

**CALIFORNIA BUSINESS AND PROFESSIONS CODE SECTION 17538.4**  
**As amended by Assembly Bill 1676 (1998)**  
**(approved by Governor September 26, 1998)**

17538.4. (a) No person or entity conducting business in this state shall facsimile (fax) or cause to be faxed, or electronically mail (e-mail) or cause to be e-mailed, documents consisting of unsolicited advertising material for the lease, sale, rental, gift offer, or other disposition of any realty, goods, services, or extension of credit unless:

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

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

(b) All unsolicited faxed or e-mailed documents subject to this section shall include a statement informing the recipient of the toll-free telephone number that the recipient may call, or a valid return address to which the recipient may write or e-mail, as the case may be, notifying the sender not to fax or e-mail the recipient any further unsolicited documents to the fax number, or numbers, or e-mail address, or addresses, specified by the recipient. In the case of faxed material, the statement shall be in at least nine-point type. In the case of e-mail, the statement shall be the first text in the body of the message and shall be of the same size as the majority of the text of the message.

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

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

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

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

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

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

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

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

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

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**CALIFORNIA BUSINESS AND PROFESSIONS CODE**  
**SECTION 17538.45**  
**Added by Assembly Bill 1629 (1998)**  
**(approved by Governor September 26, 1998)**

17538.45. (a) For purposes of this section, the following words have the following meanings:

- (1) "Electronic mail advertisement" means any electronic mail message, the principal purpose of which is to promote, directly or indirectly, the sale or other distribution of goods or services to the recipient.
- (2) "Unsolicited electronic mail advertisement" means any electronic mail advertisement that meets both of the following requirements:
  - (A) It is addressed to a recipient with whom the initiator does not have an existing business or personal relationship.
  - (B) It is not sent at the request of or with the express consent of the recipient.
- (3) "Electronic mail service provider" means any business or organization qualified to do business in California that provides registered users the ability to send or receive electronic mail through equipment located in this state and that is an intermediary in sending or receiving electronic mail.
- (4) "Initiation" of an unsolicited electronic mail advertisement refers to the action by the initial sender of the electronic mail advertisement. It does not refer to the actions of any intervening electronic mail service provider that may handle or retransmit the electronic message.
- (5) "Registered user" means any individual, corporation, or other entity that maintains an electronic mail address with an electronic mail service provider.

(b) No registered user of an electronic mail service provider shall use or cause to be used that electronic mail service provider's equipment located in this state in violation of that electronic mail service provider's policy prohibiting or restricting the use of its service or equipment for the initiation of unsolicited electronic mail advertisements.

(c) No individual, corporation, or other entity shall use or cause to be used, by initiating an unsolicited electronic mail advertisement, an electronic mail service provider's equipment located in this state in violation of that electronic mail service provider's policy prohibiting or restricting the use of its equipment to deliver unsolicited electronic mail advertisements to its registered users.

(d) An electronic mail service provider shall not be required to create a policy prohibiting or restricting the use of its equipment for the initiation or delivery of unsolicited electronic mail advertisements.

(e) Nothing in this section shall be construed to limit or restrict the rights of an electronic mail service provider under Section 230(c)(1) of Title 47 of the United States Code, or any decision of an electronic mail service provider to permit or to restrict access to or use of its system, or any exercise of its editorial function.

(f) (1) In addition to any other action available under law, any electronic mail service provider whose policy on unsolicited electronic mail advertisements is violated as provided in this section may bring a civil action to recover the actual monetary loss suffered by that provider by reason of that violation, or liquidated damages of fifty dollars (\$50) for each electronic mail message initiated or delivered in violation of this section, up to a maximum of twenty-five thousand dollars (\$25,000) per day, whichever amount is greater.

- (2) In any action brought pursuant to paragraph (1), the court may award reasonable attorney's fees to a prevailing party.
- (3) (A) In any action brought pursuant to paragraph (1), the electronic mail service provider shall be required to establish as an element of its cause of action that prior to the alleged violation, the defendant had actual notice of both of the following:
- (i) The electronic mail service provider's policy on unsolicited electronic mail advertising.
  - (ii) The fact that the defendant's unsolicited electronic mail advertisements would use or cause to be used the electronic mail service provider's equipment located in this state.
- (B) In this regard, the Legislature finds that with rapid advances in Internet technology, and electronic mail technology in particular, Internet service providers are already experimenting with embedding policy statements directly into the software running on the computers used to provide electronic mail services in a manner that displays the policy statements every time an electronic mail delivery is requested. While the state of the technology does not support such a finding at present, the Legislature believes that, in a given case at some future date, a showing that notice was supplied via electronic means between the sending and receiving computers could be held to constitute actual notice to the sender for purposes of this paragraph.
- (4) A violation of this section shall not be subject to Section 17534.