

AMENDED IN ASSEMBLY AUGUST 5, 2004

AMENDED IN ASSEMBLY JUNE 17, 2004

AMENDED IN ASSEMBLY JUNE 9, 2004

**SENATE BILL**

**No. 1457**

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**Introduced by Senator Murray**

February 19, 2004

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An act to amend Section 17529.5 of the Business and Professions Code, relating to business.

LEGISLATIVE COUNSEL'S DIGEST

SB 1457, as amended, Murray. Commercial e-mail advertisements.

Existing state law prohibits a person or entity from ~~collecting e-mail addresses or registering multiple e-mail addresses for purposes of the initiation or advertisement in an unsolicited commercial e-mail advertisement sent from California or to a California e-mail address.~~ Existing state law also prohibits a person or entity from advertising in a commercial e-mail advertisement that is sent either from California or to a California e-mail address if the e-mail contains or is accompanied by a 3rd-party's domain name without permission ~~or with~~, *contains or is accompanied by* falsified, misrepresented, obscured, or forged header information, or ~~if the e-mail~~ has a misleading subject line. Existing state law authorizes the recipient of an unsolicited commercial e-mail advertisement transmitted in violation of these prohibitions, ~~the~~ *an* e-mail service provider, or the Attorney General to bring an action to recover actual damages *for a violation of this prohibition*, and authorizes a court to award reasonable attorney's fees and costs ~~to~~ *if they*

~~are a prevailing plaintiff. A violation of the provisions governing advertising is a misdemeanor.~~

~~This bill would delete the prohibition against obscured header information. The bill would authorize *the Attorney General, an e-mail service provider, or the recipient of an unsolicited commercial e-mail advertisement transmitted in violation of these provisions, the e-mail service provider, or the Attorney General* to bring an action to recover actual damages and liquidated damages of \$1,000 per *unsolicited commercial e-mail advertisement transmitted in violation of the provisions, up to \$1,000,000 per incident, subject to reduction by the court, and would authorize the award of reasonable attorney’s fees and costs to a prevailing plaintiff.* The bill would prohibit an action from being brought under both this damages provision and other existing *the bringing of multiple actions under different damages provisions relating to e-mail advertisements for the same e-mail transmission violation.*~~

~~Because a violation of the bill would be 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 no.*

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 17529.5 of the Business and Professions
- 2 Code is amended to read:
- 3 17529.5. (a) It is unlawful for any person or entity to ~~initiate~~
- 4 ~~or~~ advertise in a commercial e-mail advertisement either sent from
- 5 California or sent to a California electronic mail address under any
- 6 of the following circumstances:
- 7 (1) The e-mail advertisement contains or is accompanied by a
- 8 third-party’s domain name without the permission of the third
- 9 party.
- 10 (2) The e-mail advertisement contains or is accompanied by
- 11 falsified, misrepresented, or forged header information. This



1 ~~subdivision~~ *paragraph* does not apply to truthful information used  
2 by a third party who has been lawfully authorized by the advertiser  
3 to use that information.

4 (3) The e-mail advertisement has a subject line that a person  
5 knows would be likely to mislead a recipient, acting reasonably  
6 under the circumstances, about a material fact regarding the  
7 contents or subject matter of the message.

8 ~~(b) (1) (A) A recipient of an e-mail advertisement transmitted~~  
9 ~~in violation of this section, an electronic mail service provider, or~~  
10 ~~the Attorney General may bring an action against an entity that~~  
11 ~~violates any provision of this section to recover either or both of~~

12 *(b) (1) (A) In addition to any other remedies provided by any*  
13 *other provision of law, the following may bring an action against*  
14 *a person or entity that violates any provision of this section:*

15 *(i) The Attorney General.*

16 *(ii) An electronic mail service provider.*

17 *(iii) A recipient of an unsolicited commercial e-mail*  
18 *advertisement, as defined in Section 17529.1.*

19 *(B) A person or entity bringing an action pursuant to*  
20 *subparagraph (A) may recover either or both of the following:*

21 *(i) Actual damages.*

22 *(ii) Liquidated damages of one thousand dollars (\$1,000) for*  
23 *each unsolicited commercial e-mail advertisement transmitted in*  
24 *violation of this section, up to one million dollars (\$1,000,000) per*  
25 *incident.*

26 ~~(B)~~

27 *(C) The recipient, an electronic mail service provider, or the*  
28 *Attorney General, if the prevailing plaintiff, may also recover*  
29 *reasonable attorney's fees and costs.*

30 ~~(C)~~

31 *(D) However, there shall not be a cause of action under this*  
32 *section against an electronic mail service provider that is only*  
33 *involved in the routine transmission of the e-mail advertisement*  
34 *over its computer network.*

35 (2) If the court finds that the defendant established and  
36 implemented, with due care, practices and procedures reasonably  
37 designed to effectively prevent *unsolicited commercial* e-mail  
38 advertisements that are in violation of this section, the court shall  
39 reduce the liquidated damages recoverable under paragraph (1) to  
40 a maximum of one hundred dollars (\$100) for each *unsolicited*



1 *commercial* e-mail advertisement, or a maximum of one hundred  
2 thousand dollars (\$100,000) per incident.

3 (3) (A) A person who has brought an action against a party ~~for~~  
4 ~~a violation of~~ *under* this section shall not bring an action against  
5 that party under Section 17529.8 or 17538.45 for the same  
6 commercial e-mail advertisement, as defined in subdivision (c) of  
7 Section 17529.1.

8 (B) A person who has brought an action against a party ~~for a~~  
9 ~~violation of~~ *under* Section 17529.8 or 17538.45 shall not bring an  
10 action against that party under this section for the same  
11 commercial e-mail advertisement, as defined in subdivision (c) of  
12 Section 17529.1.

13 SEC. 2. No reimbursement is required by this act pursuant to  
14 Section 6 of Article XIII B of the California Constitution because  
15 the only costs that may be incurred by a local agency or school  
16 district will be incurred because this act creates a new crime or  
17 infraction, eliminates a crime or infraction, or changes the penalty  
18 for a crime or infraction, within the meaning of Section 17556 of  
19 the Government Code, or changes the definition of a crime within  
20 the meaning of Section 6 of Article XIII B of the California  
21 Constitution.

