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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**

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

January 5, 1998

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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 equipment in violation of the

provider's published policy prohibiting or restricting the use of its 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 equipment in violation of the provider's published policy prohibiting or restricting the use of its 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. 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 both of the following with  
30 respect to the electronic mail service provider’s policy on  
31 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 readily accessible link on the home



1 page or other initial screen of the electronic mail service  
2 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 equipment located in this state in  
9 violation of that electronic mail service provider’s  
10 published policy prohibiting or restricting the use of its  
11 service or equipment for the initiation of unsolicited  
12 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 equipment located in this state in violation of that  
17 electronic mail service provider’s published policy  
18 prohibiting or restricting the use of its equipment to  
19 deliver unsolicited electronic mail advertisements to its  
20 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 equipment for the initiation or delivery of  
24 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.

22 (d) (1) Any person who violates any of the provisions  
23 of paragraph (1), (2), (4), or (5) of subdivision (c) is  
24 punishable by a fine not exceeding ten thousand dollars  
25 (\$10,000), or by imprisonment in the state prison for 16  
26 months, or two or three years, or by both that fine and  
27 imprisonment, or by a fine not exceeding five thousand  
28 dollars (\$5,000), or by imprisonment in a county jail not  
29 exceeding one year, or by both that fine and  
30 imprisonment.

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

33 (A) For the first violation that does not result in injury,  
34 and where the value of the computer services used does  
35 not exceed four hundred dollars (\$400), by a fine not  
36 exceeding five thousand dollars (\$5,000), or by  
37 imprisonment in a county jail not exceeding one year, or  
38 by both that fine and imprisonment.

39 (B) For any violation that results in a victim  
40 expenditure in an amount greater than five thousand



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

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

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

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

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

30 (4) Any person who violates paragraph (9) of  
31 subdivision (c) is punishable as follows:

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

35 (B) For any violation that results in injury, or for a  
36 second or subsequent violation, by a fine not exceeding  
37 five thousand dollars (\$5,000), or by imprisonment in a  
38 county jail not exceeding one year, or by both that fine  
39 and imprisonment.

1 (e) (1) In addition to any other civil remedy  
2 available, the owner or lessee of the computer, computer  
3 system, computer network, computer program, or data  
4 may bring a civil action against any person convicted  
5 under this section for compensatory damages, including  
6 any expenditure reasonably and necessarily incurred by  
7 the owner or lessee to verify that a computer system,  
8 computer network, computer program, or data was or  
9 was not altered, damaged, or deleted by the access. For  
10 the purposes of actions authorized by this subdivision, the  
11 conduct of an unemancipated minor shall be imputed to  
12 the parent or legal guardian having control or custody of  
13 the minor, pursuant to the provisions of Section 1714.1 of  
14 the Civil Code.

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

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

27 (f) This section shall not be construed to preclude the  
28 applicability of any other provision of the criminal law of  
29 this state which applies or may apply to any transaction,  
30 nor shall it make illegal any employee labor relations  
31 activities that are within the scope and protection of state  
32 or federal labor laws.

33 (g) Any computer, computer system, computer  
34 network, or any software or data, owned by the  
35 defendant, that is used during the commission of any  
36 public offense described in subdivision (c) or any  
37 computer, owned by the defendant, which is used as a  
38 repository for the storage of software or data illegally  
39 obtained in violation of subdivision (c) shall be subject to  
40 forfeiture, as specified in Section 502.01.



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

5 (2) Paragraph (3) of subdivision (c) does not apply to  
6 any employee who accesses or uses his or her employer's  
7 computer system, computer network, computer  
8 program, or data when acting outside the scope of his or  
9 her lawful employment, so long as the employee's  
10 activities do not cause an injury, as defined in paragraph  
11 (8) of subdivision (b), to the employer or another, or so  
12 long as the value of supplies and computer services, as  
13 defined in paragraph (4) of subdivision (b), which are  
14 used do not exceed an accumulated total of one hundred  
15 dollars (\$100).

16 (i) No activity exempted from prosecution under  
17 paragraph (2) of subdivision (h) which incidentally  
18 violates paragraph (2), (4), or (7) of subdivision (c) shall  
19 be prosecuted under those paragraphs.

20 (j) For purposes of bringing a civil or a criminal action  
21 under this section, a person who causes, by any means, the  
22 access of a computer, computer system, or computer  
23 network in one jurisdiction from another jurisdiction is  
24 deemed to have personally accessed the computer,  
25 computer system, or computer network in each  
26 jurisdiction.

27 (k) In determining the terms and conditions  
28 applicable to a person convicted of a violation of this  
29 section the court shall consider the following:

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

32 (2) Except as otherwise required by law, the court  
33 shall consider alternate sentencing, including community  
34 service, if the defendant shows remorse and recognition  
35 of the wrongdoing, and an inclination not to repeat the  
36 offense.

37 SEC. 3. No reimbursement is required by this act  
38 pursuant to Section 6 of Article XIII B of the California  
39 Constitution because the only costs that may be incurred  
40 by a local agency or school district will be incurred



1 because this act creates a new crime or infraction,  
2 eliminates a crime or infraction, or changes the penalty  
3 for a crime or infraction, within the meaning of Section  
4 17556 of the Government Code, or changes the definition  
5 of a crime within the meaning of Section 6 of Article  
6 XIII B of the California Constitution.

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

