertising practices.

This bill would require the ~~Department of Consumer Affairs~~ *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. It would prohibit, 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, ~~or~~ 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*. It would also prohibit persons who sell, lease, exchange, or rent 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. Fees paid in connection with the “do not call list” *by subscribers and solicitors* would be deposited in the Special Telephone Solicitors Fund created by the bill.

Existing law makes it a crime to violate any of the provisions governing advertising. By adding these new prohibitions to those provisions, this 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. Article 8 (commencing with Section 17590) is
- 2 added to Chapter 1 of Part 3 of Division 7 of the Business and
- 3 Professions Code, to read:
- 4



1 Article 8. Unsolicited and Unwanted Telephone Solicitations

2

3 17590. (a) There is a compelling state interest to protect the  
4 privacy of residential or wireless telephone subscribers who wish  
5 to avoid unsolicited and unwanted telephone solicitations. For the  
6 purposes of this article, a residential or wireless telephone  
7 subscriber shall be referred to as a subscriber.

8 (b) The act of becoming a subscriber should not undermine or  
9 lessen a person’s right of privacy as guaranteed under Section 1 of  
10 Article I of the California Constitution.

11 17591. (a) The ~~Department of Consumer Affairs~~ *Attorney*  
12 *General* shall not later than January 1, 2003, maintain a “do not  
13 call” list, updated no less frequently than quarterly, which shall set  
14 forth the California telephone numbers and ZIP Codes, but not the  
15 names or addresses, of subscribers, arranged by area code and  
16 numerical sequence, who do not wish to receive unsolicited and  
17 unwanted telephone calls from telephone solicitors as defined in  
18 Section 17592. The “do not call” list shall indicate any exclusions  
19 designated by the subscriber as provided in subdivision (b).

20 (b) Subscribers may place their telephone numbers and ZIP  
21 Codes on the “do not call” list in the manner prescribed by the  
22 ~~department~~ *Attorney General*. The subscriber’s placement on the  
23 “do not call list” *call” list* shall expire three years after the date  
24 on which the subscriber’s telephone number and ZIP Code first  
25 became available on the list to telephone solicitors. The  
26 ~~department~~ *Attorney General* shall triennially charge these  
27 subscribers a fee not to exceed one dollar (\$1.00). A subscriber  
28 may exclude from the coverage of the “do not call” list telephone  
29 calls from entities identified by the subscriber. The subscriber shall  
30 designate any exclusions in the manner prescribed by the  
31 ~~department~~ *Attorney General*.

32 (c) Telephone solicitors, as defined in Section 17592, shall  
33 obtain copies of the “do not call” list by paying a fee to the  
34 ~~department~~ *Attorney General* in an amount not to exceed the costs  
35 incurred by the ~~department~~ *Attorney General* in the preparation,  
36 *maintenance*, production, and distribution of that list. The  
37 ~~department~~ *Attorney General* shall establish a sliding scale fee  
38 schedule, charging a telephone solicitor with more than 1,000  
39 employees *or independent contractors* the maximum fee and  
40 charging a telephone solicitor with fewer than five full-time



1 employees no fee. The ~~department~~ *Attorney General* shall provide  
2 a telephone solicitor the option of paying this fee on a quarterly or  
3 annual basis. The ~~department~~ *Attorney General* shall offer a  
4 statewide list and shall also offer lists of areas within the state. The  
5 determination of the number and definition of areas shall be within  
6 the discretion of the ~~department~~ *Attorney General*.

7 (d) The ~~department~~ *Attorney General* shall utilize the best  
8 available, cost-effective technology to ensure that subscribers may  
9 easily place their telephone numbers on the “do not call” list. This  
10 technology includes, but is not limited to, methods by which a  
11 subscriber may effect placement on the list by using a  
12 state-designated Internet Web site or a designated, statewide  
13 toll-free telephone number. *When the subscriber utilizes the*  
14 *toll-free telephone number method, the subscriber shall call from*  
15 *the telephone that is also the number to be included on the list.* The  
16 ~~department~~ *Attorney General* shall also utilize the best available,  
17 cost-effective technology to ensure that telephone solicitors may  
18 easily obtain and manipulate the “do not call” list. This  
19 technology ~~includes~~ *may include*, but is not limited to, methods  
20 that are computer compatible and that allow the downloading of  
21 the list and the sorting of the list by ZIP Code and that make the  
22 list available on CD-ROM. *The Attorney General may contract*  
23 *with a private vendor to establish, maintain, and administer the*  
24 *“do not call” list and a contract entered into in that regard shall*  
25 *include appropriate provisions to protect the confidentiality of*  
26 *subscriber information. The Attorney General may promulgate*  
27 *regulations to implement the provisions of this article.*

28 (e) It is the intent of the Legislature that the fees paid to the  
29 ~~department~~ *Attorney General* by telephone solicitors and  
30 subscribers be utilized by the ~~department~~ *Attorney General* in  
31 carrying out this article. The ~~department~~ *Attorney General* shall  
32 annually reduce the amount of the fee paid by subscribers and  
33 telephone solicitors set forth in this section based on revenue  
34 history and costs so that the fees do not exceed the actual estimated  
35 costs in carrying out this article. The fees obtained by the  
36 ~~department~~ *Attorney General* shall be deposited in the Special  
37 Telephone Solicitors Fund, which is hereby created. All moneys  
38 in the fund shall be subject to annual appropriation in the Budget  
39 Act.



1 (f) A person or entity that obtains a “do not call” list shall not  
2 use the list for any purpose other than to comply with this article.  
3 These unlawful purposes include, but are not limited to, causing  
4 a subscriber to participate in and be included on, the “do not call”  
5 list without the subscriber’s knowledge or consent, selling or  
6 leasing the “do not call” list to a person other than a telephone  
7 solicitor, selling or leasing by a telephone solicitor of the “do not  
8 call” list, and a telephone solicitor, *either directly or indirectly*,  
9 persuading a subscriber with whom it has an established business  
10 relationship to place his or her telephone number on the “do not  
11 call” list, if the solicitation has the effect of preventing competitors  
12 from contacting that solicitor’s customers.

13 17592. (a) For purposes of this article, a “telephone  
14 solicitor” means any person or entity who, on his or her own  
15 behalf or through salespersons or agents, ~~automatic dialing~~  
16 announcing devices, or otherwise, makes or causes a telephone  
17 call to be made to a California telephone number that does any of  
18 the following:

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

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

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

27 (4) Seeks to sell or promote any investment, insurance, or  
28 financial services.

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

31 (b) *A person or entity does not qualify as a telephone solicitor*  
32 *if the products or services of the person or entity are sold or*  
33 *marketed by an independent contractor whose business practices*  
34 *are not controlled by the person or entity.*

35 (c) Except for telephone calls described in subdivision ~~(d)~~ (e),  
36 beginning on the 31st day after the current “do not call” list  
37 becomes available, no telephone solicitor shall call any telephone  
38 number on the then current “do not call” list and do any of the  
39 following:



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

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

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

8 (4) Seek to sell or promote any investment, insurance, or  
9 financial services.

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

12 *Between the time that a new “do not call” list becomes available*  
13 *and the 31st day thereafter when it becomes effective, telephone*  
14 *solicitors shall not call any telephone number on the previously*  
15 *available “do not call” list, if there was a list.*

16 ~~(e)~~

17 (d) No person or entity that sells, leases, exchanges, or rents  
18 telephone solicitation lists, except for directory assistance and  
19 telephone directories sold by telephone companies or their  
20 affiliates, shall include in those lists those telephone numbers that  
21 appear on the current “do not call” list.

22 ~~(d)~~

23 (e) Subdivision ~~(b)~~ (c) shall not apply to any of the following:

24 (1) Telephone calls made in response to the express request of  
25 the subscriber called, if the request was made prior to the telephone  
26 call to the subscriber; an advertisement by the subscriber; or in  
27 response to the express, written *or electronically written*  
28 permission of the subscriber obtained pursuant to subdivision ~~(e)~~  
29 (f). “Express request” or “prior written permission” does not  
30 include any consent or permission included in any contract of  
31 adhesion. “Express request” may include a telephone call from a  
32 person or entity who has been provided the subscriber’s telephone  
33 number and name as a referral from a solicitor with which the  
34 subscriber has an established business relationship, if that solicitor  
35 has obtained the subscriber’s express request for the referral. A  
36 telephone call is ~~not~~ *presumed not to be* made at the express  
37 request of a subscriber if ~~the call is made after the first to occur of~~  
38 ~~the following:~~ *one of the following occurs, as applicable:*



1 (A) ~~Twenty-one~~ *The call is made 30 business days after the last*  
2 *date on which the subscriber contacted a business with the purpose*  
3 *of inquiring about the potential purchase of goods or services.*

4 (B) ~~Twenty-one~~ *The call is made 30 business days after the last*  
5 *date on which the subscriber consented to be contacted.*

6 (C) ~~A request by the subscriber~~ *The call is made after the*  
7 *subscriber has requested that no further telephone calls be made*  
8 *to him or her.*

9 (D) *The call is made 30 business days after a product or service*  
10 *becomes available where the subscriber has made a request to the*  
11 *business for that product or service that is not then available, and*  
12 *requests a call when the product or service becomes available.*

13 (2) Telephone calls made in connection with the collection of  
14 a debt or the offer by a creditor to the subscriber of an extension  
15 of credit to pay a delinquent obligation owed by the subscriber to  
16 that creditor.

17 (3) Telephone calls that the subscriber excluded from the  
18 coverage of the “do not call” list as provided in subdivision (b) of  
19 Section 17591.

20 (4) Telephone calls made to a subscriber if the telephone  
21 solicitor has an established business relationship with the  
22 subscriber. As used in this ~~paragraph~~ *article*, “established business  
23 relationship” means a relationship formed by a voluntary,  
24 two-way communication between a telephone solicitor and a  
25 subscriber with or without an exchange of consideration, on the  
26 basis of an application, purchase, rental, lease, or transaction if the  
27 relationship has not been terminated by the subscriber or the  
28 solicitor. This term also includes a relationship with a nonprofit  
29 entity formed through means such as previous donations to the  
30 nonprofit entity or participation in or attendance at, events held by  
31 the nonprofit entity. If a subscriber purchases or obtains a product  
32 or service through a licensed agent or broker, *for purposes of this*  
33 *article* an established business relationship is created with the  
34 licensed agent or broker individually, apart from and in addition  
35 to, any established business relationship that may have been  
36 created by a licensed agent or broker acting on behalf of another,  
37 and the licensed agent or broker is a telephone solicitor, as defined  
38 in subdivision (a). Notwithstanding the provisions of this  
39 paragraph, an established business relationship does not exist  
40 between the subscriber and any separate legal entity associated



1 with the telephone solicitor not acting as an agent or vendor on  
2 behalf of the telephone solicitor, as defined in subdivision (a),  
3 unless the separate legal entity shares the brand name of a business  
4 with which the subscriber has an otherwise established business  
5 relationship. If a separate legal entity with which a subscriber does  
6 not otherwise have an established business relationship telephones  
7 a subscriber on the basis that the entity shares the brand name, and  
8 the subscriber instructs the entity to place the subscriber on the  
9 entity's "do not call" list pursuant to Section 64.1200 of Title 47  
10 of the Code of Federal Regulations and Part 310 of Title 16 of the  
11 Code of Federal Regulations, that instruction shall be binding on  
12 the entity with which the subscriber has the established business  
13 relationship, with the entity that has the shared brand name, and all  
14 other entities that share that brand name. Separate legal entities  
15 include, but are not limited to, any parent company or entity, any  
16 subsidiary company or entity, any partnership or copartner, any  
17 joint venture or venturer, association member, or comember, or  
18 any affiliated company or entity.

19 (5) Telephone calls made by an individual businessperson or a  
20 small business if the individual businessperson or small business  
21 employs no more than five full or part-time employees or  
22 independent contractors, the individual businessperson or a  
23 principal of the small business makes the telephone calls himself  
24 or herself for the sale of goods or services offered by that  
25 individual businessperson or small business, and the telephone  
26 calls are made to subscribers within a 50-mile radius of the  
27 location of the individual businessperson or small business. For  
28 purposes of this section, the services offered by the individual  
29 businessperson or small business cannot be telemarketing  
30 services. For purposes of this section, those independent  
31 contractors and employees with whom an individual  
32 businessperson or a small business is required to have a written  
33 independent contractor or employment agreement pursuant to a  
34 regulatory scheme to ensure regulatory accountability of those  
35 independent contractors or employees, are not counted against the  
36 total referenced above.

37 (6) *A telephone call made solely to verify that a subscriber, and*  
38 *not an unauthorized third party, has terminated an established*  
39 *business relationship.*



1 (7) Telephone calls made by a tax exempt charitable  
2 organization.

3 ~~(e)~~

4 (f) Nothing in this section prohibits a telephone solicitor from  
5 contacting by mail a subscriber whose telephone number appears  
6 on the “do not call” list to obtain the subscriber’s express written  
7 permission allowing the telephone solicitor to make the calls  
8 described in subdivision ~~(b)~~ (c). In any dispute regarding whether  
9 a subscriber has provided this express written permission, the  
10 telephone solicitor has the burden of proving that the subscriber  
11 has provided this permission by producing the original ~~documents~~  
12 *or a facsimile document*, signed by the subscriber, evidencing that  
13 permission.

14 17593. ~~(a) Any person who has received a telephone~~  
15 ~~solicitation that is prohibited by Section 17592 or whose telephone~~  
16 ~~number was used in violation of subdivision (c) of Section 17591,~~  
17 ~~may bring a civil action in any court of competent jurisdiction~~  
18 ~~against a telephone solicitor to recover or obtain any one or more~~  
19 ~~of the following remedies: The Attorney General, a district~~  
20 ~~attorney, or a city attorney may bring a civil action in any court of~~  
21 ~~competent jurisdiction against a telephone solicitor to enforce the~~  
22 ~~article and to obtain any one or more of the following remedies:~~

23 (1) An order to enjoin the violation.

24 (2) A civil penalty of up to five hundred dollars (\$500) for the  
25 first violation and up to one thousand dollars (\$1,000) for a second  
26 and each subsequent violation. *The civil penalties obtained shall*  
27 *be used to defray any administrative costs associated with the*  
28 *implementation of this article.*

29 (3) ~~Court costs, including reasonable attorney’s fees.~~

30 ~~(4) Any other relief that the court deems proper.~~

31 ~~(b) Nothing in this article shall limit the enforcement~~  
32 ~~provisions under Chapter 5 (commencing with Section 17200) of~~  
33 ~~Part 2.~~

34 (b) *Any person who has received a telephone solicitation that*  
35 *is prohibited by Section 17592, or whose telephone number was*  
36 *used in violation of subdivision (f) of Section 17591, may bring a*  
37 *civil action in small claims court for an injunction or order to*  
38 *prevent further violations. If a person obtains an injunction or*  
39 *order under this subdivision and service of the injunction or order*  
40 *is properly effected, a person who thereafter receives further*



1 *solicitations in violation of the injunction or order within 30 days*  
2 *after service of the initial injunction or order, may file a subsequent*  
3 *action in small claims court seeking enforcement of the injunction*  
4 *or order and a civil penalty to be awarded to the person in an*  
5 *amount up to one thousand dollars (\$1,000). For purposes of this*  
6 *subdivision, a person's claims may not be aggregated to establish*  
7 *jurisdiction in a court other than small claims court. For purposes*  
8 *of this subdivision, a defendant is not required to personally*  
9 *appear, but may appear by affidavit or by written instrument.*

10 (c) The rights, remedies, and penalties established by this  
11 article are in addition to the rights, remedies, or penalties  
12 established under other laws.

13 (d) It shall be an affirmative defense to any action brought  
14 under this ~~section or any other law~~, *article* that the violation was  
15 accidental and in violation of the telephone solicitor's policies and  
16 procedures and telemarketer instruction and training.

17 17594. A "do not call" list prepared or maintained by the  
18 ~~department~~ *Attorney General* and any information submitted to  
19 the ~~department~~ *Attorney General* by a subscriber for use in  
20 preparing or maintaining that list shall not be disclosed pursuant  
21 to a request made under Chapter 3.5 (commencing with Section  
22 6250) of Division 7 of Title 1 of the Government Code.

23 17595. If a federal agency, pursuant to paragraph (3) of  
24 subsection (c) of Section 227 of Title 47 of the United States Code,  
25 establishes a single national data base of telephone numbers of  
26 subscribers who object to receiving telephone solicitations the  
27 department shall include the part of that single national data base  
28 that relates to California in the ~~"do not call"~~ *"do not call"* list  
29 established by Section 17591.

30 SEC. 2. The provisions of this act are severable. If any  
31 provision of this article or its application is held invalid, that  
32 invalidity shall not affect other provisions or applications that can  
33 be given effect without the invalid provision or application.

34 SEC. 3. No reimbursement is required by this act pursuant to  
35 Section 6 of Article XIII B of the California Constitution because  
36 the only costs that may be incurred by a local agency or school  
37 district will be incurred because this act creates a new crime or  
38 infraction, eliminates a crime or infraction, or changes the penalty  
39 for a crime or infraction, within the meaning of Section 17556 of  
40 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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