

**ASSEMBLY BILL**

**No. 257**

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**Introduced by Assembly Member Hall**

February 7, 2013

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An act to amend Section 22577 of, and to add Sections 22575.1, 22575.2, and 22575.3 to, the Business and Professions Code, relating to privacy.

LEGISLATIVE COUNSEL'S DIGEST

AB 257, as introduced, Hall. Privacy: mobile devices.

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 the consumers, as specified.

This bill would define an online service for purposes of these provisions to include mobile applications designed to be downloaded to and installed on a mobile device. This bill would require the operator of a mobile application to satisfy various requirements, including specified privacy policy requirements, procedures to allow a consumer to access their own personally identifiable information collected and retained, safeguards to protect personally identifiable information, a requirement that the operator provide a supplemental privacy policy if an application collects information not essential to the application's basic function, and a requirement that the operator provide a special notice if the application accesses specified devices and information. The bill would require a mobile application market, as defined, to comply with specified procedures allowing access to an application's privacy policy and a means for users to report applications in violation

of the applicable terms of service or law. The bill would also establish specified requirements for an advertising network delivering an advertisement through a mobile application, including a privacy policy requirement, a requirement that the network obtain prior consent to display an advertisement in specified circumstances, a requirement that advertisements be clearly attributable to the host application in specified circumstances, and required procedures for identifying a consumer and transmitting information.

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 22575.1 is added to the Business and  
 2 Professions Code, to read:  
 3 22575.1. (a) The privacy policy for a mobile application shall  
 4 specify and limit practices regarding information retention and  
 5 collection, including the types of information collected, the use  
 6 and retention period for each category of information, the  
 7 categories of third parties with whom personally identifiable  
 8 information will be shared, and the choices a consumer has  
 9 regarding the collection, use, and sharing of personally identifiable  
 10 information.  
 11 (b) The operator of a mobile application shall:  
 12 (1) Provide consumers access to their own personally identifiable  
 13 information that the application collects and retains.  
 14 (2) Use security safeguards to protect personally identifiable  
 15 information from unauthorized access, use, disclosure,  
 16 modification, or destruction.  
 17 (3) Provide a supplemental privacy policy with enhanced  
 18 measures if an application collects personally identifiable  
 19 information that is not essential to the application’s basic function.  
 20 (4) Provide consumers with a special notice if the application  
 21 accesses text messages, call logs, the camera, the dialer, or the  
 22 microphone, or collects location information, financial information,  
 23 medical information, or passwords. A special notice shall deliver  
 24 notice to the consumer of the information collection. A special  
 25 notice shall explain the intended uses of the information and  
 26 disclose the type of third parties to whom the information may be  
 27 disclosed.

1 (c) The requirements for a mobile application privacy policy  
2 are in addition to the requirements specified elsewhere in this  
3 chapter.

4 SEC. 2. Section 22575.2 is added to the Business and  
5 Professions Code, to read:

6 22575.2. (a) In the application submission process for a new  
7 or updated mobile application, a mobile application market shall  
8 include either of the following:

9 (1) An optional data field for a hyperlink to the application's  
10 privacy policy or a statement describing the application's privacy  
11 practices.

12 (2) An optional data field for the text of the application's privacy  
13 policy or a statement describing the application's privacy practices.

14 (b) A mobile application market shall:

15 (1) Implement a means for users to report applications that do  
16 not comply with the applicable terms of service or law.

17 (2) Implement a process for responding to reported instances  
18 of noncompliance with applicable terms of service or law.

19 SEC. 3. Section 22575.3 is added to the Business and  
20 Professions Code, to read:

21 22575.3. An advertising network delivering an advertisement  
22 through a mobile application shall:

23 (a) Include a privacy policy governing the collection, use,  
24 disclosure, and retention of personally identifiable information.  
25 This policy shall be made available to users of mobile applications  
26 and application developers.

27 (b) Obtain prior consent before displaying an advertisement  
28 delivered through an application and displayed outside the context  
29 of the application.

30 (c) Provide clear attribution of the host application responsible  
31 for an advertisement delivered through an application and displayed  
32 outside the context of the application.

33 (d) Obtain prior consent before accessing personally identifiable  
34 information.

35 (e) Use application-specific or temporary device identifiers, not  
36 unchangeable device-specific identifiers.

37 (f) Transmit user data securely, using encryption for permanent  
38 unique device identifiers and personal information.

39 SEC. 4. Section 22577 of the Business and Professions Code  
40 is amended to read:

1 22577. For the purposes of this chapter, the following  
2 definitions apply:

3 (a) The term “personally identifiable information” means  
4 individually identifiable information about an individual consumer  
5 collected online by the operator from that individual and  
6 maintained by the operator in an accessible form, including any  
7 of the following:

8 (1) A first and last name.

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

11 (3) An e-mail address.

12 (4) A telephone number.

13 (5) A social security number.

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

16 (7) Information concerning a user that the Web site or online  
17 service collects online from the user and maintains in personally  
18 identifiable form in combination with an identifier described in  
19 this subdivision.

20 (b) The term “conspicuously post” with respect to a privacy  
21 policy shall include posting the privacy policy through any of the  
22 following:

23 (1) A Web page on which the actual privacy policy is posted if  
24 the Web page is the homepage or first significant page after  
25 entering the Web site.

26 (2) An icon that hyperlinks to a Web page on which the actual  
27 privacy policy is posted, if the icon is located on the homepage or  
28 the first significant page after entering the Web site, and if the icon  
29 contains the word “privacy.” The icon shall also use a color that  
30 contrasts with the background color of the Web page or is  
31 otherwise distinguishable.

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

36 (A) Includes the word “privacy.”

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

39 (C) Is written in larger type than the surrounding text, or in  
40 contrasting type, font, or color to the surrounding text of the same

1 size, or set off from the surrounding text of the same size by  
2 symbols or other marks that call attention to the language.

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

5 (5) In the case of an online service, any other reasonably  
6 accessible means of making the privacy policy available for  
7 consumers of the online service, *except for a mobile application,*  
8 *which shall follow the requirements in Section 22575.1.*

9 (c) The term “operator” means any person or entity that owns  
10 a Web site located on the Internet or an online service that collects  
11 and maintains personally identifiable information from a consumer  
12 residing in California who uses or visits the Web site or online  
13 service if the Web site or online service is operated for commercial  
14 purposes. It does not include any third party that operates, hosts,  
15 or manages, but does not own, a Web site or online service on the  
16 owner’s behalf or by processing information on behalf of the  
17 owner.

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

21 (e) *The term “online service” includes, but shall not be limited*  
22 *to, a mobile application.*

23 (f) *The term “mobile application” means an application*  
24 *designed to be downloaded to and installed on a mobile device,*  
25 *such as a mobile phone, a tablet, or a smart phone.*

26 (g) *The term “mobile application market” means a computerized*  
27 *system where a person can purchase a mobile application and*  
28 *download the mobile application directly to a mobile device.*