

CALIFORNIA

Cal. Bus & Prof. Code

§17538.43. Unsolicited Advertising by Fax

- (a) As used in this section, the following terms have the following meanings:
- (a)(1) "Telephone facsimile machine" means equipment that has the capacity to do either or both of the following:
 - (a)(1)(A) Transcribe text or images, or both, from paper into an electronic signal and to transmit that signal over a regular telephone line.
 - (a)(1)(B) Transcribe text or images, or both, from an electronic signal received over a regular telephone line onto paper.
 - (a)(2) "Unsolicited advertisement" means any material advertising the commercial availability or quality of any property, goods, or services that is transmitted to any person or entity without that person's or entity's prior express invitation or permission. Prior express invitation or permission may be obtained for a specific or unlimited number of advertisements and may be obtained for a specific or unlimited period of time.
- (b)(1) It is unlawful for a person or entity, if either the person or entity or the recipient is located within California, to use any telephone facsimile machine, computer, or other device to send, or cause another person or entity to use such a device to send, an unsolicited advertisement to a telephone facsimile machine.
- (b)(2) In addition to any other remedy provided by law, including a remedy provided by the Telephone Consumer Act (47 U.S.C. §227 and following [*which deals with improper use of telephone equipment*]), a person or entity may bring an action for a violation of this subdivision seeking the following relief:
- (b)(2)(A) Injunctive relief against further violations.
 - (b)(2)(B) Actual damages or statutory damages of \$500 per violation, whichever amount is greater.
 - (b)(2)(C) Both injunctive relief and damages as set forth in subparagraphs (b)(2)(A) and (b)(2)(B).
- If the court finds that the defendant willfully or knowingly violated this subdivision, the court may, in its discretion, increase the amount of the award to an amount equal to not more than three times the amount otherwise available under subparagraph (b)(2)(B).
- (c) It is unlawful for a person or entity, if either the person or entity or the recipient is located in California, to do either of the following:
- (c)(1) Initiate any communication using a telephone facsimile machine that does not clearly mark, in a margin at the top or bottom of each transmitted page or on the first page of each transmission, the date and time sent, an identification of the business, other entity, or individual sending the message, and the telephone number of the sending machine or of the business, other entity, or individual.
 - (c)(2) Use a computer or other electronic device to send any message via a telephone facsimile machine unless it is clearly marked, in a margin at the top or bottom of each transmitted page of the message or on the first page of the transmission, the date and time it is sent and the identification of the business, other entity, or individual sending the message and the telephone number of the sending machine or of the business, other entity, or individual.
- (d) This section shall not apply to a facsimile sent by or on behalf of a professional or trade

association that is a tax-exempt nonprofit organization and in furtherance of the association's tax-exempt purpose to a member of the association, provided that all of the following conditions are met:

(d)(1) The member voluntarily provided the association the facsimile number to which the facsimile was sent.

(d)(2) The facsimile is not primarily for the purpose of advertising the commercial availability or quality of any property, goods, or services of one or more third parties.

(d)(3) The member who is sent the facsimile has not requested that the association stop sending facsimiles for the purpose of advertising the commercial availability or quality of any property, goods, or services of one or more third parties.

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