
**SENATE COMMITTEE ON
BUSINESS, PROFESSIONS AND ECONOMIC DEVELOPMENT**
Senator Richard Roth, Chair
2021 - 2022 Regular

Bill No: SB 324 **Hearing Date:** April 5, 2021
Author: Limón
Version: February 5, 2021
Urgency: No **Fiscal:** Yes
Consultant: Dana Shaker

Subject: Unsolicited commercial mail advertisements

SUMMARY: Requires a company that sends one or more unsolicited commercial mail advertisements to the same address in a year to include a toll-free number consumers can use to opt out from receiving commercial mail advertisements from the company. Requires the company, upon receiving a request to opt out from receiving advertising, to remove the recipient's mailing address from the company's internal mailing lists and to contact any mail delivery service or third party to ensure that the recipient no longer receives the company's commercial mail advertisements. Subjects a company that knowingly violates those provisions to a civil fine of at least \$1,000 and up to \$1,000,000 for each violation, with an action to be brought by a city attorney, district attorney, or the Attorney General.

Existing State Law:

- 1) Prohibits a person or entity from initiating or advertising in unsolicited commercial email advertisements and imposes specified other restrictions relating to the collection and use of email addresses for unsolicited commercial email advertisements. (Business and Professions Code (BPC) §§ 17529.2, 17529.4)
- 2) Permits the Attorney General, an electronic mail service provider, and a recipient of an unsolicited commercial email advertisement to bring an action to recover either or both of the following: a) actual damages, and b) liquidated damages of \$ 1,000 for each unsolicited commercial email advertisement transmitted in violation of this section, up to \$ 1 million per incident. (BPC § 17529.8(a)(1))
- 3) Prohibits calling individuals on the "do not call" list for: 1) any purpose other than to comply with applicable state federal laws; 2) denying or interfering in any way, directly or indirectly, with a subscriber's right to place a California telephone number on the "do not call" list; causing a subscriber to participate in and be included on the "do not call" list without the subscriber's knowledge or consent; 3) selling or leasing the "do not call" list to a person other than a telephone solicitor; selling or leasing by a telephone solicitor of the "do not call" list; 4) charging a fee to place a California telephone number on the "do not call" list; 5) and a telephone solicitor, either directly or indirectly, persuading a subscriber with whom it has an established business relationship to place his or her telephone number on the "do not call" list, if the

solicitation has the effect of preventing competitors from contacting that solicitor's customers. (BPC § 17591)

- 4) Permits the Attorney General, a district attorney, or a city attorney to bring a civil action against a telephone solicitor to enjoin the violation, pursue a civil penalty up to the penalty amount that the FTC may pursue under federal law, or any other relief the court deems appropriate. (BPC § 17593(a))
- 5) Permits any person who received a telephone solicitation prohibited by Section 17592 to bring a civil action in small claims for an injunction or order to prevent further violations, and further permits any person who has received an injunction and then continues to receive solicitations to file a second action for the injunction or order to be enforced, plus a civil penalty of up to \$1,000. (BPC § 17593(b))
- 6) Outlines prohibitions and penalties regarding charitable donations. (BPC § 17510 *et seq.*)
- 7) Establishes that, after the passage of the "Do-Not-Call (DNC) Implementation Act" (H.R. 395), the Legislature adopted California telephone numbers on the national "do not call" registry as the California "do not call" registry. (BPC § 17590(c))

Existing Federal Law:

- 1) Establishes that Congress has passed and the President has signed the "Do-Not-Call (DNC) Implementation Act" (H.R. 395) which authorizes the Federal Trade Commission (FTC) to implement and enforce a national "do not call" registry. (16 C.F.R. 310.4 (b)(1)(iii)(B))
- 2) Establishes the FTC decided to create as part of the federal Telemarketing Sales Rule a single nationwide Do Not Call Registry. (16 C.F.R. 310; 16 C.F.R. 310.4 (b)(1)(iii)(B))
- 3) Establishes the Do-Not-Call Registry Fee Extension Act, which permanently adds individuals and families to the Do Not Call Registry, rather than only keeping them on the registry for five years. (15 USC § 6151)

This bill:

- 1) Requires a corporation, limited partnership, limited liability company, or other form of for-profit business, which is organized under the laws of California, and employs 50 or more employees (Company) that sends one or more unsolicited commercial mail advertisements to the same address in a single calendar year shall to include the following specified information on the unsolicited commercial mail advertisements:
 - a) A toll-free number that can be used to opt out of or cease receiving commercial mail advertisements from the Company.
 - b) An electronic method (website address or email address) of requesting to opt out of or cease receiving further commercial mail advertisements from the Company.

- c) A QR Code (defined as a machine-readable code, consisting of an array of squares, used for storing an internet website address).
- 2) Defines “commercial mail advertisement” as any mail sent for the purpose of advertising or promoting the lease, sale, rental, gift offer, or other disposition of any property, goods, services, or extension of credit.
- 3) Defines “unsolicited commercial mail advertisement” as a commercial mail advertisement sent to a recipient who has not provided consent to receive advertisements and has not provided their mail address to the Company for the purpose of receiving mail communications, including information regarding sales, gift offers, or services.
- 4) Requires the Company, upon receiving an opt out request, to remove the recipient’s mailing address from the Company’s internal mailing lists and to contact any mail delivery service, or third party, under contract with the Company to deliver commercial mail advertisements and update the Company’s mailing preferences to ensure that the recipient no longer receives the Company’s commercial mail advertisements.
- 5) Specifies that any Company that knowingly violates these provisions is liable for a civil penalty of at least \$1,000, up to \$1 million dollars for each violation. Requires the court, in determining the amount of the civil penalty, to consider whether the Company’s conduct was willful, repeated, or continuous, any harm caused by the Company’s actions, and the assets, liabilities, and net worth of the Company.

FISCAL EFFECT: Unknown. This bill is keyed fiscal by Legislative Counsel.

COMMENTS:

1. **Purpose.** The Consumer Federation of California is the Sponsor of the bill. According to the Author, “SB 324 would require large (50+ employees), for-profit companies, to include a method for consumers to opt-out of receiving unsolicited mail advertisements, otherwise known as ‘junk mail.’ Methods include a toll-free number, website, and/or a QR Code.

This bill does not automatically opt all consumers out of receiving junk, or prevent it from being sent, but it will make it easier for consumers to opt-out of receiving junk mail by providing them with methods for opting-out on the junk mail that they receive.”

2. **Background.**

The Federal “Do Not Call Implementation” Act. In 2003, the Do-Not-Call Implementation Act (“the DNC Act”) passed the US Congress and was signed into law by the president. The law authorizes the Federal Trade Commission (FTC) to “collect fees for the implementation and enforcement of a Do-Not-Call Registry.” In order to comply with the DNC Act, the FTC created the Do-Not-Call Registry—a database listing the phone numbers of individuals and families who have requested

that they not be contacted by telemarketers. The FTC is expressly authorized to implement and enforce the Do-Not-Call Registry under a section of the Telemarketing and Consumer Fraud and Abuse Prevention Act.

Originally, the database only maintained individual and family names for five years. However, in 2007 the DNC Act was amended by the Do-Not-Call Registry Fee Extension Act (“the DNC Extension Act”) to make those individual and family numbers permanent. The DNC Extension Act specifies the Registry fees for telemarketers and revising reporting requirements in the Telemarketing and Consumer Fraud and Abuse Prevention Act.

California’s First “Do Not Call” Law and Subsequent State Law Efforts. In 2001, California passed its own “do not call” law. That law required the California Attorney General to maintain and update a “do not call” (DNC) list that contained the telephone numbers (but not the names or addresses) and federal postal ZIP Codes of residential wireless or telephone subscribers who did not wish to receive unsolicited and unwanted telephone calls from telephone solicitors, among other things. At the time, federal law was silent on a national “do not call” list. Federal law only required solicitors to have their own internal “do not call” lists on which they were required to place the telephone numbers of telephone subscribers who they had called and specifically requested to not receive any additional calls from that solicitor.

SB 33 (Figueroa, Chapter 779, Statutes of 2003) became California law in 2003 on the heels of the DNC Act. The purpose of enacting this law was to spare California the cost of managing its own separate “do not call” law, where the federal “do not call” list became the master list. Subsequently, in 2005 SB 833 (Bowen, Chapter 667, 2005) banned junk faxing in California.

Existing Opt-out Options. Under existing law, consumers have a number of options available to them to opt-out of receiving unsolicited physical junk mail. These options include the following:

- Opt out of pre-screened offers of credit and insurance for 5 years by calling 1-888-5-OPT-OUT or permanently by going only to www.optoutprescreen.com;
- Opt out of junk mail from Direct Marketing Association member companies for \$2/10 years (and choice of what junk mail you might like to receive) by going to www.dmachoice.org;
- Opt out of printable coupons from a large national & local coupon mailer by going to <https://www.valpak.com/coupons/show/maillinglistsuppression>.
- Choose “go paperless” options offered at various companies.

- Prior Related Legislation.** SB 833 (Bowen, Chapter 667, 2005) banned junk faxing (or unsolicited advertising via facsimile machines, computers, or other electronic devices) in California, mirroring the opt-in requirement for junk faxes at the federal level.

SB 33 (Figueroa, Chapter 779, Statutes of 2003) became California law in 2003 on the heels of the DNC Act. The purpose of enacting this law was to spare California the cost of managing its own separate “do not call” law, where the federal “do not call” list became the master list.

SB 186 (Murry, Chapter 487, Statutes of 2003) created an avenue to sue advertisers for unsolicited email (spam). The bill created a cause of action for the consumer, the email service provider, or the Attorney General, to sue for violations of this bill’s restrictions and prohibitions.

- Arguments in Support.** The Consumer Federation of California writes in sponsorship and support: “SB 324 requires any company that sends one or more unsolicited business advertisement mailers to the same address within a year, to give consumers the information they need to opt-out of these advertisements. Specifically, this bill requires large for-profit companies to include a phone number, and an electronic method (email, website, or QR code), on their advertisements which consumers can use to opt-out of these advertisements in the future. Currently, the Data & Marketing Association provides an opt-out method known as ‘DMA Choice’ which allows consumers to pay a \$2 processing fee online or \$3 by mail. However, you must go through a step-by-step process and you must decide what kinds of advertisements you want to see. This bill will complement the current option consumers have now, by giving them the option to have a free opt-out method.”
- Arguments in Opposition.** A Large Coalition of labor, industry, and trade associations, including but not limited to Pitney Bowes Inc., The California Retailers Association, The California Growers Association, The California Association of Realtors, and The California Mortgage Bankers Association, writes in opposition: “The U.S. Postal Service is one of the most critical infrastructure components of the U.S. economy and has been essential to the pandemic response. A healthy postal service provides 6-day per week delivery of letters and packages, safe delivery of life saving medications, affordable shipping for ecommerce packages and supports the marketing mail that millions of small businesses rely on as a low-cost channel to reach local customers.

By restricting access to consumers through marketing mail, SB 324 jeopardizes the already fragile health of the US Postal Service, would result in significant job loss and would be harmful to the state’s growing ecommerce economy. Even non-profit charitable organizations that are exempt from this bill will be severely affected by the skyrocketing postage costs it will create. Under new federal regulations, for every 10% national reduction in marketing mail caused by this bill, postage rates across the country will increase 2.5% or \$1 billion per year.”

The American Forest & Paper Association writes in opposition: “SB 324 would simply duplicate mechanisms already in place for consumers to opt-out of unwanted mail, and create an onerous burden for businesses by requiring them to needlessly take on the expensive and time-consuming burden of becoming data management experts, with significant financial risks if not performed perfectly.

We encourage the state of California to avoid measures that restrict commerce, create economic harm for companies doing business in California, and duplicate options already available to consumers.”

The National Rural Letter Carriers’ Association writes in opposition: “While Americans and businesses struggle to reopen and return to ‘normalcy,’ now is not the time to pass legislation that would impact a key component of the economy of California. The Postal Service represents over one-million postal-related jobs and over \$229 billion in sales in California; much of this would be put at risk if SB 324 is enacted.

6. **Is This the Right Remedy?** Given that there are already in existence online and telephone methods to eliminate junk mail, whether the methods this bill requires will change the behavior of recipients to actually call the number or scan the QR code to opt-out of receiving mail is in question. While the responsibility of a Company to comply with this bill’s requirements only for California consumers is clear and comes with a host of practical and logistical challenges, it is unclear that the number of people who actually opt-out of receiving junk mail will increase if the junk mail simply has a toll-free number, internet address, and QR Code listed on the physical mail. Consumers still have to know that this pathway exists, much like they may not be aware that existing means by which to opt-out of receiving unsolicited mail are available.

NOTE: This bill is double referred to the Senate Committee on Judiciary, second.

SUPPORT AND OPPOSITION:

Support:

Consumer Federation of California (Sponsor)

Opposition:

California Association of Letter Carriers
 National Association of Letter Carriers
 American Forest & Paper Association
 American Postal Workers Union of California State
 American Postal Workers Union
 Alliance of Nonprofit Mailers
 Association of National Advertisers Nonprofit Foundation
 California Restaurant Association
 California News Publishers Association
 National Newspaper Association

California Retailers Association
California Grocers Association
California New Car Dealers Association
California Association of Realtors
California Credit Union League
Envelope Manufacturers of America
Printing Industries of America
Printing Industries of Southern California
Printing Industries of San Diego
Visual Media Alliance
Association of National Advertisers
National Postal Policy Council
Association for Postal Commerce
Major Mailers Association
National Association of Presort Mailers
National Rural Letter Carriers' Association
Package Shippers Association
Greeting Card Association
Personal Insurance Federation of California
National Association of Mutual Insurance Companies
Civil Justice Association of California
American Forest & Paper Association
Association for Mail Electronic Enhancement
Saturation Mailers Coalition
Pitney Bowes
American Advertising Federation
Greater San Francisco Ad Club
American Advertising Federation Silicon Valley
American Advertising Federation Sacramento

-- END --