

AMENDED IN SENATE AUGUST 17, 1998  
AMENDED IN SENATE JULY 28, 1998  
AMENDED IN SENATE JUNE 29, 1998  
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,  
Morrisey, 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 17511.1 of, and to add Section 17538.45 to, the Business and Professions Code, and to amend Section 502 of the Penal Code, relating to ~~electronic mail~~ advertising.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1629, as amended, Miller. ~~Electronic~~—*Advertising: telephonic sellers: electronic mail.*

(1) Existing law provides for the regulation of telephonic sellers, as defined. It exempts from the definition of telephonic sellers certain specified persons.

This bill would add to those persons exempt from the definition of telephonic sellers certain nonprofit corporations that have been exempt from taxation under a specified provision of the Revenue and Taxation Code for a minimum of 10 years, that have maintained their principal purpose for a minimum of 10 years, and that have been incorporated in the state for a minimum of 25 years.

(2) 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 *or service* 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 *or service* in violation of the provider's published policy prohibiting or restricting the use of its equipment *or service* 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 authorize the court to award reasonable attorney's fees to a prevailing party in that action.

~~(2)~~

(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 thereby damage or cause damage to a computer, computer system, or computer network. By creating a new crime, this bill would impose a state-mandated local program.

(3)

(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 17511.1 of the Business and Professions Code is amended to read:*

2 17511.1. As used in this article, “telephonic seller” or  
3 “seller” means a person who, on his or her own behalf or  
4 through salespersons or through the use of an automatic  
5 dialing-announcing device, as defined in Section 2871 of  
6 the Public Utilities Code, causes a telephone solicitation  
7 or attempted telephone solicitation to occur which meets  
8 the criteria specified in subdivision (a), (b), (c), or (d)  
9 and who is not exempted by subdivision (e), as follows:

10 (a) A telephone solicitation or attempted telephone  
11 solicitation wherein the telephonic seller initiates  
12 telephonic contact with a prospective purchaser and  
13 represents or implies one or more of the following:

14 (1) That a prospective purchaser who buys one or  
15 more items will also receive additional or other items,  
16 whether or not of the same type as purchased, without  
17 further cost. For purposes of this subdivision, “further  
18 cost” does not include actual postage or common carrier  
19 delivery charges, if any.

20 (2) That a prospective purchaser will receive a prize  
21 or gift, if the person also encourages the prospective  
22 purchaser to do either of the following:  
23



1 (A) Purchase or rent any goods or services.

2 (B) Pay any money, including, but not limited to, a  
3 delivery or handling charge.

4 (3) That a prospective purchaser is able to obtain any  
5 item or service at a price which the seller states or implies  
6 is below the regular price of the item or service offered.  
7 This paragraph shall not apply to retailers who, within the  
8 previous 12 months, have sold a majority of their goods or  
9 services through in-person sales at retail stores.

10 (4) That a prospective purchaser who buys office  
11 equipment or supplies will, because of some unusual  
12 event or imminent price increase, be able to buy these  
13 items at prices which are below those that are usually  
14 charged or will be charged for the items.

15 (5) That the seller is a person other than the person he  
16 or she is.

17 (6) That the items for sale are manufactured or  
18 supplied by a person other than the actual manufacturer  
19 or supplier.

20 (7) That the seller is offering to sell the prospective  
21 purchaser any gold, silver, or other metals, including  
22 coins, diamonds, rubies, sapphires, or other stones, coal or  
23 other minerals, or any interest in oil, gas, or mineral fields,  
24 wells, or exploration sites, or any other investment  
25 opportunity of any type whatsoever.

26 (8) That the seller is offering to make a loan, or to  
27 arrange or assist in arranging a loan or to assist in  
28 providing information which may lead to the obtaining of  
29 a loan, unless no payment of any kind is made until the  
30 loan proceeds are disbursed to the borrower.

31 (9) That a prospective purchaser will receive a credit  
32 card, as defined in subdivision (a) of Section 1747.02 of the  
33 Civil Code, if the purchaser pays an up front or  
34 preapplication fee for the credit card to the telephonic  
35 seller.

36 (b) A solicitation or attempted solicitation which is  
37 made by telephone in response to inquiries generated by  
38 unrequested notifications sent by the seller to persons  
39 who have not previously purchased goods or services  
40 from the seller or who have not previously requested



1 credit from the seller, to a prospective purchaser wherein  
2 the seller represents or implies to the recipient of the  
3 notification that any of the following applies to the  
4 recipient:

5 (1) That the recipient has in any manner been  
6 specially selected to receive the notification or the offer  
7 contained in the notification.

8 (2) That the recipient will receive a prize or gift if the  
9 recipient calls the seller.

10 (3) That if the recipient buys one or more items from  
11 the seller, the recipient will also receive additional or  
12 other items, whether or not of the same type as  
13 purchased, without further cost or at a cost which the  
14 seller states or implies is less than the regular price of such  
15 items.

16 However, this subdivision does not apply to the  
17 solicitation of sales by a catalog seller who periodically  
18 issues and delivers catalogs to potential purchasers by  
19 mail or by other means. This exception only applies if the  
20 catalog includes a written description or illustration and  
21 the sales price of each item of merchandise offered for  
22 sale, includes at least 24 full pages of written material or  
23 illustrations, is distributed in more than one state, and has  
24 an annual circulation of not less than 250,000 customers.

25 (c) A solicitation or attempted solicitation which is  
26 made by telephone in response to inquiries generated by  
27 advertisements on behalf of the telephonic seller wherein  
28 it is represented or implied that the seller is offering to sell  
29 to the prospective purchaser any gold, silver, or other  
30 metals, including coins, diamonds, rubies, sapphires, or  
31 other stones, coal or other minerals, or any interest in oil,  
32 gas, or mineral fields, wells, or exploration sites, or any  
33 other investment opportunity of any type whatsoever.

34 (d) A solicitation or attempted solicitation which is  
35 made by telephone in response to inquiries generated by  
36 advertisements on behalf of the telephonic seller wherein  
37 it is represented or implied that the seller is offering to  
38 make a loan or to arrange or assist in arranging a loan or  
39 to assist in providing information which may lead to the



1 obtaining of a loan, unless no payment of any kind is made  
2 until the loan proceeds are disbursed to the borrower.

3 (e) For purposes of this article, “telephonic seller” or  
4 “seller” does not include any of the following:

5 (1) A person offering or selling a security qualified  
6 under Section 25110, 25120, or 25130 of the Corporations  
7 Code or exempt from qualification under Chapter 1  
8 (commencing with Section 25100) of Part 2 of Division 1  
9 of Title 4 of the Corporations Code. The fact that a notice  
10 claiming an exemption under the Corporate Securities  
11 Law of 1968 is filed with the Department of Corporations  
12 does not create an exemption under this paragraph.

13 (2) A person licensed pursuant to Part 1 (commencing  
14 with Section 10000) of Division 4, when the solicited  
15 transaction is governed by that law.

16 (3) A person licensed pursuant to Chapter 9  
17 (commencing with Section 7000) of Division 3, when the  
18 solicited transaction is governed by that law.

19 (4) A person licensed or certificated pursuant to Part  
20 2 (commencing with Section 680) of Division 1 of the  
21 Insurance Code, including a person licensed pursuant to  
22 Chapter 5 (commencing with Section 1621) thereof,  
23 when the solicited transaction is governed by that law.

24 (5) A person offering or selling a franchise registered  
25 pursuant to Section 31110 of the Corporations Code or  
26 exempt from registration under Chapter 1 (commencing  
27 with Section 31100) of Part 2 of Division 5 of Title 4 of the  
28 Corporations Code. The fact that a notice claiming an  
29 exemption under the Franchise Investment Law is filed  
30 with the Department of Corporations does not create an  
31 exemption under this paragraph.

32 (6) A person soliciting the sale of a seller assisted  
33 marketing plan, as defined in Title 2.7 (commencing with  
34 Section 1812.200) of Part 4 of Division 3 of the Civil Code,  
35 who has filed with the Attorney General the documents  
36 required by Section 1812.203 of the Civil Code.

37 (7) A person primarily soliciting the sale of a  
38 newspaper of general circulation, as defined in Article 1  
39 (commencing with Section 6000) of Chapter 1 of Division  
40 7 of Title 1 of the Government Code, a magazine, or



1 membership in a book or record club whose program  
2 operates in conformity with the requirements of Section  
3 1584.5 of the Civil Code.

4 (8) A person soliciting business from prospective  
5 purchasers who have previously purchased from the  
6 business enterprise for which the person is calling.

7 (9) A person soliciting without the intent to complete  
8 and who does not complete the sales presentation during  
9 the telephone solicitation but completes the sales  
10 presentation at a later face-to-face meeting between the  
11 solicitor and the prospective purchaser. However, if a  
12 seller, directly following a telephone solicitation, causes  
13 an individual whose primary purpose it is to go to the  
14 prospective purchaser to collect the payment or deliver  
15 any item purchased, this exemption does not apply.

16 (10) Any supervised financial institution or parent,  
17 subsidiary, or subsidiary of parent thereof. As used in this  
18 paragraph, "supervised financial institution" means any  
19 commercial bank, trust company, savings and loan  
20 association, credit union, industrial loan company,  
21 personal property broker, consumer finance lender,  
22 commercial finance lender, or insurer, provided that the  
23 institution is subject to supervision by an official or agency  
24 of this state or of the United States.

25 (11) A person soliciting the sale of a preneed funeral  
26 arrangement regulated by Article 9 (commencing with  
27 Section 7735) of Chapter 12 of Division 3.

28 (12) A person licensed pursuant to Chapter 19  
29 (commencing with Section 9600) of Division 3 when  
30 acting pursuant to that licensure.

31 (13) A person soliciting the sale of services provided by  
32 a cable television system licensed or franchised pursuant  
33 to Section 53066 of the Government Code or any other  
34 authority.

35 (14) A person or an affiliate of a person whose business  
36 is regulated by the Public Utilities Commission.

37 (15) A person soliciting the sale of a commodity  
38 pursuant to Part 2 (commencing with Section 58601) of  
39 Division 21 of the Food and Agricultural Code, if the  
40 solicitation neither intends to, nor actually results in, a



1 sale which costs the purchaser in excess of one hundred  
2 dollars (\$100).

3 (16) An issuer or subsidiary of an issuer that has a  
4 security listed on a national securities exchange or  
5 designated as a national market system security on an  
6 interdealer quotation system by the National Association  
7 of Securities Dealers, Inc., if the exchange or interdealer  
8 quotation system has been certified by rule or order of the  
9 Commissioner of Corporations under subdivision (o) of  
10 Section 25100 of the Corporations Code. A subsidiary of  
11 an issuer that qualifies for exemption under this  
12 paragraph is not itself exempt unless not less than 60  
13 percent of the voting power of its shares is owned by the  
14 qualifying issuer or issuers.

15 (17) A person soliciting exclusively the sale of  
16 telephone answering services to be provided by that  
17 person or that person's employer.

18 (18) A person soliciting a transaction regulated by the  
19 Commodity Futures Trading Commission if the person is  
20 registered or temporarily licensed for this activity with  
21 the Commodity Futures Trading Commission under the  
22 Commodity Exchange Act, (7 U.S.C. Sec. 1 et seq.), and  
23 the registration or license has not expired or been  
24 suspended or revoked.

25 (19) A person who sells coins or bullion at a price  
26 which is not more than 25 percent more than the price at  
27 which the seller is concurrently buying the same coins or  
28 bullion, if: (A) the seller has had a retail location in  
29 California from which he or she has been selling coins or  
30 bullion to the public in person for at least three years; (B)  
31 the telephonic solicitations are not the person's primary  
32 business and sales made telephonically make up less than  
33 20 percent of the person's total retail sales; and (C) the  
34 person claiming an exemption pursuant to this  
35 subdivision complies with Section 17511.3, as applicable,  
36 and subdivision (p) of Section 17511.4.

37 (20) A person licensed pursuant to Chapter 14  
38 (commencing with Section 1800) of Division 1 of the  
39 Financial Code to receive money for transmittal to



1 foreign countries if the license has not expired or been  
2 suspended or revoked.

3 (21) A person licensed as a residential mortgage  
4 lender or servicer pursuant to Division 20 (commencing  
5 with Section 50000) of the Financial Code, when acting  
6 under the authority of that license.

7 (22) *A corporation that meets all of the following*  
8 *conditions:*

9 (A) *It has been exempt from taxation under Section*  
10 *23701e of the Revenue and Taxation Code for a minimum*  
11 *of 10 years.*

12 (B) *It has maintained its principal purpose for a*  
13 *minimum of 10 years.*

14 (C) *It has been incorporated in the state for a*  
15 *minimum of 25 years.*

16 (f) In any civil proceeding alleging a violation of this  
17 article, the burden of proving an exemption or an  
18 exception from a definition is upon the person claiming  
19 it, and in any criminal proceeding alleging a violation of  
20 this article, the burden of producing evidence to support  
21 a defense based upon an exemption or an exception from  
22 a definition is upon the person claiming it.

23 (g) Compliance with this article does not satisfy nor  
24 substitute for any requirements for license, registration,  
25 or regulation mandated by other laws.

26 *SEC. 2.* Section 17538.45 is added to the Business and  
27 Professions Code, to read:

28 17538.45. (a) For purposes of this section, the  
29 following words have the following meanings:

30 (1) “Electronic mail advertisement” means any  
31 electronic mail message, the principal purpose of which  
32 is to promote, directly or indirectly, the sale or other  
33 distribution of goods or services to the recipient.

34 (2) “Unsolicited electronic mail advertisement”  
35 means any electronic mail advertisement that meets both  
36 of the following requirements:

37 (A) It is addressed to a recipient with whom the  
38 initiator does not have an existing business or personal  
39 relationship.



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

3 (3) “Electronic mail service provider” means any  
4 business or organization ~~qualified to do business~~  
5 *incorporated* in California that provides registered users  
6 the ability to send or receive electronic mail ~~through~~  
7 ~~equipment located in this state~~ and that is an  
8 intermediary in sending or receiving electronic mail.

9 (4) “Initiation” of an unsolicited electronic mail  
10 advertisement refers to the action by the initial sender of  
11 the electronic mail advertisement. It does not refer to the  
12 actions of any intervening electronic mail service  
13 provider that may handle or retransmit the electronic  
14 message.

15 (5) “Publish” means to do ~~both~~ *all* of the following with  
16 respect to the electronic mail service provider’s policy on  
17 unsolicited electronic mail advertisements:

18 (A) Make that policy available upon request in written  
19 form, including, but not limited to, digital form, at no  
20 charge.

21 (B) Display that policy through an on-line notice on  
22 the Internet home page or other initial screen of the  
23 electronic mail service provider, or a page or screen  
24 accessible through a readily accessible link on the home  
25 page or other initial screen of the electronic mail service  
26 provider.

27 (C) *Conspicuously display that policy to registered*  
28 *users during the registration process or send that policy*  
29 *to registered users by electronic mail.*

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

33 (b) No registered user of an electronic mail service  
34 provider shall use or cause to be used that electronic mail  
35 service provider’s equipment ~~located in this state or~~  
36 *service* in violation of that electronic mail service  
37 provider’s published policy prohibiting or restricting the  
38 use of its service or equipment for the initiation of  
39 unsolicited electronic mail advertisements.



1 (c) No individual, corporation, or other entity shall use  
2 or cause to be used, by initiating an unsolicited electronic  
3 mail advertisement, an electronic mail service provider's  
4 equipment ~~located in this state~~ *or service* in violation of  
5 that electronic mail service provider's published policy  
6 prohibiting or restricting the use of its equipment *or*  
7 *service* to deliver unsolicited electronic mail  
8 advertisements to its registered users.

9 (d) An electronic mail service provider shall not be  
10 required to create a policy prohibiting or restricting the  
11 use of its equipment *or service* for the initiation or  
12 delivery of unsolicited electronic mail advertisements.

13 (e) Nothing in this section shall be construed to limit  
14 or restrict the rights of an electronic mail service provider  
15 under Section 230(c)(1) of Title 47 of the United States  
16 Code, or any decision of an electronic mail service  
17 provider to permit or to restrict access to or use of its  
18 system, or any exercise of its editorial function.

19 (f) (1) In addition to any other action available under  
20 law, any electronic mail service provider whose  
21 published policy on unsolicited electronic mail  
22 advertisements is violated as provided in this section may  
23 bring a civil action to recover the actual monetary loss  
24 suffered by that provider by reason of that violation, or  
25 liquidated damages of fifty dollars (\$50) for each  
26 electronic mail message initiated or delivered in violation  
27 of this section, up to a maximum of twenty-five thousand  
28 dollars (\$25,000) per day, whichever amount is greater.

29 (2) In any action brought pursuant to paragraph (1),  
30 the court may award reasonable attorney's fees to a  
31 prevailing party.

32 (3) In any action brought pursuant to paragraph (1),  
33 the electronic mail service provider shall be required to  
34 establish as an element of its cause of action that its policy  
35 on unsolicited electronic mail advertisements had been  
36 published for at least 30 days preceding the alleged  
37 violation of that policy.

38 (4) A violation of this section shall not be subject to  
39 Section 17534.

40 ~~SEC. 2.~~



1 SEC. 3. Section 502 of the Penal Code is amended to  
2 read:

3 502. (a) It is the intent of the Legislature in enacting  
4 this section to expand the degree of protection afforded  
5 to individuals, businesses, and governmental agencies  
6 from tampering, interference, damage, and  
7 unauthorized access to lawfully created computer data  
8 and computer systems. The Legislature finds and  
9 declares that the proliferation of computer technology  
10 has resulted in a concomitant proliferation of computer  
11 crime and other forms of unauthorized access to  
12 computers, computer systems, and computer data.

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

21 (b) For the purposes of this section, the following  
22 terms have the following meanings:

23 (1) "Access" means to gain entry to, instruct, or  
24 communicate with the logical, arithmetical, or memory  
25 function resources of a computer, computer system, or  
26 computer network.

27 (2) "Computer network" means any system that  
28 provides communications between one or more  
29 computer systems and input/output devices including,  
30 but not limited to, display terminals and printers  
31 connected by telecommunication facilities.

32 (3) "Computer program or software" means a set of  
33 instructions or statements, and related data, that when  
34 executed in actual or modified form, cause a computer,  
35 computer system, or computer network to perform  
36 specified functions.

37 (4) "Computer services" includes, but is not limited to,  
38 computer time, data processing, or storage functions, or  
39 other uses of a computer, computer system, or computer  
40 network.



1 (5) “Computer system” means a device or collection  
2 of devices, including support devices and excluding  
3 calculators that are not programmable and capable of  
4 being used in conjunction with external files, one or more  
5 of which contain computer programs, electronic  
6 instructions, input data, and output data, that performs  
7 functions including, but not limited to, logic, arithmetic,  
8 data storage and retrieval, communication, and control.

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

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

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

26 (9) “Victim expenditure” means any expenditure  
27 reasonably and necessarily incurred by the owner or  
28 lessee to verify that a computer system, computer  
29 network, computer program, or data was or was not  
30 altered, deleted, damaged, or destroyed by the access.

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



1 destroy, record, or transmit data, or in some other fashion  
2 usurp the normal operation of the computer, computer  
3 system, or computer network.

4 (11) "Internet domain name" means a globally  
5 unique, hierarchical reference to an Internet host or  
6 service, assigned through centralized Internet naming  
7 authorities, comprising a series of character strings  
8 separated by periods, with the rightmost character string  
9 specifying the top of the hierarchy.

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

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

19 (2) Knowingly accesses and without permission takes,  
20 copies, or makes use of any data from a computer,  
21 computer system, or computer network, or takes or  
22 copies any supporting documentation, whether existing  
23 or residing internal or external to a computer, computer  
24 system, or computer network.

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

27 (4) Knowingly accesses and without permission adds,  
28 alters, damages, deletes, or destroys any data, computer  
29 software, or computer programs which reside or exist  
30 internal or external to a computer, computer system, or  
31 computer network.

32 (5) Knowingly and without permission disrupts or  
33 causes the disruption of computer services or denies or  
34 causes the denial of computer services to an authorized  
35 user of a computer, computer system, or computer  
36 network.

37 (6) Knowingly and without permission provides or  
38 assists in providing a means of accessing a computer,  
39 computer system, or computer network in violation of  
40 this section.



1 (7) Knowingly and without permission accesses or  
2 causes to be accessed any computer, computer system, or  
3 computer network.

4 (8) Knowingly introduces any computer contaminant  
5 into any computer, computer system, or computer  
6 network.

7 (9) Knowingly and without permission uses the  
8 Internet domain name of another individual,  
9 corporation, or entity in connection with the sending of  
10 one or more electronic mail messages, and thereby  
11 damages or causes damage to a computer, computer  
12 system, or computer network.

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

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

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

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



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

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

26 (B) For any violation that results in injury, or for a  
27 second or subsequent violation, by a fine not exceeding  
28 five thousand dollars (\$5,000), or by imprisonment in a  
29 county jail not exceeding one year, or by both that fine  
30 and imprisonment.

31 (e) (1) In addition to any other civil remedy  
32 available, the owner or lessee of the computer, computer  
33 system, computer network, computer program, or data  
34 may bring a civil action against any person convicted  
35 under this section for compensatory damages, including  
36 any expenditure reasonably and necessarily incurred by  
37 the owner or lessee to verify that a computer system,  
38 computer network, computer program, or data was or  
39 was not altered, damaged, or deleted by the access. For  
40 the purposes of actions authorized by this subdivision, the



1 conduct of an unemancipated minor shall be imputed to  
2 the parent or legal guardian having control or custody of  
3 the minor, pursuant to the provisions of Section 1714.1 of  
4 the Civil Code.

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

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

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

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

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

35 (2) Paragraph (3) of subdivision (c) does not apply to  
36 any employee who accesses or uses his or her employer's  
37 computer system, computer network, computer  
38 program, or data when acting outside the scope of his or  
39 her lawful employment, so long as the employee's  
40 activities do not cause an injury, as defined in paragraph



1 (8) of subdivision (b), to the employer or another, or so  
2 long as the value of supplies and computer services, as  
3 defined in paragraph (4) of subdivision (b), which are  
4 used do not exceed an accumulated total of one hundred  
5 dollars (\$100).

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

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

17 (k) In determining the terms and conditions  
18 applicable to a person convicted of a violation of this  
19 section the court shall consider the following:

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

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

27 ~~SEC. 3.~~

28 *SEC. 4.* No reimbursement is required by this act  
29 pursuant to Section 6 of Article XIII B of the California  
30 Constitution because the only costs that may be incurred  
31 by a local agency or school district will be incurred  
32 because this act creates a new crime or infraction,  
33 eliminates a crime or infraction, or changes the penalty  
34 for a crime or infraction, within the meaning of Section  
35 17556 of the Government Code, or changes the definition  
36 of a crime within the meaning of Section 6 of Article  
37 XIII B of the California Constitution.

38 Notwithstanding Section 17580 of the Government  
39 Code, unless otherwise specified, the provisions of this act



1 shall become operative on the same date that the act  
2 takes effect pursuant to the California Constitution.

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