

AMENDED IN ASSEMBLY JUNE 20, 2013

AMENDED IN ASSEMBLY JUNE 18, 2013

AMENDED IN ASSEMBLY JUNE 10, 2013

AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 568

Introduced by Senator Steinberg

February 22, 2013

An act to add Chapter 22.1 (commencing with Section 22580) to Division 8 of the Business and Professions Code, relating to the Internet.

LEGISLATIVE COUNSEL'S DIGEST

SB 568, as amended, Steinberg. Privacy: Internet: minors.

Existing law requires an operator of a commercial Web site or online service that collects personally identifiable information through the Internet about individual consumers residing in California who use or visit its commercial Web site or online service to make its privacy policy available to consumers, as specified.

Existing federal law requires an operator of an Internet Web site or online service directed to a child, as defined, or an operator of an Internet Web site or online service that has actual knowledge that it is collecting personal information from a child to provide notice of what information is being collected and how that information is being used, and to give the parents of the child the opportunity to refuse to permit the operator's further collection of information from the child.

This bill would, on and after January 1, 2015, prohibit an operator of an Internet Web site, online service, online application, or mobile application, as specified, from marketing or advertising specified types of products or services to a minor. The bill would prohibit an operator

from using, disclosing, or compiling, or knowingly allowing a 3rd party to use, disclose, or compile, the personal information of a minor for the purpose of marketing or advertising specified types of products or services. The bill would also make this prohibition applicable to an advertising service that is notified by an operator of an Internet Web site, online service, online application, or mobile application that the site, service, or application is directed to a minor.

The bill would, on and after January 1, 2015, require the operator of an Internet Web site, online service, online application, or mobile application to permit a minor, who is a registered user of the operator’s Internet Web site, online service, online application, or mobile application, to remove, or to request and obtain removal of, content or information ~~publicly~~ posted on the operator’s Internet Web site, service, or application by the minor, unless the content or information was ~~publicly~~ posted by a 3rd party, any other provision of state or federal law requires the operator or 3rd party to maintain the content or information, or the operator anonymizes the content or information. The bill would require the operator to provide notice to a minor that the minor may remove the content or information, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

1 SECTION 1. Chapter 22.1 (commencing with Section 22580)
 2 is added to Division 8 of the Business and Professions Code, to
 3 read:

4
 5 CHAPTER 22.1. PRIVACY RIGHTS FOR CALIFORNIA MINORS IN
 6 THE DIGITAL WORLD
 7

8 22580. (a) An operator of an Internet Web site, online service,
 9 online application, or mobile application directed to minors or the
 10 operator of an Internet Web site, online service, online application,
 11 or mobile application that has actual knowledge that a minor is
 12 using its Internet Web site, online service, online application, or
 13 mobile application shall not do any of the following:

14 (1) Market or advertise a product or service on the Internet Web
 15 site, online service, online application, or mobile application
 16 directed to minors, or to a minor who the operator has actual

1 knowledge is using its Internet Web site, online service, online
2 application, or mobile application if the marketing or advertising
3 is for a product described in subdivision (g).

4 (2) Use, disclose, compile, or knowingly allow a third party to
5 use, disclose, or compile, the personal information of a minor for
6 the purpose of marketing or advertising products or services if the
7 marketing or advertising is for a product described in subdivision
8 (g).

9 (b) “Minor” means a natural person under 18 years of age who
10 resides in the state.

11 (c) “Internet Web site, online service, online application, or
12 mobile application directed to minors” mean an Internet Web site,
13 online service, online application, or mobile application, or a
14 portion thereof, that is created for the purpose of reaching an
15 audience that is primarily comprised of minors. Provided, however,
16 that an Internet Web site, online service, online application, or
17 mobile application, or a portion thereof, shall not be deemed to be
18 directed at minors solely because it refers or links to an Internet
19 Web site, online service, online application, or mobile application
20 directed to minors by using information location tools, including
21 a directory, index, reference, pointer, or hypertext link.

22 (d) “Operator” means any person or entity that owns an Internet
23 Web site, online service, online application, or mobile application.
24 It does not include any third party that operates, hosts, or manages,
25 but does not own, an Internet Web site, online service, online
26 application, or mobile application on the owner’s behalf or
27 processes information on the owner’s behalf.

28 (e) This section shall not be construed to require an operator of
29 an Internet Web site, online service, online application, or mobile
30 application to collect or retain age information about users.

31 (f) (1) With respect to marketing or advertising provided by an
32 advertising service, the operator of an Internet Web site, online
33 service, online application, or mobile application directed to minors
34 shall be deemed to be in compliance with subdivision (a) if the
35 operator ~~informs~~ *notifies* the advertising service, in the manner
36 required by the advertising service, that the site, service, or
37 application is directed to minors.

38 (2) If an advertising service is notified, in the manner required
39 by the advertising service, that an Internet Web site, online service,
40 online application, or mobile application is directed to minors

1 pursuant to paragraph (1), the advertising service shall not market
2 or advertise a product or service on the operator's Internet Web
3 site, online service, online application, or mobile application that
4 state or federal law expressly prohibits a minor from purchasing.

5 (g) The marketing and advertising restrictions described in
6 subdivision (a) shall apply to the following products and services
7 as they are defined under state law:

8 (1) Alcoholic beverages, *as referenced in Sections 23003 to*
9 *23009, inclusive, and Section 25658.*

10 (2) Firearms or handguns, *as referenced in Sections 16520,*
11 *16640, and 27505 of the Penal Code.*

12 (3) Ammunition or reloaded ammunition, *as referenced in*
13 *Sections 16150 and 30300 of the Penal Code.*

14 (4) Handgun safety certificates, *as referenced in Sections 31625*
15 *and 31655 of the Penal Code.*

16 (5) Aerosol container of paint that is capable of defacing
17 property, *as referenced in Section 594.1 of the Penal Code.*

18 (6) Etching cream that is capable of defacing property, *as*
19 *referenced in Section 594.1 of the Penal Code.*

20 (7) Any tobacco, cigarette, or cigarette papers, or blunts wraps,
21 or any other preparation of tobacco, or any other instrument or
22 paraphernalia that is designed for the smoking or ingestion of
23 tobacco, products prepared from tobacco, or any controlled
24 substance, *as referenced in Division 8.5 (commencing with Section*
25 *22950) and Sections 308, 308.1, 308.2, 308.3 of the Penal Code.*

26 (8) BB device, *as referenced in Sections 16250 and 19910 of*
27 *the Penal Code.*

28 (9) Dangerous fireworks, *as referenced in Sections 12505 and*
29 *12689 of the Health and Safety Code.*

30 (10) Tanning in an ultraviolet tanning device, *as referenced in*
31 *Sections 22702 and 22706.*

32 (11) Dietary supplement products containing ephedrine group
33 alkaloids, *as referenced in Sections 110423.2 of the Health and*
34 *Safety Code.*

35 (12) Tickets or shares in a lottery game, *as referenced in*
36 *Sections 8880.12 and 8880.52 of the Government Code.*

37 (13) Salvia divinorum or Salvinorin A, or any substance or
38 material containing Salvia divinorum or Salvinorin A, *as*
39 *referenced in Section 379 of the Penal Code.*

1 (14) Body piercing, *as referenced in Section 119302 of the*
2 *Health and Safety Code and Section 652 of the Penal Code.*

3 (15) Body branding, *as referenced in Sections 119301 and*
4 *119302 of the Health and Safety Code.*

5 (16) Permanent tattoo, *as referenced in Sections 119301 and*
6 *119302 of the Health and Safety Code and Section 653 of the Penal*
7 *Code.*

8 (17) Drug paraphernalia, *as referenced in Section 11364.5 of*
9 *the Health and Safety Code.*

10 (18) Electronic cigarette, *as referenced in Section 119405 of*
11 *the Health and Safety Code.*

12 (19) Harmful matter or obscene matter, *as referenced in Sections*
13 *311, 313, and 313.1 of the Penal Code.*

14 (20) Laser pointer, *as referenced in Sections 417.25 and 417.27*
15 *of the Penal Code.*

16 (21) A less lethal weapon, *as referenced in Sections 16780 and*
17 *19405 of the Penal Code.*

18 22581. (a) An operator of an Internet Web site, online service,
19 online application, or mobile application directed to minors or an
20 operator of an Internet Web site, online service, online application,
21 or mobile application that has actual knowledge that a minor is
22 using its Internet Web site, online service, online application, or
23 mobile application shall do all of the following:

24 (1) Permit a minor who is a registered user of the operator's
25 Internet Web site, online service, online application, or mobile
26 application to remove, or to request and obtain removal of, content
27 or information ~~publicly~~ posted on the operator's Internet Web site,
28 online service, online application, or mobile application by the
29 user.

30 (2) Provide notice to a minor who is a registered user of the
31 operator's Internet Web site, online service, online application, or
32 mobile application that the minor may remove, or request and
33 obtain removal of, content or information ~~publicly~~ posted on the
34 operator's Internet Web site, online service, online application, or
35 mobile application by the registered user.

36 (3) Provide clear instructions to a minor who is a registered user
37 of the operator's Internet Web site, online service, online
38 application, or mobile application on how the user may request
39 and obtain the removal of content or information ~~publicly~~ posted

1 on the operator's Internet Web site, online service, online
2 application, or mobile application.

3 (4) Provide notice to a minor who is a registered user of the
4 operator's Internet Web site, online service, online application, or
5 mobile application that the removal described under subdivision
6 (b) does not ensure complete or comprehensive removal of the
7 content or information ~~publicly~~ posted on the operator's Internet
8 Web site, online service, online application, or mobile application
9 by the registered user.

10 (b) An operator or a third party is not required to erase or
11 otherwise eliminate, or to enable erasure or elimination of, content
12 or information in any of the following circumstances:

13 (1) Any other provision of federal or state law requires the
14 operator or third party to maintain the content or information.

15 (2) The content or information was ~~publicly~~ posted to the
16 operator's Internet Web site, online service, online application, or
17 mobile application by a third party other than the minor, who is a
18 registered user, including any content or information ~~publicly~~
19 posted by the registered user that was republished or reposted by
20 the third party.

21 (3) The operator anonymizes the content or information posted
22 by the minor who is a registered user, so that the minor who is a
23 registered user cannot be individually identified.

24 (4) *The minor does not follow the instructions provided to the*
25 *minor pursuant to paragraph (3) of subdivision (a) on how the*
26 *registered user may request and obtain the removal of content or*
27 *information posted on the operator's Internet Web site, online*
28 *service, online application, or mobile application by the registered*
29 *user.*

30 (5) *The minor has received compensation or other consideration*
31 *for providing the content.*

32 (c) This section shall not be construed to limit the authority of
33 a law enforcement agency to obtain any content or information
34 from an operator as authorized by law or pursuant to an order of
35 a court of competent jurisdiction.

36 (d) An operator shall be deemed compliant with this section if:

37 (1) It renders the content or information posted by the minor
38 user no longer visible to other users of the service and the public
39 even if the content or information remains on the operator's servers
40 in some form.

1 (2) Despite making the original posting by the minor user
2 invisible, it remains visible because a third party has copied the
3 posting or reposted the content or information posted by the minor.

4 (e) This section shall not be construed to require an operator or
5 an Internet Web site, online service, online application, or mobile
6 application to collect age information about users.

7 (f) ~~“Publicly posted”~~ “*Posted*” means content or information
8 that can be accessed by a user in addition to the minor who posted
9 the content or information, whether the user is a registered user or
10 not, of the Internet Web site, online service, online application, or
11 mobile application where the content or information is posted.

12 22582. This chapter shall become operative on January 1, 2015.