

Assembly Bill No. 2297

Passed the Assembly August 30, 2002

Chief Clerk of the Assembly

Passed the Senate August 28, 2002

Secretary of the Senate

This bill was received by the Governor this _____ day of
_____, 2002, at _____ o'clock __M.

Private Secretary of the Governor



CHAPTER _____

An act to add Chapter 15.5 (commencing with Section 22575) to Division 8 of the Business and Professions Code, relating to privacy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2297, Simitian. Online Privacy and Disclosure Act of 2002.

Existing law does not regulate the security and confidentiality of consumer personal and identifying information obtained by persons and entities engaged in online business transactions.

This bill, beginning on July 1, 2003, would require an operator, defined as a person or entity that collects personal and identifying information from California residents through the Internet or online service for commercial purposes, to conspicuously post a privacy policy on its Web site and to comply with that policy. The bill would require that the privacy policy identify the categories of information that the operator collects about individuals and with whom the operator may share the information. The bill would provide that individuals or entities with fewer than 25 employees and who do less than 10% of their business with individuals located in California are exempt from the bill. The bill would declare that its provisions preempt and supersede laws of specified local government entities regarding the posting of a privacy policy on an Internet Web site.

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

SECTION 1. This act shall be known as, and may be cited as, the Online Privacy and Disclosure Act of 2002.

SEC. 2. The Legislature finds and declares all of the following:

(a) Each person or entity that engages in online business has a continuing and affirmative obligation to respect and uphold the privacy of individuals and to protect the security and confidentiality of the individuals' personal and identifying information.



(b) It is the intent of the Legislature, in enacting this act, to provide enhanced consumer protections and remedies relative to the disclosure of personal and identifying information obtained online.

(c) It is the intent of the Legislature to require persons and entities engaged in online business to provide individuals with notice of their online privacy rights and improved and more meaningful choices as to whether personal and identifying information may be disclosed, sold, or shared.

(d) It is the intent of the Legislature to protect the constitutionally guaranteed right to privacy of Californians who spend time or conduct business on the Internet. While this act does not fully fulfill California's constitutional guarantee of privacy, giving meaningful and reliable notice to consumers will empower them to make knowledgeable choices about how to safeguard their personal and identifying information.

(e) It is the intent of the Legislature that Internet service providers or similar entities responsible for transmitting data shall have no obligations under this act relative to disclosures related to personal and identifying information that they do not collect, maintain, or store.

SEC. 3. Chapter 15.5 (commencing with Section 22575) is added to Division 8 of the Business and Professions Code, to read:

CHAPTER 15.5. INTERNET PRIVACY REQUIREMENTS

22575. (a) An operator that collects personal and identifying information through the Internet about individuals located in California shall conspicuously post and comply with a privacy policy on its Web site that identifies the categories of information that it collects about individuals through the Internet and the categories of persons or entities with whom the operator may share the information.

(b) The privacy policy shall also do all of the following:

(1) Disclose whether or not the operator maintains a process for an individual to review and request changes to his or her personal and identifying information that is collected in this manner, and if so, include a description of that process.



(2) Explicitly state that the operator reserves the right to change its privacy policy without notice to the individual, if the operator, in fact, reserves that right.

(3) Identify its effective date and provide a hyperlink to at least three of the most recent privacy policies that were substantially different in some form or fashion from the current privacy policy:

22576. An operator shall post or provide upon request, previous privacy policies that were either posted by it in the past two years or that were retained and remain available, consistent with the operator's record retention policy, for a period greater than two years. This chapter, however, shall not create a duty to reconstruct and post past privacy policies that were in existence prior to the operative date of this chapter.

22577. For the purposes of this chapter, the following definitions apply:

(a) The term "personal and identifying information" means individually identifiable information about an individual collected online, including any of the following:

- (1) A first and last name.
- (2) A home or other physical address, including street name and name of a city or town.
- (3) An e-mail address.
- (4) A telephone number.
- (5) A social security number.
- (6) Any other identifier that permits the physical or online contacting of a specific individual.
- (7) Information concerning a user that the Web site collects online from the user and combines with an identifier described in this subdivision.

(b) The term "conspicuously post" with respect to a privacy policy shall include posting the privacy policy through any of the following:

- (1) A Web page on which the actual privacy policy is posted if the Web page is the homepage or first significant page after entering the Web site.
- (2) An icon that hyperlinks to a Web site on which the actual privacy policy is posted, if the icon is located on the home page or the first significant page after entering the Web site, and if the icon contains the word "privacy." The icon shall also use a color that contrasts with the background color of the Web page.



(3) A text link that hyperlinks to a Web site on which the actual privacy policy is posted, if the text link is located on the home page or first significant page after entering the Web site, and if the text link does one of the following:

(A) Includes the word “privacy” in a type size no smaller than the type size of the majority of the remainder of the page, and is located either at the bottom of the page or in the left-most column.

(B) Is written in capital letters equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size.

(C) Is written in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from the surrounding text of the same size by symbols or other marks that call attention to the language.

(4) Any other functional hyperlink that is so displayed that a reasonable person would notice it.

(c) The term “operator” means any person or entity that operates a Web site located on the Internet or that operates an online service that collects or maintains personal information from or about a California resident who uses or visits the Web site or online service if the Web site or online service is operated for commercial purposes, including any person or entity offering a product or service for sale through that Web site or online service.

22578. (a) An operator who fails or refuses to conspicuously post a privacy policy on its Web site within 60 days after being notified of its failure to comply with that requirement, shall be in violation of Section 22575.

(b) An operator who either knowingly and willfully or negligently fails to comply with the provisions of its privacy policy shall be in violation of Section 22575.

22579. Individuals or entities with fewer than 25 employees and who do less than 10 percent of their business with individuals located in this state are exempt from this chapter.

22580. It is the intent of the Legislature that this chapter is a matter of statewide concern. This chapter supersedes and preempts all rules, regulations, codes, ordinances, and other laws adopted by a city, county, city and county, municipality, or local agency regarding the posting of a privacy policy on an Internet Web site.

22581. This chapter shall become operative on July 1, 2003.



Approved _____, 2002

Governor

