

AMENDED IN ASSEMBLY MARCH 26, 1998

AMENDED IN ASSEMBLY MARCH 12, 1998

CALIFORNIA LEGISLATURE—1997-98 REGULAR SESSION

ASSEMBLY BILL

No. 1676

**Introduced by Assembly Member Bowen
(Coauthors: Assembly Members Brown, Campbell, Kuehl,
Leach, Martinez, and Mazzone)**

(Coauthors: Senators Dills, Karnette, O'Connell, Solis,
Vasconcellos, and Watson)

January 14, 1998

An act to amend Section 17538.4 of the Business and Professions Code, relating to advertising.

LEGISLATIVE COUNSEL'S DIGEST

AB 1676, as amended, Bowen. Advertising: electronic mail.

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

This bill would expand that prohibition to include the transmission of unsolicited advertising by electronic mail (e-mail), and would make several related changes.

Existing law provides for the regulation of advertising and provides that a violation of those provisions is a crime. This bill, by creating additional prohibitions with regard to advertising, would expand the scope of an existing crime, thereby imposing a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17538.4 of the Business and
2 Professions Code is amended to read:

3 17538.4. (a) No person or entity conducting business
4 in this state shall ~~fax facsimile (fax) or cause to be faxed,~~
5 ~~or electronically mail or cause to be electronically mailed,~~
6 ~~documents consisting of unsolicited advertising material~~
7 ~~for the lease, sale, rental, gift offer, or other disposition of~~
8 ~~any realty, goods, services, or extension of credit unless~~
9 ~~that person or entity establishes a toll-free telephone~~
10 ~~number which a recipient of the unsolicited faxed or~~
11 ~~electronically mailed documents may call to notify the~~
12 ~~sender not to fax or electronically mail the recipient any~~
13 ~~further unsolicited documents.~~

14 (b) ~~All unsolicited faxed or electronically mailed~~
15 ~~documents subject to this section shall include a~~
16 ~~statement, in at least 9-point type, informing the~~
17 ~~recipient of the toll-free telephone number the recipient~~
18 ~~may call, and a valid return address to which the recipient~~
19 ~~may write or electronically mail, as the case may be,~~
20 ~~notifying the sender not to fax or electronically mail the~~
21 ~~recipient any further unsolicited documents to the fax~~
22 ~~number, or numbers, or electronic mail address, or~~
23 ~~addresses, specified by the recipient.~~

24 (c) ~~Upon notification by a recipient of his or her~~
25 ~~request not to receive any further unsolicited faxed or~~
26 ~~electronically mailed documents, no person or entity~~
27 ~~conducting business in this state shall fax or cause to be~~
28 ~~faxed or electronically mail or cause to be electronically~~
29 ~~mailed any unsolicited documents to that recipient.~~



1 ~~(d) Any violation of subdivision (c) is an infraction~~
2 ~~punishable by a fine of five hundred dollars (\$500) for~~
3 ~~each and every transmission.~~

4 ~~(e) As used in this section, “fax” or “cause to be faxed”~~
5 ~~or “electronically mail” or “cause to be electronically~~
6 ~~mailed” shall not include or refer to the transmission of~~
7 ~~any documents by a telecommunications utility or~~
8 ~~Internet service provider to the extent that the~~
9 ~~telecommunications utility or Internet service provider~~
10 ~~merely carries that transmission over its network. mail~~
11 ~~(e-mail) or cause to be e-mailed, documents consisting of~~
12 ~~unsolicited advertising material for the lease, sale, rental,~~
13 ~~gift offer, or other disposition of any realty, goods,~~
14 ~~services, or extension of credit unless:~~

15 ~~(1) In the case of a fax, that person or entity establishes~~
16 ~~a toll-free telephone number that a recipient of the~~
17 ~~unsolicited faxed documents may call to notify the sender~~
18 ~~not to fax the recipient any further unsolicited~~
19 ~~documents.~~

20 ~~(2) In the case of e-mail, that person or entity~~
21 ~~establishes a toll-free telephone number or valid sender~~
22 ~~operated return e-mail address that the recipient of the~~
23 ~~unsolicited documents may call or e-mail to notify the~~
24 ~~sender not to e-mail any further unsolicited documents.~~

25 ~~(b) All unsolicited faxed or e-mailed documents~~
26 ~~subject to this section shall include a statement informing~~
27 ~~the recipient of the toll-free telephone number that the~~
28 ~~recipient may call, or a valid return address to which the~~
29 ~~recipient may write or e-mail, as the case may be,~~
30 ~~notifying the sender not to fax or e-mail the recipient any~~
31 ~~further unsolicited documents to the fax number, or~~
32 ~~numbers, or e-mail address, or addresses, specified by the~~
33 ~~recipient.~~

34 ~~In the case of faxed material, the statement shall be in~~
35 ~~at least nine-point type. In the case of e-mail, the~~
36 ~~statement shall be the first text in the body of the message~~
37 ~~and shall be of the same size as the majority of the text of~~
38 ~~the message.~~

39 ~~(c) Upon notification by a recipient of his or her~~
40 ~~request not to receive any further unsolicited faxed or~~



1 e-mailed documents, no person or entity conducting
 2 business in this state shall fax or cause to be faxed or e-mail
 3 or cause to be e-mailed any unsolicited documents to that
 4 recipient.

5 (d) Any violation of subdivision (c) is an infraction
 6 punishable by a fine of five hundred dollars (\$500) for
 7 each and every transmission.

8 (e) As used in this section, “fax” or “cause to be faxed”
 9 or “e-mail” or “cause to be e-mailed” does not include or
 10 refer to the transmission of any documents by a
 11 telecommunications utility or Internet service provider
 12 to the extent that the telecommunications utility or
 13 Internet service provider merely carries that
 14 transmission over its network.

15 (f) In the case of e-mail that consists of unsolicited
 16 advertising material for the lease, sale, rental, gift offer,
 17 or other disposition of any realty, goods, services, or
 18 extension of credit, the subject line of each and every
 19 message shall include “ADV:” as the first four characters.
 20 If these messages contain information that consists of
 21 unsolicited advertising material for the lease, sale, rental,
 22 gift offer, or other disposition of any realty, goods,
 23 services, or extension of credit, that may only be viewed,
 24 purchased, rented, leased, or held in possession by an
 25 individual 18 years of age and older, the subject line of
 26 each and every message shall include “ADV:ADLT” as
 27 the first eight characters.

28 (g) An employer who is the registered owner of more
 29 than one e-mail address may notify the person or entity
 30 conducting business in this state e-mailing or causing to
 31 be e-mailed, documents consisting of unsolicited
 32 advertising material for the lease, sale, rental, gift offer,
 33 or other disposition of any realty, goods, services, or
 34 extension of credit of the desire to cease e-mailing on
 35 behalf of all of the employees who may use
 36 employer-provided and employer-controlled e-mail
 37 addresses.

38 SEC. 2. No reimbursement is required by this act
 39 pursuant to Section 6 of Article XIII B of the California
 40 Constitution because the only costs that may be incurred



1 by a local agency or school district will be incurred
2 because this act creates a new crime or infraction,
3 eliminates a crime or infraction, or changes the penalty
4 for a crime or infraction, within the meaning of Section
5 17556 of the Government Code, or changes the definition
6 of a crime within the meaning of Section 6 of Article
7 XIII B of the California Constitution.

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

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