

ASSEMBLY BILL

No. 1629

Introduced by Assembly Member Miller

January 5, 1998

An act to add Section 17538.45 to the Business and Professions Code, relating to advertising.

LEGISLATIVE COUNSEL'S DIGEST

AB 1629, as introduced, Miller. Advertising: electronic mail.

Existing law prohibits a person conducting business in this state from faxing unsolicited advertising material, unless certain conditions are satisfied.

This bill would also prohibit a person conducting business in the state from using a computer or other electronic device to send an unsolicited advertisement to an electronic mail address within the state unless (1) that person has a preexisting and ongoing business or personal relationship with the recipient, or absent that relationship, the recipient has previously provided express consent or permission with respect to the advertisement and (2) that person provides certain identifying information at the beginning of the advertisement. It would also authorize any person with legal standing to bring an action in a court of competent jurisdiction to enjoin any violation of these prohibitions, or to recover civil damages, as specified, or to seek both of those remedies. It would also provide that the prevailing party in any of those actions shall be entitled to recover reasonable attorney's fees.

Existing law provides for the regulation of advertising and provides that any violation of those provisions is a crime. This bill, by creating additional prohibitions with regard to advertising, would expand the scope of an existing crime, thereby imposing 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 17538.45 is added to the Business
2 and Professions Code, to read:
3 17538.45. (a) No person conducting business in this
4 state shall use any computer or other electronic device to
5 send an unsolicited advertisement to an electronic mail
6 address within the state unless each of the following
7 requirements are satisfied:
8 (1) That person has a preexisting and ongoing business
9 or personal relationship with the recipient, or absent that
10 relationship, the recipient has previously provided
11 express consent or permission with respect to the
12 advertisement.
13 (2) That person clearly provides, at the beginning of
14 the unsolicited advertisement, the date and time the
15 message was sent, the identity of the person sending the
16 message, and the return electronic mail address of that
17 person.
18 (b) (1) Notwithstanding Sections 17535 and 17536,
19 any person who has legal standing may bring an action in
20 a court of competent jurisdiction for either or both of the
21 following purposes:
22 (A) To enjoy any violation of this section.
23 (B) To recover civil damages in an amount equal to
24 the actual monetary loss suffered by that person by reason



1 of any violation, or five hundred dollars (\$500) for each
2 violation, whichever amount is greater. However, if the
3 court finds that a violation of this section was willful or
4 knowing, the court may, in its discretion, award up to
5 three times the amount of those civil damages.

6 (2) The prevailing party in any action brought under
7 paragraph (1) shall be entitled to recover reasonable
8 attorney's fees.

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

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

