

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 ~~a product or service~~ *specified types of products or services* to ~~a minor, as defined,~~ *if state or federal law expressly prohibits a minor from purchasing the*

~~product or service~~ *minor*. The bill would prohibit an operator from using, disclosing, or compiling, or *knowingly* allowing a 3rd party to ~~knowingly~~ use, disclose, or compile, the personal information of a minor for the purpose of marketing or advertising *specified types of* products or services ~~if state or federal law expressly prohibits a minor from purchasing the product or service~~. 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:

1 (1) Market or advertise a product or service on the Internet Web
2 site, online service, online application, or mobile application
3 directed to minors, or to a minor who the operator has actual
4 knowledge is using its Internet Web site, online service, online
5 application, or mobile application if ~~state or federal law expressly~~
6 ~~prohibits a minor from purchasing the product or service~~ *the*
7 *marketing or advertising is for a product described in subdivision*
8 *(g).*

9 (2) Use, disclose, compile, or *knowingly* allow a third party to
10 use, disclose, or compile, the personal information of a minor for
11 the purpose of marketing or advertising products or services if
12 ~~state or federal law expressly prohibits a minor from purchasing~~
13 ~~the product or service~~ *the marketing or advertising is for a product*
14 *described in subdivision (g).*

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

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

28 (d) “Operator” means any person or entity that owns an Internet
29 Web site, online service, online application, or mobile application.
30 It does not include any third party that operates, hosts, or manages,
31 but does not own, an Internet Web site, online service, online
32 application, or mobile application on the owner’s behalf or
33 processes information on the owner’s behalf.

34 (e)

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

38 (f)

39 (f) (1) With respect to marketing or advertising provided by an
40 advertising service, the operator of an Internet Web site, online

1 service, online application, or mobile application directed to minors
2 shall be deemed to be in compliance with subdivision (a) if the
3 operator informs the advertising service, *in the manner required*
4 *by the advertising service*, that the site, service, or application is
5 directed to minors.

6 (2) If an advertising service is notified, *in the manner required*
7 *by the advertising service*, that an Internet Web site, online service,
8 online application, or mobile application is directed to minors
9 pursuant to paragraph (1), the advertising service shall not market
10 or advertise a product or service on the operator's Internet Web
11 site, online service, online application, or mobile application that
12 state or federal law expressly prohibits a minor from purchasing.

13 (g) *The marketing and advertising restrictions described in*
14 *subdivision (a) shall apply to the following products and services*
15 *as they are defined under state law:*

16 (1) *Alcoholic beverages.*

17 (2) *Firearms or handguns.*

18 (3) *Ammunition or reloaded ammunition.*

19 (4) *Handgun safety certificates.*

20 (5) *Aerosol container of paint that is capable of defacing*
21 *property.*

22 (6) *Etching cream that is capable of defacing property.*

23 (7) *Any tobacco, cigarette, or cigarette papers, or blunts wraps,*
24 *or any other preparation of tobacco, or any other instrument or*
25 *paraphernalia that is designed for the smoking or ingestion of*
26 *tobacco, products prepared from tobacco, or any controlled*
27 *substance.*

28 (8) *BB device.*

29 (9) *Dangerous fireworks.*

30 (10) *Tanning in an ultraviolet tanning device.*

31 (11) *Dietary supplement products containing ephedrine group*
32 *alkaloids.*

33 (12) *Tickets or shares in a lottery game.*

34 (13) *Salvia divinorum or Salvinorin A, or any substance or*
35 *material containing Salvia divinorum or Salvinorin A.*

36 (14) *Body piercing.*

37 (15) *Body branding.*

38 (16) *Permanent tattoo.*

39 (17) *Drug paraphernalia.*

40 (18) *Electronic cigarette.*

1 (19) *Harmful matter or obscene matter.*

2 (20) *Laser pointer.*

3 (21) *A less lethal weapon.*

4 22581. (a) An operator of an Internet Web site, online service,
5 online application, or mobile application directed to minors or an
6 operator of an Internet Web site, online service, online application,
7 or mobile application that has actual knowledge that a minor is
8 using its Internet Web site, online service, online application, or
9 mobile application shall do all of the following:

10 (1) Permit a minor who is a registered user of the operator's
11 Internet Web site, online service, online application, or mobile
12 application to remove, or to request and obtain removal of, content
13 or information publicly posted on the operator's Internet Web site,
14 online service, online application, or mobile application by the
15 user.

16 (2) Provide notice to a minor who is a registered user of the
17 operator's Internet Web site, online service, online application, or
18 mobile application that the minor may remove, or request and
19 obtain removal of, content or information publicly posted on the
20 operator's Internet Web site, online service, online application, or
21 mobile application by the registered user.

22 (3) Provide clear instructions to a minor who is a registered user
23 of the operator's Internet Web site, online service, online
24 application, or mobile application on how the user may request
25 and obtain the removal of content or information publicly posted
26 on the operator's Internet Web site, online service, online
27 application, or mobile application.

28 (4) Provide notice to a minor who is a registered user of the
29 operator's Internet Web site, online service, online application, or
30 mobile application that the removal described under subdivision
31 (b) does not ensure complete or comprehensive removal of the
32 content or information publicly posted on the operator's Internet
33 Web site, online service, online application, or mobile application
34 by the registered user.

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

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

1 (2) The content or information was publicly posted to the
2 operator’s Internet Web site, online service, online application, or
3 mobile application by a third party other than the minor, who is a
4 registered user, including any content or information publicly
5 posted by the registered user that was republished or reposted by
6 the third party.

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

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

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

15 (1) It renders the content or information posted by the minor
16 user no longer visible to other users of the service and the public
17 even if the content or information remains on the operator’s servers
18 in some form.

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

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

25 (f) “Publicly posted” means content or information that can be
26 accessed by a user in addition to the minor who posted the content
27 or information, whether the user is a registered user or not, of the
28 Internet Web site, online service, online application, or mobile
29 application where the content or information is posted.

30 22582. This chapter shall become operative on January 1, 2015.