

AMENDED IN SENATE JUNE 3, 2013
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~~ *allows* 3rd parties to conduct online tracking on the commercial Web site or online service *and whether there is a means to disable this tracking*.

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 ~~(3)~~
28 (2) 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
31 personally identifiable information that is collected through the
32 Web site or online service, provide a description of that process.
33 ~~(4)~~
34 (3) Describe the process by which the operator notifies
35 consumers who use or visit its commercial Web site or online

1 service of material changes to the operator’s privacy policy for
2 that Web site or online service.

3 ~~(5)~~

4 (4) Identify its effective date.

5 (5) *Disclose how the operator responds to Web browser “do*
6 *not track” signals or other similar mechanisms regarding online*
7 *tracking, as defined in subdivision (e) of Section 22577, when an*
8 *individual consumer uses or visits the commercial Web site or*
9 *online service.*

10 (6) *Disclose whether other parties on the operator’s commercial*
11 *Web site or online service are or may be conducting online*
12 *tracking, as defined in subdivision (e) of Section 22577, and what,*
13 *if any, program, solution, protocol, or mechanism the operator*
14 *follows that offers consumers who use or visit its commercial Web*
15 *site or online service the ability to exercise a choice regarding*
16 *whether to permit this collection. The operator shall also offer*
17 *information regarding how the consumer can use the program,*
18 *solution, protocol, or mechanism.*

19 SEC. 2. Section 22577 of the Business and Professions Code
20 is amended to read:

21 22577. For the purposes of this chapter, the following
22 definitions apply:

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

28 (1) A first and last name.

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

31 (3) An e-mail address.

32 (4) A telephone number.

33 (5) A social security number.

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

36 (7) Information concerning a user that the Web site or online
37 service collects online from the user and maintains in personally
38 identifiable form in combination with an identifier described in
39 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.” The icon shall also use a color that
11 contrasts with the background color of the Web page or is
12 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.”

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

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

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

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

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

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

1 (e) The term “online tracking” means the practice of collecting
2 personally identifiable information about an individual consumer’s
3 online activities over time and across different Web sites and online
4 ~~services:~~ *services, for any use other than the internal business*
5 *purposes of the commercial Web site or online service through*
6 *which the tracking is conducted.*

7 (f) *The term “internal business purposes” means those activities*
8 *necessary to maintain or analyze the functioning of the commercial*
9 *Web site or online service, perform network communications,*
10 *authenticate users of the commercial Web site or online service,*
11 *and ensure legal or regulatory compliance, provided that the*
12 *information collected for these activities is not used or disclosed*
13 *for any other purpose.*

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