

Senate Bill No. 272

Passed the Senate August 30, 2013

Secretary of the Senate

Passed the Assembly August 26, 2013

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2013, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 17533.6 of the Business and Professions Code, relating to business.

LEGISLATIVE COUNSEL'S DIGEST

SB 272, Corbett. Advertising and solicitations: government and military endorsements.

Existing law makes it unlawful for any person, firm, corporation, or association that is a nongovernmental entity to solicit funds or information, or the purchase of goods or services, by means of a mailing, electronic message, or Internet Web site that contains a seal, emblem, insignia, trade or brand name, or any other term, symbol, or content that reasonably could be interpreted or construed as implying any federal, state, or local government connection, approval, or endorsement, unless certain criteria are met. A violation of this provision is a crime.

This bill would revise and recast that provision. Except as specified, the bill would make it unlawful for any person, firm, corporation, or association that is a nongovernmental entity to use any seal, emblem, insignia, trade or brand name, or any other term, symbol, or content that reasonably could be interpreted or construed as implying any federal, state, or local government, military veteran entity, or military or veteran service organization connection, approval, or endorsement of any product or service, including, but not limited to, any financial product, goods, or services, by any means, including, but not limited to, a mailing, electronic message, Internet Web site, periodical, or television commercial.

This bill would authorize any person, firm, corporation, or association that is a nongovernmental entity to advertise or promote any event, presentation, seminar, workshop, or other public gathering using a seal, emblem, insignia, trade or brand name, or any other term, symbol, or content, if the person, firm, corporation, or association that is a nongovernmental entity has an expressed connection with, or the approval or endorsement of, a federal, state, or local government, military veteran entity, or military or veteran service organization. The bill would authorize any person, firm, corporation, or association that is a nongovernmental entity

to solicit information, solicit the purchase of or payment for a product or service, or solicit the contribution of funds or membership fees, by any means, including, but not limited to, a mailing, electronic message, Internet Web site, periodical, or television commercial disseminated in this state, using a seal, emblem, insignia, trade or brand name, or any other term, symbol, or content, if the person, firm, corporation, or association that is a nongovernmental entity meets certain requirements.

By changing the definition of a crime and creating new crimes, 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.

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

SECTION 1. Section 17533.6 of the Business and Professions Code is amended to read:

17533.6. (a) Except as described in subdivisions (b) and (c), it is unlawful for any person, firm, corporation, or association that is a nongovernmental entity to use a seal, emblem, insignia, trade or brand name, or any other term, symbol, or content that reasonably could be interpreted or construed as implying any federal, state, or local government, military veteran entity, or military or veteran service organization connection, approval, or endorsement of any product or service, including, but not limited to, any financial product, goods, or services, by any means, including, but not limited to, a mailing, electronic message, Internet Web site, periodical, or television commercial disseminated in this state, unless the nongovernmental entity has an expressed connection with, or the approval or endorsement of, a federal, state, or local government, military veteran entity, or military or veteran service organization.

(b) Notwithstanding subdivision (a) and if permitted by other provisions of law, any person, firm, corporation, or association that is a nongovernmental entity may advertise or promote any event, presentation, seminar, workshop, or other public gathering

using a seal, emblem, insignia, trade or brand name, or any other term, symbol, or content as described in subdivision (a), if the person, firm, corporation, or association that is a nongovernmental entity has an expressed connection with, or the approval or endorsement of, a federal, state, or local government, military veteran entity, or military or veteran service organization.

(c) Notwithstanding subdivision (a), any person, firm, corporation, or association that is a nongovernmental entity may solicit information, solicit the purchase of or payment for a product or service, or solicit the contribution of funds or membership fees, by any means, including, but not limited to, a mailing, electronic message, Internet Web site, periodical, or television commercial disseminated in this state, using a seal, emblem, insignia, trade or brand name, or any other term, symbol, or content as described in subdivision (a), if the person, firm, corporation, or association that is a nongovernmental entity meets the requirements of paragraph (1) or (2) as follows:

(1) The nongovernmental entity has an expressed connection with, or the approval or endorsement of, a federal, state, or local government entity, if permitted by other provisions of law.

(2) (A) The solicitation meets all of the following requirements:

(i) The solicitation conspicuously displays the following disclosure on the front and back of every page of the solicitation:

“THIS PRODUCT OR SERVICE HAS NOT BEEN APPROVED OR ENDORSED BY ANY GOVERNMENTAL AGENCY, AND THIS OFFER IS NOT BEING MADE BY AN AGENCY OF THE GOVERNMENT.”

(ii) In the case of a mailed solicitation, the front of the envelope, outside cover, or wrapper in which the matter is mailed conspicuously displays the following disclosure:

“THIS IS NOT A GOVERNMENT DOCUMENT.”

(iii) If permitted by other provisions of law, in the case of a television commercial disseminated in this state, the solicitation conspicuously displays the following disclosure at the top of the television screen for the entire duration of the television commercial:

“THIS PRODUCT OR SERVICE HAS NOT BEEN APPROVED OR ENDORSED BY ANY GOVERNMENTAL AGENCY, AND THIS OFFER IS NOT BEING MADE BY AN AGENCY OF THE GOVERNMENT.”

(iv) The disclosure in clause (i) shall be displayed conspicuously, as provided in subdivision (f), and immediately below each portion of the solicitation that reasonably could be construed to specify an amount due and payable by the recipient. The disclosure in clause (ii) shall be displayed conspicuously, as provided in subdivision (f), and immediately below the area of the envelope, outside cover, or wrapper that is used for a return address. The disclosure in clause (iii) shall be displayed conspicuously, as provided in subdivision (f), and at the top of the television screen. The disclosures in clauses (i), (ii), and (iii) shall not be preceded, followed, or surrounded by symbols, terms, or other content that result in the disclosures not being conspicuous or that introduce, modify, qualify, or explain the text of those disclosures.

(v) The solicitation does not use a title or trade or brand name that reasonably could be interpreted or construed as implying any federal, state, or local government connection, approval, or endorsement, including, but not limited to, use of the term “agency,” “administrative,” “assessor,” “board,” “bureau,” “collector,” “commission,” “committee,” “department,” “division,” “recorder,” “unit,” “federal,” “state,” “county,” “city,” or “municipal,” or the name or division of any government agency.

(vi) The solicitation does not specify a date or time period when payment to the soliciting nongovernmental person, firm, corporation, or association is due, including, but not limited to, use of the terms “due date,” “due now,” “remit by,” “remit immediately,” “payment due,” “pay now,” “pay immediately,” or “pay no later than,” unless the solicitation displays, in the same sentence as the date or time period specified, how the information being solicited will be used, a description of the product or service that is to be provided and to what government agency it shall be rendered, or how the solicited funds or membership fees will be used, as applicable.

(vii) The solicitation does not state or imply that payment to any person, firm, corporation, or association that is not a

government entity is mandatory or required by law, or state or imply that penalties, fines, or consequences will occur if payment is not made to the soliciting nongovernmental person, firm, corporation, or association.

(B) Subparagraph (A) is not applicable to seals, emblems, insignia, trade or brand name, or any other term, symbol, or content of the United States Department of Veterans Affairs, the Department of Veterans Affairs, the federal and state military, military veteran entities, and military or veteran service organizations.

(d) Notwithstanding Section 17534, any violation of this section is a misdemeanor punishable by imprisonment in a county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars (\$2,500), or by both that fine and imprisonment.

(e) Any person who is harmed as a result of a violation of this section shall be entitled to recover, in addition to any other available remedies, damages in an amount equal to three times the amount solicited.

(f) For purposes of this section, “conspicuous” or “conspicuously” means displayed apart from other print on the page, envelope, outside cover, or wrapper and in not less than 12-point boldface font type in capital letters that is at least 2-point boldface font type sizes larger than the next largest print on the page, envelope, outside cover, or wrapper and in contrasting type, layout, font, or color in a manner that clearly calls attention to the language.

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

Approved _____, 2013

Governor