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BUSINESS AND PROFESSIONS CODE - BPC

DIVISION 7. GENERAL BUSINESS REGULATIONS [16000 - 18107] (*Division 7 added by Stats. 1941, Ch. 61.*)

PART 3. REPRESENTATIONS TO THE PUBLIC [17500 - 17943] (*Part 3 added by Stats. 1941, Ch. 63.*)

CHAPTER 1. Advertising [17500 - 17606] (*Chapter 1 added by Stats. 1941, Ch. 63.*)

ARTICLE 2. Particular Offenses [17530 - 17539.6] (*Article 2 added by Stats. 1941, Ch. 63.*)

17530. It is unlawful for any person, firm, corporation, or association, or any employee or agent therefor, to make or disseminate any statement or assertion of fact in a newspaper, circular, circular or form letter, or other publication published or circulated, including over the Internet, in any language in this state, concerning the extent, location, ownership, title, or other characteristic, quality, or attribute of any real estate located in this state or elsewhere, which is known to be untrue and which is made or disseminated with the intention of misleading.

Nothing in this section shall be construed to hold the publisher of any newspaper, or any job printer, liable for any publication herein referred to unless the publisher or printer has an interest, either as owner or agent, in the real estate so advertised.

(Amended by Stats. 1998, Ch. 599, Sec. 7. Effective January 1, 1999.)

17530.1. (a) It shall be unlawful for a person to recommend to a prospective trustor any person to serve as trustee with knowledge or having reason to believe that the proposed trustee is insolvent or is about to become insolvent.

For purposes of this section, "insolvent" means a person who has ceased to pay that person's debts as they become due or whose liabilities exceed that person's assets.

(b) The provisions of this section shall not apply to any trustee named in any deed of trust or mortgage which secures a note or evidence of indebtedness on real property when such trustee acts solely in that capacity.

(Added by Stats. 1979, Ch. 763.)

17530.5. (a) It is a misdemeanor for any person, including an individual, firm, corporation, association, partnership, or joint venture, or any employee or agent thereof, to disclose any information obtained in the business of preparing federal or state income tax returns or assisting taxpayers in preparing those returns, including any instance in which this information is obtained through an electronic medium, unless the disclosure is within any of the following:

(1) Consented to in writing by the taxpayer in a separate document that states to whom the disclosure will be made and how the information will be used. If the taxpayer agrees, this separate consent document may be in the form of an electronic record, executed by an electronic signature as provided by Title 2.5 (commencing with Section 1633.1) of Part 2 of Division 3 of the Civil Code.

(2) Expressly authorized by state or federal law.

(3) Necessary to the preparation of the return.

(4) Pursuant to court order.

(b) For the purposes of this section, a person is engaged in the business of preparing federal or state income tax returns or assisting taxpayers in preparing those returns if the person does any of the following:

(1) Advertises, or gives publicity to the effect that the person prepares or assists others in the preparation of state or federal income tax returns.

(2) Prepares or assists others in the preparation of state or federal income tax returns for compensation.

(3) Files a state or federal income tax return by electronic transmittal of return data directly to the Franchise Tax Board or to the Internal Revenue Service.

(c) A disclosure prohibited by this section includes a disclosure made internally within the entity preparing or assisting in preparing the return for any purpose other than tax preparation or made by that entity to any of its subsidiaries or affiliates.

(d) For purposes of this section, "affiliate" means any entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, another entity.

(e) Contacting a taxpayer to obtain his or her written consent to disclosure does not constitute a violation of this section.

(Amended by Stats. 2000, Ch. 1084, Sec. 1. Effective January 1, 2001.)

17530.7. It is unlawful for any person, other than a funeral director as defined in Section 7615, to sell, or offer to sell, on a retail basis, a casket, alternative container, or outer burial container, unless that person does all of the following:

(a) Provides to any person, upon beginning any discussion of prices, a written or printed list containing, but not necessarily limited to, the price of all caskets and containers that are normally offered for sale by that seller. The seller shall also provide a written statement or list that, at a minimum, specifically identifies particular caskets or containers by price and by thickness of metal, type of wood, or other construction, and by interior and color, when a request for specific information on caskets or containers is made in person by any individual. This information shall also be provided over the telephone, upon request.

(b) Places the price in a conspicuous manner on each casket. Individual price tags on caskets shall include the thickness of metal and type of wood or other construction, as applicable, in addition to interior and color information.

(c) Places in a conspicuous manner on each casket represented as having a sealing device of any kind, the following notices in at least eight-point boldface type: "THERE IS NO SCIENTIFIC OR OTHER EVIDENCE THAT ANY CASKET WITH A SEALING DEVICE WILL PRESERVE HUMAN REMAINS."

(d) Furnishes to the buyer prior to the sale, a written or printed itemized statement of all costs associated with the sale.

(e) Provides to the buyer a statement that includes a notice to the buyer that he or she may contact the office of the district attorney in that jurisdiction with any questions or complaints. At a minimum, the information shall be in eight-point boldface type, and state the following: "THE SELLER IS NOT A FUNERAL DIRECTOR AND IS NOT LICENSED BY THE DEPARTMENT OF CONSUMER AFFAIRS, AND MAY NOT OFFER OR PERFORM FUNERAL SERVICES. STATE AND FEDERAL LAWS PROHIBIT A FUNERAL DIRECTOR FROM CHARGING HANDLING FEES FOR A CASKET SUPPLIED BY ANOTHER PARTY. THE MONEYS RECEIVED BY THE SELLER FOR THE PURCHASE OF A CASKET ARE NOT SUBJECT TO STATE LAW GOVERNING MONEY HELD IN TRUST. THE SELLER IS NOT BOUND BY STATE LAWS OR REGULATIONS THAT GOVERN FUNERAL HOMES AND CEMETERIES. THE PURCHASER ENTERS THIS AGREEMENT AT HIS OR HER OWN RISK. FOR MORE INFORMATION, CONTACT THE OFFICE OF THE DISTRICT ATTORNEY IN YOUR COUNTY."

(Added by Stats. 1998, Ch. 286, Sec. 3. Effective January 1, 1999.)

17531. It is unlawful for any person, firm, or corporation, in any newspaper, magazine, circular, form letter or any open publication, published, distributed, or circulated in this state, including over the Internet, or on any billboard, card, label, or other advertising medium, or by means of any other advertising device, to advertise, call attention to or give publicity to the sale of any merchandise, which merchandise is secondhand or used merchandise, or which merchandise is defective in any manner, or which merchandise consists of articles or units or parts known as "seconds," or blemished merchandise, or which merchandise has been rejected by the manufacturer thereof as not first class, unless there is conspicuously displayed directly in connection with the name and description of that merchandise and each specified article, unit, or part thereof, a direct and unequivocal statement, phrase, or word which will clearly indicate that the merchandise or each article, unit, or part thereof so advertised is secondhand, used, defective, or consists of "seconds" or is blemished merchandise, or has been rejected by the manufacturer thereof, as the case may be. Any violation of this section is a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars (\$2,500), or by both that imprisonment and fine.

(Amended by Stats. 1998, Ch. 599, Sec. 8. Effective January 1, 1999.)

17531.1. Every manufacturer, wholesaler, jobber, distributor, or other person, who packages children's toys for sale to any retailer, shall clearly state on the outside of the package that the toy is unassembled if such is the case. If children's toys are packaged outside this State, the first wholesaler, jobber, distributor, or other person who has possession or control of the toys in this State in the course of distribution or marketing of such toys for sale to any retailer shall not further distribute or market such toys if they are unassembled unless and until the outside of each package which contains any such toys clearly states that the toys are unassembled.

(Added by Stats. 1959, Ch. 823.)

17531.3. (a) For purposes of this section, the following terms have the following meanings:

(1) "Educational conference" means a conference, forum, camp, or other similar event, intended to develop the leadership, career, or college readiness of a student or provide some other form of educational benefit, when participation in the event is represented as being limited to students receiving an award, invitation, or nomination to participate in the event.

(2) "Educational conference organization" or "organization" means a person, partnership, corporation, or other entity that operates in a for-profit manner and that plans and advertises educational conferences to students residing in the State of California.

(3) "Student" means a person who is enrolled in elementary or secondary school, grade kindergarten through grade 12, at the time an educational conference is arranged with an educational conference organization.

(b) An educational conference organization that provides materials related to an educational conference directly to a school or any employee thereof for purposes of distribution to a student shall comply with all of the following:

(1) The organization shall provide the materials in a sealed envelope or other packaging addressed to the parent or legal guardian of the student.

(2) The organization shall include with the materials all of the following disclosures, in clear and conspicuous language:

(A) That the materials constitute a solicitation for the sale of a product.

(B) The legal form of the organization making the solicitation, including the for-profit status of the organization.

(C) The legal owner, if any, of the organization making the solicitation.

(D) The specific eligibility criteria required for participation in the solicited educational conference or conferences, if any.

(E) An itemized list of the costs to participate in the educational conference and the total price of participating in the educational conference, including estimated expenses not included in the price of the educational conference.

(F) That attendance at an educational conference may not affect a student's chances of being admitted to college and that a parent or guardian should contact the student's school counselor for more information.

(G) Whether or not a nomination from a teacher or school administrator is required to participate in the educational conference, or if an individual may be self-nominated or nominated by a parent or guardian.

(H) The total amount, if any, of funding or other support, including employment or grants for school supplies, the organization has provided to the student's school or the school's employees during the last three years before the date of the solicitation.

(I) A phone number, email address, or Internet Web site that a parent or guardian may use to contact a government agency within the relevant jurisdiction for purposes of filing a complaint related to the solicitation or the educational conference itself.

(3) The organization shall provide the disclosures described in paragraph (2) on separate documents addressed to the school and to any employee thereof who is asked to distribute materials to a student.

(Added by Stats. 2016, Ch. 185, Sec. 2. (AB 2609) Effective January 1, 2017.)

17531.5. It is unlawful for any person, firm, or corporation, in any newspaper, magazine, circular, form letter, or any open publication, published, distributed, or circulated in the State of California, including over the Internet, or on any billboard, card, label, or other advertising medium, or by means of any other advertising device, to advertise, call attention to, or give publicity to the sale of any merchandise, which merchandise is surplus materials as defined in the federal Surplus Property Act of 1944 (50 U.S.C. App. Sec. 1622 et seq.), unless there is conspicuously displayed directly in connection with the name and description of that merchandise and each specified article, unit, or part thereof, a direct and unequivocal statement, phrase, or word which will clearly indicate that the merchandise or each article, unit, or part thereof so advertised is or consists of surplus materials as defined in the federal Surplus Property Act of 1944.

(Amended by Stats. 1998, Ch. 599, Sec. 9. Effective January 1, 1999.)

17531.6. As used in Sections 17531.7 and 17531.8, the term:

(a) "Picture tube" means cathode ray tube, otherwise known as kinescope or CRT.

(b) "Rejuvenate," or words of like import such as "reactivate" or "restore," means the repair of any internal malfunction of a picture tube by burning out shorts in the electron gun assembly, or flaking the cathode by heating and vibrating the cathode, or activities of a similar nature.

(c) "Seconds," or terms of like import such as "rejects," mean that the picture tube, though giving satisfactory performance, does not meet the quality and workmanship maintained by the manufacturer with respect to the general run of tubes of the same type.

(d) "Person" includes individual, partnership, firm, association, or corporation.

(Added by Stats. 1965, Ch. 725.)

17531.7. (a) No manufacturer, processor, or distributor of television picture tubes shall sell, offer for sale, or expose for sale any such tube unless the television picture tube and its container, if any, are correctly labeled to indicate the new and used materials of such tube according to the schedule and manner as hereinafter provided.

Description of the picture tube by new and used components and materials shall be indicated by setting forth on the label the particular grade and verbatim description as selected from the following which applies to such tube.

Schedule

Black and White Picture Tubes

Grade AA—Description—All new components and materials including new glass envelope.

Grade A—Description—Used glass envelope, all other components and materials are new.

Grade B—Description—Used glass envelope, used phosphorescent viewing screen, used aluminization, used internal conductive coating, all other components and materials are new.

Grade C—Description—Used picture tube for resale, all significant components and materials are used.

Color Picture Tubes

Grade AA—Description—All new components and materials, including new glass envelope.

Grade A—Description—Used glass envelope, new or used shadow mask, all other components and materials are new.

Grade B—Description—New electron gun, all other components and materials are used.

Grade C—Description—Used picture tube for resale, all significant components and materials are used.

(b) The fact that a used picture tube has been rejuvenated, or has a new or used brightener attached to it, or has fresh paint or coating on the outside, or any combination of the above, shall not change its status or description as a Grade C picture tube, and the terms "rebuilt" or "reconditioned" or words of like import shall not be used to describe such tube.

(c) Where a picture tube is a "second" such tube shall be designated by label as a "second" to the exclusion of any other grade designation or component description and the following additional notation shall appear verbatim on the label:

—This picture tube is a manufacturer's reject or
second line quality tube but it is capable of
giving satisfactory performance—

(Amended by Stats. 1969, Ch. 694.)

17531.8. No person other than a purchaser at retail for his own use and consumption shall remove, deface, cover, obliterate, mutilate, alter, or cause to be removed, defaced, covered, obliterated, mutilated, or altered any label required to be placed on a picture tube by this code.

(Added by Stats. 1965, Ch. 725.)

17531.9. Any person violating any of the provisions of Section 17531.7 or 17531.8 may be enjoined by any superior court of competent jurisdiction upon action for injunction, brought by the Attorney General or any district attorney in this state, and the superior court shall, after proof of violation, issue an injunction or other appropriate order restraining such conduct. This injunctive remedy shall not be construed to limit the district attorney of the county wherein the violation occurred from prosecuting criminal action for any violations of Section 17531.7 or 17531.8.

(Added by Stats. 1965, Ch. 725.)

17532. It is unlawful wilfully or knowingly, with intent to defraud, to sell or exchange, or offer or expose for sale or exchange, coal of a specific name or kind under any other name or description, or as the output of any mine other than the mine of which it is the product.

(Added by Stats. 1941, Ch. 63.)

17533. It is unlawful for any proprietor or publisher of any newspaper or periodical, including any newspaper or periodical published over the Internet, wilfully and knowingly to misrepresent the circulation of the newspaper or periodical, for the purpose of securing advertising or other patronage.

17533.5. It shall be unlawful for any person, firm, corporation or association to sell or offer for sale any surplus materials as defined in the Federal Surplus Property Act of 1944, being Chapter 479, Public Laws United States 457, approved October 3, 1944, if such person, firm, corporation or association does business, carries on or trades under or in any way uses in dealing with the public, directly or indirectly, any name which by reason of the inclusion of a word or words such as "Army," "Navy," "United States," "Federal," "treasury," "procurement," "G.I.," or any others which connote the United States Government or its armed forces or any of its departments or agencies, has a tendency to lead the purchasing public to believe, contrary to fact, that the establishment at which such materials are offered for sale has some official relationship to the United States Government or that all of the articles sold or offered for sale are such surplus materials or that the articles there sold are of higher quality and lower prices than those elsewhere obtainable; provided, however, that this section shall not prohibit the continued use of a trade name by an establishment which for three years prior to the effective date of this section has continually used such word or words as its trade name or as a portion thereof.

(Added by Stats. 1945, Ch. 1144.)

17533.6. (a) Except as described in subdivisions (b) and (c), it is unlawful for any person, firm, corporation, or association that is a nongovernmental entity to use a seal, emblem, insignia, trade or brand name, or any other term, symbol, or content that reasonably could be interpreted or construed as implying any federal, state, or local government, military veteran entity, or military or veteran service organization connection, approval, or endorsement of any product or service, including, but not limited to, any financial product, goods, or services, by any means, including, but not limited to, a mailing, electronic message, Internet Web site, periodical, or television commercial disseminated in this state, unless the nongovernmental entity has an expressed connection with, or the approval or endorsement of, a federal, state, or local government, military veteran entity, or military or veteran service organization.

(b) Notwithstanding subdivision (a) and if permitted by other provisions of law, any person, firm, corporation, or association that is a nongovernmental entity may advertise or promote any event, presentation, seminar, workshop, or other public gathering using a seal, emblem, insignia, trade or brand name, or any other term, symbol, or content as described in subdivision (a), if the person, firm, corporation, or association that is a nongovernmental entity has an expressed connection with, or the approval or endorsement of, a federal, state, or local government, military veteran entity, or military or veteran service organization.

(c) Notwithstanding subdivision (a), any person, firm, corporation, or association that is a nongovernmental entity may solicit information, solicit the purchase of or payment for a product or service, or solicit the contribution of funds or membership fees, by any means, including, but not limited to, a mailing, electronic message, Internet Web site, periodical, or television commercial disseminated in this state, using a seal, emblem, insignia, trade or brand name, or any other term, symbol, or content as described in subdivision (a), if the person, firm, corporation, or association that is a nongovernmental entity meets the requirements of paragraph (1) or (2) as follows:

(1) The nongovernmental entity has an expressed connection with, or the approval or endorsement of, a federal, state, or local government entity, if permitted by other provisions of law.

(2) (A) The solicitation meets all of the following requirements:

(i) The solicitation conspicuously displays the following disclosure on the front and back of every page of the solicitation:

"THIS PRODUCT OR SERVICE HAS NOT BEEN APPROVED OR ENDORSED BY ANY GOVERNMENTAL AGENCY, AND THIS OFFER IS NOT BEING MADE BY AN AGENCY OF THE GOVERNMENT."

(ii) In the case of a mailed solicitation, the front of the envelope, outside cover, or wrapper in which the matter is mailed conspicuously displays the following disclosure:

"THIS IS NOT A GOVERNMENT DOCUMENT."

(iii) If permitted by other provisions of law, in the case of a television commercial disseminated in this state, the solicitation conspicuously displays the following disclosure at the top of the television screen for the entire duration of the television commercial:

"THIS PRODUCT OR SERVICE HAS NOT BEEN APPROVED OR ENDORSED BY ANY GOVERNMENTAL AGENCY, AND THIS OFFER IS NOT BEING MADE BY AN AGENCY OF THE GOVERNMENT."

(iv) The disclosure in clause (i) shall be displayed conspicuously, as provided in subdivision (f), and immediately below each portion of the solicitation that reasonably could be construed to specify an amount due and payable by the recipient. The disclosure in clause (ii) shall be displayed conspicuously, as provided in subdivision (f), and immediately below the area of the envelope, outside cover, or wrapper that is used for a return address. The disclosure in clause (iii) shall be displayed conspicuously, as provided in subdivision (f), and at the top of the television screen. The disclosures in clauses (i), (ii), and (iii) shall not be preceded, followed, or surrounded by symbols, terms, or other content that result in the disclosures not being conspicuous or that introduce, modify, qualify, or explain the text of those disclosures.

(v) The solicitation does not use a title or trade or brand name that reasonably could be interpreted or construed as implying any federal, state, or local government connection, approval, or endorsement, including, but not limited to, use of the term "agency," "administrative," "assessor," "board," "bureau," "collector," "commission," "committee," "department," "division," "recorder," "unit," "federal," "state," "county," "city," or "municipal," or the name or division of any government agency.

(vi) The solicitation does not specify a date or time period when payment to the soliciting nongovernmental person, firm, corporation, or association is due, including, but not limited to, use of the terms "due date," "due now," "remit by," "remit immediately," "payment due," "pay now," "pay immediately," or "pay no later than," unless the solicitation displays, in the same sentence as the date or time period specified, how the information being solicited will be used, a description of the product or service that is to be provided and to what government agency it shall be rendered, or how the solicited funds or membership fees will be used, as applicable.

(vii) The solicitation does not state or imply that payment to any person, firm, corporation, or association that is not a government entity is mandatory or required by law, or state or imply that penalties, fines, or consequences will occur if payment is not made to the soliciting nongovernmental person, firm, corporation, or association.

(B) Subparagraph (A) is not applicable to seals, emblems, insignia, trade or brand name, or any other term, symbol, or content of the United States Department of Veterans Affairs, the Department of Veterans Affairs, the federal and state military, military veteran entities, and military or veteran service organizations.

(d) Notwithstanding Section 17534, any violation of this section is a misdemeanor punishable by imprisonment in a county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars (\$2,500), or by both that fine and imprisonment.

(e) Any person who is harmed as a result of a violation of this section shall be entitled to recover, in addition to any other available remedies, damages in an amount equal to three times the amount solicited.

(f) For purposes of this section, "conspicuous" or "conspicuously" means displayed apart from other print on the page, envelope, outside cover, or wrapper and in not less than 12-point boldface font type in capital letters that is at least 2-point boldface font type sizes larger than the next largest print on the page, envelope, outside cover, or wrapper and in contrasting type, layout, font, or color in a manner that clearly calls attention to the language.

(Amended by Stats. 2013, Ch. 695, Sec. 1. (SB 272) Effective January 1, 2014.)

17533.6.5. (a) Notwithstanding any other law, a person, firm, corporation, or association that is a nongovernmental entity may solicit a fee for providing a copy of a public record if that solicitation meets all of the requirements set forth in paragraphs (1) to (3), inclusive:

(1) Contains at the top of the solicitation, in at least 24-point type, all of the following:

(A) The following disclosure statement: "THIS IS AN ADVERTISEMENT. THIS OFFER IS NOT BEING MADE BY, OR ON BEHALF OF, ANY GOVERNMENT AGENCY. YOU ARE NOT REQUIRED TO MAKE ANY PAYMENT OR TAKE ANY OTHER ACTION IN RESPONSE TO THIS OFFER."

(B) The fee or cost charged by the relevant state or local agency to obtain a copy of the record that the solicitation is offering to obtain.

(C) The information necessary to contact the state or local agency that has custody of the record.

(D) The name and physical address of the nongovernmental entity soliciting the fee.

(2) The disclosures in paragraph (1) shall not be preceded, followed, or surrounded by symbols, terms, or other content that result in the disclosures not being conspicuous or that introduce, modify, qualify, or explain the text of those disclosures.

(3) A solicitation subject to this subdivision shall not be in a form, use deadline dates, or contain other language or content that reasonably could be interpreted or construed as implying:

(A) That it was issued by a state or local government agency or is otherwise connected, approved, or endorsed by a state or local government agency.

(B) A legal duty on the person being solicited, that any payment to the nongovernmental entity is mandatory or required by law, or that penalties, fines, or other consequences will occur if payment is not made by that person.

(b) The Attorney General, a district attorney, or a city attorney may bring an action against any person who violates this section. The court may order the person who violates this section to refund all of the moneys paid to the victim. The court shall impose a civil penalty of not more than one hundred dollars (\$100) for each solicitation document distributed in violation of this section, and not more than two hundred dollars (\$200) for each subsequent document distributed in violation of this section. The civil penalty shall be payable to the general fund of whichever governmental entity brought the action to assess the civil penalty.

(c) As used in this section, "solicit" means to directly advertise or market through writing or graphics and via mail, telefax, or email to an individually identified person, residence, or business location. "Solicit" does not include any of the following:

(1) Communicating through a mass advertisement, including a catalog, a radio or television broadcast, or an Internet Web site.

(2) Communicating via telephone, mail, or electronic communication, if initiated by the consumer.

(3) Advertising the sale of public data to other businesses and entities for a legitimate business purpose, including to research and reporting firms, government agencies, government procurement officers, and government contractors who receive value-added benefits for the purchase and use of public data.

(d) This section does not apply to a title insurance company authorized to do business in this state or its authorized agent.

(e) This section is not subject to Section 17534 or any other criminal penalty provision.

(Added by Stats. 2017, Ch. 293, Sec. 2. (AB 492) Effective January 1, 2018.)

17533.7. (a) It is unlawful for any person, firm, corporation, or association to sell or offer for sale in this state any merchandise on which merchandise or on its container there appears the words "Made in U.S.A.," "Made in America," "U.S.A.," or similar words if the merchandise or any article, unit, or part thereof, has been entirely or substantially made, manufactured, or produced outside of the United States.

(b) This section shall not apply to merchandise made, manufactured, or produced in the United States that has one or more articles, units, or parts from outside of the United States, if all of the articles, units, or parts of the merchandise obtained from outside the United States constitute not more than 5 percent of the final wholesale value of the manufactured product.

(c) (1) This section shall not apply to merchandise made, manufactured, or produced in the United States that has one or more articles, units, or parts from outside of the United States, if both of the following apply:

(A) The manufacturer of the merchandise shows that it can neither produce the article, unit, or part within the United States nor obtain the article, unit, or part of the merchandise from a domestic source.

(B) All of the articles, units, or parts of the merchandise obtained from outside the United States constitute not more than 10 percent of the final wholesale value of the manufactured product.

(2) The determination that the article, unit, or part of the merchandise cannot be made, manufactured, produced, or obtained within the United States from a domestic source shall not be based on the cost of the article, unit, or part.

(d) This section shall not apply to merchandise sold for resale to consumers outside of California.

(e) For purposes of this section, merchandise sold or offered for sale outside of California shall not be deemed mislabeled if the label conforms to the law of the forum state or country within which they are sold or offered for sale.

(Amended by Stats. 2015, Ch. 238, Sec. 1. (SB 633) Effective January 1, 2016.)

17533.8. (a) It is unlawful for any person to offer, by mail, by telephone, in person, or by any other means or in any other form, including over the Internet, a prize or gift, with the intent to offer a sales presentation, without disclosing at the time of the offer of the prize or gift, in a clear and unequivocal manner, the intent to offer that sales presentation.

(b) This section shall not apply to the publisher of any newspaper, periodical, or other publication, or any radio or television broadcaster, or the owner or operator of any cable, satellite, or other medium of communications who broadcasts or publishes, including over the Internet, an advertisement or offer in good faith, without knowledge of its violation of subdivision (a).

(Amended by Stats. 1998, Ch. 599, Sec. 11. Effective January 1, 1999.)

17533.9. It shall be unlawful for any person, firm, corporation, or association, in any newspaper, magazine, circular, form letter, or open publication, published, distributed, or circulated in this state, including over the Internet, or on any billboard, card, label, or other advertising medium, or by means of any other advertising device, to advertise the sale of tear gas, tear gas devices, and tear gas weapons, as defined in Sections 17240 and 17250 of the Penal Code, unless there is conspicuously displayed or stated in connection with the name and description of that tear gas, or those tear gas weapons or devices, a direct and unequivocal statement that will clearly indicate that possession or transportation of tear gas and tear gas weapons or devices is prohibited by law unless specifically exempted or permitted pursuant to the authority contained in Division 11 (commencing with Section 22810) of Title 3 of Part 6 of the Penal Code.

(Amended by Stats. 2010, Ch. 178, Sec. 14. (SB 1115) Effective January 1, 2011. Operative January 1, 2012, by Sec. 107 of Ch. 178.)

17533.10. It shall be unlawful for any person, firm, corporation, or association, in any newspaper, magazine, circular, form letter, or open publication, published, distributed, or circulated in this state, including over the Internet, or on any billboard, card, label, or other advertising medium, or by means of any other advertising device, to advertise the sale of anabolic steroids, as defined in subdivision (f) of Section 11056 of the Health and Safety Code, unless there is conspicuously displayed or stated in connection with the name and description of any of those anabolic steroids, a direct and unequivocal statement that will clearly indicate that the possession by, or sale to, an ultimate consumer of anabolic steroids is a crime punishable by a substantial fine and imprisonment, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, pursuant to Sections 11377, 11378, and 11379 of the Health and Safety Code.

(Amended by Stats. 1998, Ch. 599, Sec. 13. Effective January 1, 1999.)

17534. Any person, firm, corporation, partnership or association or any employee or agent thereof who violates this chapter is guilty of a misdemeanor.

(Added by Stats. 1941, Ch. 63.)

17534.5. Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this state.

(Added by Stats. 1973, Ch. 393.)

17535. Obtaining Injunctive Relief

Any person, corporation, firm, partnership, joint stock company, or any other association or organization which violates or proposes to violate this chapter may be enjoined by any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person, corporation, firm, partnership, joint stock company, or any other association or organization of any practices which violate this chapter, or which may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of any practice in this chapter declared to be unlawful.

Actions for injunction under this section may be prosecuted by the Attorney General or any district attorney, county counsel, city attorney, or city prosecutor in this state in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person who has suffered injury in fact and has lost money or property as a result of a violation of this chapter. Any person may pursue representative claims or relief on behalf of others only if the claimant meets the standing requirements of this section and complies with Section 382 of the Code of Civil Procedure, but these limitations do not apply to claims brought under this chapter by the Attorney General, or any district attorney, county counsel, city attorney, or city prosecutor in this state.

(Amended November 2, 2004, by initiative Proposition 64, Sec. 5.)

17535.5. (a) Any person who intentionally violates any injunction issued pursuant to Section 17535 shall be liable for a civil penalty not to exceed six thousand dollars (\$6,000) for each violation. Where the conduct constituting a violation is of a continuing nature, each day of such conduct is a separate and distinct violation. In determining the amount of the civil penalty, the court shall consider all relevant circumstances, including, but not limited to, the extent of harm caused by the conduct constituting a violation, the nature and persistence of such conduct, the length of time over which the conduct occurred, the assets, liabilities and net worth of the person, whether corporate or individual, and any corrective action taken by the defendant.

(b) The civil penalty prescribed by this section shall be assessed and recovered in a civil action brought in any county in which the violation occurs or where the injunction was issued in the name of the people of the State of California by the Attorney General or by any district attorney, county counsel, or city attorney in any court of competent jurisdiction within his jurisdiction without regard to the county from which the original injunction was issued. An action brought pursuant to this section to recover such civil penalties shall

take special precedence over all civil matters on the calendar of the court except those matters to which equal precedence on the calendar is granted by law.

(c) If such an action is brought by the Attorney General, one-half of the penalty collected pursuant to this section shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State Treasurer. If brought by a district attorney or county counsel, the entire amount of the penalty collected shall be paid to the treasurer of the county in which the judgment is entered. If brought by a city attorney or city prosecutor, one-half of the penalty shall be paid to the treasurer of the county in which the judgment was entered and one-half to the city.

(d) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (c), the amount of such reasonable expenses incurred by the board shall be paid to the State Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the State Treasurer. The amount of such reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality or county which funds the local agency.

(Amended by Stats. 1979, Ch. 897.)

17536. Penalty for Violations of Chapter; Proceedings; Disposition of Proceeds

(a) Any person who violates any provision of this chapter shall be liable for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney, county counsel, or city attorney in any court of competent jurisdiction.

(b) The court shall impose a civil penalty for each violation of this chapter. In assessing the amount of the civil penalty, the court shall consider any one or more of the relevant circumstances presented by any of the parties to the case, including, but not limited to, the following: the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth.

(c) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State Treasurer.

If brought by a district attorney or county counsel, the entire amount of penalty collected shall be paid to the treasurer of the county in which the judgment was entered. If brought by a city attorney or city prosecutor, one-half of the penalty shall be paid to the treasurer of the county and one-half to the city. The aforementioned funds shall be for the exclusive use by the Attorney General, district attorney, county counsel, and city attorney for the enforcement of consumer protection laws.

(d) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (c), the amount of such reasonable expenses incurred by the board shall be paid to the State Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund the moneys shall be paid to the State Treasurer. The amount of such reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality which funds the local agency.

(e) As applied to the penalties for acts in violation of Section 17530, the remedies provided by this section and Section 17534 are mutually exclusive.

(Amended November 2, 2004, by initiative Proposition 64, Sec. 6.)

17536.5. If a violation of this chapter is alleged or the application or construction of this chapter is in issue in any proceeding in the Supreme Court of California, a state court of appeal, or the appellate division of a superior court, each person filing any brief or petition with the court in that proceeding shall serve, within three days of filing with the court, a copy of that brief or petition on the Attorney General, directed to the attention of the Consumer Protection Section at a service address designated on the Attorney General's official internet website for service of papers under this section or, if no service address is designated, at the Attorney General's office in the City of San Francisco and on the district attorney of the county in which the lower court action or proceeding was originally filed. Upon the Attorney General's or district attorney's request, each person who has filed any other document, including all or a portion of the appellate record, with the court in addition to a brief or petition shall provide a copy of that document without charge to the Attorney General or the district attorney within five days of the request. The time for service may be extended by the Chief Justice or presiding justice or judge for good cause shown. No judgment or relief, temporary or permanent, shall be granted or opinion issued until proof of service of the petition or brief on the Attorney General and district attorney is filed with the court.

17537. (a) It is unlawful for any person to use the term “prize” or “gift” or other similar term in any manner that would be untrue or misleading, including, but not limited to, the manner made unlawful in subdivision (b) or (c).

(b) It is unlawful to notify any person by any means, as a part of an advertising plan or program, that he or she has won a prize and that as a condition of receiving such prize he or she must pay any money or purchase or rent any goods or services.

(c) It is unlawful to notify any person by any means that he or she will receive a gift and that as a condition of receiving the gift he or she must pay any money, or purchase or lease (including rent) any goods or services, if any one or more of the following conditions exist:

(1) The shipping charge, depending on the method of shipping used, exceeds (A) the average cost of postage or the average charge of a delivery service in the business of delivering goods of like size, weight, and kind for shippers other than the offeror of the gift for the geographic area in which the gift is being distributed, or (B) the exact amount for shipping paid to an independent fulfillment house or an independent supplier, either of which is in the business of shipping goods for shippers other than the offeror of the gift.

(2) The handling charge (A) is not reasonable, or (B) exceeds the actual cost of handling, or (C) exceeds the greater of three dollars (\$3) in any transaction or 80 percent of the actual cost of the gift item to the offeror or its agent, or (D) in the case of a general merchandise retailer, exceeds the actual amount for handling paid to an independent fulfillment house or supplier, either of which is in the business of handling goods for businesses other than the offeror of the gift.

(3) Any goods or services which must be purchased or leased by the offeree of the gift in order to obtain the gift could have been purchased through the same marketing channel in which the gift was offered for a lower price without the gift items at or proximate to the time the gift was offered.

(4) The majority of the gift offeror's sales or leases within the preceding year, through the marketing channel in which the gift is offered or through in-person sales at retail outlets, of the type of goods or services which must be purchased or leased in order to obtain the gift item was made in conjunction with the offer of a gift.

This paragraph does not apply to a gift offer made by a general merchandise retailer in conjunction with the sale or lease through mail order of goods or services (excluding catalog sales) if (A) the goods or services are of a type unlike any other type of goods or services sold or leased by the general merchandise retailer at any time during the period beginning six months before and continuing until six months after the gift offer, (B) the gift offer does not extend for a period of more than two months, and (C) the gift offer is not untrue or misleading in any manner.

(5) The gift offeror represents that the offeree has been specially selected in any manner unless (A) the representation is true and (B) the offeree made a purchase from the gift offeror within the six-month period before the gift offer was made or has a credit card issued by, or a retail installment account with, the gift offeror.

(d) The following definitions apply to this section:

(1) “Marketing channel” means a method of retail distribution, including, but not limited to, catalog sales, mail order, telephone sales, and in-person sales at retail outlets.

(2) “General merchandise retailer” means any person or entity regardless of the form of organization that has continuously offered for sale or lease more than 100 different types of goods or services to the public in California throughout a period exceeding five years.

(e) Each violation of the provisions of this section is a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars (\$2,500), or by both.

(Amended by Stats. 1986, Ch. 812, Sec. 1. Effective September 15, 1986.)

17537.1. (a) It is unlawful for any person, or an employee, agent, or independent contractor employed or authorized by that person, by any means, as part of an advertising plan or program, to offer any incentive as an inducement to the recipient to visit a location, attend a sales presentation, or contact a sales agent in person, by telephone, or by mail, unless the offer clearly and conspicuously discloses in writing, in readily understandable language, all of the information required in paragraphs (1) and (2). If the offer is not initially made in writing, the required disclosures shall be received by the recipient in writing prior to any scheduled visit to a location, sales presentation, or contact with a sales agent. For purposes of this section, the term “incentive” means any item or service of value, including, but not limited to, any prize, gift, money, or other tangible property.

(1) The following disclosures shall appear on the front (or first) page of the offer:

(A) The name and street address of the owner of the real or personal property or the provider of the services which are the subject of the visit, sales presentation, or contact with a sales agent. If the offer is made by an agent or independent contractor employed or authorized by the owner or provider, or is made under a name other than the true name of the owner or provider, the name of the owner or provider shall be more prominently and conspicuously displayed than the name of the agent, independent contractor, or other name.

(B) A general description of the business of the owner or provider identified pursuant to subparagraph (A), and the purpose of any requested visit, sales presentation, or contact with a sales agent, which shall include a general description of the real or personal property or services which are the subject of the sales presentation and a clear statement, if applicable, that there will be a sales presentation and the approximate duration of the visit and sales presentation.

(C) If the recipient is not assured of receiving any particular incentive, a statement of the odds of receiving each incentive offered or, in the alternative, a clear statement describing the location in the offer where the odds can be found. The odds shall be stated in whole Arabic numbers in a format such as: "1 chance in 100,000" or "1:100,000." The odds and, where applicable, the alternative statement describing their location, shall be printed in a type size that is at least equal to that used for the standard text on the front (or first) page of the offer.

(D) A clear statement, if applicable, that the offer is subject to specific restrictions, qualifications, and conditions and a statement describing the location in the offer where the restrictions, qualifications, and conditions may be found. Both statements shall be printed in a type size that is at least equal to that used for the standard text on the front (or first) page of the offer.

(2) The following disclosures shall appear in the offer, but need not appear on the front (or first) page of the offer:

(A) Unless the odds are disclosed on the front (or first) page of the offer, a statement of the odds of receiving each incentive offered, printed in the size and format set forth in subparagraph (C) of paragraph (1).

(B) All restrictions, qualifications, and other conditions which must be satisfied before the recipient is entitled to receive the incentive, including, but not limited to:

(i) Any deadline by which the recipient must visit the location, attend the sales presentation, or contact the sales agent in order to receive an incentive.

(ii) Any other conditions, such as a minimum age qualification, a financial qualification, or a requirement that if the recipient is married or in a registered domestic partnership, both spouses must be present in order to receive the incentive. Any financial qualifications shall be stated with a specificity sufficient to enable the recipient to reasonably determine his or her eligibility.

(C) A statement that the owner or provider identified pursuant to subparagraph (A) of paragraph (1) reserves the right to provide a raincheck, or a substitute or like incentive, if those rights are reserved.

(D) A statement that a recipient who receives an offered incentive may request and will receive evidence showing that the incentive provided matches the incentive randomly or otherwise selected for distribution to that recipient.

(E) All other rules, terms, and conditions of the offer, plan, or program.

(b) It is unlawful for any person making an offer subject to subdivision (a), or any employee, agent, or independent contractor employed or authorized by that person, to offer any incentive when the person knows or has reason to know that the offered item will not be available in a sufficient quantity based upon the reasonably anticipated response to the offer.

(c) It is unlawful for any person making an offer subject to subdivision (a), or any employee, agent, or independent contractor employed or authorized by that person, to fail to provide any offered incentive which any recipient who has responded to the offer in the manner specified therein, who has performed the requirements disclosed therein, and who has met the qualifications described therein, is entitled to receive, unless the offered incentive is not reasonably available and the offer discloses the reservation of a right to provide a raincheck, or a like or substitute incentive, if the offered incentive is unavailable.

(d) If the person making an offer subject to subdivision (a) is unable to provide an offered incentive because of limitations of supply, quantity, or quality that were not reasonably foreseeable or controllable by the person making the offer, the person making the offer shall inform the recipient of the recipient's right to receive a raincheck for the incentive offered, unless the person making the offer knows or has reasonable basis for knowing that the incentive will not be reasonably available and shall inform the recipient of the recipient's right to at least one of the following additional options:

(1) The person making the offer will provide a like incentive of equivalent or greater retail value or a raincheck therefor.

(2) The person making the offer will provide a substitute incentive of equivalent or greater retail value.

(3) The person making the offer will provide a raincheck for the like or substitute incentive.

(e) If a raincheck is provided, the person making an offer subject to subdivision (a) shall, within a reasonable time, and in no event later than 80 days, deliver the agreed incentive to the recipient's address without additional cost or obligation to the recipient, unless the incentive for which the raincheck is provided remains unavailable because of limitations of supply, quantity, or quality not reasonably foreseeable or controllable by the person making the offer. In that case, the person making the offer shall, not later than 30 days after the expiration of the 80 days, deliver a like incentive of equal or greater retail value or, if an incentive is not reasonably available to the person making the offer, a substitute incentive of equal or greater retail value.

(f) Upon the request of a recipient who has received or claims a right to receive any offered incentive, the person making an offer subject to subdivision (a) shall furnish to the person sufficient evidence showing that the incentive provided matches the incentive randomly or otherwise selected for distribution to that recipient.

(g) It is unlawful for any person making an offer subject to subdivision (a), or any employee, agent, or independent contractor employed or authorized by that person, to:

(1) Use any printing styles, graphics, layouts, text, colors, or formats on envelopes or on the offer that imply, create an appearance, or would lead a reasonable person to believe, that the offer originates from or is issued by or on behalf of a government or public agency, public utility, public organization, insurance company, credit reporting agency, bill collecting company, or law firm, unless the same is true.

(2) Misrepresent the size, quantity, identity, value, or qualities of any incentive.

(3) Misrepresent in any manner the odds of receiving any particular incentive.

(4) Represent directly or by implication that the number of participants has been significantly limited or that any person has been selected to receive a particular incentive unless that is the fact.

(5) Label any offer a notice of termination or notice of cancellation.

(6) Misrepresent, in any manner, the offer, plan, or program or the affiliation, connection, association, or contractual relationship between the person making the offer and the owner or provider, if they are not the same.

(h) If the major incentives are awarded or given at random, by the assignment of a number to the incentives, that number shall be actually assigned by the party contractually responsible for doing so. The person making an offer subject to subdivision (a) hereof, or the agent, employee, or independent contractor employed or authorized by that person, if any, shall maintain, for a period of one year after the date the offer is made, the records that show that the winning numbers or opportunity to receive the major incentives have been deposited in the mail or otherwise made available to recipients in accordance with the odds statement provided pursuant to subparagraph (C) of paragraph (1) of subdivision (a) hereof. The records shall be made available to the Attorney General within 30 days after written request therefor. Postal receipt records, affidavits of mailing, or a list of winners or recipients of the major incentives shall be deemed to satisfy the requirements of this section.

(Amended by Stats. 2016, Ch. 50, Sec. 2. (SB 1005) Effective January 1, 2017.)

17537.2. The following, when used as part of an advertising plan or program defined in Section 17537.1, are deceptive and constitute unfair trade practices:

(a) When, in order to utilize the incentive, the recipient is requested to pay any money to any person or entity named or referred to in the offer, or to purchase, rent, or otherwise pay that person or entity for any product or service including a deposit, whether returnable or not, whether payment is for an item, a service, shipping, handling, insurance or payment for anything.

Notwithstanding the preceding paragraph, when the offered incentive is a certificate or coupon redeemable for transportation, accommodations, recreation, vacation, entertainment, or like services, the offer may place a condition on the use of the incentive which requires the recipient to pay directly to the transportation company, the accommodation, recreation, vacation or entertainment facility, or similar direct provider of like services, a refundable deposit, not to exceed fifty dollars (\$50), to reserve space availability or admission, only if the deposit shall be returned in United States dollars immediately upon the recipient's arrival at the location of the provider to whom the recipient paid the deposit. If the incentive is such a certificate or coupon, and if government-imposed taxes directly related to the service being provided are not included in the incentive, the offer itself, in close proximity to the description of the incentive which is evidenced by the certificate or coupon, shall disclose those government-imposed taxes which will be the recipient's responsibility and the approximate dollar amount of those taxes. A deposit from the recipient may be collected to cover the cost of those government-imposed taxes.

(b) Stating or implying in the offer that the recipient is one of a selected group to receive a particular incentive or one or more of a group of incentives, without clearly and conspicuously disclosing in close proximity to the statement or implied statement of selection the total number of persons in that select group or the odds of receiving the incentive or incentives. Statements of selection which

require such disclosure include such phrases as “you are a finalist,” “we are sending this to a limited number of people,” “either you or another named person has won the major prize,” “if you do not respond, your incentive will be given to someone else.”

(c) Stating or implying in the offer that the recipient is likely to receive one or more of the offered incentives because other named people have already received other named incentives, unless the offer clearly and conspicuously discloses in close proximity to the statement the recipient’s odds of receiving the identified incentive.

(d) When the solicitation states or implies that the recipient is likely to receive an incentive which has a normal retail price which is higher than that of another named incentive unless that statement is true. For purposes of this section, a list of incentives implies that the incentives are in descending or ascending order of value unless the solicitation clearly and conspicuously negates the implication in close proximity to the list.

(e) Describing an incentive or incentives in an untrue or misleading manner. Untrue or misleading descriptions include those which imply that the incentive being offered is of greater fair market value or of a different kind or nature than a recipient would be led to believe from a reasonable reading of the offer, or which lists the recipient’s name in close proximity to a specific incentive unless the offer clearly and conspicuously discloses immediately next to or immediately under or above the recipient’s name the recipient’s odds of receiving the specific incentive.

(f) Subdivision (a) shall not apply to an incentive constituting an opportunity to stay at a hotel or other resort accommodations at a discount from the standard rate for the hotel or resort accommodations, if all of the following conditions are met:

(1) The fee to utilize the incentive and the requirement, if any, to attend a sales presentation are clearly and conspicuously disclosed in close proximity to the description of the offered incentive.

(2) A statement appears in close proximity to the description of the offered incentive and in substantially the following form: The recipient is responsible for payment of any government-imposed taxes directly related to the service being provided and any personal expenses incurred when utilizing this offer.

(3) The accommodations to be occupied by the recipient of the incentive are within a 20-mile radius of the property on which the accommodations offered for sale are located or, if not within that radius, the accommodations offered for sale are managed and operated by the same person as, an affiliate (as defined in Section 150 of the Corporations Code) of, or a franchisee (as defined in Section 20002) of, the manager and operator of the accommodations to be occupied, and the manager and operator of the accommodations offered for sale or the manager and operator of the accommodations to be occupied is an issuer or subsidiary of an issuer that has a security listed on a national securities exchange, and the exchange has been certified by rule or order of the Commissioner of Financial Protection and Innovation under subdivision (o) of Section 25100 of the Corporations Code. A subsidiary of an issuer that qualifies under this paragraph does not itself qualify under this paragraph unless not less than 60 percent of the voting power of its shares is owned by the qualifying issuer or issuers.

(4) If the incentive is offered in conjunction with any additional incentive or incentives or as one or more of a group of incentives, the offer of that additional incentive or incentives shall comply with Section 17537.1 and the following:

(A) The additional incentive or incentives are typically and customarily included in a vacation package and may include, but not be limited to, transportation, dining, entertainment, or recreation.

(B) The fee and additional requirements, if any, to use the additional incentive or incentives are clearly and conspicuously disclosed in close proximity to the description of the offer of them.

(Amended by Stats. 2022, Ch. 452, Sec. 16. (SB 1498) Effective January 1, 2023.)

17537.3. The following acts are prohibited:

(a) For any person to offer as part of an advertising plan or program, promotional offers of smokeless tobacco products which require proof of purchase of a smokeless tobacco product unless it carries a designation that the offer is not available to persons under 21 years of age. Each promotional offer shall include in any mail-in coupon a statement requesting purchasers to verify that the purchaser is 21 years of age or older.

(b) For any person to honor mail-in and telephone requests for promotional offers of smokeless tobacco products unless appropriate efforts are made to ascertain that a purchaser is over 21 years of age. For purposes of this subdivision, appropriate efforts to ascertain the age of a purchaser includes, but is not limited to, requests for a purchaser’s birth date.

(c) For any person by any means, as part of an advertising plan or program, to distribute free samples of smokeless tobacco products within a two-block radius of any premises or facilities whose primary purpose is directed toward persons under 21 years of age including, but not limited to, schools, clubhouses, and youth centers, when those premises are being used for their primary purposes.

(d) For any person to distribute, as part of any advertising plan or program, unsolicited samples of smokeless tobacco products through a mail campaign.

17537.4. If the person making an offer subject to Section 17537 or to subdivision (a) of Section 17537.1, or any employee, agent, or independent contractor employed or authorized by that person, violates any provision of Section 17537, 17537.1, or 17537.2, the recipient of the offer who is damaged by the violation may bring a civil action against the person making the offer for, and may be awarded, treble damages. The court may award reasonable attorneys' fees to the prevailing party.

(Added by renumbering Section 17537.2 by Stats. 1990, Ch. 1529, Sec. 2.)

17537.5. (a) It is unlawful for any person soliciting a sale or order for energy conservation products or services, including over the Internet, to do any of the following:

- (1) Make false claims of affiliation or association with an electrical or gas corporation or municipally owned and operated electrical or gas utility or its energy conservation programs.
- (2) Falsely represent that the purchase of an energy conservation service or the purchase or installation of an energy conservation product is required by law.
- (3) Misrepresent the nature of the purchaser's obligation for the purchase price of the energy conservation products or services.
- (4) Misrepresent the tax consequences of purchasing energy conservation products or services.

(b) Any person, firm, corporation, partnership or association, and any employee or agent thereof who violates this section (1) in the course of solicitation of a sale or order at a residence; (2) by telephone; or (3) by any other method or at any other location, including over the Internet, shall be liable for the damages provided by subdivision (c) of Section 17500.3, in addition to all other penalties provided by law.

(Amended by Stats. 1998, Ch. 599, Sec. 14. Effective January 1, 1999.)

17537.6. (a) It is unlawful for any person to make any untrue or misleading statements in any manner in connection with the offering or performance of a homestead filing service. For the purpose of this section, an "untrue or misleading statement" means and includes any representation that any of the following is true:

- (1) The preparation or recordation of a homestead declaration will in any manner prevent the forced sale of a judgment debtor's dwelling.
- (2) The preparation or recordation of a homestead declaration will prevent the foreclosure of a mortgage, deed of trust, or mechanic's lien.
- (3) Any of the provisions relating to the homestead exemption set forth in Article 4 (commencing with Section 704.710) of Chapter 4 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure are available only to persons who prepare or record a homestead declaration.
- (4) A homestead declaration is in any way related to the obtaining of any applicable homeowner's exemption to real property taxes.
- (5) The preparation or recordation of a homestead declaration is required by law in any manner.
- (6) The offeror of the homestead filing service has a file or record covering a person to whom a solicitation is made.
- (7) The offeror of the homestead filing service is, or is affiliated with, any charitable or public service entity unless the offeror is, or is affiliated with, a charitable organization which has qualified for a tax exemption under Section 501(c)(3) of the Internal Revenue Code.
- (8) The offeror of the homestead filing service is, or is affiliated with, any governmental entity. A violation of this paragraph includes, but is not limited to, the following:

(A) The misleading use of any governmental seal, emblem, or other similar symbol.

(B) The use of a business name including the word "homestead" and the word "agency," "bureau," "department," "division," "federal," "state," "county," "city," "municipal," "California," or "United States," or the name of any city, county, city and county, or any governmental entity.

(C) The use of an envelope that simulates an envelope containing a government check, tax bill, or government notice or an envelope which otherwise has the capacity to be confused with, or mistaken for, an envelope sent by a governmental entity.

(b) (1) It is unlawful to offer to perform a homestead filing service without making the following disclosure:

THIS HOMESTEAD FILING SERVICE IS NOT ASSOCIATED WITH ANY GOVERNMENT AGENCY.

YOU DO NOT HAVE TO RECORD A HOMESTEAD DECLARATION.

RECORDING A HOMESTEAD DECLARATION DOES NOT PROTECT YOUR HOME AGAINST FORCED SALE BY A CREDITOR.

YOU MAY WISH TO CONSULT A LAWYER ABOUT THE BENEFITS OF RECORDING A HOMESTEAD DECLARATION.

IF YOU WANT TO RECORD A HOMESTEAD, YOU CAN FILL OUT A HOMESTEAD DECLARATION FORM BY YOURSELF, HAVE YOUR SIGNATURE NOTARIZED, AND HAVE THE FORM RECORDED BY THE COUNTY RECORDER.

(2) The disclosure specified in paragraph (1) shall be placed at the top of each page of every advertisement or promotional material disseminated by an offeror of a homestead filing service and shall be printed in 12-point boldface type enclosed in a box formed by a heavy line.

(3) The disclosure specified in paragraph (1) shall be recited at the beginning of every oral solicitation and every broadcast advertisement and shall be delivered in printed form as prescribed by paragraph (2) before the time each person who responds to the oral solicitation or broadcast advertisement is obligated to pay for any service.

(c) In addition to any other service, every offeror of a homestead filing service shall deliver each notarized homestead declaration to the appropriate county recorder for recordation as soon as needed or required by a homestead declarant, but no later than 10 days after the homestead declaration is notarized. The offeror of the homestead filing service shall pay all fees charged in connection with the notarization and recordation of the homestead declaration.

(d) No offeror of a homestead filing service shall charge, demand, or collect any money until after the homestead declaration is recorded. The total amount charged, demanded, or collected by an offeror of a homestead filing service, including all fees for notarization and recordation, shall not exceed twenty-five dollars (\$25).

(e) For the purposes of this section, the following definitions apply:

(1) "Homestead filing service" means any service performed or offered to be performed for compensation in connection with the preparation or completion of a homestead declaration or in connection with the assistance in any manner of another person to prepare or complete a homestead declaration. "Homestead filing service" does not include any service performed by an attorney at law authorized to practice in this state for a client who has retained that attorney or an employee of that attorney acting under the attorney's direction and supervision.

(2) A "homestead declaration" has the meaning described in Article 5 (commencing with Section 704.910) of Chapter 4 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

(Added by Stats. 1987, Ch. 974, Sec. 1.)

17537.7. Except as to communications described in paragraph (2) of subdivision (n) of Section 11713.1 of the Vehicle Code, it is unlawful for any person to use the terms "invoice," "dealer invoice," "wholesale price," or similar terms that refer to a dealer's cost for a motor vehicle in an advertisement for the sale or lease of a vehicle, or advertise that the selling price of a vehicle is above, below, or at either of the following:

(a) The manufacturer's or distributor's invoice or selling price to a dealer.

(b) A dealer's cost.

(Added by Stats. 1995, Ch. 585, Sec. 1. Effective January 1, 1996.)

17537.8. (a) It is unlawful for any person to make any untrue or misleading statements in any manner in connection with the offering or performance of a homeowners' exemption filing service. For the purpose of this section, an "untrue or misleading statement" includes, but is not limited to, any representation that any of the following is true:

(1) A fee is required in order to receive the homeowners' exemption.

(2) The offeror of the homeowners' exemption filing service has a file or record covering a person to whom a solicitation is made.

(3) The offeror of the homeowners' exemption filing service is, or is affiliated with, any governmental entity. A violation of this paragraph includes, but is not limited to, the following:

(A) The misleading use of any governmental seal, emblem, or other similar symbol.

(B) The use of a business name including the word "homeowners' exemption" or "exemption" and the word "assessor," "auditor," "agency," "bureau," "department," "division," "federal," "state," "county," "city," or "municipal," or the name of any city, county, city and county, or any governmental entity.

(C) The use of an envelope that simulates an envelope containing a government check, tax bill, or government notice or an envelope that otherwise has the capacity to be confused with, or mistaken for, an envelope sent by a governmental entity.

(D) The use of an envelope or outside cover or wrapper in which a solicitation is mailed that does not bear on its face in capital letters and in conspicuous and legible type the following notice: "THIS IS NOT A GOVERNMENT DOCUMENT."

(b) (1) It is unlawful to offer to perform a homeowners' exemption filing service without making the following disclosure:

"THIS HOMEOWNERS' EXEMPTION FILING SERVICE IS NOT ASSOCIATED WITH ANY GOVERNMENT AGENCY. YOU CAN OBTAIN AND FILE A HOMEOWNERS' EXEMPTION CLAIM FORM, AT NO COST, WITH THE COUNTY ASSESSOR'S OFFICE."

(2) The disclosures specified in paragraph (1) shall be placed at the top of each page of every advertisement or promotional material disseminated by an offeror of a homeowners' exemption filing service and shall be printed in 12-point boldface type enclosed in a box formed by a heavy line.

(3) The disclosure specified in paragraph (1) shall be recited at the beginning of every oral solicitation and every broadcast advertisement and shall be delivered in printed form as prescribed by paragraph (2) before the time each person who responds to the oral solicitation or broadcast advertisement is obligated to pay for the service.

(c) No offeror of a homeowners' exemption filing service shall charge, demand, or collect any money until after the homeowners' exemption is filed with the county assessor. The total amount charged, demanded, or collected by an offeror of a homeowners' exemption filing service shall not exceed twenty-five dollars (\$25).

(d) For the purposes of this section, the following definitions apply:

(1) "Homeowners' exemption filing service" means any service performed or offered to be performed for compensation in connection with the preparation or completion of a homeowners' exemption claim or in connection with the assistance in any manner of another person to prepare or complete a homeowners' exemption claim.

(2) "Homeowners' exemption" has the meaning described in Section 218 of the Revenue and Taxation Code.

(Added by Stats. 1997, Ch. 249, Sec. 2. Effective January 1, 1998.)

17537.9. (a) It is unlawful for any person to make any untrue or misleading statements in any manner in connection with the offering or performance of an assessment reduction filing service. For the purposes of this section, an "untrue or misleading statement" includes, but is not limited to, any representation that any of the following is true:

(1) The preparation of a request for review or an assessment appeal application will result in a guaranteed reduction of property taxes.

(2) A fee is required in order for the county to process a reduction of a property's assessed value where the county has no applicable fee.

(3) The offeror of the assessment reduction filing service will be physically present to represent the person to whom a solicitation is made before county assessor staff, an assessment appeals board, county board of equalization, or an assessment hearing officer, unless the fee includes this service.

(4) The offeror of the assessment reduction filing service will prepare or complete informal assessor review data or prepare or complete the application in full, with the exception of the property owner's signature, on behalf of the person to whom a solicitation is made, unless the fee includes this service.

(5) The offeror of the assessment reduction filing service has a file or record covering a person to whom a solicitation is made.

(6) The offeror of the assessment reduction filing service is, or is affiliated with, any governmental entity. A violation of this paragraph includes, but is not limited to, the following:

(A) The misleading use of any governmental seal, emblem, or other similar symbol.

(B) The use of a business name including the word "appeal" or "tax" and the word "agency," "assessor," "board," "bureau," "commission," "department," "division," "federal," "state," "county," "city," or "municipal," or the name of any city, county, city and county, or any governmental entity.

(C) The use of an envelope that simulates an envelope containing a government check, tax bill, or government notice or an envelope that otherwise has the capacity to be confused with, or mistaken for, an envelope sent by a governmental entity.

(D) The use of an envelope or outside cover or wrapper in which a solicitation is mailed that does not bear on its face in capital letters and in conspicuous and legible type the following notice:

"THIS IS NOT A GOVERNMENT DOCUMENT."

(7) A late fee is required if the person to whom the solicitation is sent fails to respond to the offeror of the assessment reduction filing service by a date stated in the solicitation.

(b) (1) It is unlawful to offer to perform an assessment reduction filing service without making the following disclosure:

"THIS ASSESSMENT REDUCTION FILING SERVICE IS NOT ASSOCIATED WITH ANY GOVERNMENT AGENCY. IF YOU DISAGREE WITH THE ASSESSED VALUE OF YOUR PROPERTY, YOU HAVE THE RIGHT TO AN INFORMAL ASSESSMENT REVIEW, AT NO COST, BY CONTACTING THE ASSESSOR'S OFFICE DIRECTLY. IF YOU AND THE ASSESSOR CANNOT AGREE TO THE VALUE OF THE PROPERTY OR IF YOU DO NOT WISH TO CONTACT THE ASSESSOR YOU CAN OBTAIN AND FILE AN APPLICATION FOR CHANGED ASSESSMENT WITH THE COUNTY BOARD OF EQUALIZATION OR ASSESSMENT APPEALS BOARD ON YOUR OWN BEHALF. AN APPEALS BOARD HAS THE AUTHORITY TO RAISE PROPERTY VALUES (BUT IN NO CASE HIGHER THAN THE PROPOSITION 13 PROTECTED VALUE) AS WELL AS TO LOWER PROPERTY VALUES."

(2) The disclosures specified in paragraph (1) shall be placed at the top of each page of every advertisement or promotional material disseminated by an offeror of an assessment reduction filing service and shall be printed in not less than 12-point boldface font type that is at least 2-point boldface font type sizes larger than the next largest print on the page and enclosed in a box formed by a heavy line.

(3) The disclosure specified in paragraph (1) shall be recited at the beginning of every oral solicitation and every broadcast advertisement and shall be delivered in printed form as prescribed by paragraph (2) before the time each person who responds to the oral solicitation or broadcast advertisement is obligated to pay for the service.

(c) (1) No offeror of an assessment reduction filing service shall charge, demand, or collect any money in connection with a request for review until after the request is filed with the assessor.

(2) No offeror of an assessment reduction filing service shall charge, demand, or collect any money in connection with an assessment appeal application until after the application is filed with the clerk of the assessment appeals board.

(d) For the purposes of this section, the following definitions apply:

(1) "Assessment reduction filing service" means any service performed or offered to be performed for compensation in connection with the preparation or completion of an application or request of any kind for reduction in assessment of residential property or in connection with the assistance in any manner of another person to either (A) prepare or complete an application or request of any kind for reduction in assessment of residential property or (B) provide comparable sales information in connection with an application or request for reduction in assessment of residential property.

(2) "Assessment appeal application" has the meaning described in Section 1603 of the Revenue and Taxation Code.

(e) (1) It is unlawful for an offeror of an assessment reduction filing service to file a request or application of any kind for reduction in assessment without first obtaining a written authorization from the property owner.

(2) A true and correct copy of the written authorization shall be submitted with any request or application for reduction in assessment. The offeror shall maintain the original written authorization for a period of three years and shall make it available for inspection and copying within 24 hours of a request without a warrant to law enforcement, the Attorney General, district attorney, or city attorney.

(Amended by Stats. 2011, Ch. 269, Sec. 2. (AB 75) Effective January 1, 2012.)

17537.10. (a) It is unlawful for any person, firm, corporation, association, or any other business entity to make any untrue or misleading statements in any manner in connection with the offering or performance of a grant deed copy service. For the purpose of this section, an "untrue or misleading statement" includes, but is not limited to, any representation, with regard to property identified by its address or assessor's parcel number, that any of the following is true:

(1) That due to property foreclosures and loan modifications in the county where the property is located, the property owner should obtain a copy of his or her grant deed or other record of title.

(2) That a governmental entity, or any other entity that includes in its name words that could lead a person to reasonably believe that the entity is affiliated with government, has recommended that a property owner should have a copy of his or her grant deed or other record of title.

(3) That the offeror of the grant deed copy service is, or is affiliated with, any governmental entity. A violation of this paragraph includes, but is not limited to, the following:

(A) The misleading use of any governmental seal, emblem, or other similar symbol.

(B) The use of a business name including the words "title" or "grant deed" or "public record" and the word "agency," "bureau," "department," "division," "federal," "state," "county," "city," or "municipal," or the name of any city, county, city and county, or any governmental entity.

(C) The use of an envelope that simulates an envelope containing a government check, tax bill, or government notice or an envelope that otherwise has the capacity to be confused with, or mistaken for, an envelope sent by a governmental entity.

(D) The use of an envelope or outside cover or wrapper in which a solicitation is mailed that does not bear on its face in capital letters and in conspicuous and legible type the following notice: "THIS IS NOT A GOVERNMENT APPROVED OR AUTHORIZED DOCUMENT."

(4) That there is a fee payment deadline to obtain a copy of a property owner's grant deed or other record of title.

(b) (1) It is unlawful to offer to perform a grant deed copy service without making the following disclosure:

"THIS SERVICE TO OBTAIN A COPY OF YOUR GRANT DEED OR OTHER RECORD OF TITLE IS NOT ASSOCIATED WITH ANY GOVERNMENTAL AGENCY. YOU CAN OBTAIN A COPY OF YOUR GRANT DEED OR OTHER RECORD OF TITLE FROM THE COUNTY RECORDER IN THE COUNTY WHERE YOUR PROPERTY IS LOCATED FOR [AMOUNT OF FEE FOR THE COPY OF A GRANT DEED OR OTHER RECORD OF TITLE IN THAT COUNTY]."

(2) The disclosure specified in paragraph (1) shall be placed at the top of each page of every advertisement or promotional material disseminated by an offeror of a grant deed copy service and shall be printed in 14-point boldface type enclosed in a box formed by a heavy line.

(3) The disclosure specified in paragraph (1) shall be recited at the beginning of every oral solicitation and every broadcast advertisement and shall be delivered in printed form as prescribed by paragraph (2) before the time each person who responds to the oral solicitation or broadcast advertisement is obligated to pay for the service.

(c) For purposes of this section, "grant deed copy service" means a service offered by a person, firm, corporation, association, or any other business entity, through a mailed solicitation to a property owner, to obtain, for compensation, a copy of the property owner's grant deed or other record of title.

(Added by Stats. 2010, Ch. 533, Sec. 1. (AB 1373) Effective January 1, 2011.)

17537.11. (a) It is unlawful for any person to offer a coupon that is in any manner untrue or misleading.

(b) It is unlawful for any person to offer a coupon described as "free" or as a "gift," "prize," or other similar term if (1) the recipient of the coupon is required to pay money or buy any goods or services to obtain or use the coupon, and (2) the person offering the coupon or anyone honoring the coupon made the majority of his or her sales in the preceding year in connection with one or more "free," "gift," "prize," or similarly described coupons.

(c) For purposes of this section:

(1) "Coupon" includes any coupon, certificate, document, discount, or similar matter that purports to entitle the user of the coupon to obtain goods or services for free or for a special or reduced price.

(2) "Sale" includes lease or rent.

(Amended by Stats. 2000, Ch. 135, Sec. 10. Effective January 1, 2001.)

17537.12. (a) This section shall be known and may be cited as the Truth in Music Advertising Act.

(b) As used in this section, the following terms have the following meanings unless the context clearly indicates otherwise:

(1) "Performing group" means a vocal or instrumental group seeking to use the name of another group that has previously released a commercial sound recording under that name.

(2) "Person" means the performing group or its promoter, manager, or agent. "Person" does not include the performance venue or its owners, managers, or operators, unless the performance venue owns or produces the performing group, or knew or should have known that the performing group does not have a legal right to perform.

(3) "Recording group" means a vocal or instrumental group, at least one of whose members has previously released a commercial sound recording under that group's name and in which the member or members have a legal right by virtue of use or operation under the group name without having abandoned the name or affiliation with the group.

(4) "Sound recording" means a work that results from the fixation on a material object of a series of musical, spoken, or other sounds regardless of the nature of the material object, such as a disk, tape, or other phonorecord, in which the sounds are embodied.

(c) No person shall advertise or conduct a live musical performance or production through the use of a false, deceptive, or misleading affiliation, connection, or association between a performing group and a recording group unless any of the following apply:

(1) The performing group is the authorized registrant and owner of a federal service mark for the group registered in the United States Patent and Trademark Office.

(2) At least one member of the performing group was previously a member of the recording group and has a legal right by virtue of use or operation under the group name without having abandoned the name or affiliation of the group.

(3) The live musical performance or production is identified in all advertising and promotion as a salute or tribute, and the name of the vocal or instrumental group performing is not so closely related or similar to that used by the recording group that it would tend to confuse or mislead the public.

(4) The advertising does not relate to a live musical performance or production taking place in this state.

(5) The performance or production is expressly authorized by the recording group.

(d) (1) Any person who violates any of the provisions of this section shall be subject to a civil penalty not to exceed two thousand five hundred dollars (\$2,500) per violation, as provided in subdivision (a) of Section 17206. An action for a civil penalty shall be brought by a public prosecutor as provided in subdivision (a) of Section 17206 and shall be enforceable as a civil judgment.

(2) Any person who violates any of the provisions of this section shall be subject to the equitable remedies described in Chapter 5 (commencing with Section 17200) of Part 2.

(3) Nothing in this section shall preclude prosecution of a violation of this section under any other provision of law.

(Amended by Stats. 2009, Ch. 140, Sec. 20. (AB 1164) Effective January 1, 2010.)

17537.15. (a) For purposes of this section, "floral or ornamental products or services" means floral arrangements, cut flowers, floral bouquets, potted plants, balloons, floral designs, and related products and services.

(b) For the purposes of this section, "local telephone number" means a specific telephone number (area code and prefix) assigned for the purpose of completing local calls between a calling party or station and any other party or station within a designated exchange or all of its designated local calling areas. The term "local telephone number" does not include long distance telephone numbers or any toll-free telephone numbers listed in a local telephone directory.

(c) (1) It is an infraction for a provider or vendor of floral or ornamental products or services to misrepresent the geographic location of its business by doing either of the following:

(A) Listing a local telephone number in any advertisement or listing, unless the advertisement or listing identifies the true physical address, including the city, of the provider's or vendor's business.

(B) Listing a fictitious business name or an assumed business name in any advertisement or listing if both of the following criteria are met:

(i) The name of the business misrepresents the provider's or vendor's geographic location.

(ii) The advertisement or listing does not identify the true physical address, including the city and state, of the provider's or vendor's business.

(2) Notwithstanding Sections 17534 and 17534.5, a violation of this section is punishable, exclusively, by a fine not to exceed two hundred fifty dollars (\$250).

(d) This section does not create or impose any duty or obligation on a person other than a vendor or provider described in subdivision (a).

(e) This section does not apply to any of the following:

- (1) A publisher of a telephone directory or other publication or a provider of a directory assistance service publishing or providing information about another business.
- (2) An Internet Web site that aggregates and provides information about other businesses.
- (3) An owner or publisher of a print advertising medium providing information about other businesses.
- (4) An Internet service provider.
- (5) An Internet service that displays or distributes advertisements for other businesses.

(Added by Stats. 2012, Ch. 633, Sec. 1. (AB 1581) Effective January 1, 2013.)

17538. (a) It is unlawful in the sale or lease or offering for sale or lease of goods or services, for any person conducting sales or leases by telephone, the Internet or other electronic means of communication, mail order, or catalog in this state, including, but not limited to, the offering for sale or lease on television, radio, or the Internet, or by any other electronic means of communication or telecommunications device, of goods or services that may be ordered by mail, telephone, the Internet, or other electronic means of communication or telecommunications device, or for any person advertising in connection with those sales, leases, or advertisements a mailing address, telephone number, or Internet or other electronic address, to accept payment from or for a buyer, for the purchase or lease of goods or services ordered by mail, telephone, the Internet, or other electronic means of communication or telecommunications device, whether payment to the vendor is made directly, through the mail, by means of a transfer of funds from an account of the buyer or any other person, or by any other means, and then permit 30 days, unless otherwise conspicuously stated in the offering or advertisement, or unless a shorter time is clearly communicated by the person conducting the sale or lease, to elapse without doing any one of the following things:

(1) Shipping, mailing, or providing the goods or services ordered.

(2) Mailing a full refund or, if payment was made by means of a transfer from an account, (A) crediting the account in the full amount of the debit, or (B) if a third party is the creditor, issuing a credit memorandum to the third party, who shall promptly credit the account in the full amount of the debit.

(3) Sending the buyer a letter or other written notice (A) advising the buyer of the duration of an expected delay expressed as a specific number of days or weeks, or proposing the substitution of goods or services of equivalent or superior quality, and (B) offering to make a full refund, in accordance with paragraph (2), within one week if the buyer so requests. The vendor shall provide to the buyer in that letter or written notice a toll-free telephone number or other cost-free method to communicate the buyer's request for a full refund. If the vendor proposes to substitute goods or services, the vendor shall describe the substitute goods or services in detail, indicating fully how the substitute differs from the goods or services ordered.

(4) (A) Shipping, mailing, or providing substitute goods or services of equivalent or superior quality, if the buyer is extended the opportunity to return the substitute goods or services and the vendor promises to refund to the buyer (i) the cost of returning the substitute goods or services and (ii) any portion of the purchase price previously paid by the buyer.

(B) Except as provided in subparagraph (C), a notice to the buyer shall accompany the mailing, shipping, or providing of the substitute goods or services that informs the buyer of the substitution; describes fully how the substitute differs from the goods or services ordered, except that obvious nontechnical differences, such as color, need not be described; and discloses the buyer's right to reject the substitute goods or services and obtain a full refund of the amount paid, plus the cost of returning the substitute goods or services.

(C) The vendor may omit from the notice required by subparagraph (B) a description of how the substitute goods or services differ from the ordered goods or services if the notice otherwise complies with subparagraph (B), and if all the following requirements are complied with:

(i) The vendor maintains at least 100 retail outlets located in at least 20 counties in this state that are open to the public regularly during normal business hours where buyers can order catalog goods, pick them up, and return them for refunds.

(ii) The vendor maintains a toll-free telephone number and provides to each buyer, at the time of the buyer's call, a full description of how substitute goods or services differ from ordered goods or services. The toll-free telephone number shall

operate and be staffed at all times during which goods or services normally are available for pick up from the vendor's retail outlets.

(iii) If the buyer picks up substitute goods or services from the vendor's retail outlet, the notice required by subparagraph (B) as modified by this subparagraph is placed on, or attached to, the exterior of the package or wrapping containing the substitute, or is handed to the buyer at the time the buyer picks up the substitute.

(iv) The notice contains a reference number or some other means of identifying the ordered goods or services and the substitute goods or services.

(v) The notice contains the vendor's toll-free telephone number and instructions to the buyer that the buyer may call that number to obtain a full description of how the substitute differs from the ordered goods.

(b) For purposes of paragraphs (3) and (4) of subdivision (a), goods or services shall be considered of "equivalent or superior quality" only if they are (1) substantially similar to the goods or services ordered, (2) fit for the usual purposes for which the goods or services ordered are used, and (3) normally offered by the vendor at a price equal to or greater than the price of the goods or services ordered.

(c) When a buyer makes an initial application for an open-end credit plan, as defined in the Federal Consumer Credit Protection Act (15 U.S.C. Sec. 1602), at the same time the goods or services are ordered, and the goods or services are to be purchased on credit, the person conducting the business shall have 50 days, rather than 30 days, to perform the actions specified in this section.

(d) A vendor conducting business through the Internet or any other electronic means of communication shall do all of the following when the transaction involves a buyer located in this state:

(1) Before accepting any payment or processing any debit or credit charge or funds transfer, the vendor shall disclose to the buyer in writing or by electronic means of communication, such as e-mail or an on-screen notice, the vendor's return and refund policy, the legal name under which the business is conducted and, except as provided in paragraph (3), the complete street address from which the business is actually conducted.

(2) If the disclosure of the vendor's legal name and address information required by this subdivision is made by on-screen notice, all of the following shall apply:

(A) The disclosure of the legal name and address information shall appear on any of the following: (i) the first screen displayed when the vendor's electronic site is accessed, (ii) on the screen on which goods or services are first offered, (iii) on the screen on which a buyer may place the order for goods or services, (iv) on the screen on which the buyer may enter payment information, such as a credit card account number, or (v) for nonbrowser-based technologies, in a manner that gives the user a reasonable opportunity to review that information. The communication of that disclosure shall not be structured to be smaller or less legible than the text of the offer of the goods or services.

(B) The disclosure of the legal name and address information shall be accompanied by an adjacent statement describing how the buyer may receive the information at the buyer's e-mail address. The vendor shall provide the disclosure information to the buyer at the buyer's e-mail address within five days of receiving the buyer's request.

(C) Until the vendor complies with subdivision (a) in connection with all buyers of the vendor's goods or services, the vendor shall make available to a buyer and any person or entity who may enforce this section pursuant to Section 17535 on-screen access to the information required to be disclosed under this subdivision.

(3) The complete street address need not be disclosed as required by paragraph (1) if the vendor utilizes a private mailbox receiving service and all of the following conditions are met: (A) the vendor satisfies the conditions described in paragraph (2) of subdivision (b) of Section 17538.5, (B) the vendor discloses the actual street address of the private mailbox receiving service in the manner prescribed by this subdivision for the disclosure of the vendor's actual street address, and (C) the vendor and the private mailbox receiving service comply with all of the requirements of subdivisions (c) to (f), inclusive, of Section 17538.5.

(e) If a buyer is permitted to return goods or cancel a service that he or she purchased or contracted for on or after January 1, 2003, the vendor shall, within 30 days of return of the goods in refundable condition or cancellation of the service and of receipt of sufficient information to enable the vendor to make the refund, including confirmation that the buyer's payment for the purchase or contract has been paid or cleared by the applicable financial institution, process and send to the buyer any refund due to the buyer as a result of the return or cancellation, or, if the buyer's payment was made by means of a third-party creditor, the vendor shall issue a credit memorandum to the third party, pursuant to 12 C.F.R. 226.12(e), within seven business days and the third party shall promptly credit the account in the full amount of the refund.

(f) As used in this section and Section 17538.3, the following words have the following meanings:

(1) "Goods" means tangible chattels, including certificates or coupons exchangeable for those goods, and including goods which, at the time of the sale or subsequently, are to be so affixed to real property as to become a part of that real property, whether or

not severable therefrom.

(2) "Person" means an individual, partnership, corporation, association, or other group, however organized.

(3) "Buyer" means a person who seeks or acquires, by purchase or lease, any goods or services for any purpose.

(4) "Services" means work, labor, and services, including services furnished in connection with the sale or repair of goods.

(5) "Vendor" means a person who, as described in subdivision (a), vends, sells, leases, supplies, or ships goods or services, who conducts sales or leases of goods or services, or who offers goods or services for sale or lease. "Vendor" does not include a person responding to an electronic agent in connection with providing goods or services to a buyer if the aggregate amount of all transactions with the buyer does not exceed ten dollars (\$10).

(6) "Internet" means the global information system that is logically linked together by a globally unique address space based on the Internet Protocol (IP), or its subsequent extensions, and that is able to support communications using the Transmission Control Protocol/Internet Protocol (TCP/IP) suite, or its subsequent extensions, or other IP-compatible protocols, and that provides, uses, or makes accessible, either publicly or privately, high level services layered on the communications and related infrastructure described in this paragraph.

(7) "Electronic agent" means a computer program designed, selected, or programmed to initiate or respond to electronic messages or performances without review by an individual.

(g) Any violation of the provisions of this section is a misdemeanor punishable by imprisonment in the county jail not exceeding six months, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

(Amended by Stats. 2002, Ch. 326, Sec. 1. Effective January 1, 2003.)

17538.3. The provisions of Section 17538 do not apply to any of the following, except that subdivisions (d) and (e) of Section 17538 shall apply to subdivisions (a), (b), (c), and (d) of this section:

(a) To instances in which all advertising for goods or services contains a notice as to each item or service offered, which, in the case of printed advertising, shall be in a type size at least as large as that indicating the price, that a delay may be expected of a specified period. In those cases, one of the events described in Section 17538 must occur no later than the expiration of the period specified in the advertisement.

(b) To goods or services, such as quarterly magazines, which by their nature are not ready for use or consumption until a future date and for that reason cannot be stocked at the time of order.

(c) To installments other than the first of goods, such as magazine subscriptions, ordered for serial delivery.

(d) To any telecommunications goods and services sold by a telecommunications company, except those telecommunications goods and services purchased for use primarily for personal, family, or household purposes.

(e) To financial services offered in the ordinary course of business by a supervised bank, national banking association, bank holding company, a state or federal savings and loan association, a state or federal credit union, or a subsidiary or affiliate thereof, or an authorized industrial loan company, a licensed personal property broker, a licensed consumer finance lender, a licensed commercial finance lender, or a person licensed pursuant to Division 4 (commencing with Section 10000).

(f) To any delay in delivery of goods or services caused by the United States Postal Service, an act of God, or a labor strike by the vendor's employees.

(Amended by Stats. 2002, Ch. 326, Sec. 2. Effective January 1, 2003.)

17538.35. (a) Unless otherwise permitted by law or contract, any provider of electronic mail service shall provide each customer with notice at least 30 days before permanently terminating the customer's electronic mail address.

(b) No contract for electronic mail service may permit termination of service without cause with less than a 30-day notice. For purposes of this subdivision, "termination of service without cause" means termination of service at the unfettered discretion of the service provider without regard to any conduct of the customer that violates the service provider's terms of service or acceptable use policy.

(c) For purposes of this section, "provider" shall mean the entity that controls the customer's electronic mail address, and not the entity making the underlying network or access available to the provider or the customer.

(d) No provider shall be liable under this section solely for a failure to comply with this section in the event a customer's electronic mail address is permanently terminated due to the action or inaction of an entity making the underlying network or access available to the provider or the customer.

(e) This section supersedes and preempts all rules, regulations, codes, statutes, or ordinances of all cities, counties, cities and counties, municipalities, and other local agencies regarding notice of electronic mail termination by providers of electronic mail service.

(f) This section shall become inoperative on the date that a federal law or regulation is enacted that regulates notice requirements in the event of termination of electronic mail service.

(Added by Stats. 2002, Ch. 783, Sec. 1. Effective January 1, 2003. Conditionally inoperative as provided in subd. (f).)

17538.41. (a) (1) Except as provided in subdivision (b), (c), (d), or (e), no person, entity conducting business, candidate, or political committee in this state shall transmit, or cause to be transmitted, a text message advertisement to a mobile telephony services handset, pager, or two-way messaging device that is equipped with short message capability or any similar capability allowing the transmission of text messages. A text message advertisement is a message, the principal purpose of which is to promote the sale of goods or services, or to promote a political purpose or objective, to the recipient, and consisting of advertising material for the lease, sale, rental, gift offer, or other disposition of any realty, goods, services, or extension of credit, or advertising material for political purposes.

(2) This section shall apply when a text message advertisement is transmitted to a number assigned for mobile telephony service, pager service, or two-way messaging service to a California resident.

(b) This section shall not apply to text messages transmitted at the direction of a person or entity offering mobile telephony service, pager service, or two-way messaging service if the subscriber is offered an option to not receive those text messages.

(c) This section shall not apply to text messages transmitted by a business, candidate, or political committee that has an existing relationship with the subscriber if the subscriber is offered an option not to receive text messages from that business, candidate, or political committee.

(d) This section shall not apply to text messages transmitted by an affiliate of a business that has an existing relationship with the subscriber, but only if the subscriber has provided consent to the business with which he or she has that relationship to receive text messages from affiliates of that business. "Affiliate" means any company that controls, is controlled by, or is under common control with, another company.

(e) This section shall not apply to electronic mail messages that are forwarded, without the knowledge of the sender, to a mobile telephony services handset, pager, or two-way messaging device.

(f) Subdivision (a) shall not impose an obligation on a person or entity offering mobile telephony service, pager service, or two-way messaging service to control the transmission of a text message unless the message is transmitted at the direction of that person or entity.

(g) For purposes of this section, "mobile telephony service" means commercially available interconnected mobile phone services that provide access to the public switched telephone network (PSTN) via mobile communication devices employing radiowave technology to transmit calls, including cellular radiotelephone, broadband Personal Communications Services (PCS), and digital Specialized Mobile Radio (SMR).

(Amended by Stats. 2005, Ch. 711, Sec. 1. Effective January 1, 2006.)

17538.43. (a) As used in this section, the following terms have the following meanings:

(1) "Telephone facsimile machine" means equipment that has the capacity to do either or both of the following:

(A) Transcribe text or images, or both, from paper into an electronic signal and to transmit that signal over a regular telephone line.

(B) Transcribe text or images, or both, from an electronic signal received over a regular telephone line onto paper.

(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.

(2) In addition to any other remedy provided by law, including a remedy provided by the Telephone Consumer Act (47 U.S.C. Sec. 227 and following), a person or entity may bring an action for a violation of this subdivision seeking the following relief:

(A) Injunctive relief against further violations.

(B) Actual damages or statutory damages of five hundred dollars (\$500) per violation, whichever amount is greater.

(C) Both injunctive relief and damages as set forth in subparagraphs (A) and (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).

(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:

(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.

(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:

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

(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.

(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.

(Added by Stats. 2005, Ch. 667, Sec. 1. Effective January 1, 2006.)

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, 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 this 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) An electronic mail service provider who has brought an action against a party for a violation under Section 17529.8 shall not bring an action against that party under this section for the same unsolicited commercial electronic mail advertisement.

(B) An electronic mail service provider who has brought an action against a party for a violation of this section shall not bring an action against that party under Section 17529.8 for the same unsolicited commercial electronic mail advertisement.

(Amended by Stats. 2004, Ch. 183, Sec. 15. Effective January 1, 2005.)

17538.5. (a) It is unlawful in the sale or offering for sale of consumer goods or services for any person conducting, any business in this state which utilizes a post office box address, a private mailbox receiving service, or a street address representing a site used for the receipt or delivery of mail or as a telephone answering service, to fail to disclose the legal name under which business is done and, except as provided in paragraph (2) of subdivision (b), the complete street address from which business is actually conducted in all advertising and promotional materials, including order blanks and forms. Any violation of the provisions of this section is a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars (\$2,500), or by both.

(b) (1) This section shall not apply to a person who sells the preponderance of goods and services at retail from trade premises which are open to the public regularly during normal business hours where the post office box or telephone answering service is supportive of and ancillary to the sales made or to any person who provides services pursuant to a license issued pursuant to this code or any other provision of law by a state board or agency or, except for a person conducting a mail order or catalog business, by a city or county or city and county in this state, which has the person's current business street address or home address on record and which is authorized to reveal that address to inquiring persons.

(2) If a person conducts a business described in subdivision (a) from that person's residence, the person is not required to disclose the residence address if both of the following conditions are satisfied:

(A) The person's current business street address or home address is contained in a United States Postal Service (USPS) Form 1583 that is filed with the USPS.

(B) The person has signed an acknowledgement form substantially in accordance with the provisions set forth in subdivision (f) which, among other things, authorizes the commercial mail receiving agency to act as that person's agent for service of process.

(c) A commercial mail receiving agency (CMRA) shall not provide private mailbox receiving service to any customer until it obtains from that customer at least two pieces of identification regarding that customer and provides to that customer an acknowledgment, as set forth in subdivision (f), which (1) acknowledges the obligation to advise the CMRA of any change in address, (2) authorizes the CMRA to act as an agent for service of process, and (3) acknowledges the requirements of Sections 17200 and 17500, which prohibit unfair competition and false advertising. The commercial mail receiving agency shall thereafter maintain a copy of any United States Postal Service Form 1583 for each mailbox service customer, along with a copy of each of the two pieces of identification used by the customer, for a period of two years after the termination of service to that customer. Upon the request of the Department of Consumer Affairs or any law enforcement agency conducting an investigation, the commercial mail receiving agency shall make available to the Department of Consumer Affairs or that law enforcement agency, for purposes of that investigation and copying, its copy of the United States Postal Service Form 1583 and the two pieces of identification used by the customer.

(d) (1) Every person receiving private mailbox receiving service from a CMRA in this state shall be required to sign an agreement, along with a USPS Form 1583, which authorizes the CMRA owner or operator to act as agent for service of process for the mail receiving service customer. Every CMRA owner or operator shall be required to accept service of process for and on behalf of any of their mail receiving service customers, and for two years after termination of any mail receiving service customer agreement. Upon receipt of any process for any mailbox service customer, the CMRA owner or operator shall (A) within 48 hours after receipt of any process, place a copy of the documents or a notice that the documents were received into the customer's mailbox or other place where the customer usually receives his or her mail, unless the mail receiving service for the customer was previously terminated, and (B) within five days after receipt, send all documents by first-class mail, to the last known home or personal address of the mail receiving service customer. The CMRA shall obtain a certificate of mailing in connection with the mailing of the documents. Service of process upon the mail receiving service customer shall then be deemed perfected 10 days after the date of mailing.

If the CMRA owner or operator has complied with the foregoing requirements and provides to any party participating in a lawsuit involving a mail receiving service customer a declaration of service by mail, given under penalty of perjury along with a certificate of mailing, the CMRA owner or operator shall have no further liability in connection with acting as agent for service of process for its mail receiving service customer.

(2) Upon complaint or inquiry concerning any CMRA mail receiving service customer, the CMRA owner or operator shall inform the person making the complaint or inquiry that the CMRA is an authorized agent for service of process on the mail receiving service customer.

(3) Upon presentation of a certified copy of a judgment, the CMRA shall disclose to the judgment creditor the last known address of any of its mail receiving service customers against whom the judgment was obtained.

(e) An owner or operator of a CMRA who, acting in good faith, contacts a governmental agency concerning suspected illegal or fraudulent activities carried out by a mail receiving service customer shall have no liability for claims filed by the customer arising out of that contact. No owner or operator of a commercial mail receiving agency that maintains on file a copy of the United States Postal Service Form 1583 for its private mailbox receiving service customers and complies with subdivision (c) shall be liable for any illegal acts of any mail receiving service customer based only on the fact that the owner or operator of the CMRA provided mail receiving services to the customer.

(f) The following acknowledgement and notice, substantially in the form set forth below, shall be delivered to each person obtaining private mailbox receiving service at a CMRA:

"ACKNOWLEDGEMENT BY PRIVATE MAILBOX SERVICE CUSTOMERS

This acknowledgement is required by Section 17538.5 of the Business and Professions Code.

Any person obtaining private mailbox receiving service in the State of California must read and acknowledge receipt of the following statement, which is to be kept on file at this CMRA and will be made available, upon demand, to the Department of Consumer Affairs or any law enforcement agency conducting an investigation.

By requesting and obtaining use of a private mailbox receiving service in the State of California, I acknowledge that:

1. I am obligated to disclose my actual home address or place of residence on a USPS Form 1583 or other form as may later be developed and I further agree that I will provide prompt written notice to this CMRA of any subsequent change in my home address or place of residence.
2. By signing below, I irrevocably authorize this CMRA to act as my agent for service of process to receive any legal documents that may be served upon me. This authorization shall continue from the date of this agreement until two years after my mail receiving service has been terminated. I understand that this CMRA will (A) place a copy of the documents or a notice that the documents were received into my mailbox or other place where I usually receive my mail, unless my mail receiving service has been terminated, and (B) send all documents by first-class mail to the home or other address last known to the CMRA.

3. I further acknowledge that I understand that use of a private mailbox receiving service for commercial purposes in the State of California requires the user to comply with all applicable laws, including Section 17538.5 of the Business and Professions Code and laws prohibiting unfair competition and false advertising as set forth in Sections 17200 and 17500 of the Business and Professions Code. Violation of these laws may result in criminal or civil penalties or both. I understand that the United States Postal Service Form 1583 that must be prepared for each private mailbox receiving service customer shall be delivered to the local United States Post Office and a copy of the form must be retained by this CMRA and made available upon demand to the Department of Consumer Affairs or any law enforcement agency conducting an investigation. I hereby agree to accept and abide by the foregoing requirements.

Date _____	Signature _____
Name Printed _____	
Street Address _____	
CityStateZip" _____	

(Amended by Stats. 1994, Ch. 684, Sec. 2. Effective January 1, 1995.)

17538.6. (a) It is unlawful for any person conducting business in this state to require or request a consumer to issue a postdated check unless (1) the person accepting the check advises the consumer in writing that the check may be cashed immediately, notwithstanding the postdating, unless the consumer files a postdating order with the consumer's bank pursuant to Section 4401 of the Commercial Code, and (2) either of the following occurs:

(A) Receipt of the advice is acknowledged by the consumer in writing.

(B) The advice is clearly printed on an invoice for goods or services that is provided to the consumer at the same time that the check is solicited.

(b) This section shall not apply to any person who requires or requests a consumer to issue a postdated check if the recipient of the check does not submit the check for collection or cause it to be submitted for collection until on or after its date.

(c) As used in this section:

(1) "Bank" means any person engaged in the business of banking and includes, in addition to a commercial bank, a savings and loan association, savings bank, or credit union.

(2) "Check" means a draft, other than a documentary draft, payable on demand drawn on a bank, even though it is described by another term, such as "share draft" or "negotiable order of withdrawal."

(Added by Stats. 1992, Ch. 914, Sec. 1. Effective January 1, 1993.)

17538.7. (a) It is unlawful for a seller to advertise any payment, number of payments, or period of repayment for any goods, property, or services purchased through an extension of consumer credit under an open-end credit plan accepted for purchases by more than one seller unless the seller clearly and conspicuously discloses all of the following:

(1) The cash price and the amount or percentage of a downpayment, if any.

(2) The monthly or other periodic payment, the number of payments or the period of repayment, the total amount of all payments, and whether the monthly or other periodic payment is calculated on the assumption that the purchaser has no outstanding balance due under the open-end credit plan, if that is the case.

(3) The amount of the finance charge and any periodic rate that may be applied expressed as an annual percentage rate as described under subdivision (e). If the open-end credit plan provides for a variable periodic rate, that fact shall be disclosed.

(4) Any minimum, fixed, transaction, activity, or similar charge and any membership or participation fee that could be imposed.

(5) The name of the creditor, if not the seller.

(6) Whether the advertised terms are available to the purchaser only after the creditor's approval, if that is the case.

(b) (1) A catalog or other multiple-page advertisement that gives information in a table or schedule in sufficient detail to permit determination of the disclosures required by subdivision (a) shall be considered a single advertisement if (A) the table or schedule is clearly and conspicuously set forth, and (B) any statement of the amount of any payment, the number of payments, or the period of repayment appearing anywhere else in the catalog or advertisement clearly refers to the page on which the table or schedule begins.

(2) A catalog or multiple-page advertisement complies with subdivision (a) if the table or schedule includes all appropriate disclosures for a representative scale of amounts up to the level of the more commonly sold higher-priced property or services offered.

(c) It is unlawful for a seller to advertise any payment, number of payments, or period of repayment for particular goods, property, or services purchased through an extension of consumer credit under any open-end credit plan unless the seller clearly and conspicuously discloses the cash price proximate to the advertised payment, number of payments, or period of repayment.

(d) It is unlawful for a seller to advertise terms that actually are not or will not be arranged or offered by the creditor.

(e) (1) For the purposes of this title, the terms "person," "creditor," "consumer credit," "open-end credit," "cash price," "downpayment," "finance charge," "periodic rate," and "annual percentage rate" have the same meaning as used in Regulation Z.

(2) The term "Regulation Z" shall mean any rule, regulation, or interpretation promulgated by the Board of Governors of the Federal Reserve System under the Federal Truth in Lending Act, (Public Law 90-321, as amended), and any interpretation or approval issued by an official or employee of the Federal Reserve System duly authorized by the board under the Truth in Lending Act, to issue those interpretations or approvals.

(Added by Stats. 1985, Ch. 734, Sec. 1.)

17538.8. Any advertisement that offers free or discounted transportation or certificates to obtain transportation and that requires the consumer to purchase accommodations through or from a particular source, or any advertisement that offers free or discounted accommodations or certificates to obtain accommodations and that requires the consumer to purchase transportation through or from a particular source, shall set forth in close proximity to each reference to free or discounted transportation or accommodations, in a size and prominence no less than the largest print in the reference, the total price that shall be paid by the consumer for the combination of transportation and accommodations. If the advertisement is oral, the total price shall immediately precede or follow each description of the free or discounted transportation or accommodations.

(Added by Stats. 1994, Ch. 1123, Sec. 1.5. Effective January 1, 1995.)

17538.9. (a) For the purposes of this section:

(1) "Ancillary charges" means all surcharges, taxes, fees, connection charges, maintenance fees, monthly or other periodic fees, per-call access fees, or other assessments or charges of any kind, however denominated, that may be imposed in connection with the use of a card or services, other than the per unit or per minute rate charged.

(2) "Cellular telephone services" means facilities-based, commercial mobile telephone services.

(3) "Company" refers to any entity providing prepaid calling services to the public using its own or a resold telecommunications network.

(4) "Distributor" means any person who offers or sells a card or services to a retail vendor or to any other person for ultimate resale to a retail vendor.

(5) "Prepaid calling card" or "card" means any object containing an access number and authorization code that enables a consumer to use prepaid calling services. It does not include any object of that type used for promotional purposes.

(6) "Prepaid calling services" or "services" refers to any prepaid telecommunications service that allows consumers to originate calls through an access number and authorization code, whether manually or electronically dialed.

(7) "Retail vendor" means any person who sells a card or service to a consumer for use in making telephone calls.

(b) The following standards and requirements for consumer disclosure and services shall apply to the advertising and sale of prepaid calling cards and prepaid calling services:

(1) Any advertisement of the price, rate, or unit value in connection with the sale of prepaid calling cards or services shall clearly and conspicuously disclose all of the following:

(A) Any geographic limitation to the advertised price, rate, or unit value.

(B) All ancillary charges and the conditions under which each applies. This disclosure shall be made prominently near the beginning of the advertisement. In a written advertisement this disclosure shall appear in table form in a box with the bold label, "Other Charges." The amount of each ancillary charge shall be identified in one column and the conditions under which each applies shall be stated on the same line in the column immediately to the right of the charge.

(2) The following information shall be legibly printed on the card:

(A) The name of the company.

(B) A toll-free customer service number.

(C) A toll-free network access number, if required to access service.

(D) The authorization code, if required to access service.

(E) The expiration date or policy, if applicable, except where paragraph (11) applies.

(3) The company shall print legibly on the card or packaging, so that it may be read without having to open any packaging, and the retail vendor shall make available clearly and conspicuously in a prominent area immediately proximate to the point of sale of the prepaid calling card or prepaid calling services the following information, which shall be current at the time of printing and for as long as it is displayed:

(A) The value of the card and all ancillary charges.

(B) Ancillary charges for international calls to each country for which the card may be used or, in lieu of disclosing ancillary charges for each country, the highest ancillary charges for any international calls applicable on that card and any additional or different prices, rates, or unit values applicable to international usage of the prepaid calling card or prepaid calling services.

(C) The minimum charge per call, such as a three-minute minimum charge, if any.

(D) The definition of the term "unit," if applicable.

(E) The billing decrement.

(F) The name of the company.

(G) The recharge policy, if any.

(H) The refund policy, if any.

(I) The expiration policy, if any.

(J) The 24-hour customer service toll-free telephone number required in paragraph (9).

(4) Before a customer has recharged a card or service, no company shall provide fewer minutes than those stated, charge more than the rate stated, or charge more for ancillary services than stated on the card or packaging, or in an advertisement available to the public at the time the card or service is purchased.

(5) Service may be recharged by the customer at a rate higher than the rate at initial purchase or last recharge. However, the customer shall be informed of any increased rates or charges prior to the customer agreeing to pay for the recharge.

(6) If a language other than English is used on the card or packaging to provide dialing instructions to place a call or to contact customer service, the information required by paragraph (3) shall also be disclosed in that language in the point of sale disclosure in the manner described in paragraph (3).

(7) If a language other than English is used in the advertising or promotion of the card or prepaid calling services or is used on the card or packaging other than for dialing instructions, the information required by paragraph (3) shall also be disclosed in that language on the card or packaging and in the point of sale disclosure in the manner described in paragraph (3).

(8) A company shall provide a voice prompt, immediately after a caller enters a personal identification number and destination number, that states the number of minutes for that call if the entire remaining value of the card or service were consumed in one continuous call to the dialed destination, substantially in the following form:

"You have [insert number] minutes if used up in this call."

(9) A company shall establish and maintain a toll-free customer service telephone number that shall meet the following requirements:

(A) A live operator shall answer incoming calls to the telephone number 24 hours a day, seven days a week.

(B) The telephone number shall have sufficient capacity and staffing to accommodate a reasonably anticipated number of calls without incurring a busy signal or undue wait. The company shall provide customer service in each language used on a prepaid calling card or its packaging and in the advertising or promotion of the prepaid calling card or prepaid calling services.

(C) The telephone number shall allow consumers to lodge complaints and obtain information on all of the following:

(i) All rates and ancillary charges.

(ii) The company's recharge, refund, and expiration policies.

(iii) The balance of use available in the consumer's account, if applicable.

(D) A company shall not impose any ancillary charge related to obtaining customer service, including any charge related to connecting with the customer service number or waiting to speak to a live operator.

A company offering prepaid cellular telephone services shall be deemed to be in compliance with the requirements of this paragraph if, when a request for information is made outside of normal business hours, that company provides the information requested on the next business day.

(10) A company that issues prepaid calling cards or prepaid calling services shall provide a refund to any purchaser of a prepaid calling card or prepaid calling services if the network services associated with that card or services fail to operate in a commercially reasonable manner. The refund shall be in an amount not less than the value remaining on the card or in the form of a replacement card, and shall be provided to the consumer within 30 days from the date of receipt of notification from the consumer that the card has failed to operate in a commercially reasonable manner.

(11) Cards without a specific expiration date or policy printed on the card, and with a balance of service remaining, shall be considered active for a minimum of one year from the date of purchase, or if recharged, from the date of the last recharge.

(12) In the case of prepaid calling cards or services utilized at a pay telephone, the company may provide voice prompt notification of any ancillary charges related to pay telephone usage, in lieu of providing notice of those ancillary charges as required by paragraph (1) and by subparagraph (A) of paragraph (3), provided that the company provides users of prepaid calling cards or services with reasonable time to terminate the call after notification of the ancillary charges related to pay telephone usage without incurring any charge for the call.

(13) A company shall maintain access numbers with sufficient capacity to accommodate a reasonably anticipated number of calls without incurring a busy signal or undue delay.

(14) A company may not impose any ancillary charges that are not disclosed as required by this section or that exceed the amount disclosed by the company.

(15) A company may not impose any charges if the consumer is not connected to the number called. For the purpose of this paragraph, the customer shall not be considered connected to the number called if the customer receives a busy signal or the call is unanswered.

(16) The value of the card and the amount of any ancillary charges, that are required to be disclosed by paragraph (3), shall be expressed in the same format. If the value of a card is expressed in minutes, the minutes shall be identified as domestic or international and the identification shall be printed on the same line or next line as the value of the card in minutes.

(17) No person shall offer or sell any prepaid calling card or prepaid calling services that do not contain the information required to be disclosed on the card or packaging as provided in paragraph (3).

(18) A distributor that sells directly to a retail vendor shall provide the retail vendor with the current information required by paragraph (3) in a form that may be displayed by the retail vendor as provided in paragraph (3).

(Amended by Stats. 2008, Ch. 739, Sec. 1. Effective January 1, 2009.)

17539. The Legislature finds that there is a compelling need for more complete disclosure of rules and operation of contests in which money or other valuable consideration may be solicited; that current methods of disclosure are inadequate and create misunderstandings as to the true requirements for participation and winning of prizes offered; that certain problems which have arisen are peculiar to contests; that the provisions of Sections 17539.1 through 17539.3 are necessary to the public welfare and that

the terms hereof shall be interpreted so as to provide maximum disclosure to and fair treatment of persons who may or do enter such contests.

(Added by Stats. 1974, Ch. 1152.)

17539.1. (a) The following unfair acts or practices undertaken by, or omissions of, any person in the operation of any contest or sweepstakes are prohibited:

- (1) Failing to clearly and conspicuously disclose, at the time of the initial contest solicitation, at the time of each precontest promotional solicitation and each time the payment of money is required to become or to remain a contestant, the total number of contestants anticipated based on prior experience and the percentages of contestants correctly solving each puzzle used in the three most recently completed contests conducted by the person. If the person has not operated or promoted three contests he or she shall disclose for each prior contest if any, the information required by this section.
- (2) Failing to promptly send to each member of the public upon his or her request, the actual number and percentage of contestants correctly solving each puzzle or game in the contest most recently completed.
- (3) Misrepresenting in any manner the odds of winning any prize.
- (4) Misrepresenting in any manner, the rules, terms, or conditions of participation in a contest.
- (5) Failing to clearly and conspicuously disclose with all contest puzzles and games and with all promotional puzzles and games all of the following:
 - (A) The maximum number of puzzles or games that may be necessary to complete the contest and determine winners.
 - (B) The maximum amount of money, including the maximum cost of any postage and handling fees, that a participant may be asked to pay to win each of the contest prizes then offered.
 - (C) That future puzzles or games, if any, or tie breakers, if any, will be significantly more difficult than the initial puzzle.
 - (D) The date or dates on or before which the contest will terminate and upon which all prizes will be awarded.
 - (E) The method of determining prizewinners if a tie remains after the last tie breaker puzzle is completed.
 - (F) All rules, regulations, terms, and conditions of the contest.
- (6) Failing to clearly and conspicuously disclose the exact nature and approximate value of the prizes when offered.
- (7) Failing to award and distribute all prizes of the value and type represented.
- (8) Representing directly or by implication that the number of participants has been significantly limited, or that any particular person has been selected to win a prize unless such is the fact.
- (9) Representing directly or by implication that any particular person has won any money, prize, thing, or other value in a contest unless there has been a real contest in which a meaningful percentage, which shall be at least a majority, of the participants in such contests have failed to win a prize, money, thing, or other value.
- (10) Representing directly or by implication that any particular person has won any money, prize, thing, or other value without disclosing the exact nature and approximate value thereof.
- (11) Using the word "lucky" to describe any number, ticket, coupon, symbol, or other entry, or representing in any other manner directly or by implication that any number, ticket, coupon, symbol, or other entry confers or will confer an advantage upon the recipient that other recipients will not have, that the recipient is more likely to win a prize than are others, or that the number, ticket, coupon, symbol, or other entry has some value that other entries do not have.
- (12) Using or offering for use any method intended to be used by a person interacting with an electronic video monitor to simulate gambling or play gambling-themed games in a business establishment that (A) directly or indirectly implements the predetermination of sweepstakes cash, cash-equivalent prizes, or other prizes of value, or (B) otherwise connects a sweepstakes player or participant with sweepstakes cash, cash-equivalent prizes, or other prizes of value. For the purposes of this paragraph, "business establishment" means a business that has any financial interest in the conduct of the sweepstakes or the sale of the

products or services being promoted by the sweepstakes at its physical location. This paragraph does not make unlawful game promotions or sweepstakes conducted by for-profit commercial entities on a limited and occasional basis as an advertising and marketing tool that are incidental to substantial bona fide sales of consumer products or services and that are not intended to provide a vehicle for the establishment of places of ongoing gambling or gaming.

(13) Failing to obtain the express written or oral consent of individuals before their names are used for a promotional purpose in connection with a mailing to a third person.

(14) Using or distributing simulated checks, currency, or any simulated item of value unless there is clearly and conspicuously printed thereon the words: SPECIMEN—NONNEGOTIABLE.

(15) Representing, directly or by implication, orally or in writing, that any tie breaker puzzle may be entered upon the payment of money qualifying the contestant for an extra cash or any other type prize or prizes unless:

(A) It is clearly and conspicuously disclosed that the payments are optional and that contestants are not required to pay money, except for reasonable postage and handling fees, to play for an extra cash or any other type of prize or prizes; and

(B) Contestants are clearly and conspicuously given the opportunity to indicate they wish to enter such phase of the contest for free, except for reasonable postage and handling fees the amount of which shall not exceed one dollar and fifty cents (\$1.50) plus the actual cost of postage and which shall be clearly and conspicuously disclosed at the time of the initial contest solicitation and each time thereafter that the payment of such fees is required. The contestants' opportunity to indicate they wish to enter for free shall be in immediate conjunction with and in a like manner as the contestants' opportunity to indicate they wish to play for an extra prize.

(b) For the purposes of this section, "sweepstakes" means a procedure, activity, or event, for the distribution, donation, or sale of anything of value by lot, chance, predetermined selection, or random selection that is not unlawful under other provisions of law, including, but not limited to, Chapter 9 (commencing with Section 319) and Chapter 10 (commencing with Section 330) of Title 9 of Part 1 of the Penal Code.

(c) This section does not apply to an advertising plan or program that is regulated by, and complies with, the requirements of Section 17537.1.

(d) Nothing in this section shall be deemed to render lawful any activity that is unlawful pursuant to other law, including, but not limited to, Section 320, 330a, 330b, 330.1, or 337j of the Penal Code.

(e) Nothing in this section shall be deemed to render unlawful or restrict otherwise lawful games and methods used by a gambling enterprise licensed under the Gambling Control Act or operations of the California State Lottery.

(Amended by Stats. 2014, Ch. 592, Sec. 1. (AB 1439) Effective January 1, 2015.)

17539.15. (a) Solicitation materials containing sweepstakes entry materials or solicitation materials selling information regarding sweepstakes shall not represent, taking into account the context in which the representation is made, including, without limitation, emphasis, print, size, color, location, and presentation of the representation and any qualifying language, that a person is a winner or has already won a prize or any particular prize unless that person has in fact won a prize or any particular prize. If the representation is made on or visible through the mailing envelope containing the sweepstakes materials, the context in which the representation is to be considered, including any qualifying language, shall be limited to what appears on, appears from, or is visible through, the mailing envelope.

(b) Solicitation materials containing sweepstakes entry materials or solicitation materials selling information regarding sweepstakes shall include a clear and conspicuous statement of the no-purchase-or-payment-necessary message, in readily understandable terms, in the official rules included in those solicitation materials and, if the official rules do not appear thereon, on the entry-order device included in those solicitation materials. The no-purchase-or-payment-necessary message included in the official rules shall be set out in a separate paragraph in the official rules and be printed in capital letters in contrasting typeface not smaller than the largest typeface used in the text of the official rules.

(c) Sweepstakes entries not accompanied by an order for products or services shall not be subjected to any disability or disadvantage in the winner selection process to which an entry accompanied by an order for products or services would not be subject.

(d) Solicitation materials containing sweepstakes entry materials or solicitation materials selling information regarding sweepstakes shall not represent that an entry in the promotional sweepstakes accompanied by an order for products or services will be eligible to receive additional prizes or be more likely to win than an entry not accompanied by an order for products or services or that an entry not accompanied by an order for products or services will have a reduced chance of winning a prize in the promotional sweepstakes.

(e) Solicitation materials containing sweepstakes entry materials or solicitation materials selling information regarding sweepstakes shall not represent that a person has been specially selected in connection with a sweepstakes unless it is true.

(f) Solicitation materials containing sweepstakes entry materials or solicitation materials selling information regarding sweepstakes shall not represent that the person receiving the solicitation has received any special treatment or personal attention from the sweepstakes sponsor or any officer, employee, or agent of the sweepstakes sponsor unless the representation of special treatment or personal attention is true.

(g) Solicitation materials containing sweepstakes entry materials or solicitation materials selling information regarding sweepstakes shall not represent that a person is being notified a second or final time of the opportunity to receive or compete for a prize, unless that representation is true.

(h) Solicitation materials containing sweepstakes entry materials or solicitation materials selling information regarding sweepstakes shall not represent that a prize notice is urgent or otherwise convey an impression of urgency by use of description, phrasing on a mailing envelope, or similar method, unless there is a limited time period in which the recipient must take some action to claim, or be eligible to receive, a prize, and the date by which that action is required is clearly and conspicuously disclosed in the body of the solicitation materials.

(i) Solicitation materials containing sweepstakes entry materials or solicitation materials selling information regarding sweepstakes shall not do either of the following:

(1) Simulate or falsely represent that it is a document authorized, issued, or approved by any court, official, or agency of the United States or any state, or by any lawyer, law firm, or insurance or brokerage company.

(2) Create a false impression as to its source, authorization, or approval.

(j) The official rules for a sweepstakes shall disclose information about the date or dates the final winner or winners will be determined.

(k) For purposes of this section:

(1) "No-purchase-or-payment-necessary message" means the following statement or a statement substantially similar to the following statement: "No purchase or payment of any kind is necessary to enter or win this sweepstakes."

(2) "Official rules" means the formal printed statement, however designated, of the rules for the promotional sweepstakes appearing in the solicitation materials. The official rules shall be prominently identified and all references thereto in any solicitation materials shall consistently use the designation for the official rules that appears in those materials. Each sweepstakes solicitation shall contain a copy of the official rules.

(3) "Specially selected" means a representation that a person is a winner, a finalist, in first place or tied for first place, or otherwise among a limited group of persons with an enhanced likelihood of receiving a prize.

(l) (1) A sweepstakes sponsor may not charge a fee as a condition of receiving a monetary distribution or obtaining information about a prize or sweepstakes.

(2) (A) For the purposes of this section, "sweepstakes sponsor" means either of the following:

(i) A person or entity that operates or administers a sweepstakes as defined in paragraph (12) of subdivision (a) of Section 17539.5.

(ii) A person or entity that offers, by means of a notice, a prize to another person in conjunction with any real or purported sweepstakes that requires or allows, or creates the impression of requiring or allowing, the person to purchase any goods or services, or pay any money, as a condition of receiving, or in conjunction with allowing the person to receive, use, or obtain a prize or information about a prize.

(B) A person or entity that merely furnishes a prize in connection with a sweepstakes that is operated or administered by another person or entity shall not be deemed to be a sweepstakes sponsor.

(Amended by Stats. 2008, Ch. 749, Sec. 1. Effective January 1, 2009.)

17539.2. Every person who conducts any contest shall:

(a) Clearly and conspicuously disclose on each entry blank the deadline for submission of that entry.

(b) Refund all money or other consideration to contestants requesting such refund in writing within one year of payment and who are unable to participate in any aspect of any contest through no fault of the contestant.

(c) At the conclusion of the contest send to all entrants upon their request the names of all winners, the prize or prizes won by each, the correct solution to each puzzle and the winning solutions to each puzzle (if different from the correct solution).

(d) Maintain for no less than two years after all prizes are awarded all the following:

(1) Copies of all contest solicitations and puzzles.

(2) All puzzles and correspondence sent by a contestant or copies or records disclosing details thereof and records of replies thereto.

(3) Adequate records which disclose the names and addresses of all contestants, the approximate date each contestant was sent each puzzle or game, the number of prizes awarded, the method of selecting winners, the names and addresses of the winners, and facts upon which all representations or disclosures made in connection with the contest are based and from which the validity of the representations or disclosures can be determined.

(Added by Stats. 1974, Ch. 1152.)

17539.3. (a) Sections 17539.1 and 17539.2 do not apply to a game conducted to promote the sale of an employer's product or service by his or her employees, when those employees are the sole eligible participants.

(b) As used in Sections 17539.1 and 17539.2, "person" includes a firm, corporation, or association, but does not include any charitable trust, corporation, or other organization exempted from taxation under Section 23701d of the Revenue and Taxation Code or Section 501(c) of the Internal Revenue Code.

(c) Nothing in Sections 17539 to 17539.2, inclusive, shall be construed to permit any contest or any series of contests or any act or omission in connection therewith that is prohibited by any other provision of law.

(d) Nothing in Section 17539.1 or 17539.2 shall be construed to hold any newspaper publisher or radio or television broadcaster liable for publishing or broadcasting any advertisement relating to a contest, unless that publisher or broadcaster is the person conducting or holding that contest.

(e) As used in Sections 17539 to 17539.2, inclusive, "contest" includes any game, contest, puzzle, scheme, or plan that holds out or offers to prospective participants the opportunity to receive or compete for gifts, prizes, or gratuities as determined by skill or any combination of chance and skill and that is, or in whole or in part may be, conditioned upon the payment of consideration.

(f) Sections 17539 to 17539.2, inclusive, do not apply to the mailing or otherwise sending of an application for admission, or a notification or token evidencing the right of admission, to a contest, performance, sporting event, or tournament of skill, speed, power, or endurance between, or the operation of the contest, performance, sporting event, or tournament by, participants physically present at that contest, performance, sporting event, or tournament.

(Amended by Stats. 2006, Ch. 538, Sec. 25. Effective January 1, 2007.)

17539.35. No person shall advertise, offer, or operate any contest, as defined in subdivision (e) of Section 17539.3, in which any prize, including any money, property, service, or other matter of value, may be awarded or transferred if the opportunity to win that prize is conditioned on a minimum number of entries or contest participants.

(Added by Stats. 1994, Ch. 1074, Sec. 1. Effective January 1, 1995.)

17539.4. No person shall place an advertisement disseminated primarily in this state for a loan which utilizes real property as collateral unless there is disclosed within the printed text of that advertisement, or the oral text in the case of a radio or television advertisement, the license under which the loan would be made or arranged, the state regulatory entity supervising that type of loan transaction or, in the case of unlicensed lending activity, a statement that the loan is being made or arranged by an unlicensed party who is not operating under the regulatory supervision of a state agency.

This section shall not apply to any bank or bank holding company, or to any savings association or federal association as defined by Section 5102 of the Financial Code, or to any industrial loan company or credit union, or to any subsidiary or affiliate of these entities if the subsidiary or affiliate is not separately licensed.

(Amended by Stats. 1992, Ch. 864, Sec. 2. Effective January 1, 1993.)

17539.5. (a) For purposes of this section and Sections 17539.55 and 17539.6:

(1) "Broadcast" means the utilization of radio, television, home videos, movie screens, telephones, or other medium, including the Internet, that does not automatically provide the prospective consumer with a printed or written document he or she can read at leisure.

(2) "Caller" means a telephone user or end user who calls or may call an information-access service or who receives a telephonic solicitation that results in the recipient being connected to an information-access service.

(3) "Carrier" means any regional telephone operating company, interexchange carrier, or local exchange telephone company that provides telecommunications transmission services.

(4) "Incentive" means any item or service of value, however denominated, including, but not limited to, any prize, award, gift, or money, or any coupon that can be used in whole or in part to obtain a product or service.

(5) "Information provider" means a person who advertises or sells an information-access service and on whose behalf charges are billed.

(6) "Information-access service" means any telecommunications service that permits individuals to access a telephone number, and for which the caller is assessed, by virtue of placing or completing the call, a charge that is greater than, or in addition to, the charge for the transmission of the call. Information-access service includes, but is not limited to, telephone numbers with the prefix 900 or 976.

(7) "900 number" means any prefixed telephone number used for information-access service and includes, but is not limited to, telephone numbers with the prefix 900 or 976.

(8) "Prize" means any item of value given to winners in a sweepstakes who have been selected on the basis of lot or chance.

(9) "Program" means the audio message that the caller hears or receives upon placing or receiving a call and being connected to an information-access service.

(10) "Sell an information service" means to attempt to cause a caller to act in a manner that causes that caller to be charged for utilizing an information-access service.

(11) "Solicitation" includes all forms of solicitation for information-access services, including, but not limited to, mailings, advertisements in newspapers and magazines, advertisements broadcast by radio or television, advertisements contained in home videos or appearing on movie screens, telephone solicitations, and advertisements transmitted over the Internet. "Solicitation" does not include simple listings in telephone directories provided those listings are not accompanied by any advertising text.

(12) "Sweepstakes" means any procedure for the distribution of anything of value by lot or by chance that is not unlawful under other provisions of law including, but not limited to, the provisions of Section 320 of the Penal Code. Nothing contained in this section shall be deemed to render lawful any activity that otherwise would violate Section 320 of the Penal Code.

(b) It is unlawful for any person to engage in any of the following acts in order to encourage any caller to utilize an information-access service:

(1) Soliciting callers by use of an automatic dialing device or a live or recorded outbound telephone message.

(2) Utilizing signals or tones provided directly or indirectly by the information provider to access the information-access service.

(3) Requiring callers to call more than one 900 number or to require calling the same 900 number more than one time in order to receive goods or services represented in the initial solicitation.

(4) Utilizing a telephone number other than a 900 number from which a caller can be automatically connected to the information-access service.

(5) Soliciting callers to call a telephone number other than a 900 number, including, but not limited to, an 800 telephone number, when the caller who calls that other number will be referred to a 900 number unless all solicitations for the initial information-access program clearly and conspicuously disclose that a referral will be made and the cost to the caller for calling the 900 number to which the caller will be referred.

(6) Soliciting callers to call a number other than a 900 number, including, but not limited to, an 800 telephone number, when the caller who calls that number will be asked to accept one or more collect calls unless all solicitations clearly and conspicuously disclose that the caller will be asked to accept one or more collect calls and the cost to the caller for accepting the collect calls. The cost shall be described as cost per minute and cost per hour.

(7) Referring a caller from one 900 number to another 900 number unless all solicitations for the initial information-access program clearly and conspicuously disclose that a referral will be made and the cost to the caller for calling the 900 number to which the caller will be referred.

(8) Advertising that the information-access service is free.

(9) Using any printing style, graphic, layout, text, color, or format which states or implies that the solicitation originates from, or was issued by or on behalf of a governmental agency, a public utility, a nonprofit organization, an insurance company, a credit reporting agency, a collection company, or a law firm unless the same is true.

(c) It is unlawful for any person to solicit or sell an information-access service unless the following information is clearly and conspicuously disclosed in all solicitations:

(1) An accurate description of the information-access service.

(2) The name, address, and non-900 telephone number of the information provider.

(3) The cost of the call, which shall be disclosed as follows:

(A) If the call is billed at a fixed rate, the total cost of the call.

(B) If the call is billed on a usage-sensitive basis, the cost per minute or other unit of time, and including:

(i) In broadcast solicitations, the average cost of the call.

(ii) In print solicitations, the average cost or length of the call, except that print solicitations directed to persons in this state shall disclose the average cost of the call.

(C) Solicitations in which the length of the program cannot reasonably be determined because the length of the program depends upon the skill of, or the selections or responses made by, the caller, shall be exempt from the cost disclosure provisions of this paragraph.

(D) Solicitations that are oral shall include a voice announcement of the cost of the call in clear and understandable language that is clearly audible and articulated at a volume equal to that used to announce the 900 number. The cost of the call shall be stated immediately prior to or immediately after the 900 number is stated.

(E) Solicitations that are broadcast visually shall include, in clear, visible, easily readable, and conspicuously presented letters and numbers, set against a contrasting background, the cost of calling the 900 number. The visual disclosure of the cost of the call shall be displayed directly above, below, or adjacent to the number to be called whenever the number is displayed in the commercial. The visual disclosure of the cost of the call shall be a distinct disclosure and shall not be combined in the same paragraph with any other disclosure required to be made pursuant to this section. The lettering of the visual disclosure shall be no less than 18 scan lines high and shall be displayed for as long as the number is displayed. Broadcast solicitations shall also include a voice announcement of the cost of the call in clear and understandable language that is clearly audible and articulated at a volume equal to that used to announce the 900 number. The cost of the call shall be stated immediately prior to or after the 900 number is stated.

(F) Solicitations that appear in print shall include, in clear, visible, easily readable, and conspicuously presented letters and numbers, the cost of calling the 900 number. The printed disclosure of the cost of the call shall be displayed directly above, below, or adjacent to the number. The lettering of the cost disclosure shall be in no less than 10-point type.

(4) If the information-access service is aimed at or likely to be of interest to minors, solicitations that appear in print shall contain a statement, in at least the same size print as that used to disclose the 900 number, that persons under the age of 18 years should obtain parental consent before calling. If the solicitation is through a broadcast, this statement shall be of the same audibility as that used to disclose the 900 number.

(d) It shall be unlawful for any person to solicit or sell an information-access service in any manner related to a sweepstakes.

(e) Solicitations made to persons in this state offering the opportunity to participate in a sweepstakes shall, with respect to each prize offered, set forth clearly, conspicuously, and in easily readable letters the odds of receiving that prize, described in whole Arabic numerals in a format such as: "1 chance in 100,000" or "1:100,000." If the odds depend upon the number of entries and the number of persons solicited is controlled by the sponsor of the promotion, the solicitation shall set forth the reasonable expectation of entries. If the odds depend upon the number of entries received and the number of persons solicited is not controlled by the sponsor of the sweepstakes, a statement to the effect that the odds depend on the number of entries received shall be sufficient. If more than one prize is offered, the odds shall be separately stated for each prize. The disclosure required to be made pursuant to this subdivision shall be made immediately adjacent to the first identification of the prize to which it relates or in a separate section entitled "Consumer Disclosure" or "Official Rules." These titles shall be printed in no less than 10-point boldface type. The consumer disclosure section shall be clearly and conspicuously disclosed in the solicitation. There shall be a statement referring the recipient of the solicitation to the consumer disclosure section in the main text of the solicitation in close proximity to the description of the prizes, and the odds shall be disclosed within the top 25 percent of the consumer disclosure section. If the consumer disclosure section does not appear on the same page as the statement referring the recipient of the solicitation to this section, the statement shall indicate where the consumer disclosure section is located. If the odds appear in the section entitled "Consumer Disclosure" or "Official Rules," there shall be a clear and conspicuous statement in the main text of the solicitation in close proximity to the description of the prizes that the odds to the recipient of obtaining the prize or prizes will be found elsewhere, and the statement shall set forth where they will be found. It is not a violation of this section to reference the official rules and the odds in the same

statement as long as the statement referencing the official rules and the odds is in the main text of the solicitation in close proximity to the description of the prizes. For example, a statement such as: "See official rules (on (reference to location of rules if not on same page)) for odds and other details" or a similar statement meets the requirements of this provision. This provision shall not apply to broadcast solicitations for sweepstakes in which the winners will be selected in a random drawing in which the odds depend on the number of entries received, provided that those solicitations shall disclose where the official rules are available and the official rules shall set forth the odds of winning in accordance with this subdivision.

(f) If any incentive is offered in a solicitation for an information-access service, the solicitation shall clearly and conspicuously disclose all restrictions, qualifications, and deadlines that must be complied with in order to obtain the incentive being offered.

(g) No person soliciting callers for an information-access service shall represent directly or by implication that the person being solicited is part of a significantly limited group selected to receive an incentive, unless that is true and the number of recipients who will be receiving the solicitation is clearly and conspicuously set forth in the solicitation.

(h) It is unlawful for any person to solicit or sell an information-access service to any person in the following manner:

(1) The solicitation offers to persons in this state who respond to the solicitation by calling a 900 number any incentive that:

(A) Requires the recipient to purchase goods or services from the information provider in order to utilize the incentive.

However, this subparagraph does not apply to offers where the incentive is a "cents-off" coupon that is usable only for the purchase of the offeror's own brand name product or products, the total value of the "cents-off" coupon offered is clearly and conspicuously disclosed in the offer, the total value of the "cents-off" coupon does not exceed five dollars (\$5), the "cents-off" coupon is to be utilized to reduce the price of those products at retail stores in the recipient's area, and at least 60 percent of the revenue per month of the offeror is derived from the sale of the product or products being purchased without the use of the "cents-off" coupons.

(B) Requires the recipient to purchase goods or services from any third party in order to utilize the incentive unless:

(i) The fact that a purchase or payment is required in order to utilize the incentive is disclosed in the solicitation.

(ii) A representative sample of the establishments at which the incentive may be redeemed is disclosed in the solicitation.

(iii) If the incentive entitles the recipient to save money on the purchase of goods or services, the incentive is described as a cents-off, discount coupon, or similar term that clearly indicates that it is redeemable only for savings on purchases of goods or services.

(2) The solicitation states or implies that the caller is likely to receive one of the prizes offered, by representing in the solicitation that other named persons have already won the other prizes being offered in the solicitation and that the recipient of the solicitation is therefore likely to receive the prize that has not been won by the other persons named in the solicitation, unless the recipient's odds of receiving the remaining prize are clearly and conspicuously disclosed in the solicitation in close proximity to the list of the other named persons.

(i) Nothing contained in this section shall be deemed to render lawful any activity that otherwise would violate Section 17537.

(j) No information-access service shall offer a game of skill in which the cost of the call is billed on a usage-sensitive basis and in which answers to multiple choice questions of increasing difficulty are required in order to win, unless the solicitation clearly and conspicuously discloses the percentage of contestants anticipated to answer all questions correctly based on prior experience or, if the game is being operated for the first time, based on a good faith estimate.

(k) This section does not apply to a regional telephone operating company, interexchange carrier, or local telephone company operating in those capacities, that in good faith telecommunicates an information-access program without knowledge that the program or related advertising violates any provision of this section, Section 17539.55, or Section 17539.6.

(l) Neither this section, Section 17539.55, nor Section 17539.6 applies to the California State Lottery.

(Amended by Stats. 1998, Ch. 599, Sec. 16. Effective January 1, 1999.)

17539.55. (a) It shall be unlawful to operate a sweepstakes in this state through the use of a 900 number, unless the information provider registers with the Department of Justice as provided in this section within 10 days after causing any advertisement for the sweepstakes to be directed to any person in this state.

(b) The registration shall include the following information:

(1) Each 900 number to be used in the sweepstakes.

(2) The name and address of the information provider including corporate identity, if any, and the name and address for the information provider's agent for service of process within the state.

(3) A copy of the information provider's audio text, prerecorded, or live operator scripts.

(4) A copy of the official rules for the sweepstakes.

(5) For television, video, or any on-screen advertisements, a copy of the storyboard and video recording.

(6) For radio advertisements, a copy of the script and audio recording.

(7) For print or electronic form transmitted over the Internet, a copy of all advertisements.

(8) For direct mail solicitations, a copy of all principal solicitations.

(9) For telephone solicitations, a copy of the script.

(10) The names of the carriers that the information provider plans to utilize to carry the 900 number calls.

(c) The information provider shall pay an annual registration fee of fifty dollars (\$50) for each 900 number used for sweepstakes purposes.

(d) It shall be unlawful for any information provider that operates a sweepstakes to make reference, in any contact with the public, to the fact that the information provider is registered with the Department of Justice, as required by this section, or in any other manner imply that that registration represents approval of the sweepstakes by the Department of Justice.

(Amended by Stats. 2009, Ch. 88, Sec. 5. (AB 176) Effective January 1, 2010.)

17539.6. Any broadcast or print advertisement or notice that contains a 900 number shall be written or spoken in the same language as the language used in a recorded message or by a live operator of the 900 number call.

(Added by Stats. 1992, Ch. 944, Sec. 3. Effective January 1, 1993.)