

ASSEMBLY BILL

No. 2667

Introduced by Assembly Member Bloom

February 21, 2014

An act to add Sections 1802.22, 1802.23, 1802.24, 1802.25, 1803.12, and 1803.13 to the Civil Code, relating to electronic devices.

LEGISLATIVE COUNSEL'S DIGEST

AB 2667, as introduced, Bloom. Retail installment contracts: electronic devices: monitoring technology.

Existing law, the Unruh Act, provides for the regulation of retail installment contracts, as defined. Existing law requires retail installment contracts to contain specified notices, including, among other things, information on costs and terms of repayment. Existing law makes it a misdemeanor to willfully violate the provisions regulating retail installment contracts.

This bill would add to these provisions regulating retail contracts provisions requiring a retail seller to provide clear and prominent notice to a buyer and obtain express consent from the buyer at the time of sale of an electronic device if that device has monitoring technology or geophysical location tracking technology installed and would prohibit a seller from installing the technology without providing clear and prominent notice and obtaining express consent from the buyer. The bill would prohibit a seller from using a monitoring technology or geophysical location tracking technology on an electronic device for any purpose other than to prevent fraud.

Because a willful violation of these provisions would be a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

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

1 SECTION 1. Section 1802.22 is added to the Civil Code, to
2 read:

3 1802.22. “Electronic device” means a desktop or laptop
4 computer, handheld device, tablet, smart phone, or other electronic
5 product or device that has a platform on which to download, install,
6 or run any software program, code, script, or other content.

7 SEC. 2. Section 1802.23 is added to the Civil Code, to read:

8 1802.23. “Clear and prominent notice” means notice presented
9 in an understandable language and syntax, in the predominantly
10 used language for that communication, and that:

11 (a) In textual communications, the required disclosures are of
12 a type, size, and location sufficiently noticeable for an ordinary
13 consumer to read and comprehend in print that contrasts highly
14 with the background on which they appear.

15 (b) In communications disseminated orally or through audible
16 means, the required disclosures are delivered in a volume and
17 cadence sufficient for an ordinary consumer to hear and
18 comprehend.

19 (c) In communications disseminated through video means, the
20 required disclosures are in writing in a form consistent with
21 subdivision (a) of this definition and appear on the screen for a
22 duration sufficient for an ordinary consumer to read and
23 comprehend them, and in the same language as the predominantly
24 used language for that communication.

25 (d) In communications made through interactive media,
26 including the Internet, online services, and software, the required
27 disclosures are unavoidable and presented in a form consistent
28 with subdivision (a), in addition to any audio or video presentation.

29 SEC. 3. Section 1802.24 is added to the Civil Code, to read:

1 1802.24. “Geophysical location tracking technology” means
2 hardware, software, or an application that collects and reports data
3 or information that identifies the precise geophysical location of
4 an item, including, technologies that report the GPS coordinates
5 of a computer or other item, the WiFi signals available to or
6 actually used by a computer to access the Internet, the
7 telecommunication towers or connections available to or actually
8 used by a computer, the processing of any reported data or
9 information through geolocation lookup services, or any
10 information derived from any combination of the foregoing.

11 SEC. 4. Section 1802.25 is added to the Civil Code, to read:

12 1802.25. “Monitoring technology” means any hardware,
13 software, or application utilized in conjunction with a computer
14 that can cause the computer to capture, monitor, record, or report
15 information about user activities by recording keystrokes, clicks,
16 or other user-generated actions, capturing screenshots of the
17 information displayed on a computer monitor or screen, or
18 activating the camera or microphone function of a computer to
19 take photographs or record audio or visual content through the
20 computer’s Internet Webcam or microphone.

21 SEC. 5. Section 1803.12 is added to the Civil Code, to read:

22 1803.12. It shall be unlawful for a seller to fail to provide clear
23 and prominent notice to a buyer and obtain express consent from
24 the buyer at the time of sale of an electronic device if that device
25 has monitoring technology or geophysical location tracking
26 technology installed or to install monitoring technology or
27 geophysical location tracking technology on an electronic device
28 without first providing clear and prominent notice to the buyer and
29 obtaining express consent.

30 SEC. 6. Section 1803.13 is added to the Civil Code, to read:

31 1803.13. It shall be unlawful for a seller to use monitoring
32 technology or geophysical location tracking technology on an
33 electronic device for any purpose other than the prevention of
34 fraud.

35 SEC. 7. No reimbursement is required by this act pursuant to
36 Section 6 of Article XIII B of the California Constitution because
37 the only costs that may be incurred by a local agency or school
38 district will be incurred because this act creates a new crime or
39 infraction, eliminates a crime or infraction, or changes the penalty
40 for a crime or infraction, within the meaning of Section 17556 of

- 1 the Government Code, or changes the definition of a crime within
- 2 the meaning of Section 6 of Article XIII B of the California
- 3 Constitution.

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