

AMENDED IN ASSEMBLY JANUARY 6, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 242**

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**Introduced by Assembly Member Chau**

February 6, 2013

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An act to amend ~~Section~~ *Sections 22575, 22576, 22577, and 22578* of the Business and Professions Code, relating to privacy.

LEGISLATIVE COUNSEL'S DIGEST

AB 242, as amended, Chau. Privacy: Internet.

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.

~~This bill would require the privacy policy to be no more than 100 words, be written in clear and concise language, be written at no greater than an 8th grade reading level, and to include a statement indicating whether the personally identifiable information may be sold or shared with others, and if so, how and with whom the information may be shared.~~

*This bill would eliminate references to "privacy policy," and instead refer to a privacy policy as a "policy." The bill would require these policies to include hyperlinks to the Web pages where a consumer may file a complaint, as specified, if an operator collects personal information about an individual consumer.*

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. Section 22575 of the Business and Professions~~  
2     ~~Code is amended to read:~~

3     ~~22575. (a) An operator of a commercial Web site or online~~  
4     ~~service that collects personally identifiable information through~~  
5     ~~the Internet about individual consumers residing in California who~~  
6     ~~use or visit its commercial Web site or online service shall~~  
7     ~~conspicuously post its privacy policy on its Web site, or in the case~~  
8     ~~of an operator of an online service, make that policy available in~~  
9     ~~accordance with paragraph (5) of subdivision (b) of Section 22577.~~  
10    ~~An operator shall be in violation of this subdivision only if the~~  
11    ~~operator fails to post its policy within 30 days after being notified~~  
12    ~~of noncompliance.~~

13    ~~(b) The privacy policy required by subdivision (a) shall do all~~  
14    ~~of the following:~~

15    ~~(1) Identify the categories of personally identifiable information~~  
16    ~~that the operator collects through the Web site or online service~~  
17    ~~about individual consumers who use or visit its commercial Web~~  
18    ~~site or online service and the categories of third-party persons or~~  
19    ~~entities with whom the operator may share that personally~~  
20    ~~identifiable information.~~

21    ~~(2) If the operator maintains a process for an individual~~  
22    ~~consumer who uses or visits its commercial Web site or online~~  
23    ~~service to review and request changes to any of his or her~~  
24    ~~personally identifiable information that is collected through the~~  
25    ~~Web site or online service, provide a description of that process.~~

26    ~~(3) Describe the process by which the operator notifies~~  
27    ~~consumers who use or visit its commercial Web site or online~~  
28    ~~service of material changes to the operator's privacy policy for~~  
29    ~~that Web site or online service.~~

30    ~~(4) Identify its effective date.~~

31    ~~(c) The privacy policy required by this section shall be no more~~  
32    ~~than 100 words and shall be written in clear and concise language~~  
33    ~~at no greater than an eighth grade reading level. The privacy policy~~  
34    ~~shall include a statement indicating whether the personally~~  
35    ~~identifiable information may be sold or shared with others, and if~~  
36    ~~so, how and with whom the information may be shared.~~

37    ~~SECTION 1. Section 22575 of the Business and Professions~~  
38    ~~Code is amended to read:~~

1 22575. (a) An operator of a commercial Web site or online  
2 service that collects personally identifiable information through  
3 the Internet about individual consumers residing in California who  
4 use or visit its commercial Web site or online service shall  
5 conspicuously post ~~its privacy~~ a policy on its Web site, or in the  
6 case of an operator of an online service, make that policy available  
7 in accordance with paragraph (5) of subdivision (b) of Section  
8 22577. An operator shall be in violation of this subdivision only  
9 if the operator fails to post its policy within 30 days after being  
10 notified of noncompliance.

11 (b) The ~~privacy~~ policy required by subdivision (a) shall do all  
12 of the following:

13 (1) Identify the categories of personally identifiable information  
14 that the operator collects through the Web site or online service  
15 about individual consumers who use or visit its commercial Web  
16 site or online service and the categories of third-party persons or  
17 entities with whom the operator may share that personally  
18 identifiable information.

19 (2) If the operator maintains a process for an individual  
20 consumer who uses or visits its commercial Web site or online  
21 service to review and request changes to any of his or her  
22 personally identifiable information that is collected through the  
23 Web site or online service, provide a description of that process.

24 (3) Describe the process by which the operator notifies  
25 consumers who use or visit its commercial Web site or online  
26 service of material changes to the operator's ~~privacy~~ policy for  
27 that Web site or online service.

28 (4) Identify its effective date.

29 (5) Disclose how the operator responds to Web browser "do not  
30 track" signals or other mechanisms that provide consumers the  
31 ability to exercise choice regarding the collection of personally  
32 identifiable information about an individual consumer's online  
33 activities over time and across third-party Web sites or online  
34 services, if the operator engages in that collection.

35 (6) Disclose whether other parties may collect personally  
36 identifiable information about an individual consumer's online  
37 activities over time and across different Web sites when a consumer  
38 uses the operator's Web site or service.

39 (7) An operator may satisfy the requirement of paragraph (5)  
40 by providing a clear and conspicuous hyperlink in the operator's

1 privacy policy to an online location containing a description,  
2 including the effects, of any program or protocol the operator  
3 follows that offers the consumer that choice.

4 (8) *If an operator collects personal information about an*  
5 *individual consumer, include hyperlinks to the Web pages where*  
6 *the consumer may file a complaint with the Attorney General and*  
7 *the Federal Trade Commission.*

8 *SEC. 2. Section 22576 of the Business and Professions Code*  
9 *is amended to read:*

10 22576. An operator of a commercial Web site or online service  
11 that collects personally identifiable information through the Web  
12 site or online service from individual consumers who use or visit  
13 the commercial Web site or online service and who reside in  
14 California shall be in violation of this section if the operator fails  
15 to comply with the provisions of Section 22575 or with the  
16 provisions of its posted ~~privacy~~ policy in either of the following  
17 ways:

18 (a) Knowingly and willfully.

19 (b) Negligently and materially.

20 *SEC. 3. Section 22577 of the Business and Professions Code*  
21 *is amended to read:*

22 22577. For the purposes of this chapter, the following  
23 definitions apply:

24 (a) The term “personally identifiable information” means  
25 individually identifiable information about an individual consumer  
26 collected online by the operator from that individual and  
27 maintained by the operator in an accessible form, including any  
28 of the following:

29 (1) A first and last name.

30 (2) A home or other physical address, including street name and  
31 name of a city or town.

32 (3) An e-mail address.

33 (4) A telephone number.

34 (5) A social security number.

35 (6) Any other identifier that permits the physical or online  
36 contacting of a specific individual.

37 (7) Information concerning a user that the Web site or online  
38 service collects online from the user and maintains in personally  
39 identifiable form in combination with an identifier described in  
40 this subdivision.

1 (b) The term “conspicuously post” with respect to a ~~privacy~~  
2 policy shall include posting the ~~privacy~~ policy through any of the  
3 following:

4 (1) A Web page on which the actual ~~privacy~~ policy is posted if  
5 the Web page is the homepage or first significant page after  
6 entering the Web site.

7 (2) An icon that hyperlinks to a Web page on which the actual  
8 ~~privacy~~ policy is posted, if the icon is located on the homepage or  
9 the first significant page after entering the Web site, and if the icon  
10 contains the ~~word “privacy.”~~ words “*using your information.*”  
11 The icon shall also use a color that contrasts with the background  
12 color of the Web page or is otherwise distinguishable.

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

17 (A) Includes the ~~word “privacy.”~~ words “*using your*  
18 *information.*”

19 (B) Is written in capital letters equal to or greater in size than  
20 the surrounding text.

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

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

27 (5) In the case of an online service, any other reasonably  
28 accessible means of making the ~~privacy~~ policy available for  
29 consumers of the online service.

30 (c) The term “operator” means any person or entity that owns  
31 a Web site located on the Internet or an online service that collects  
32 and maintains personally identifiable information from a consumer  
33 residing in California who uses or visits the Web site or online  
34 service if the Web site or online service is operated for commercial  
35 purposes. It does not include any third party that operates, hosts,  
36 or manages, but does not own, a Web site or online service on the  
37 owner’s behalf or by processing information on behalf of the  
38 owner.

1 (d) The term “consumer” means any individual who seeks or  
2 acquires, by purchase or lease, any goods, services, money, or  
3 credit for personal, family, or household purposes.

4 *SEC. 4. Section 22578 of the Business and Professions Code*  
5 *is amended to read:*

6 22578. It is the intent of the Legislature that this chapter is a  
7 matter of statewide concern. This chapter supersedes and preempts  
8 all rules, regulations, codes, ordinances, and other laws adopted  
9 by a city, county, city and county, municipality, or local agency  
10 regarding the posting of a ~~privacy~~ policy on an Internet Web site.