

AMENDED IN ASSEMBLY JUNE 19, 2002
AMENDED IN ASSEMBLY JUNE 12, 2002
AMENDED IN SENATE APRIL 22, 2002
AMENDED IN SENATE APRIL 16, 2002
AMENDED IN SENATE APRIL 1, 2002

SENATE BILL

No. 1872

Introduced by Senator Bowen

February 22, 2002

An act to amend Sections 17538 and 17538.3 of the Business and Professions Code, relating to business practices.

LEGISLATIVE COUNSEL'S DIGEST

SB 1872, as amended, Bowen. Vendors: refund and return policies: consumer remedies.

Existing law generally requires a vendor conducting business through the Internet or any other electronic means of communication to, among other things, disclose to a buyer located in this state the vendor's return and refund policy. Certain activities are exempt from these and other related provisions. A violation of these provisions is a crime.

This bill would require a vendor that offers a return and refund policy allowing the return of goods or cancellation of services to process and send to the buyer any refund due within ~~5-business~~ 30 days or to otherwise arrange to credit the buyer's account.

This bill would also extend the application of the vendor return and refund disclosure and refund requirements to certain activities currently exempt from the disclosure requirement.

Because this bill would revise the definition of a crime, it 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 of the Business and Professions
2 Code is amended to read:
3 17538. (a) It is unlawful in the sale or lease or offering for
4 sale or lease of goods or services, for any person conducting sales
5 or leases by telephone, the Internet or other electronic means of
6 communication, mail order, or catalog in this state, including, but
7 not limited to, the offering for sale or lease on television, radio, or
8 the Internet, or by any other electronic means of communication
9 or telecommunications device, of goods or services that may be
10 ordered by mail, telephone, the Internet, or other electronic means
11 of communication or telecommunications device, or for any
12 person advertising in connection with those sales, leases, or
13 advertisements a mailing address, telephone number, or Internet
14 or other electronic address, to accept payment from or for a buyer,
15 for the purchase or lease of goods or services ordered by mail,
16 telephone, the Internet, or other electronic means of
17 communication or telecommunications device, whether payment
18 to the vendor is made directly, through the mail, by means of a
19 transfer of funds from an account of the buyer or any other person,
20 or by any other means, and then permit 30 days, unless otherwise
21 conspicuously stated in the offering or advertisement, or unless a
22 shorter time is clearly communicated by the person conducting the
23 sale or lease, to elapse without doing any one of the following
24 things:



1 (1) Shipping, mailing, or providing the goods or services
2 ordered.

3 (2) Mailing a full refund or, if payment was made by means of
4 a transfer from an account, (A) crediting the account in the full
5 amount of the debit, or (B) if a third party is the creditor, issuing
6 a credit memorandum to the third party, who shall promptly credit
7 the account in the full amount of the debit.

8 (3) Sending the buyer a letter or other written notice (A)
9 advising the buyer of the duration of an expected delay expressed
10 as a specific number of days or weeks, or proposing the
11 substitution of goods or services of equivalent or superior quality,
12 and (B) offering to make a full refund, in accordance with
13 paragraph (2), within one week if the buyer so requests. The
14 vendor shall provide to the buyer in that letter or written notice a
15 toll-free telephone number or other cost-free method to
16 communicate the buyer's request for a full refund. If the vendor
17 proposes to substitute goods or services, the vendor shall describe
18 the substitute goods or services in detail, indicating fully how the
19 substitute differs from the goods or services ordered.

20 (4) (A) Shipping, mailing, or providing substitute goods or
21 services of equivalent or superior quality, if the buyer is extended
22 the opportunity to return the substitute goods or services and the
23 vendor promises to refund to the buyer (i) the cost of returning the
24 substitute goods or services and (ii) any portion of the purchase
25 price previously paid by the buyer.

26 (B) Except as provided in subparagraph (C), a notice to the
27 buyer shall accompany the mailing, shipping, or providing of the
28 substitute goods or services that informs the buyer of the
29 substitution; describes fully how the substitute differs from the
30 goods or services ordered, except that obvious nontechnical
31 differences, such as color, need not be described; and discloses the
32 buyer's right to reject the substitute goods or services and obtain
33 a full refund of the amount paid, plus the cost of returning the
34 substitute goods or services.

35 (C) The vendor may omit from the notice required by
36 subparagraph (B) a description of how the substitute goods or
37 services differ from the ordered goods or services if the notice
38 otherwise complies with subparagraph (B), and if all the following
39 requirements are complied with:



1 (i) The vendor maintains at least 100 retail outlets located in at
2 least 20 counties in this state that are open to the public regularly
3 during normal business hours where buyers can order catalog
4 goods, pick them up, and return them for refunds.

5 (ii) The vendor maintains a toll-free telephone number and
6 provides to each buyer, at the time of the buyer's call, a full
7 description of how substitute goods or services differ from ordered
8 goods or services. The toll-free telephone number shall operate
9 and be staffed at all times during which goods or services normally
10 are available for pick up from the vendor's retail outlets.

11 (iii) If the buyer picks up substitute goods or services from the
12 vendor's retail outlet, the notice required by subparagraph (B) as
13 modified by this subparagraph is placed on, or attached to, the
14 exterior of the package or wrapping containing the substitute, or
15 is handed to the buyer at the time the buyer picks up the substitute.

16 (iv) The notice contains a reference number or some other
17 means of identifying the ordered goods or services and the
18 substitute goods or services.

19 (v) The notice contains the vendor's toll-free telephone number
20 and instructions to the buyer that the buyer may call that number
21 to obtain a full description of how the substitute differs from the
22 ordered goods.

23 (b) For purposes of paragraphs (3) and (4) of subdivision (a),
24 goods or services shall be considered of "equivalent or superior
25 quality" only if they are (1) substantially similar to the goods or
26 services ordered, (2) fit for the usual purposes for which the goods
27 or services ordered are used, and (3) normally offered by the
28 vendor at a price equal to or greater than the price of the goods or
29 services ordered.

30 (c) When a buyer makes an initial application for an open-end
31 credit plan, as defined in the Federal Consumer Credit Protection
32 Act (15 U.S.C. Sec. 1602), at the same time the goods or services
33 are ordered, and the goods or services are to be purchased on credit,
34 the person conducting the business shall have 50 days, rather than
35 30 days, to perform the actions specified in this section.

36 (d) A vendor conducting business through the Internet or any
37 other electronic means of communication shall do all of the
38 following when the transaction involves a buyer located in this
39 state:



1 (1) Before accepting any payment or processing any debit or
2 credit charge or funds transfer, the vendor shall disclose to the
3 buyer in writing or by electronic means of communication, such
4 as e-mail or an on-screen notice, the vendor's return and refund
5 policy, the legal name under which the business is conducted and,
6 except as provided in paragraph (3), the complete street address
7 from which the business is actually conducted.

8 (2) If the disclosure of the vendor's legal name and address
9 information required by this subdivision is made by on-screen
10 notice, all of the following shall apply:

11 (A) The disclosure of the legal name and address information
12 shall appear on any of the following: (i) the first screen displayed
13 when the vendor's electronic site is accessed, (ii) on the screen on
14 which goods or services are first offered, (iii) on the screen on
15 which a buyer may place the order for goods or services, ~~or~~ (iv) on
16 the screen on which the buyer may enter payment information,
17 such as a credit card account number, *or (v) for nonbrowser-based*
18 *technologies, in a manner that gives the user a reasonable*
19 *opportunity to review that information.* The communication of that
20 disclosure shall not be structured to be smaller or less legible than
21 the text of the offer of the goods or services.

22 (B) The disclosure of the legal name and address information
23 shall be accompanied by an adjacent statement describing how the
24 buyer may receive the information at the buyer's e-mail address.
25 The vendor shall provide the disclosure information to the buyer
26 at the buyer's e-mail address within five days of receiving the
27 buyer's request.

28 (C) Until the vendor complies with subdivision (a) in
29 connection with all buyers of the vendor's goods or services, the
30 vendor shall make available to a buyer and any person or entity
31 who may enforce this section pursuant to Section 17535 on-screen
32 access to the information required to be disclosed under this
33 subdivision.

34 (3) The complete street address need not be disclosed as
35 required by paragraph (1) if the vendor utilizes a private mailbox
36 receiving service and all of the following conditions are met: (A)
37 the vendor satisfies the conditions described in paragraph (2) of
38 subdivision (b) of Section 17538.5, (B) the vendor discloses the
39 actual street address of the private mailbox receiving service in the
40 manner prescribed by this subdivision for the disclosure of the



1 vendor's actual street address, and (C) the vendor and the private
2 mailbox receiving service comply with all of the requirements of
3 subdivisions (c) to (f), inclusive, of Section 17538.5.

4 (e) If a buyer is permitted to return goods or cancel a service
5 that he or she purchased or contracted for on or after January 1,
6 2003, the vendor shall, within ~~five business~~ 30 days of return of
7 the goods in refundable condition or cancellation of the service and
8 of receipt of sufficient information to enable the vendor to make
9 the refund, including confirmation that the buyer's payment for
10 the purchase or contract has been paid or cleared by the applicable
11 financial institution, process and send to the buyer any refund due
12 to the buyer as a result of the return or cancellation, or, if the
13 buyer's payment was made by means of a transfer from an account,
14 ~~the vendor shall credit the account in the full amount of the refund~~
15 ~~within one business day, or if a third party is the third-party~~
16 creditor, the vendor shall issue a credit memorandum to the third
17 party, *pursuant to 12 C.F.R. 226.12(e)*, within ~~one business day~~
18 *seven business days* and the third party shall promptly credit the
19 account in the full amount of the refund.

20 (f) As used in this section and Section 17538.3, the following
21 words have the following meanings:

22 (1) "Goods" means tangible chattels, including certificates or
23 coupons exchangeable for those goods, and including goods
24 which, at the time of the sale or subsequently, are to be so affixed
25 to real property as to become a part of that real property, whether
26 or not severable therefrom.

27 (2) "Person" means an individual, partnership, corporation,
28 association, or other group, however organized.

29 (3) "Buyer" means a person who seeks or acquires, by
30 purchase or lease, any goods or services for any purpose.

31 (4) "Services" means work, labor, and services, including
32 services furnished in connection with the sale or repair of goods.

33 (5) "Vendor" means a person who, as described in subdivision
34 (a), vends, sells, leases, supplies, or ships goods or services, who
35 conducts sales or leases of goods or services, or who offers goods
36 or services for sale or lease. "Vendor" does not include a person
37 responding to an electronic agent in connection with providing
38 goods or services to a buyer if the aggregate amount of all
39 transactions with the buyer does not exceed ten dollars (\$10).



1 (6) “Internet” means the global information system that is
2 logically linked together by a globally unique address space based
3 on the Internet Protocol (IP), or its subsequent extensions, and that
4 is able to support communications using the Transmission Control
5 Protocol/Internet Protocol (TCP/IP) suite, or its subsequent
6 extensions, or other IP-compatible protocols, and that provides,
7 uses, or makes accessible, either publicly or privately, high level
8 services layered on the communications and related infrastructure
9 described in this paragraph.

10 (7) “Electronic agent” means a computer program designed,
11 selected, or programmed to initiate or respond to electronic
12 messages or performances without review by an individual.

13 (g) Any violation of the provisions of this section is a
14 misdemeanor punishable by imprisonment in the county jail not
15 exceeding six months, by a fine not exceeding one thousand
16 dollars (\$1,000), or by both that imprisonment and fine.

17 SEC. 2. Section 17538.3 of the Business and Professions
18 Code is amended to read:

19 17538.3. The provisions of Section 17538 do not apply to any
20 of the following, except that subdivisions (d) and (e) of Section
21 17538 shall apply to subdivisions (a), (b), (c), and (d) of this
22 section:

23 (a) To instances in which all advertising for goods or services
24 contains a notice as to each item or service offered, which, in the
25 case of printed advertising, shall be in a type size at least as large
26 as that indicating the price, that a delay may be expected of a
27 specified period. In those cases, one of the events described in
28 Section 17538 must occur no later than the expiration of the period
29 specified in the advertisement.

30 (b) To goods or services, such as quarterly magazines, which by
31 their nature are not ready for use or consumption until a future date
32 and for that reason cannot be stocked at the time of order.

33 (c) To installments other than the first of goods, such as
34 magazine subscriptions, ordered for serial delivery.

35 (d) To any telecommunications goods and services sold by a
36 telecommunications company, except those telecommunications
37 goods and services purchased for use primarily for personal,
38 family, or household purposes.

39 (e) To financial services offered in the ordinary course of
40 business by a supervised bank, national banking association, bank



1 holding company, a state or federal savings and loan association,
2 a state or federal credit union, or a subsidiary or affiliate thereof,
3 or an authorized industrial loan company, a licensed personal
4 property broker, a licensed consumer finance lender, a licensed
5 commercial finance lender, or a person licensed pursuant to
6 Division 4 (commencing with Section 10000).

7 (f) To any delay in delivery of goods or services caused by the
8 United States Postal Service, an act of God, or a labor strike by the
9 vendor's employees.

10 SEC. 3. No reimbursement is required by this act pursuant to
11 Section 6 of Article XIII B of the California Constitution because
12 the only costs that may be incurred by a local agency or school
13 district will be incurred because this act creates a new crime or
14 infraction, eliminates a crime or infraction, or changes the penalty
15 for a crime or infraction, within the meaning of Section 17556 of
16 the Government Code, or changes the definition of a crime within
17 the meaning of Section 6 of Article XIII B of the California
18 Constitution.

