

Introduced by Senator Peace

February 24, 1997

An act to amend Sections 17500.3 and 25605 of the Business and Professions Code, and to amend Section 313 of the Penal Code, relating to electronic commerce.

LEGISLATIVE COUNSEL'S DIGEST

SB 597, as introduced, Peace. Internet use.

(1) Existing law governing advertising prohibits a person from soliciting the sale of goods either in person or over the telephone without giving identifying information. It is also unlawful for a person soliciting the sale of goods either in person or over the telephone to use a scheme that misrepresents the solicitor's true status or mission for the purpose of making the sale.

This bill would make these prohibitions applicable to transactions over the Internet.

(2) The Alcoholic Beverage Control Act prohibits an off-sale licensee from delivering alcoholic beverages from an order received over the telephone without requiring proof of age and identity when the beverages are delivered.

This bill would make this prohibition applicable to orders received over the Internet.

(3) Under existing law, it is unlawful for a person to knowingly or negligently sell, rent, distribute, send, cause to be sent, exhibit, or offer to distribute, or exhibit any harmful material to a minor.

This bill would define distribution and exhibition to include transmitting or making material available over the Internet.

Because this bill would expand the scope of an existing crime, it would impose a state-mandated local program.

(4) 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 finds and declares the
2 following:

3 (a) The Internet is a collection of interconnected
4 computers and communications networks that is used for
5 commercial, educational, and recreational purposes. Use
6 of the Internet is growing rapidly, doubling every four
7 months according to some estimates. The number of
8 persons using the Internet has doubled every year for the
9 past several years.

10 (b) Many activities that are commonly conducted on
11 a face-to-face basis may also be transacted over the
12 Internet. In many instances, California law regulates
13 these transactions, providing buyers and sellers with clear
14 rules governing the transactions. These laws include
15 limitations on the availability to minors of liquor, tobacco,
16 and harmful matter, limitations on the general
17 availability of gambling, and procedures governing the
18 advertising, sale, and terms and conditions of purchases.
19 The applicability of these laws when products and
20 services are sold or exchanged over the Internet is, in
21 some cases, not clear.

22 (c) Modification of existing law to extend it to
23 transactions occurring over the Internet is necessary to
24 ensure that California's existing restrictions on the
25 availability of certain products are effective regardless of
26 how a product is sold or distributed, and promotes the
27 public interest. Providing clear rules to govern the



1 relationship and expectations of buyers and sellers will
2 facilitate a stable marketplace and encourage commerce
3 over the Internet, thereby benefiting California
4 consumers, business, and the state economy.

5 SEC. 2. Section 17500.3 of the Business and
6 Professions Code is amended to read:

7 17500.3. (a) It is unlawful for ~~any~~ a person to solicit a
8 sale or order for sale of goods or services at the residence
9 of a prospective buyer, in person or by means of
10 telephone, *or over the Internet*, without clearly,
11 affirmatively, and expressly revealing at the time the
12 person initially contacts the prospective buyer, and
13 before making any other statement, except a greeting, or
14 asking the prospective buyer any other questions, that
15 the purpose of the contact is to effect a sale, by doing all
16 of the following:

17 (1) Stating the identity of the person making the
18 solicitation.

19 (2) Stating the trade name of the person represented
20 by the person making the solicitation.

21 (3) Stating the kind of goods or services being offered
22 for sale.

23 (4) ~~And, in the case of an~~ *For an* “in person” contact,
24 the person making the solicitation shall, in addition ~~to~~
25 ~~meeting the requirements of paragraphs (1), (2) and (3),~~
26 show or display identification ~~which~~ *that* states the
27 information required by paragraphs (1) and (2) as well
28 as the address of the place of business of one of ~~such~~ *the*
29 persons so identified.

30 (b) It is unlawful for ~~any~~ a person, in soliciting a sale
31 or order for the sale of goods or services at the residence
32 of a prospective buyer, in person or by telephone, *or over*
33 *the Internet*, to use ~~any~~ a plan, scheme, or ruse ~~which~~ *that*
34 misrepresents his *or her* true status or mission for the
35 purpose of making ~~such~~ *the* sale or order for the sale of
36 goods or services.

37 (c) In addition to ~~any~~ other penalties or remedies
38 applicable to violations of this section, the intentional
39 violation of this section ~~shall entitle~~ *entitles* persons
40 bound to a contract, when there was a sales approach or



1 presentation or both in which ~~such~~ an intentional
2 violation of this section took place, to damages of two
3 times the amount of the sale price or up to two hundred
4 fifty dollars (\$250), whichever is greater, ~~but in no case~~
5 ~~shall such~~. *However, the damages may not* be less than
6 fifty dollars (\$50); ~~provided, however, that as a in any~~
7 ~~case. As a~~ condition precedent to instituting ~~such an~~
8 action ~~hereunder~~ under this section against the person
9 represented by the person making the solicitation, the
10 aggrieved party shall, in writing, demand that the person
11 represented by the solicitor terminate ~~such the~~ contract
12 and return ~~any—and~~ all payments made ~~thereunder~~
13 *according to the contract*, and that the person
14 represented by the solicitor shall have refused within a
15 reasonable time, ~~such the~~ termination and return. If the
16 person represented by the person making the solicitation
17 elects to terminate, he *or she* shall return to the aggrieved
18 party payments received for ~~any—and~~ all goods, and for
19 services not rendered, and upon return of ~~such the~~
20 payments, the aggrieved party shall return ~~any—and~~ all
21 goods received under the contract. For the purposes of
22 this section, a reasonable time ~~shall mean~~ is 20 business
23 days from the date of demand. This subdivision ~~shall does~~
24 not apply to a cause of action commenced under any
25 other provision of law, including, but not limited to, a
26 cause of action commenced pursuant to Section 382 of the
27 Code of Civil Procedure or Section 1781 of the Civil Code.

28 Any rights under this subdivision ~~shall be are~~ waived if,
29 subsequent to the signing of the contract, the party bound
30 by the contract states that identification, ~~as required by~~
31 this section, was given.

32 (d) Persons represented by the person making the
33 solicitation shall keep and maintain copies of all demands
34 for termination for violation of this section for a period of
35 one year from date of receipt. Failure to maintain ~~such~~
36 *those records shall create creates* a presumption affecting
37 the burden of proof that demand for termination had
38 been properly made.

39 (e) Where any provision of law provides a penalty for
40 the violation of any offense specified in this section, it ~~shall~~



1 ~~be~~ is a defense to the imposition of ~~such the~~ penalty as to
2 any defendant who did not commit the act or acts
3 constituting the offense that ~~such the~~ defendant did not
4 know, and with the exercise of reasonable care could not
5 have known, that the act was committed, ~~which that~~
6 constitutes the violation of this section.

7 (f) As used in this section “person” includes ~~any a~~
8 individual, firm, partnership, corporation, association, or
9 other organization, but does not include ~~any a~~ nonprofit
10 charitable organization, or ~~any a~~ person selling ~~any~~
11 intangibles, or ~~any~~ items defined in Section 1590(a)(1);
12 of Title 18 of the California Administrative Code as it read
13 on July 15, 1972.

14 (g) This section ~~shall~~ does not prohibit ~~nor~~ or
15 authorize the enactment by the governing body of any
16 city, county, or city and county, of ordinances relating to
17 home solicitations ~~which that~~ are more restrictive of ~~such~~
18 solicitation than the provisions of this section.

19 SEC. 3. Section 25605 of the Business and Professions
20 Code is amended to read:

21 25605. ~~No off-sale~~ An off-sale licensee ~~shall~~ may not
22 deliver ~~any~~ alcoholic beverages pursuant to orders
23 received for ~~such the~~ alcoholic beverage by telephone or
24 over the Internet unless, upon delivery, the recipient
25 ~~shall be~~ is able to furnish proof of age and identity to
26 indicate that he or she is 21 years of age or over.

27 SEC. 4. Section 313 of the Penal Code is amended to
28 read:

29 313. As used in this chapter:

30 (a) “Harmful matter” means matter, taken as a whole,
31 which to the average person, applying contemporary
32 statewide standards, appeals to the prurient interest, and
33 is matter which, taken as a whole, depicts or describes in
34 a patently offensive way sexual conduct and which, taken
35 as a whole, lacks serious literary, artistic, political, or
36 scientific value for minors.

37 (1) When it appears from the nature of the matter or
38 the circumstances of its dissemination, distribution, or
39 exhibition that it is designed for clearly defined deviant



1 sexual groups, the appeal of the matter shall be judged
2 with reference to its intended recipient group.

3 (2) In prosecutions under this chapter, where
4 circumstances of production, presentation, sale,
5 dissemination, distribution, or publicity indicate that
6 matter is being commercially exploited by the defendant
7 for the sake of its prurient appeal, that evidence is
8 probative with respect to the nature of the matter and
9 can justify the conclusion that the matter lacks serious
10 literary, artistic, political, or scientific value for minors.

11 (b) “Matter” means ~~any~~ a book, magazine,
12 newspaper, video recording, or other printed or written
13 material or ~~any~~ a picture, drawing, photograph, motion
14 picture, or other pictorial representation or ~~any~~ a statue
15 or other figure, or ~~any~~ a recording, transcription, or
16 mechanical, chemical, or electrical reproduction or any
17 other articles, equipment, machines, or materials.
18 “Matter” also includes live or recorded telephone
19 messages when transmitted, disseminated, or distributed
20 as part of a commercial transaction.

21 (c) “Person” means ~~any~~ an individual, partnership,
22 firm, association, corporation, limited liability company,
23 or other legal entity.

24 (d) “Distribute” means to transfer possession of, *or*
25 *transmit*, whether with or without consideration.

26 (e) “Knowingly” means being aware of the character
27 of the matter.

28 (f) “Exhibit” means to show, *including making*
29 *material available over the Internet*.

30 (g) “Minor” means any natural person under 18 years
31 of age.

32 SEC. 5. No reimbursement is required by this act
33 pursuant to Section 6 of Article XIII B of the California
34 Constitution because the only costs that may be incurred
35 by a local agency or school district will be incurred
36 because this act creates a new crime or infraction,
37 eliminates a crime or infraction, or changes the penalty
38 for a crime or infraction, within the meaning of Section
39 17556 of the Government Code, or changes the definition



1 of a crime within the meaning of Section 6 of Article
2 XIII B of the California Constitution.
3 Notwithstanding Section 17580 of the Government
4 Code, unless otherwise specified, the provisions of this act
5 shall become operative on the same date that the act
6 takes effect pursuant to the California Constitution.

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