

AMENDED IN ASSEMBLY APRIL 23, 2008

AMENDED IN ASSEMBLY APRIL 3, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 2950

Introduced by Assembly Member Huffman

February 22, 2008

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2950, as amended, Huffman. ~~Computers: false or deceptive commercial~~ *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.

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

~~This bill would instead make it unlawful and a misdemeanor for any person or entity to send, initiate, or advertise in, or knowingly enable another to send, initiate, or advertise in, a commercial e-mail message that contains falsity or deception in any portion of the message or information attached thereto and that is either sent from California or to a California e-mail address. The bill would also authorize a district attorney or city attorney to bring an action for a violation of these provisions, and would authorize a court to increase or reduce damages, as specified, and to award injunctive relief.~~

~~Because a violation of the provisions of this bill would be a crime, it would impose 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-no. State-mandated local program: yes-no.~~

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

1 ~~SECTION 1. It is the intent of the Legislature to regulate false~~
 2 ~~and deceptive commercial electronic mail messages within the~~
 3 ~~exception to federal preemption to the full extent permitted by the~~
 4 ~~CAN-SPAM Act of 2003 (17 U.S.C. Sec. 7707(b)) and any other~~
 5 ~~provision of state and federal law.~~

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

8 ~~17529.5. (a) It is the intent of the Legislature that this section,~~
 9 ~~which prohibits falsity and deception in commercial e-mail~~
 10 ~~messages and attachments, shall operate within the exception to~~
 11 ~~federal preemption to the full extent permitted by the CAN-SPAM~~
 12 ~~Act of 2003 (17 U.S.C. Sec. 7707(b)) and any other provision of~~
 13 ~~federal law.~~

14 ~~(b) It is unlawful for any person or entity to send, initiate, or~~
 15 ~~advertise in, or knowingly enable or assist another to send, initiate~~
 16 ~~or advertise in, a commercial e-mail message that contains falsity~~
 17 ~~or deception in any portion of the message or information attached~~
 18 ~~thereto and that is either sent from California or sent to a California~~
 19 ~~electronic mail address. For the purposes of this section, falsity or~~

1 ~~deception in any portion of a commercial e-mail message or any~~
2 ~~information attached thereto includes, but is not limited to, any of~~
3 ~~the following:~~

4 ~~(1) The commercial e-mail message contains or is accompanied~~
5 ~~by a third-party's domain name without the permission of the third~~
6 ~~party. Accurate source or destination information shall not~~
7 ~~constitute a violation of this paragraph.~~

8 ~~(2) The e-mail advertisement contains or is accompanied by~~
9 ~~header information that is materially false or misleading, as defined~~
10 ~~in Section 7704 of Title 15 of the United States Code. This~~
11 ~~paragraph does not apply to truthful information used by a third~~
12 ~~party who has been lawfully authorized by the advertiser to use~~
13 ~~that information.~~

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

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

21 ~~(i) The Attorney General, a district attorney, or the city attorney.~~

22 ~~(ii) An electronic mail service provider.~~

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

25 ~~(B) A person or entity bringing an action pursuant to~~
26 ~~subparagraph (A) may recover or be awarded any or all of the~~
27 ~~following:~~

28 ~~(i) Actual damages.~~

29 ~~(ii) Liquidated damages of one thousand dollars (\$1,000) for~~
30 ~~each commercial e-mail message transmitted in violation of this~~
31 ~~section, up to one million dollars (\$1,000,000) per incident.~~

32 ~~(iii) If the court finds that the defendant willfully or knowingly~~
33 ~~violated this section, the court may, in its discretion, increase the~~
34 ~~amount of the award to an amount equal to not more than three~~
35 ~~times the amount otherwise awarded pursuant to clauses (i) and~~
36 ~~(ii) combined.~~

37 ~~(iv) An order enjoining violations of this section.~~

38 ~~(C) The recipient, an electronic mail service provider, the~~
39 ~~Attorney General, a district attorney, or a city attorney, if the~~

1 prevailing plaintiff, may also recover reasonable attorney's fees
2 and costs.

3 (D) However, there shall not be a cause of action under this
4 section against an electronic mail service provider that is only
5 involved in the routine transmission of the commercial e-mail
6 message over its computer network. For purposes of this section,
7 "routine transmission" does not include actions taken as an
8 advertising network.

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

17 (3) (A) A person who has brought an action against a party
18 under this section shall not bring an action against that party under
19 Section 17529.8 or 17538.45 for the same commercial e-mail
20 message or incident.

21 (B) A person who has brought an action against a party under
22 Section 17529.8 or 17538.45 shall not bring an action against that
23 party under this section for the same commercial e-mail message
24 or incident.

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

29 (e) The provisions of this section are severable. If any provision
30 of this section or its application is held invalid, the invalidity shall
31 not affect any other provision or application that can be given
32 effect without the invalid provision or application.

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

1 ~~the meaning of Section 6 of Article XIII B of the California~~
2 ~~Constitution.~~

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