

AMENDED IN SENATE JUNE 30, 1998  
AMENDED IN ASSEMBLY APRIL 28, 1998  
AMENDED IN ASSEMBLY MARCH 26, 1998  
AMENDED IN ASSEMBLY MARCH 12, 1998

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1676**

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**Introduced by Assembly Member Bowen**  
**(Coauthors: Assembly Members Brown, Campbell, Kuehl,**  
**Leach, Martinez, and Mazzoni)**  
(Coauthors: Senators Dills, Karnette, O’Connell, Solis,  
Vasconcellos, and Watson)

January 14, 1998

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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 facsimile (fax) or cause to be faxed, or  
5 electronically mail (e-mail) or cause to be e-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 (1) In the case of a fax, that person or entity establishes  
10 a toll-free telephone number that a recipient of the  
11 unsolicited faxed documents may call to notify the sender  
12 not to fax the recipient any further unsolicited  
13 documents.

14 (2) In the case of e-mail, that person or entity  
15 establishes a toll-free telephone number or valid sender  
16 operated return e-mail address that the recipient of the  
17 unsolicited documents may call or e-mail to notify the  
18 sender not to e-mail any further unsolicited documents.

19 (b) All unsolicited faxed or e-mailed documents  
20 subject to this section shall include a statement informing  
21 the recipient of the toll-free telephone number that the  
22 recipient may call, or a valid return address to which the  
23 recipient may write or e-mail, as the case may be,  
24 notifying the sender not to fax or e-mail the recipient any  
25 further unsolicited documents to the fax number, or



1 numbers, or e-mail address, or addresses, specified by the  
2 recipient.

3 In the case of faxed material, the statement shall be in  
4 at least nine-point type. In the case of e-mail, the  
5 statement shall be the first text in the body of the message  
6 and shall be of the same size as the majority of the text of  
7 the message.

8 (c) Upon notification by a recipient of his or her  
9 request not to receive any further unsolicited faxed or  
10 e-mailed documents, no person or entity conducting  
11 business in this state shall fax or cause to be faxed or e-mail  
12 or cause to be e-mailed any unsolicited documents to that  
13 recipient.

14 ~~(d) Any violation of subdivision (c) is an infraction~~  
15 ~~punishable by a fine of two hundred fifty dollars (\$250)~~  
16 ~~for each and every transmission.~~

17 *(d) In the case of e-mail, this section shall apply when*  
18 *the unsolicited e-mailed documents are delivered to a*  
19 *California resident via an electronic mail service*  
20 *provider's service or equipment located in this state. For*  
21 *these purposes "electronic mail service provider" means*  
22 *any business or organization qualified to do business in*  
23 *this state that provides individuals, corporations, or other*  
24 *entities the ability to send or receive electronic mail*  
25 *through equipment located in this state and that is an*  
26 *intermediary in sending or receiving electronic mail.*

27 *(e) As used in this section, "unsolicited e-mailed*  
28 *documents" means any e-mailed document or*  
29 *documents consisting of advertising material for the*  
30 *lease, sale, rental, gift offer, or other disposition of any*  
31 *realty, goods, services, or extension of credit that meet*  
32 *both of the following requirements:*

33 *(A) The documents are addressed to a recipient with*  
34 *whom the initiator does not have an existing business or*  
35 *personal relationship.*

36 *(B) The documents are not sent at the request of, or*  
37 *with the express consent of, the recipient.*

38 ~~(e)~~

39 *(f) As used in this section, "fax" or "cause to be faxed"*  
40 *or "e-mail" or "cause to be e-mailed" does not include or*



1 refer to the transmission of any documents by a  
2 telecommunications utility or Internet service provider  
3 to the extent that the telecommunications utility or  
4 Internet service provider merely carries that  
5 transmission over its network.

6 ~~(f)~~

7 (g) In the case of e-mail that consists of unsolicited  
8 advertising material for the lease, sale, rental, gift offer,  
9 or other disposition of any realty, goods, services, or  
10 extension of credit, the subject line of each and every  
11 message shall include "ADV:" as the first four characters.  
12 If these messages contain information that consists of  
13 unsolicited advertising material for the lease, sale, rental,  
14 gift offer, or other disposition of any realty, goods,  
15 services, or extension of credit, that may only be viewed,  
16 purchased, rented, leased, or held in possession by an  
17 individual 18 years of age and older, the subject line of  
18 each and every message shall include "ADV:ADLT" as  
19 the first eight characters.

20 ~~(g)~~

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

31 SEC. 2. No reimbursement is required by this act  
32 pursuant to Section 6 of Article XIII B of the California  
33 Constitution because the only costs that may be incurred  
34 by a local agency or school district will be incurred  
35 because this act creates a new crime or infraction,  
36 eliminates a crime or infraction, or changes the penalty  
37 for a crime or infraction, within the meaning of Section  
38 17556 of the Government Code, or changes the definition  
39 of a crime within the meaning of Section 6 of Article  
40 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.

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