

AMENDED IN ASSEMBLY MARCH 19, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 370

Introduced by Assembly Member Muratsuchi

February 14, 2013

An act to amend Sections 22575 and 22577 of the Business and Professions Code, relating to consumers.

LEGISLATIVE COUNSEL'S DIGEST

AB 370, as amended, Muratsuchi. Consumers: online tracking.

Existing law requires an operator of a commercial Web site or online service that collects personally identifiable information through the Internet about consumers residing in California who use or visit its commercial Web site or online service to conspicuously post its privacy policy on its Web site or online service and to comply with that policy. Existing law, among other things, requires that the privacy policy identify the categories of personally identifiable information that the operator collects about individual consumers who use or visit its Web site or online service and 3rd parties with whom the operator shares the information.

This bill would require an operator to disclose whether or not it honors a request from a consumer to disable online tracking, as defined, of the consumer who visits or uses its commercial Web site or online service. The bill would also require an operator to disclose if it does not allow 3rd parties to conduct online tracking on the commercial Web site or online service.

Existing law, subject to specified exceptions, requires a business that discloses a customer's personal information to a 3rd party for direct marketing purposes to provide the customer, within 30 days after the

~~customer's request, as specified, in writing or by e-mail the names and addresses of the recipients of that information and specified details regarding the information disclosed.~~

~~This bill would declare the intent of the Legislature to enact legislation that would regulate online behavioral tracking of consumers.~~

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) *Disclose whether or not the operator honors or complies*
22 *with a Web browser's signal or other similar mechanism that*
23 *indicates a request to disable online tracking of the individual*
24 *consumer who uses or visits its commercial Web site or online*
25 *service, or, if the operator does not allow third parties to conduct*
26 *online tracking on the Web site or service, to disclose that fact.*

27 ~~(2)~~

28 (3) If the operator maintains a process for an individual
29 consumer who uses or visits its commercial Web site or online
30 service to review and request changes to any of his or her

1 personally identifiable information that is collected through the
2 Web site or online service, provide a description of that process.

3 ~~(3)~~

4 (4) Describe the process by which the operator notifies
5 consumers who use or visit its commercial Web site or online
6 service of material changes to the operator’s privacy policy for
7 that Web site or online service.

8 ~~(4)~~

9 (5) Identify its effective date.

10 *SEC. 2. Section 22577 of the Business and Professions Code*
11 *is amended to read:*

12 22577. For the purposes of this chapter, the following
13 definitions apply:

14 (a) The term “personally identifiable information” means
15 individually identifiable information about an individual consumer
16 collected online by the operator from that individual and
17 maintained by the operator in an accessible form, including any
18 of the following:

19 (1) A first and last name.

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

22 (3) An e-mail address.

23 (4) A telephone number.

24 (5) A social security number.

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

27 (7) Information concerning a user that the Web site or online
28 service collects online from the user and maintains in personally
29 identifiable form in combination with an identifier described in
30 this subdivision.

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

34 (1) A Web page on which the actual privacy policy is posted if
35 the Web page is the homepage or first significant page after
36 entering the Web site.

37 (2) An icon that hyperlinks to a Web page on which the actual
38 privacy policy is posted, if the icon is located on the homepage or
39 the first significant page after entering the Web site, and if the icon
40 contains the word “privacy.” The icon shall also use a color that

1 contrasts with the background color of the Web page or is
2 otherwise distinguishable.

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

7 (A) Includes the word “privacy.”

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

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

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

16 (5) In the case of an online service, any other reasonably
17 accessible means of making the privacy policy available for
18 consumers of the online service.

19 (c) The term “operator” means any person or entity that owns
20 a Web site located on the Internet or an online service that collects
21 and maintains personally identifiable information from a consumer
22 residing in California who uses or visits the Web site or online
23 service if the Web site or online service is operated for commercial
24 purposes. It does not include any third party that operates, hosts,
25 or manages, but does not own, a Web site or online service on the
26 owner’s behalf or by processing information on behalf of the
27 owner.

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

31 (e) *The term “online tracking” means the practice of collecting*
32 *personally identifiable information about an individual consumer’s*
33 *online activities over time and across different Web sites and online*
34 *services.*

35 ~~SECTION 1. It is the intent of the Legislature to enact~~
36 ~~legislation that would regulate online behavioral tracking of~~
37 ~~consumers.~~

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