

AMENDED IN SENATE JUNE 11, 1998
AMENDED IN ASSEMBLY MAY 14, 1998
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, in addition to any other action available under law, 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, *as specified*.

(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 *to the recipient*.

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 *through equipment*
21 *located in this state and that is an intermediary in sending*
22 *or receiving electronic mail*.

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

29 (5) “Publish” means to do ~~either~~ *both* of the following
30 with respect to the electronic mail service provider’s
31 policy on unsolicited electronic mail advertisements:

32 (A) Make that policy available upon request in written
33 form, *including, but not limited to, digital form*, at no
34 charge.

35 (B) Display that policy through an on-line notice on
36 the Internet home page *or other initial screen* of the
37 electronic mail service provider, or a page *or screen*
38 accessible through a ~~conspicuous~~ *readily accessible* link



1 on the ~~Internet home page~~ *home page or other initial*
2 *screen* of the electronic mail service provider.

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

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

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

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

25 (e) *Nothing in this section shall be construed to limit*
26 *or restrict the rights of an electronic mail service provider*
27 *under Section 230(c)(1) of Title 47 of the United States*
28 *Code, or any decision of an electronic mail service*
29 *provider to permit or to restrict access to or use of its*
30 *system, or any exercise of its editorial function.*

31 (f) (1) In addition to any other action available under
32 law, any electronic mail service provider whose
33 published policy on unsolicited electronic mail
34 advertisements is violated as provided in this section may
35 bring a civil action to recover the actual monetary loss
36 suffered by that provider by reason of that violation, or
37 liquidated damages of fifty dollars (\$50) for each
38 electronic mail message initiated or delivered in violation
39 of this section, up to a maximum of fifteen thousand
40 dollars (\$15,000) per day, whichever amount is greater.



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

4 (3) *In any action brought pursuant to paragraph (1),*
5 *the electronic mail service provider shall be required to*
6 *establish as an element of its cause of action that its policy*
7 *on unsolicited electronic mail advertisements had been*
8 *published for at least 30 days preceding the alleged*
9 *violation of that policy.*

10 SEC. 2. Section 502 of the Penal Code is amended to
11 read:

12 502. (a) It is the intent of the Legislature in enacting
13 this section to expand the degree of protection afforded
14 to individuals, businesses, and governmental agencies
15 from tampering, interference, damage, and
16 unauthorized access to lawfully created computer data
17 and computer systems. The Legislature finds and
18 declares that the proliferation of computer technology
19 has resulted in a concomitant proliferation of computer
20 crime and other forms of unauthorized access to
21 computers, computer systems, and computer data.

22 The Legislature further finds and declares that
23 protection of the integrity of all types and forms of
24 lawfully created computers, computer systems, and
25 computer data is vital to the protection of the privacy of
26 individuals as well as to the well-being of financial
27 institutions, business concerns, governmental agencies,
28 and others within this state that lawfully utilize those
29 computers, computer systems, and data.

30 (b) For the purposes of this section, the following
31 terms have the following meanings:

32 (1) "Access" means to gain entry to, instruct, or
33 communicate with the logical, arithmetical, or memory
34 function resources of a computer, computer system, or
35 computer network.

36 (2) "Computer network" means any system that
37 provides communications between one or more
38 computer systems and input/output devices including,
39 but not limited to, display terminals and printers
40 connected by telecommunication facilities.



1 (3) “Computer program or software” means a set of
2 instructions or statements, and related data, that when
3 executed in actual or modified form, cause a computer,
4 computer system, or computer network to perform
5 specified functions.

6 (4) “Computer services” includes, but is not limited to,
7 computer time, data processing, or storage functions, or
8 other uses of a computer, computer system, or computer
9 network.

10 (5) “Computer system” means a device or collection
11 of devices, including support devices and excluding
12 calculators that are not programmable and capable of
13 being used in conjunction with external files, one or more
14 of which contain computer programs, electronic
15 instructions, input data, and output data, that performs
16 functions including, but not limited to, logic, arithmetic,
17 data storage and retrieval, communication, and control.

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

23 (7) “Supporting documentation” includes, but is not
24 limited to, all information, in any form, pertaining to the
25 design, construction, classification, implementation, use,
26 or modification of a computer, computer system,
27 computer network, computer program, or computer
28 software, which information is not generally available to
29 the public and is necessary for the operation of a
30 computer, computer system, computer network,
31 computer program, or computer software.

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

35 (9) “Victim expenditure” means any expenditure
36 reasonably and necessarily incurred by the owner or
37 lessee to verify that a computer system, computer
38 network, computer program, or data was or was not
39 altered, deleted, damaged, or destroyed by the access.



1 (10) “Computer contaminant” means any set of
2 computer instructions that are designed to modify,
3 damage, destroy, record, or transmit information within
4 a computer, computer system, or computer network
5 without the intent or permission of the owner of the
6 information. They include, but are not limited to, a group
7 of computer instructions commonly called viruses or
8 worms, that are self-replicating or self-propagating and
9 are designed to contaminate other computer programs or
10 computer data, consume computer resources, modify,
11 destroy, record, or transmit data, or in some other fashion
12 usurp the normal operation of the computer, computer
13 system, or computer network.

14 (11) “Internet domain name” means a globally
15 unique, hierarchical reference to an Internet host or
16 service, assigned through centralized Internet naming
17 authorities, comprising a series of character strings
18 separated by periods, with the rightmost character string
19 specifying the top of the hierarchy.

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

23 (1) Knowingly accesses and without permission alters,
24 damages, deletes, destroys, or otherwise uses any data,
25 computer, computer system, or computer network in
26 order to either (A) devise or execute any scheme or
27 artifice to defraud, deceive, or extort, or (B) wrongfully
28 control or obtain money, property, or data.

29 (2) Knowingly accesses and without permission takes,
30 copies, or makes use of any data from a computer,
31 computer system, or computer network, or takes or
32 copies any supporting documentation, whether existing
33 or residing internal or external to a computer, computer
34 system, or computer network.

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

37 (4) Knowingly accesses and without permission adds,
38 alters, damages, deletes, or destroys any data, computer
39 software, or computer programs which reside or exist



1 internal or external to a computer, computer system, or
2 computer network.

3 (5) Knowingly and without permission disrupts or
4 causes the disruption of computer services or denies or
5 causes the denial of computer services to an authorized
6 user of a computer, computer system, or computer
7 network.

8 (6) Knowingly and without permission provides or
9 assists in providing a means of accessing a computer,
10 computer system, or computer network in violation of
11 this section.

12 (7) Knowingly and without permission accesses or
13 causes to be accessed any computer, computer system, or
14 computer network.

15 (8) Knowingly introduces any computer contaminant
16 into any computer, computer system, or computer
17 network.

18 (9) Knowingly and without permission uses the
19 Internet domain name of another individual,
20 corporation, or entity in connection with the sending of
21 one or more electronic mail messages—~~and thereby~~
22 ~~disrupts or causes the disruption of computer services or~~
23 ~~denies or causes the denial of computer services to an~~
24 ~~authorized user of a computer, computer system, or~~
25 ~~computer network.~~

26 (d) (1) Any person who violates any of the provisions
27 of paragraph (1), (2), (4), or (5) of subdivision (c) is
28 punishable by a fine not exceeding ten thousand dollars
29 (\$10,000), or by imprisonment in the state prison for 16
30 months, or two or three years, or by both that fine and
31 imprisonment, or by a fine not exceeding five thousand
32 dollars (\$5,000), or by imprisonment in a county jail not
33 exceeding one year, or by both that fine and
34 imprisonment.

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

37 (A) For the first violation that does not result in injury,
38 and where the value of the computer services used does
39 not exceed four hundred dollars (\$400), by a fine not
40 exceeding five thousand dollars (\$5,000), or by



1 imprisonment in a county jail not exceeding one year, or
2 by both that fine and imprisonment.

3 (B) For any violation that results in a victim
4 expenditure in an amount greater than five thousand
5 dollars (\$5,000) or in an injury, or if the value of the
6 computer services used exceeds four hundred dollars
7 (\$400), or for any second or subsequent violation, by a
8 fine not exceeding ten thousand dollars (\$10,000), or by
9 imprisonment in the state prison for 16 months, or two or
10 three years, or by both that fine and imprisonment, or by
11 a fine not exceeding five thousand dollars (\$5,000), or by
12 imprisonment in a county jail not exceeding one year, or
13 by both that fine and imprisonment.

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

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

19 (B) For any violation that results in a victim
20 expenditure in an amount not greater than five thousand
21 dollars (\$5,000), or for a second or subsequent violation,
22 by a fine not exceeding five thousand dollars (\$5,000), or
23 by imprisonment in a county jail not exceeding one year,
24 or by both that fine and imprisonment.

25 (C) For any violation that results in a victim
26 expenditure in an amount greater than five thousand
27 dollars (\$5,000), by a fine not exceeding ten thousand
28 dollars (\$10,000), or by imprisonment in the state prison
29 for 16 months, or two or three years, or by both that fine
30 and imprisonment, or by a fine not exceeding five
31 thousand dollars (\$5,000), or by imprisonment in a county
32 jail not exceeding one year, or by both that fine and
33 imprisonment.

34 (e) (1) In addition to any other civil remedy
35 available, the owner or lessee of the computer, computer
36 system, computer network, computer program, or data
37 may bring a civil action against any person convicted
38 under this section for compensatory damages, including
39 any expenditure reasonably and necessarily incurred by
40 the owner or lessee to verify that a computer system,



1 computer network, computer program, or data was or
2 was not altered, damaged, or deleted by the access. For
3 the purposes of actions authorized by this subdivision, the
4 conduct of an unemancipated minor shall be imputed to
5 the parent or legal guardian having control or custody of
6 the minor, pursuant to the provisions of Section 1714.1 of
7 the Civil Code.

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

11 (3) A community college, state university, or
12 academic institution accredited in this state is required to
13 include computer-related crimes as a specific violation of
14 college or university student conduct policies and
15 regulations that may subject a student to disciplinary
16 sanctions up to and including dismissal from the academic
17 institution. This paragraph shall not apply to the
18 University of California unless the Board of Regents
19 adopts a resolution to that effect.

20 (f) This section shall not be construed to preclude the
21 applicability of any other provision of the criminal law of
22 this state which applies or may apply to any transaction,
23 nor shall it make illegal any employee labor relations
24 activities that are within the scope and protection of state
25 or federal labor laws.

26 (g) Any computer, computer system, computer
27 network, or any software or data, owned by the
28 defendant, that is used during the commission of any
29 public offense described in subdivision (c) or any
30 computer, owned by the defendant, which is used as a
31 repository for the storage of software or data illegally
32 obtained in violation of subdivision (c) shall be subject to
33 forfeiture, as specified in Section 502.01.

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

38 (2) Paragraph (3) of subdivision (c) does not apply to
39 any employee who accesses or uses his or her employer's
40 computer system, computer network, computer



1 program, or data when acting outside the scope of his or
2 her lawful employment, so long as the employee's
3 activities do not cause an injury, as defined in paragraph
4 (8) of subdivision (b), to the employer or another, or so
5 long as the value of supplies and computer services, as
6 defined in paragraph (4) of subdivision (b), which are
7 used do not exceed an accumulated total of one hundred
8 dollars (\$100).

9 (i) No activity exempted from prosecution under
10 paragraph (2) of subdivision (h) which incidentally
11 violates paragraph (2), (4), or (7) of subdivision (c) shall
12 be prosecuted under those paragraphs.

13 (j) For purposes of bringing a civil or a criminal action
14 under this section, a person who causes, by any means, the
15 access of a computer, computer system, or computer
16 network in one jurisdiction from another jurisdiction is
17 deemed to have personally accessed the computer,
18 computer system, or computer network in each
19 jurisdiction.

20 (k) In determining the terms and conditions
21 applicable to a person convicted of a violation of this
22 section the court shall consider the following:

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

25 (2) Except as otherwise required by law, the court
26 shall consider alternate sentencing, including community
27 service, if the defendant shows remorse and recognition
28 of the wrongdoing, and an inclination not to repeat the
29 offense.

30 SEC. 3. No reimbursement is required by this act
31 pursuant to Section 6 of Article XIII B of the California
32 Constitution because the only costs that may be incurred
33 by a local agency or school district will be incurred
34 because this act creates a new crime or infraction,
35 eliminates a crime or infraction, or changes the penalty
36 for a crime or infraction, within the meaning of Section
37 17556 of the Government Code, or changes the definition
38 of a crime within the meaning of Section 6 of Article
39 XIII B of the California Constitution.



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

O

