

AMENDED IN SENATE AUGUST 20, 1998

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.

*This bill would become inoperative if federal law on this subject is enacted.*

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



1 recipient may write or e-mail, as the case may be,  
2 notifying the sender not to fax or e-mail the recipient any  
3 further unsolicited documents to the fax number, or  
4 numbers, or e-mail address, or addresses, specified by the  
5 recipient.

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

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

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)~~

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

37 ~~(B)~~

38 (2) The documents are not sent at the request of, or  
39 with the express consent of, the recipient.

1 (f) As used in this section, “fax” or “cause to be faxed”  
2 or “e-mail” or “cause to be e-mailed” does not include or  
3 refer to the transmission of any documents by a  
4 telecommunications utility or Internet service provider  
5 to the extent that the telecommunications utility or  
6 Internet service provider merely carries that  
7 transmission over its network.

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

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 (i) *This section, or any part of this section, shall*  
32 *become inoperative on and after the date that federal law*  
33 *is enacted that prohibits or otherwise regulates the*  
34 *transmission of unsolicited advertising by electronic mail*  
35 *(e-mail).*

36 SEC. 2. No reimbursement is required by this act  
37 pursuant to Section 6 of Article XIII B of the California  
38 Constitution because the only costs that may be incurred  
39 by a local agency or school district will be incurred  
40 because this act creates a new crime or infraction,

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

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

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