

AMENDED IN ASSEMBLY MAY 8, 2008  
AMENDED IN ASSEMBLY APRIL 23, 2008  
AMENDED IN ASSEMBLY APRIL 3, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2950**

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**Introduced by Assembly Member Huffman**

February 22, 2008

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*An act to amend Section 17529.5 of the Business and Professions Code, relating to advertising.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2950, as amended, Huffman. Commercial e-mail messages: falsity and deception.

Existing state law prohibits a person or entity from advertising in a commercial e-mail advertisement that is sent either from California or to a California e-mail address if the e-mail contains or is accompanied by a 3rd party's domain name without permission, contains or is accompanied by falsified, misrepresented, or forged header information, or has a misleading subject line, and makes a violation of the prohibition a misdemeanor. Existing law authorizes the Attorney General, an e-mail service provider, or the recipient of an unsolicited commercial e-mail advertisement transmitted in violation of these provisions to bring an action to recover liquidated damages of \$1,000 per unsolicited commercial e-mail advertisement transmitted in violation of the provisions, up to \$1,000,000 per incident, subject to reduction by the court, as specified. *Existing law specifies proper venue in civil actions.*

~~This bill would declare the intent of the Legislature to regulate false and deceptive commercial electronic mail messages, as specified.~~

*This bill would also authorize a district attorney or a city attorney to bring an action under the above provisions. The bill would provide that venue in cases brought under the above provisions is also appropriate in any county in which the recipient of the commercial e-mail message resides.*

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

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

1 SECTION 1. Section 17529.5 of the Business and Professions  
2 Code is amended to read:

3 17529.5. (a) It is unlawful for any person or entity to advertise  
4 in a commercial e-mail advertisement either sent from California  
5 or sent to a California electronic mail address under any of the  
6 following circumstances:

7 (1) The e-mail advertisement contains or is accompanied by a  
8 third-party’s domain name without the permission of the third  
9 party.

10 (2) The e-mail advertisement contains or is accompanied by  
11 falsified, misrepresented, or forged header information. This  
12 paragraph does not apply to truthful information used by a third  
13 party who has been lawfully authorized by the advertiser to use  
14 that information.

15 (3) The e-mail advertisement has a subject line that a person  
16 knows would be likely to mislead a recipient, acting reasonably  
17 under the circumstances, about a material fact regarding the  
18 contents or subject matter of the message.

19 (b) (1) (A) In addition to any other remedies provided by any  
20 other provision of law, the following may bring an action against  
21 a person or entity that violates any provision of this section:

22 (i) The Attorney General, *a district attorney, or a city attorney.*

23 (ii) An electronic mail service provider.

24 (iii) A recipient of an unsolicited commercial e-mail  
25 advertisement, as defined in Section 17529.1.

26 (B) A person or entity bringing an action pursuant to  
27 subparagraph (A) may recover either or both of the following:

28 (i) Actual damages.

29 (ii) Liquidated damages of one thousand dollars (\$1,000) for  
30 each unsolicited commercial e-mail advertisement transmitted in

1 violation of this section, up to one million dollars (\$1,000,000)  
2 per incident.

3 (C) The recipient, an electronic mail service provider, or the  
4 Attorney General, *district attorney, or city attorney*, if the  
5 prevailing plaintiff, may also recover reasonable attorney's fees  
6 and costs.

7 (D) However, there shall not be a cause of action under this  
8 section against an electronic mail service provider that is only  
9 involved in the routine transmission of the e-mail advertisement  
10 over its computer network.

11 (2) If the court finds that the defendant established and  
12 implemented, with due care, practices and procedures reasonably  
13 designed to effectively prevent unsolicited commercial e-mail  
14 advertisements that are in violation of this section, the court shall  
15 reduce the liquidated damages recoverable under paragraph (1) to  
16 a maximum of one hundred dollars (\$100) for each unsolicited  
17 commercial e-mail advertisement, or a maximum of one hundred  
18 thousand dollars (\$100,000) per incident.

19 (3) (A) A person who has brought an action against a party  
20 under this section shall not bring an action against that party under  
21 Section 17529.8 or 17538.45 for the same commercial e-mail  
22 advertisement, as defined in subdivision (c) of Section 17529.1.

23 (B) A person who has brought an action against a party under  
24 Section 17529.8 or 17538.45 shall not bring an action against that  
25 party under this section for the same commercial e-mail  
26 advertisement, as defined in subdivision (c) of Section 17529.1.

27 (c) *Venue for an action brought under this section is appropriate*  
28 *in any county in which the recipient of the commercial e-mail*  
29 *message resides or in any county appropriate pursuant to Chapter*  
30 *1 (commencing with Section 392) of Title 2 of Part 2 of the Code*  
31 *of Civil Procedure.*

32 (e)

33 (d) A violation of this section is a misdemeanor, punishable by  
34 a fine of not more than one thousand dollars (\$1,000),  
35 imprisonment in a county jail for not more than six months, or  
36 both that fine and imprisonment.

37 ~~SECTION 1. It is the intent of the Legislature to regulate false~~  
38 ~~and deceptive commercial electronic mail messages within the~~  
39 ~~exception to federal preemption to the full extent permitted by the~~

- 1 ~~CAN-SPAM Act of 2003 (17 U.S.C. Sec. 7707(b)) and any other~~
- 2 ~~provision of state and federal law.~~

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