

AMENDED IN ASSEMBLY APRIL 21, 1998
AMENDED IN ASSEMBLY APRIL 14, 1998
AMENDED IN ASSEMBLY MARCH 12, 1998

CALIFORNIA LEGISLATURE—1997-98 REGULAR SESSION

ASSEMBLY BILL

No. 1629

**Introduced by Assembly Members Miller and Cunneen
(Coauthors: Assembly Members Alquist, Baldwin,
Bordonaro, Campbell, Frusetta, Leach, Lempert,
Morrissey, and Runner)**

January 5, 1998

An act to add Section 17538.45 to the Business and Professions Code, and to amend Section 502 of the Penal Code, relating to electronic mail.

LEGISLATIVE COUNSEL'S DIGEST

AB 1629, as amended, Miller. Electronic mail.

(1) 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 registered user of an electronic mail service provider, as defined, from using or causing to be used the provider's service or equipment in violation of the provider's published policy prohibiting or restricting the use of its service of equipment for the initiation of unsolicited electronic mail advertisements. It would also prohibit any individual, corporation, or other entity from using or causing to be used, by initiating an unsolicited

electronic mail advertisement, an electronic mail service provider's service or equipment in violation of the provider's published policy prohibiting or restricting the use of its service or equipment to deliver unsolicited electronic mail advertisements to its registered users. It would authorize any electronic mail service provider whose published policy is violated as provided in these provisions to bring a civil action to recover damages, as specified, and would provide that the prevailing party in that action shall be entitled to recover reasonable attorney's fees.

(2) 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.

(3) Existing law makes it a crime to knowingly and without permission tamper with, interfere with, damage, or gain unlawful access to certain computers, computer systems, and computer data.

This bill would, in addition, make it a crime to knowingly and without permission use the Internet domain name, as defined, of another individual, corporation, or entity in connection with the sending of one or more electronic mail messages and to thereby disrupt or cause the disruption of computer services or deny or cause the denial of computer services to an authorized user of a computer, computer system, or computer network. By creating a new crime, this bill 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. Section 17538.45 is added to the Business
2 and Professions Code, to read:

3 17538.45. (a) For purposes of this section, the
4 following words have the following meanings:

5 (1) “Electronic mail advertisement” means any
6 electronic mail message, the principal purpose of which
7 is to promote, directly or indirectly, the sale or other
8 distribution of goods or services.

9 (2) “Unsolicited electronic mail advertisement”
10 means any electronic mail advertisement that meets both
11 of the following requirements:

12 (A) It is addressed to a recipient with whom the
13 initiator does not have an existing business or personal
14 relationship.

15 (B) It is not sent at the request of or with the express
16 consent of the recipient.

17 (3) “Electronic mail service provider” means any
18 business or organization qualified to do business in
19 California that provides registered users the ability to
20 send or receive electronic mail.

21 (4) “Initiation” of an unsolicited electronic mail
22 advertisement refers to the action by the initial sender of
23 the electronic mail advertisement. It does not refer to the
24 actions of any intervening electronic mail service
25 provider that may handle or retransmit the electronic
26 message.

27 (5) “Publish” means to do either of the following with
28 respect to the electronic mail service provider’s policy on
29 unsolicited electronic mail advertisements:

30 (A) Make that policy available upon request in written
31 form, at no charge.

32 (B) Display that policy through an on-line notice on
33 the Internet home page of the electronic mail service
34 provider, or a page accessible through a conspicuous link
35 on the Internet home page of the electronic mail service
36 provider.



1 (6) “Registered user” means any individual,
2 corporation, or other entity that maintains an electronic
3 mail address with an electronic mail service provider.

4 (b) No registered user of an electronic mail service
5 provider shall use or cause to be used that electronic mail
6 service provider’s service or equipment in violation of
7 that electronic mail service provider’s published policy
8 prohibiting or restricting the use of its service or
9 equipment for the initiation of unsolicited electronic mail
10 advertisements.

11 (c) No individual, corporation, or other entity shall use
12 or cause to be used, by initiating an unsolicited electronic
13 mail advertisement, an electronic mail service provider’s
14 service or equipment in violation of that electronic mail
15 service provider’s published policy prohibiting or
16 restricting the use of its service or equipment to deliver
17 unsolicited electronic mail advertisements to its
18 registered users.

19 (d) An electronic mail service provider shall not be
20 required to create a policy prohibiting or restricting the
21 use of its service or equipment for the initiation or
22 delivery of unsolicited electronic mail advertisements.

23 (e) (1) In addition to any action available under
24 Section 17536, any electronic mail service provider whose
25 published policy on unsolicited electronic mail
26 advertisements is violated as provided in this section may
27 bring a civil action to recover the actual monetary loss
28 suffered by that provider by reason of that violation, or
29 fifty dollars (\$50) for each electronic mail message
30 initiated or delivered in violation of this section, ~~up to a~~
31 ~~maximum of fifteen thousand dollars (\$15,000) per day,~~
32 whichever amount is greater.

33 (2) The prevailing party in any action brought under
34 paragraph (1) shall be entitled to recover reasonable
35 attorney’s fees.

36 SEC. 2. Section 502 of the Penal Code is amended to
37 read:

38 502. (a) It is the intent of the Legislature in enacting
39 this section to expand the degree of protection afforded
40 to individuals, businesses, and governmental agencies



1 from tampering, interference, damage, and
2 unauthorized access to lawfully created computer data
3 and computer systems. The Legislature finds and
4 declares that the proliferation of computer technology
5 has resulted in a concomitant proliferation of computer
6 crime and other forms of unauthorized access to
7 computers, computer systems, and computer data.

8 The Legislature further finds and declares that
9 protection of the integrity of all types and forms of
10 lawfully created computers, computer systems, and
11 computer data is vital to the protection of the privacy of
12 individuals as well as to the well-being of financial
13 institutions, business concerns, governmental agencies,
14 and others within this state that lawfully utilize those
15 computers, computer systems, and data.

16 (b) For the purposes of this section, the following
17 terms have the following meanings:

18 (1) "Access" means to gain entry to, instruct, or
19 communicate with the logical, arithmetical, or memory
20 function resources of a computer, computer system, or
21 computer network.

22 (2) "Computer network" means any system that
23 provides communications between one or more
24 computer systems and input/output devices including,
25 but not limited to, display terminals and printers
26 connected by telecommunication facilities.

27 (3) "Computer program or software" means a set of
28 instructions or statements, and related data, that when
29 executed in actual or modified form, cause a computer,
30 computer system, or computer network to perform
31 specified functions.

32 (4) "Computer services" includes, but is not limited to,
33 computer time, data processing, or storage functions, or
34 other uses of a computer, computer system, or computer
35 network.

36 (5) "Computer system" means a device or collection
37 of devices, including support devices and excluding
38 calculators that are not programmable and capable of
39 being used in conjunction with external files, one or more
40 of which contain computer programs, electronic



1 instructions, input data, and output data, that performs
2 functions including, but not limited to, logic, arithmetic,
3 data storage and retrieval, communication, and control.

4 (6) “Data” means a representation of information,
5 knowledge, facts, concepts, computer software,
6 computer programs or instructions. Data may be in any
7 form, in storage media, or as stored in the memory of the
8 computer or in transit or presented on a display device.

9 (7) “Supporting documentation” includes, but is not
10 limited to, all information, in any form, pertaining to the
11 design, construction, classification, implementation, use,
12 or modification of a computer, computer system,
13 computer network, computer program, or computer
14 software, which information is not generally available to
15 the public and is necessary for the operation of a
16 computer, computer system, computer network,
17 computer program, or computer software.

18 (8) “Injury” means any alteration, deletion, damage,
19 or destruction of a computer system, computer network,
20 computer program, or data caused by the access.

21 (9) “Victim expenditure” means any expenditure
22 reasonably and necessarily incurred by the owner or
23 lessee to verify that a computer system, computer
24 network, computer program, or data was or was not
25 altered, deleted, damaged, or destroyed by the access.

26 (10) “Computer contaminant” means any set of
27 computer instructions that are designed to modify,
28 damage, destroy, record, or transmit information within
29 a computer, computer system, or computer network
30 without the intent or permission of the owner of the
31 information. They include, but are not limited to, a group
32 of computer instructions commonly called viruses or
33 worms, that are self-replicating or self-propagating and
34 are designed to contaminate other computer programs or
35 computer data, consume computer resources, modify,
36 destroy, record, or transmit data, or in some other fashion
37 usurp the normal operation of the computer, computer
38 system, or computer network.

39 (11) “Internet domain name” means a globally
40 unique, hierarchical reference to an Internet host or



1 service, assigned through centralized Internet naming
2 authorities, comprising a series of character strings
3 separated by periods, with the rightmost character string
4 specifying the top of the hierarchy.

5 (c) Except as provided in subdivision (h), any person
6 who commits any of the following acts is guilty of a public
7 offense:

8 (1) Knowingly accesses and without permission alters,
9 damages, deletes, destroys, or otherwise uses any data,
10 computer, computer system, or computer network in
11 order to either (A) devise or execute any scheme or
12 artifice to defraud, deceive, or extort, or (B) wrongfully
13 control or obtain money, property, or data.

14 (2) Knowingly accesses and without permission takes,
15 copies, or makes use of any data from a computer,
16 computer system, or computer network, or takes or
17 copies any supporting documentation, whether existing
18 or residing internal or external to a computer, computer
19 system, or computer network.

20 (3) Knowingly and without permission uses or causes
21 to be used computer services.

22 (4) Knowingly accesses and without permission adds,
23 alters, damages, deletes, or destroys any data, computer
24 software, or computer programs which reside or exist
25 internal or external to a computer, computer system, or
26 computer network.

27 (5) Knowingly and without permission disrupts or
28 causes the disruption of computer services or denies or
29 causes the denial of computer services to an authorized
30 user of a computer, computer system, or computer
31 network.

32 (6) Knowingly and without permission provides or
33 assists in providing a means of accessing a computer,
34 computer system, or computer network in violation of
35 this section.

36 (7) Knowingly and without permission accesses or
37 causes to be accessed any computer, computer system, or
38 computer network.



1 (8) Knowingly introduces any computer contaminant
 2 into any computer, computer system, or computer
 3 network.

4 (9) Knowingly and without permission uses the
 5 Internet domain name of another individual,
 6 corporation, or entity in connection with the sending of
 7 one or more electronic mail messages and thereby
 8 disrupts or causes the disruption of computer services or
 9 denies or causes the denial of computer services to an
 10 authorized user of a computer, computer system, or
 11 computer network.

12 (d) (1) Any person who violates any of the provisions
 13 of paragraph (1), (2), (4), or (5) of subdivision (c) is
 14 punishable by a fine not exceeding ten thousand dollars
 15 (\$10,000), or by imprisonment in the state prison for 16
 16 months, or two or three years, or by both that fine and
 17 imprisonment, or by a fine not exceeding five thousand
 18 dollars (\$5,000), or by imprisonment in a county jail not
 19 exceeding one year, or by both that fine and
 20 imprisonment.

21 (2) Any person who violates paragraph (3) of
 22 subdivision (c) is punishable as follows:

23 (A) For the first violation that does not result in injury,
 24 and where the value of the computer services used does
 25 not exceed four hundred dollars (\$400), by a fine not
 26 exceeding five thousand dollars (\$5,000), or by
 27 imprisonment in a county jail not exceeding one year, or
 28 by both that fine and imprisonment.

29 (B) For any violation that results in a victim
 30 expenditure in an amount greater than five thousand
 31 dollars (\$5,000) or in an injury, or if the value of the
 32 computer services used exceeds four hundred dollars
 33 (\$400), or for any second or subsequent violation, by a
 34 fine not exceeding ten thousand dollars (\$10,000), or by
 35 imprisonment in the state prison for 16 months, or two or
 36 three years, or by both that fine and imprisonment, or by
 37 a fine not exceeding five thousand dollars (\$5,000), or by
 38 imprisonment in a county jail not exceeding one year, or
 39 by both that fine and imprisonment.



1 (3) Any person who violates paragraph (6), (7), (8), or
2 (9) of subdivision (c) is punishable as follows:

3 (A) For a first violation that does not result in injury,
4 an infraction punishable by a fine not exceeding two
5 hundred fifty dollars (\$250).

6 (B) For any violation that results in a victim
7 expenditure in an amount not greater than five thousand
8 dollars (\$5,000), or for a second or subsequent violation,
9 by a fine not exceeding five thousand dollars (\$5,000), or
10 by imprisonment in a county jail not exceeding one year,
11 or by both that fine and imprisonment.

12 (C) For any violation that results in a victim
13 expenditure in an amount greater than five thousand
14 dollars (\$5,000), by a fine not exceeding ten thousand
15 dollars (\$10,000), or by imprisonment in the state prison
16 for 16 months, or two or three years, or by both that fine
17 and imprisonment, or by a fine not exceeding five
18 thousand dollars (\$5,000), or by imprisonment in a county
19 jail not exceeding one year, or by both that fine and
20 imprisonment.

21 (e) (1) In addition to any other civil remedy
22 available, the owner or lessee of the computer, computer
23 system, computer network, computer program, or data
24 may bring a civil action against any person convicted
25 under this section for compensatory damages, including
26 any expenditure reasonably and necessarily incurred by
27 the owner or lessee to verify that a computer system,
28 computer network, computer program, or data was or
29 was not altered, damaged, or deleted by the access. For
30 the purposes of actions authorized by this subdivision, the
31 conduct of an unemancipated minor shall be imputed to
32 the parent or legal guardian having control or custody of
33 the minor, pursuant to the provisions of Section 1714.1 of
34 the Civil Code.

35 (2) In any action brought pursuant to this subdivision
36 the court may award reasonable attorney's fees to a
37 prevailing party.

38 (3) A community college, state university, or
39 academic institution accredited in this state is required to
40 include computer-related crimes as a specific violation of



1 college or university student conduct policies and
2 regulations that may subject a student to disciplinary
3 sanctions up to and including dismissal from the academic
4 institution. This paragraph shall not apply to the
5 University of California unless the Board of Regents
6 adopts a resolution to that effect.

7 (f) This section shall not be construed to preclude the
8 applicability of any other provision of the criminal law of
9 this state which applies or may apply to any transaction,
10 nor shall it make illegal any employee labor relations
11 activities that are within the scope and protection of state
12 or federal labor laws.

13 (g) Any computer, computer system, computer
14 network, or any software or data, owned by the
15 defendant, that is used during the commission of any
16 public offense described in subdivision (c) or any
17 computer, owned by the defendant, which is used as a
18 repository for the storage of software or data illegally
19 obtained in violation of subdivision (c) shall be subject to
20 forfeiture, as specified in Section 502.01.

21 (h) (1) Subdivision (c) does not apply to any person
22 who accesses his or her employer's computer system,
23 computer network, computer program, or data when
24 acting within the scope of his or her lawful employment.

25 (2) Paragraph (3) of subdivision (c) does not apply to
26 any employee who accesses or uses his or her employer's
27 computer system, computer network, computer
28 program, or data when acting outside the scope of his or
29 her lawful employment, so long as the employee's
30 activities do not cause an injury, as defined in paragraph
31 (8) of subdivision (b), to the employer or another, or so
32 long as the value of supplies and computer services, as
33 defined in paragraph (4) of subdivision (b), which are
34 used do not exceed an accumulated total of one hundred
35 dollars (\$100).

36 (i) No activity exempted from prosecution under
37 paragraph (2) of subdivision (h) which incidentally
38 violates paragraph (2), (4), or (7) of subdivision (c) shall
39 be prosecuted under those paragraphs.



1 (j) For purposes of bringing a civil or a criminal action
2 under this section, a person who causes, by any means, the
3 access of a computer, computer system, or computer
4 network in one jurisdiction from another jurisdiction is
5 deemed to have personally accessed the computer,
6 computer system, or computer network in each
7 jurisdiction.

8 (k) In determining the terms and conditions
9 applicable to a person convicted of a violation of this
10 section the court shall consider the following:

11 (1) The court shall consider prohibitions on access to
12 and use of computers.

13 (2) Except as otherwise required by law, the court
14 shall consider alternate sentencing, including community
15 service, if the defendant shows remorse and recognition
16 of the wrongdoing, and an inclination not to repeat the
17 offense.

18 SEC. 3. No reimbursement is required by this act
19 pursuant to Section 6 of Article XIII B of the California
20 Constitution because the only costs that may be incurred
21 by a local agency or school district will be incurred
22 because this act creates a new crime or infraction,
23 eliminates a crime or infraction, or changes the penalty
24 for a crime or infraction, within the meaning of Section
25 17556 of the Government Code, or changes the definition
26 of a crime within the meaning of Section 6 of Article
27 XIII B of the California Constitution.

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

