

Senate Bill No. 597

Passed the Senate August 19, 1998

Secretary of the Senate

Passed the Assembly August 11, 1998

Chief Clerk of the Assembly

This bill was received by the Governor this ____ day
of _____, 1998, at ____ o'clock __M.

Private Secretary of the Governor



CHAPTER _____

An act to amend Sections 7027.1, 17500, 17502, 17509, 17510.4, 17510.85, 17530, 17531, 17531.5, 17533, 17533.8, 17533.9, 17533.10, 17537.5, 17539.5, and 17539.55 of the Business and Professions Code, relating to electronic commerce.

LEGISLATIVE COUNSEL'S DIGEST

SB 597, Peace. Internet use.

(1) Existing law makes it a crime to engage in various unlawful advertising practices conducted by specified means of dissemination or publication. This bill would expand certain of those unlawful advertising practices to include dissemination or publication over the Internet. It would also declare legislative intent in this regard.

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

(2) 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.

This bill would incorporate additional changes in Section 17539.5 of the Business and Professions Code, proposed by SB 1476, to be operative only if SB 1476 and this bill are both chaptered and become effective on or before January 1, 1999, and this bill is chaptered last.

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

SECTION 1. The Legislature finds and declares that the Internet is a collection of interconnected computers and communications networks that is used for commercial, educational, and recreational purposes. Use of the Internet is growing rapidly, doubling every four months according to some estimates. The number of



persons using the Internet has doubled every year for the past several years.

SEC. 2. Section 7027.1 of the Business and Professions Code is amended to read:

7027.1. (a) It is a misdemeanor for any person to advertise for construction or work of improvement covered by this chapter unless that person holds a valid license under this chapter in the classification so advertised, except that a licensed building or engineering contractor may advertise as a general contractor.

(b) "Advertise," as used in this section, includes, but not by way of limitation, the issuance of any card, sign, or device to any person, the causing, permitting, or allowing of any sign or marking on or in any building or structure, or in any newspaper, magazine, or by airwave or any electronic transmission, or in any directory under a listing for construction or work of improvement covered by this chapter, with or without any limiting qualifications.

(c) A violation of this section is punishable by a fine of not less than seven hundred dollars (\$700) and not more than one thousand dollars (\$1,000), which fine shall be in addition to any other punishment imposed for a violation of this section.

(d) If upon investigation, the registrar has probable cause to believe that an unlicensed individual is in violation of this section, the registrar may issue a citation pursuant to Section 7028.7 or 7099.10.

SEC. 2.5. Section 17500 of the Business and Professions Code is amended to read:

17500. It is unlawful for any person, firm, corporation or association, or any employee thereof with intent directly or indirectly to dispose of real or personal property or to perform services, professional or otherwise, or anything of any nature whatsoever or to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated before the public in this state, or to make or disseminate or cause to be made or disseminated from this state before the public in any state, in any newspaper or other publication, or any advertising device, or by



public outcry or proclamation, or in any other manner or means whatever, including over the Internet, any statement, concerning that real or personal property or those services, professional or otherwise, or concerning any circumstance or matter of fact connected with the proposed performance or disposition thereof, which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading, or for any person, firm, or corporation to so make or disseminate or cause to be so made or disseminated any such statement as part of a plan or scheme with the intent not to sell that personal property or those services, professional or otherwise, so advertised at the price stated therein, or as so advertised. Any violation of the provisions of this section is a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars (\$2,500), or by both that imprisonment and fine.

SEC. 3. Section 17502 of the Business and Professions Code is amended to read:

17502. This article does not apply to any visual or sound radio broadcasting station, to any internet service provider or commercial online service, or to any publisher of a newspaper, magazine, or other publication, who broadcasts or publishes, including over the Internet, an advertisement in good faith, without knowledge of its false, deceptive, or misleading character.

SEC. 4. Section 17509 of the Business and Professions Code is amended to read:

17509. (a) Any advertisement, including any advertisement over the Internet, soliciting the purchase or lease of a product or service, or any combination thereof, that requires, as a condition of sale, the purchase or lease of a different product or service, or any combination thereof, shall conspicuously disclose in the advertisement the price of all those products or services. This requirement shall not in any way affect the provisions of Sections 16726 and 16727, with respect to unlawful buying arrangements.



(b) Subdivision (a) does not apply to any of the following:

(1) Contractual plans or arrangements complying with this paragraph under which the seller periodically provides the consumer with a form or announcement card which the consumer may use to instruct the seller not to ship the offered merchandise. Any instructions not to ship merchandise included on the form or card shall be printed in type as large as all other instructions and terms stated on the form or card. The form or card shall specify a date by which it shall be mailed by the consumer (the “mailing date”) or received by the seller (the “return date”) to prevent shipment of the offered merchandise. The seller shall mail the form or card either at least 25 days prior to the return date or at least 20 days prior to the mailing date, or provide a mailing date of at least 10 days after receipt by the consumer, except that whichever system the seller chooses for mailing the form or card, shall be calculated to afford the consumer at least 10 days in which to mail his or her form or card. The form or card shall be preaddressed to the seller so that it may serve as a postal reply card or, alternatively, the form or card shall be accompanied by a return envelope addressed to seller. Upon the membership contract or application form or on the same page and immediately adjacent to the contract or form, and in clear and conspicuous language, there shall be disclosed the material terms of the plan or arrangement including all of the following:

(A) That aspect of the plan under which the subscriber shall notify the seller, in the manner provided for by the seller, if the seller does not wish to purchase or receive the selection.

(B) Any obligation assumed by the subscriber to purchase a minimum quantity of merchandise.

(C) The right of a contract-complete subscriber to cancel his or her membership at any time.

(D) Whether billing charges will include an amount for postage and handling.

(2) Other contractual plans or arrangements not covered under subdivision (a), such as continuity plans,



subscription arrangements, standing order arrangements, supplements, and series arrangements under which the seller periodically ships merchandise to a consumer who has consented in advance to receive that merchandise on a periodic basis.

(c) This section shall not apply to the publisher of any newspaper, periodical, or other publication, or any radio or television broadcaster, or the owner or operator of any cable, satellite, or other medium of communication who broadcasts or publishes, including over the Internet, an advertisement or offer in good faith, without knowledge of its violation of subdivision (a).

SEC. 5. Section 17510.4 of the Business and Professions Code is amended to read:

17510.4. If the initial solicitation or sales solicitation is made by radio, television, letter, telephone, or any other means not involving direct personal contact with the person solicited, including over the Internet, this solicitation shall clearly disclose the information required by Section 17510.3. This disclosure requirement shall not apply to any radio or television solicitation of 60 seconds or less. If the gift is subsequently made or the sale is subsequently consummated, the solicitation or sale for charitable purposes card shall be mailed to or otherwise delivered to the donor, or to the buyer with the item or items purchased.

SEC. 6. Section 17510.85 of the Business and Professions Code is amended to read:

17510.85. Any individual, corporation, or other legal entity who for compensation solicits funds or other property in this state for charitable purposes shall disclose prior to an oral solicitation or sales solicitation made by direct personal contact, radio, television, telephone, or over the Internet, or at the same time as a written solicitation or sales solicitation: (a) that the solicitation or sales solicitation is being conducted by a commercial fundraiser for charitable purposes, and (b) the name of the commercial fundraiser for charitable purposes as registered with the Attorney General pursuant to Section 12599 of the Government Code.



SEC. 7. Section 17530 of the Business and Professions Code is amended to read:

17530. It is unlawful for any person, firm, corporation, or association, or any employee or agent therefor, to make or disseminate any statement or assertion of fact in a newspaper, circular, circular or form letter, or other publication published or circulated, including over the Internet, in any language in this state, concerning the extent, location, ownership, title, or other characteristic, quality, or attribute of any real estate located in this state or elsewhere, which is known to be untrue and which is made or disseminated with the intention of misleading.

Nothing in this section shall be construed to hold the publisher of any newspaper, or any job printer, liable for any publication herein referred to unless the publisher or printer has an interest, either as owner or agent, in the real estate so advertised.

SEC. 8. Section 17531 of the Business and Professions Code is amended to read:

17531. It is unlawful for any person, firm, or corporation, in any newspaper, magazine, circular, form letter or any open publication, published, distributed, or circulated in this state, including over the Internet, or on any billboard, card, label, or other advertising medium, or by means of any other advertising device, to advertise, call attention to or give publicity to the sale of any merchandise, which merchandise is secondhand or used merchandise, or which merchandise is defective in any manner, or which merchandise consists of articles or units or parts known as “seconds,” or blemished merchandise, or which merchandise has been rejected by the manufacturer thereof as not first class, unless there is conspicuously displayed directly in connection with the name and description of that merchandise and each specified article, unit, or part thereof, a direct and unequivocal statement, phrase, or word which will clearly indicate that the merchandise or each article, unit, or part thereof so advertised is secondhand, used, defective, or consists of “seconds” or is blemished merchandise, or has been rejected by the manufacturer



thereof, as the case may be. Any violation of this section is a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars (\$2,500), or by both that imprisonment and fine.

SEC. 9. Section 17531.5 of the Business and Professions Code is amended to read:

17531.5. It is unlawful for any person, firm, or corporation, in any newspaper, magazine, circular, form letter, or any open publication, published, distributed, or circulated in the State of California, including over the Internet, or on any billboard, card, label, or other advertising medium, or by means of any other advertising device, to advertise, call attention to, or give publicity to the sale of any merchandise, which merchandise is surplus materials as defined in the federal Surplus Property Act of 1944 (50 U.S.C. App. Sec. 1622 et seq.), unless there is conspicuously displayed directly in connection with the name and description of that merchandise and each specified article, unit, or part thereof, a direct and unequivocal statement, phrase, or word which will clearly indicate that the merchandise or each article, unit, or part thereof so advertised is or consists of surplus materials as defined in the federal Surplus Property Act of 1944.

SEC. 10. Section 17533 of the Business and Professions Code is amended to read:

17533. It is unlawful for any proprietor or publisher of any newspaper or periodical, including any newspaper or periodical published over the Internet, willfully and knowingly to misrepresent the circulation of the newspaper or periodical, for the purpose of securing advertising or other patronage.

SEC. 11. Section 17533.8 of the Business and Professions Code is amended to read:

17533.8. (a) It is unlawful for any person to offer, by mail, by telephone, in person, or by any other means or in any other form, including over the Internet, a prize or gift, with the intent to offer a sales presentation, without disclosing at the time of the offer of the prize or gift, in



a clear and unequivocal manner, the intent to offer that sales presentation.

(b) This section shall not apply to the publisher of any newspaper, periodical, or other publication, or any radio or television broadcaster, or the owner or operator of any cable, satellite, or other medium of communications who broadcasts or publishes, including over the Internet, an advertisement or offer in good faith, without knowledge of its violation of subdivision (a).

SEC. 12. Section 17533.9 of the Business and Professions Code is amended to read:

17533.9. It shall be unlawful for any person, firm, corporation, or association, in any newspaper, magazine, circular, form letter, or open publication, published, distributed, or circulated in this state, including over the Internet, or on any billboard, card, label, or other advertising medium, or by means of any other advertising device, to advertise the sale of tear gas, tear gas devices, and tear gas weapons, as defined in Sections 12401 and 12402 of the Penal Code, unless there is conspicuously displayed or stated in connection with the name and description of that tear gas, or those tear gas weapons or devices, a direct and unequivocal statement that will clearly indicate that possession or transportation of tear gas and tear gas weapons or devices is prohibited by law unless specifically exempted or permitted pursuant to the authority contained in Chapter 4 (commencing with Section 12401) of Title 2 of Part 4 of the Penal Code.

SEC. 13. Section 17533.10 of the Business and Professions Code is amended to read:

17533.10. It shall be unlawful for any person, firm, corporation, or association, in any newspaper, magazine, circular, form letter, or open publication, published, distributed, or circulated in this state, including over the Internet, or on any billboard, card, label, or other advertising medium, or by means of any other advertising device, to advertise the sale of anabolic steroids, as defined in subdivision (f) of Section 11056 of the Health and Safety Code, unless there is conspicuously displayed or stated in connection with the name and description of



any of those anabolic steroids, a direct and unequivocal statement that will clearly indicate that the possession by, or sale to, an ultimate consumer of anabolic steroids is a crime punishable by a substantial fine and imprisonment, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, pursuant to Sections 11377, 11378, and 11379 of the Health and Safety Code.

SEC. 14. Section 17537.5 of the Business and Professions Code is amended to read:

17537.5. (a) It is unlawful for any person soliciting a sale or order for energy conservation products or services, including over the Internet, to do any of the following:

(1) Make false claims of affiliation or association with an electrical or gas corporation or municipally owned and operated electrical or gas utility or its energy conservation programs.

(2) Falsely represent that the purchase of an energy conservation service or the purchase or installation of an energy conservation product is required by law.

(3) Misrepresent the nature of the purchaser's obligation for the purchase price of the energy conservation products or services.

(4) Misrepresent the tax consequences of purchasing energy conservation products or services.

(b) Any person, firm, corporation, partnership or association, and any employee or agent thereof who violates this section (1) in the course of solicitation of a sale or order at a residence; (2) by telephone; or (3) by any other method or at any other location, including over the Internet, shall be liable for the damages provided by subdivision (c) of Section 17500.3, in addition to all other penalties provided by law.

SEC. 15. Section 17539.5 of the Business and Professions Code is amended to read:

17539.5. (a) For purposes of this section and Sections 17539.55 and 17539.6:

(1) "Broadcast" means the utilization of radio, television, home videos, movie screens, telephones, or other medium, including the Internet, that does not



automatically provide the prospective consumer with a printed or written document he or she can read at leisure.

(2) “Caller” means a telephone user or end user who calls or may call an information-access service or who receives a telephonic solicitation that results in the recipient being connected to an information-access service.

(3) “Carrier” means any regional telephone operating company, interexchange carrier, or local exchange telephone company that provides telecommunications transmission services.

(4) “Incentive” means any item or service of value, however denominated, including, but not limited to, any prize, award, gift, or money, or any coupon that can be used in whole or in part to obtain a product or service.

(5) “Information provider” means a person who advertises or sells an information-access service and on whose behalf charges are billed.

(6) “Information-access service” means any telecommunications service that permits individuals to access a telephone number, and for which the caller is assessed, by virtue of placing or completing the call, a charge that is greater than, or in addition to, the charge for the transmission of the call. Information-access service includes, but is not limited to, telephone numbers with the prefix 900 or 976.

(7) “900 number” means any prefixed telephone number used for information-access service and includes, but is not limited to, telephone numbers with the prefix 900 or 976.

(8) “Prize” means any item of value given to winners in a sweepstakes who have been selected on the basis of lot or chance.

(9) “Program” means the audio message that the caller hears or receives upon placing or receiving a call and being connected to an information-access service.

(10) “Sell an information service” means to attempt to cause a caller to act in a manner that causes that caller to be charged for utilizing an information-access service.



(11) “Solicitation” includes all forms of solicitation for information-access services, including, but not limited to, mailings, advertisements in newspapers and magazines, advertisements broadcast by radio or television, advertisements contained in home videos or appearing on movie screens, telephone solicitations, and advertisements transmitted over the Internet. “Solicitation” does not include simple listings in telephone directories provided those listings are not accompanied by any advertising text.

(12) “Sweepstakes” means any procedure for the distribution of anything of value by lot or by chance that is not unlawful under other provisions of law including, but not limited to, the provisions of Section 320 of the Penal Code. Nothing contained in this section shall be deemed to render lawful any activity that otherwise would violate Section 320 of the Penal Code.

(b) It is unlawful for any person to engage in any of the following acts in order to encourage any caller to utilize an information-access service:

(1) Soliciting callers by use of an automatic dialing device or a live or recorded outbound telephone message.

(2) Utilizing signals or tones provided directly or indirectly by the information provider to access the information-access service.

(3) Requiring callers to call more than one 900 number or to require calling the same 900 number more than one time in order to receive goods or services represented in the initial solicitation.

(4) Utilizing a telephone number other than a 900 number from which a caller can be automatically connected to the information-access service.

(5) Soliciting callers to call a telephone number other than a 900 number, including, but not limited to, an 800 telephone number, when the caller who calls that other number will be referred to a 900 number unless all solicitations for the initial information-access program clearly and conspicuously disclose that a referral will be made and the cost to the caller for calling the 900 number to which the caller will be referred.



(6) Soliciting callers to call a number other than a 900 number, including, but not limited to, an 800 telephone number, when the caller who calls that number will be asked to accept one or more collect calls unless all solicitations clearly and conspicuously disclose that the caller will be asked to accept one or more collect calls and the cost to the caller for accepting the collect calls. The cost shall be described as cost per minute and cost per hour.

(7) Referring a caller from one 900 number to another 900 number unless all solicitations for the initial information-access program clearly and conspicuously disclose that a referral will be made and the cost to the caller for calling the 900 number to which the caller will be referred.

(8) Advertising that the information-access service is free.

(9) Using any printing style, graphic, layout, text, color, or format which states or implies that the solicitation originates from, or was issued by or on behalf of a governmental agency, a public utility, a nonprofit organization, an insurance company, a credit reporting agency, a collection company, or a law firm unless the same is true.

(c) It is unlawful for any person to solicit or sell an information-access service unless the following information is clearly and conspicuously disclosed in all solicitations:

(1) An accurate description of the information-access service.

(2) The name, address, and non-900 telephone number of the information provider.

(3) The cost of the call, which shall be disclosed as follows:

(A) If the call is billed at a fixed rate, the total cost of the call.

(B) If the call is billed on a usage-sensitive basis, the cost per minute or other unit of time, and including:

(i) In broadcast solicitations, the average cost of the call.



(ii) In print solicitations, the average cost or length of the call, except that print solicitations directed to persons in this state shall disclose the average cost of the call.

(C) Solicitations in which the length of the program cannot reasonably be determined because the length of the program depends upon the skill of, or the selections or responses made by, the caller, shall be exempt from the cost disclosure provisions of this paragraph.

(D) Solicitations that are oral shall include a voice announcement of the cost of the call in clear and understandable language that is clearly audible and articulated at a volume equal to that used to announce the 900 number. The cost of the call shall be stated immediately prior to or immediately after the 900 number is stated.

(E) Solicitations that are broadcast visually shall include, in clear, visible, easily readable, and conspicuously presented letters and numbers, set against a contrasting background, the cost of calling the 900 number. The visual disclosure of the cost of the call shall be displayed directly above, below, or adjacent to the number to be called whenever the number is displayed in the commercial. The visual disclosure of the cost of the call shall be a distinct disclosure and shall not be combined in the same paragraph with any other disclosure required to be made pursuant to this section. The lettering of the visual disclosure shall be no less than 18 scan lines high and shall be displayed for as long as the number is displayed. Broadcast solicitations shall also include a voice announcement of the cost of the call in clear and understandable language that is clearly audible and articulated at a volume equal to that used to announce the 900 number. The cost of the call shall be stated immediately prior to or after the 900 number is stated.

(F) Solicitations that appear in print shall include, in clear, visible, easily readable, and conspicuously presented letters and numbers, the cost of calling the 900 number. The printed disclosure of the cost of the call shall be displayed directly above, below, or adjacent to the



number. The lettering of the cost disclosure shall be in no less than 10-point type.

(4) If the information-access service is aimed at or likely to be of interest to minors, solicitations that appear in print shall contain a statement, in at least the same size print as that used to disclose the 900 number, that persons under the age of 18 years should obtain parental consent before calling. If the solicitation is through a broadcast, this statement shall be of the same audibility as that used to disclose the 900 number.

(d) It shall be unlawful for any person to solicit or sell an information-access service that offers the person being solicited the opportunity to participate in a sweepstakes unless:

(1) There is available, to all persons who are solicited, a free alternative method of participating that provides all participants with an equal chance of winning. No information-access service shall offer a sweepstakes to consumers in this state in which a person calling a 900 number will receive any benefit beyond that received by a person who utilizes an alternative method of entry into the sweepstakes. The free alternative method of entry shall be clearly and conspicuously disclosed in the following manner:

(A) Solicitations that are broadcast visually shall include a visual disclosure of the alternate method of entry. The disclosure that one can enter without calling the 900 number and instructions on how one may so enter shall be displayed in close proximity to the 900 number on a static screen against a clean and contrasting background. The lettering of the visual disclosure shall be made in clear, visible, easily readable, and understandable text, shall be no less than 18 scan lines, and shall be displayed for a period of time sufficient to allow a consumer to copy the information. The visual disclosure of the alternate method of entry shall be distinct and shall not be combined in the same paragraph with any other disclosure required to be made pursuant to this section. Solicitations that are broadcast orally shall include an oral disclosure of the alternate method of



entry. The disclosure that one can enter for free and how one may so enter shall be made in clear and understandable language that is clearly audible and articulated at a volume equal to that used to announce the 900 number and for a period of time sufficient to allow a consumer to copy the information. The oral disclosure shall be made in close proximity to the 900 number. All broadcast solicitations shall include, in addition to the oral or visual disclosure described above, an oral statement that no telephone call is required to enter the sweepstakes.

(B) For print solicitations, the disclosure of the existence of the alternate method of entry and detailed instructions on how one may so enter shall be made in clear, visible, and easily readable text in close proximity to the 900 number to be called. The lettering of the disclosure shall be of a size no less than the predominant type size used in the main text of the solicitation and shall not be obscured by any other printed or graphic matter in the solicitation.

(2) If the alternate method of entry is by mail, any associated fulfillment that the solicitation represents will be sent to persons who respond by mail shall be completed within 21 days, and the solicitation may not represent that the time for fulfillment of mail-in requests is any longer than the information provider reasonably anticipates it will take to fulfill, which shall, in no event, exceed 21 days.

(3) If the alternate method of entry is by mail, and entrants in this state are required to submit a self-addressed envelope to receive any associated fulfillment that the solicitation represents will be sent to persons who respond by mail, entrants shall not be required to affix return postage to their self-addressed envelope.

(4) Minors are excluded from participation.

(5) The information provider provides a full refund to any caller who requests one upon submission by the caller of proof of payment of the telephone charges, provided that if the caller has not previously requested a refund for



the same information-access service call, no proof of payment is required.

(6) The amount or value of each prize awarded is not dependent on the number of entries received.

(7) The information provider obtains unrestricted title or the right to vest title in all prizes prior to the commencement of the sweepstakes.

(8) A list of the winners of all major prizes is made available to any person requesting that list and the solicitation contains an address where a person may request a list of the winners. The names and addresses of the winners shall be available to the Attorney General upon request within 30 days after the selection of winners and shall be maintained for a period of not less than three years.

(9) All major prizes shall be awarded. Major prizes that are not claimed by those who have been solicited shall be awarded in a subsequent drawing from the names of all who responded to the solicitation but did not receive a major prize. This drawing shall take place not later than 30 days after the deadline for responding to the solicitation. For purposes of this section, a major prize is a prize with a substantial cash value.

(10) A deadline by which the recipient of the solicitation must respond is clearly and conspicuously disclosed.

(11) The disclosed deadline provides those solicited with at least two weeks within which to respond.

(12) The solicitation discloses any material restrictions or conditions that must be satisfied before the recipient is entitled to receive any prize offered.

(13) The solicitation contains a description of how the winner of each prize mentioned is selected.

(e) Solicitations made to persons in this state offering the opportunity to participate in a sweepstakes shall, with respect to each prize offered, set forth clearly, conspicuously, and in easily readable letters the odds of receiving that prize, described in whole Arabic numerals in a format such as: “1 chance in 100,000” or “1:100,000.” If the odds depend upon the number of entries and the



number of persons solicited is controlled by the sponsor of the promotion, the solicitation shall set forth the reasonable expectation of entries. If the odds depend upon the number of entries received and the number of persons solicited is not controlled by the sponsor of the sweepstakes, a statement to the effect that the odds depend on the number of entries received shall be sufficient. If more than one prize is offered, the odds shall be separately stated for each prize. The disclosure required to be made pursuant to this subdivision shall be made immediately adjacent to the first identification of the prize to which it relates or in a separate section entitled “Consumer Disclosure” or “Official Rules.” These titles shall be printed in no less than 10-point boldface type. The consumer disclosure section shall be clearly and conspicuously disclosed in the solicitation. There shall be a statement referring the recipient of the solicitation to the consumer disclosure section in the main text of the solicitation in close proximity to the description of the prizes, and the odds shall be disclosed within the top 25 percent of the consumer disclosure section. If the consumer disclosure section does not appear on the same page as the statement referring the recipient of the solicitation to this section, the statement shall indicate where the consumer disclosure section is located. If the odds appear in the section entitled “Consumer Disclosure” or “Official Rules,” there shall be a clear and conspicuous statement in the main text of the solicitation in close proximity to the description of the prizes that the odds to the recipient of obtaining the prize or prizes will be found elsewhere, and the statement shall set forth where they will be found. It is not a violation of this section to reference the official rules and the odds in the same statement as long as the statement referencing the official rules and the odds is in the main text of the solicitation in close proximity to the description of the prizes. For example, a statement such as: “See official rules (on (reference to location of rules if not on same page)) for odds and other details” or a similar statement meets the requirements of this provision. This provision



shall not apply to broadcast solicitations for sweepstakes in which the winners will be selected in a random drawing in which the odds depend on the number of entries received, provided that those solicitations shall disclose where the official rules are available and the official rules shall set forth the odds of winning in accordance with this subdivision.

(f) If more than one prize is listed in a solicitation for an information-access service that offers the opportunity to participate in a sweepstakes, the prizes shall be listed in descending order of retail value.

(g) If any incentive is offered in a solicitation for an information-access service, the solicitation shall clearly and conspicuously disclose all restrictions, qualifications, and deadlines that must be complied with in order to obtain the incentive being offered.

(h) No person soliciting callers for an information-access service shall represent directly or by implication that the person being solicited is part of a significantly limited group selected to receive an incentive, unless that is true and the number of recipients who will be receiving the solicitation is clearly and conspicuously set forth in the solicitation.

(i) No person soliciting callers for an information-access service shall state or imply that the person being solicited has already been chosen to receive a prize in a sweepstakes, will receive one or more of several listed prizes, or may receive one or more of several listed prizes, unless:

(1) The disclosed deadline in the solicitation is not more than six months after the first solicitation for participation, provided, however, that this subdivision shall not apply to random draw contests where the solicitation makes it clear that no participant has yet been chosen as the “winner” and the drawing date is clearly and conspicuously disclosed.

(2) No further solicitations for participation in a particular sweepstakes is disseminated after the top prize listed in the solicitation has been claimed. A drawing



pursuant to paragraph (9) of subdivision (d) shall thereafter be conducted to award any unclaimed prizes.

(j) It is unlawful for any person to solicit or sell an information-access service to any person in the following manner:

(1) The solicitation offers to persons in this state who respond to the solicitation by calling a 900 number any incentive that:

(A) Requires the recipient to purchase goods or services from the information provider in order to utilize the incentive, provided, however, that this subparagraph does not apply to offers where the incentive is a “cents-off” coupon that is usable only for the purchase of the offeror’s own brand name product or products, the total value of the “cents-off” coupon offered is clearly and conspicuously disclosed in the offer, the total value of the “cents-off” coupon does not exceed five dollars (\$5), the “cents-off” coupon is to be utilized to reduce the price of those products at retail stores in the recipient’s area, and at least 60 percent of the revenue per month of the offeror is derived from the sale of the product or products being purchased without the use of the “cents-off” coupons.

(B) Requires the recipient to purchase goods or services from any third party in order to utilize the incentive unless:

(i) The fact that a purchase or payment is required in order to utilize the incentive is disclosed in the solicitation.

(ii) A representative sample of the establishments at which the incentive may be redeemed is disclosed in the solicitation.

(iii) If the incentive entitles the recipient to save money on the purchase of goods or services, the incentive is described as a cents-off, discount coupon, or similar term that clearly indicates that it is redeemable only for savings on purchases of goods or services.

(2) The solicitation states or implies that the caller is likely to receive one of the prizes offered, by representing in the solicitation that other named persons have already won the other prizes being offered in the solicitation and



that the recipient of the solicitation is therefore likely to receive the prize that has not been won by the other persons named in the solicitation, unless the recipient's odds of receiving the remaining prize are clearly and conspicuously disclosed in the solicitation in close proximity to the list of the other named persons.

(k) Nothing contained in this section shall be deemed to render lawful any activity that otherwise would violate Section 17537.

(l) No information-access service shall offer a game of skill in which the cost of the call is billed on a usage-sensitive basis and in which answers to multiple choice questions of increasing difficulty are required in order to win, unless the solicitation clearly and conspicuously discloses the percentage of contestants anticipated to answer all questions correctly based on prior experience or, if the game is being operated for the first time, based on a good faith estimate.

(m) This section does not apply to a regional telephone operating company, interexchange carrier, or local telephone company operating in those capacities, that in good faith telecommunicates an information-access program without knowledge that the program or related advertising violates any provision of this section, Section 17539.55, or Section 17539.6.

(n) Neither this section, Section 17539.55, nor Section 17539.6 applies to the California State Lottery.

SEC. 16. Section 17539.5 of the Business and Professions Code is amended to read:

17539.5. (a) For purposes of this section and Sections 17539.55 and 17539.6:

(1) "Broadcast" means the utilization of radio, television, home videos, movie screens, telephones, or other medium, including the Internet, that does not automatically provide the prospective consumer with a printed or written document he or she can read at leisure.

(2) "Caller" means a telephone user or end user who calls or may call an information-access service or who receives a telephonic solicitation that results in the



recipient being connected to an information-access service.

(3) “Carrier” means any regional telephone operating company, interexchange carrier, or local exchange telephone company that provides telecommunications transmission services.

(4) “Incentive” means any item or service of value, however denominated, including, but not limited to, any prize, award, gift, or money, or any coupon that can be used in whole or in part to obtain a product or service.

(5) “Information provider” means a person who advertises or sells an information-access service and on whose behalf charges are billed.

(6) “Information-access service” means any telecommunications service that permits individuals to access a telephone number, and for which the caller is assessed, by virtue of placing or completing the call, a charge that is greater than, or in addition to, the charge for the transmission of the call. Information-access service includes, but is not limited to, telephone numbers with the prefix 900 or 976.

(7) “900 number” means any prefixed telephone number used for information-access service and includes, but is not limited to, telephone numbers with the prefix 900 or 976.

(8) “Prize” means any item of value given to winners in a sweepstakes who have been selected on the basis of lot or chance.

(9) “Program” means the audio message that the caller hears or receives upon placing or receiving a call and being connected to an information-access service.

(10) “Sell an information service” means to attempt to cause a caller to act in a manner that causes that caller to be charged for utilizing an information-access service.

(11) “Solicitation” includes all forms of solicitation for information-access services, including, but not limited to, mailings, advertisements in newspapers and magazines, advertisements broadcast by radio or television, advertisements contained in home videos or appearing on movie screens, telephone solicitations, and



advertisements transmitted over the Internet. “Solicitation” does not include simple listings in telephone directories provided those listings are not accompanied by any advertising text.

(12) “Sweepstakes” means any procedure for the distribution of anything of value by lot or by chance that is not unlawful under other provisions of law including, but not limited to, the provisions of Section 320 of the Penal Code. Nothing contained in this section shall be deemed to render lawful any activity that otherwise would violate Section 320 of the Penal Code.

(b) It is unlawful for any person to engage in any of the following acts in order to encourage any caller to utilize an information-access service:

(1) Soliciting callers by use of an automatic dialing device or a live or recorded outbound telephone message.

(2) Utilizing signals or tones provided directly or indirectly by the information provider to access the information-access service.

(3) Requiring callers to call more than one 900 number or to require calling the same 900 number more than one time in order to receive goods or services represented in the initial solicitation.

(4) Utilizing a telephone number other than a 900 number from which a caller can be automatically connected to the information-access service.

(5) Soliciting callers to call a telephone number other than a 900 number, including, but not limited to, an 800 telephone number, when the caller who calls that other number will be referred to a 900 number unless all solicitations for the initial information-access program clearly and conspicuously disclose that a referral will be made and the cost to the caller for calling the 900 number to which the caller will be referred.

(6) Soliciting callers to call a number other than a 900 number, including, but not limited to, an 800 telephone number, when the caller who calls that number will be asked to accept one or more collect calls unless all solicitations clearly and conspicuously disclose that the caller will be asked to accept one or more collect calls and



the cost to the caller for accepting the collect calls. The cost shall be described as cost per minute and cost per hour.

(7) Referring a caller from one 900 number to another 900 number unless all solicitations for the initial information-access program clearly and conspicuously disclose that a referral will be made and the cost to the caller for calling the 900 number to which the caller will be referred.

(8) Advertising that the information-access service is free.

(9) Using any printing style, graphic, layout, text, color, or format which states or implies that the solicitation originates from, or was issued by or on behalf of a governmental agency, a public utility, a nonprofit organization, an insurance company, a credit reporting agency, a collection company, or a law firm unless the same is true.

(c) It is unlawful for any person to solicit or sell an information-access service unless the following information is clearly and conspicuously disclosed in all solicitations:

(1) An accurate description of the information-access service.

(2) The name, address, and non-900 telephone number of the information provider.

(3) The cost of the call, which shall be disclosed as follows:

(A) If the call is billed at a fixed rate, the total cost of the call.

(B) If the call is billed on a usage-sensitive basis, the cost per minute or other unit of time, and including:

(i) In broadcast solicitations, the average cost of the call.

(ii) In print solicitations, the average cost or length of the call, except that print solicitations directed to persons in this state shall disclose the average cost of the call.

(C) Solicitations in which the length of the program cannot reasonably be determined because the length of the program depends upon the skill of, or the selections



or responses made by, the caller, shall be exempt from the cost disclosure provisions of this paragraph.

(D) Solicitations that are oral shall include a voice announcement of the cost of the call in clear and understandable language that is clearly audible and articulated at a volume equal to that used to announce the 900 number. The cost of the call shall be stated immediately prior to or immediately after the 900 number is stated.

(E) Solicitations that are broadcast visually shall include, in clear, visible, easily readable, and conspicuously presented letters and numbers, set against a contrasting background, the cost of calling the 900 number. The visual disclosure of the cost of the call shall be displayed directly above, below, or adjacent to the number to be called whenever the number is displayed in the commercial. The visual disclosure of the cost of the call shall be a distinct disclosure and shall not be combined in the same paragraph with any other disclosure required to be made pursuant to this section. The lettering of the visual disclosure shall be no less than 18 scan lines high and shall be displayed for as long as the number is displayed. Broadcast solicitations shall also include a voice announcement of the cost of the call in clear and understandable language that is clearly audible and articulated at a volume equal to that used to announce the 900 number. The cost of the call shall be stated immediately prior to or after the 900 number is stated.

(F) Solicitations that appear in print shall include, in clear, visible, easily readable, and conspicuously presented letters and numbers, the cost of calling the 900 number. The printed disclosure of the cost of the call shall be displayed directly above, below, or adjacent to the number. The lettering of the cost disclosure shall be in no less than 10-point type.

(4) If the information-access service is aimed at or likely to be of interest to minors, solicitations that appear in print shall contain a statement, in at least the same size print as that used to disclose the 900 number, that persons



under the age of 18 years should obtain parental consent before calling. If the solicitation is through a broadcast, this statement shall be of the same audibility as that used to disclose the 900 number.

(d) It shall be unlawful for any person to solicit or sell an information-access service in any manner related to a sweepstakes.

(e) Solicitations made to persons in this state offering the opportunity to participate in a sweepstakes shall, with respect to each prize offered, set forth clearly, conspicuously, and in easily readable letters the odds of receiving that prize, described in whole Arabic numerals in a format such as: “1 chance in 100,000” or “1:100,000.” If the odds depend upon the number of entries and the number of persons solicited is controlled by the sponsor of the promotion, the solicitation shall set forth the reasonable expectation of entries. If the odds depend upon the number of entries received and the number of persons solicited is not controlled by the sponsor of the sweepstakes, a statement to the effect that the odds depend on the number of entries received shall be sufficient. If more than one prize is offered, the odds shall be separately stated for each prize. The disclosure required to be made pursuant to this subdivision shall be made immediately adjacent to the first identification of the prize to which it relates or in a separate section entitled “Consumer Disclosure” or “Official Rules.” These titles shall be printed in no less than 10-point boldface type. The consumer disclosure section shall be clearly and conspicuously disclosed in the solicitation. There shall be a statement referring the recipient of the solicitation to the consumer disclosure section in the main text of the solicitation in close proximity to the description of the prizes, and the odds shall be disclosed within the top 25 percent of the consumer disclosure section. If the consumer disclosure section does not appear on the same page as the statement referring the recipient of the solicitation to this section, the statement shall indicate where the consumer disclosure section is located. If the odds appear in the section entitled “Consumer



Disclosure” or “Official Rules,” there shall be a clear and conspicuous statement in the main text of the solicitation in close proximity to the description of the prizes that the odds to the recipient of obtaining the prize or prizes will be found elsewhere, and the statement shall set forth where they will be found. It is not a violation of this section to reference the official rules and the odds in the same statement as long as the statement referencing the official rules and the odds is in the main text of the solicitation in close proximity to the description of the prizes. For example, a statement such as: “See official rules (on (reference to location of rules if not on same page)) for odds and other details” or a similar statement meets the requirements of this provision. This provision shall not apply to broadcast solicitations for sweepstakes in which the winners will be selected in a random drawing in which the odds depend on the number of entries received, provided that those solicitations shall disclose where the official rules are available and the official rules shall set forth the odds of winning in accordance with this subdivision.

(f) If any incentive is offered in a solicitation for an information-access service, the solicitation shall clearly and conspicuously disclose all restrictions, qualifications, and deadlines that must be complied with in order to obtain the incentive being offered.

(g) No person soliciting callers for an information-access service shall represent directly or by implication that the person being solicited is part of a significantly limited group selected to receive an incentive, unless that is true and the number of recipients who will be receiving the solicitation is clearly and conspicuously set forth in the solicitation.

(h) It is unlawful for any person to solicit or sell an information-access service to any person in the following manner:

(1) The solicitation offers to persons in this state who respond to the solicitation by calling a 900 number any incentive that:



(A) Requires the recipient to purchase goods or services from the information provider in order to utilize the incentive. However, this subparagraph does not apply to offers where the incentive is a “cents-off” coupon that is usable only for the purchase of the offeror’s own brand name product or products, the total value of the “cents-off” coupon offered is clearly and conspicuously disclosed in the offer, the total value of the “cents-off” coupon does not exceed five dollars (\$5), the “cents-off” coupon is to be utilized to reduce the price of those products at retail stores in the recipient’s area, and at least 60 percent of the revenue per month of the offeror is derived from the sale of the product or products being purchased without the use of the “cents-off” coupons.

(B) Requires the recipient to purchase goods or services from any third party in order to utilize the incentive unless:

(i) The fact that a purchase or payment is required in order to utilize the incentive is disclosed in the solicitation.

(ii) A representative sample of the establishments at which the incentive may be redeemed is disclosed in the solicitation.

(iii) If the incentive entitles the recipient to save money on the purchase of goods or services, the incentive is described as a cents-off, discount coupon, or similar term that clearly indicates that it is redeemable only for savings on purchases of goods or services.

(2) The solicitation states or implies that the caller is likely to receive one of the prizes offered, by representing in the solicitation that other named persons have already won the other prizes being offered in the solicitation and that the recipient of the solicitation is therefore likely to receive the prize that has not been won by the other persons named in the solicitation, unless the recipient’s odds of receiving the remaining prize are clearly and conspicuously disclosed in the solicitation in close proximity to the list of the other named persons.



(i) Nothing contained in this section shall be deemed to render lawful any activity that otherwise would violate Section 17537.

(j) No information-access service shall offer a game of skill in which the cost of the call is billed on a usage-sensitive basis and in which answers to multiple choice questions of increasing difficulty are required in order to win, unless the solicitation clearly and conspicuously discloses the percentage of contestants anticipated to answer all questions correctly based on prior experience or, if the game is being operated for the first time, based on a good faith estimate.

(k) This section does not apply to a regional telephone operating company, interexchange carrier, or local telephone company operating in those capacities, that in good faith telecommunicates an information-access program without knowledge that the program or related advertising violates any provision of this section, Section 17539.55, or Section 17539.6.

(l) Neither this section, Section 17539.55, nor Section 17539.6 applies to the California State Lottery.

SEC. 17. Section 17539.55 of the Business and Professions Code is amended to read:

17539.55. (a) It shall be unlawful to operate a sweepstakes in this state through the use of a 900 number, unless the information provider registers with the Department of Justice as provided in this section within 10 days after causing any advertisement for the sweepstakes to be directed to any person in this state.

(b) The registration shall include the following information:

(1) Each 900 number to be used in the sweepstakes.

(2) The name and address of the information provider including corporate identity, if any, and the name and address for the information provider's agent for service of process within the state.

(3) A copy of the information provider's audio text, prerecorded, or live operator scripts.

(4) A copy of the official rules for the sweepstakes.



(5) For television, video, or any on-screen advertisements, a copy of the storyboard and videotape.

(6) For radio advertisements, a copy of the script and audio cassette recording.

(7) For print or electronic form transmitted over the Internet, a copy of all advertisements.

(8) For direct mail solicitations, a copy of all principal solicitations.

(9) For telephone solicitations, a copy of the script.

(10) The names of the carriers which the information provider plans to utilize to carry the 900 number calls.

(c) The information provider shall pay an annual registration fee of fifty dollars (\$50) for each 900 number used for sweepstakes purposes.

(d) It shall be unlawful for any information provider that operates a sweepstakes to make reference, in any contact with the public, to the fact that the information provider is registered with the Department of Justice, as required by this section, or in any other manner imply that such registration represents approval of the sweepstakes by the Department of Justice.

SEC. 18. Section 16 of this bill incorporates amendments to Section 17539.5 of the Business and Professions Code proposed by both this bill and SB 1476. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 17539.5 of the Business and Professions Code, and (3) this bill is enacted after SB 1476, in which case Section 15 of this bill shall not become operative.

SEC. 19. 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.



Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.



Approved _____, 1998

Governor

