

AMENDED IN ASSEMBLY APRIL 24, 2014

AMENDED IN ASSEMBLY MARCH 27, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2667

Introduced by Assembly Member Bloom

February 21, 2014

An act to amend Section 1812.622 of, and to add Section 1812.650 to, the Civil Code, relating to electronic devices.

LEGISLATIVE COUNSEL'S DIGEST

AB 2667, as amended, Bloom. Rental-purchase agreements: electronic devices: monitoring technology.

Existing law, the Karnette Rental-Purchase Act, provides for the regulation of rental-purchase agreements, as defined. Existing law requires rental-purchase agreements to contain specified notices, including, among other things, information on costs and terms of payment. Existing law makes it a misdemeanor to willfully violate the provisions regulating rental-purchase agreements.

This bill would add to these provisions regulating rental-purchase agreements provisions requiring a lessor to provide clear and prominent notice to a consumer and obtain express consent from the consumer at the time the lessor and the consumer enter into a rental-purchase agreement for an electronic device if that device has geophysical location tracking technology installed and would prohibit a lessor from installing the technology without providing clear and prominent notice and obtaining express consent from the consumer. The bill would prohibit a lessor from using, *selling, or sharing* geophysical location tracking technology on an electronic device for any purpose other than to prevent

fraud or loss. The bill would prohibit a lessor from using or installing monitoring technology on an electronic device. *The bill would provide for the expiration of and notification related to geophysical location tracking technology. The bill would provide for remote technical assistance, as specified.*

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 1812.622 of the Civil Code is amended
 2 to read:
 3 1812.622. As used in this title:
 4 (a) “Advertisement” means a commercial message in any
 5 medium that directly or indirectly solicits or promotes one or more
 6 specific rental-purchase transactions, excluding instore
 7 merchandising aids. This definition does not limit or alter the
 8 application of other laws, including Chapter 5 (commencing with
 9 Section 17200) of Part 2 and Chapter 1 (commencing with Section
 10 17500) of Part 3, of Division 7 of the Business and Professions
 11 Code, to rental-purchase transactions.
 12 (b) “Consumer” means a natural person or persons who rent or
 13 lease personal property from a lessor pursuant to a rental-purchase
 14 agreement or to whom a lessor offers personal property for use
 15 pursuant to a rental-purchase agreement.
 16 (c) “Lessor” means any person or entity that provides or offers
 17 to provide personal property for use by consumers pursuant to a
 18 rental-purchase agreement.
 19 (d) “Rental-purchase agreement,” except as otherwise provided
 20 in this subdivision, means an agreement between a lessor and a
 21 consumer pursuant to which the lessor rents or leases, for valuable
 22 consideration, personal property for use by a consumer for personal,
 23 family, or household purposes for an initial term not exceeding

1 four months that may be renewed or otherwise extended, if under
2 the terms of the agreement the consumer acquires an option or
3 other legally enforceable right to become owner of the property.
4 A rental-purchase agreement is a lease subject to Title 1.5
5 (commencing with Section 1750) and Title 1.7 (commencing with
6 Section 1790).

7 “Rental-purchase agreement” shall not be construed to be, nor
8 be governed by, and shall not apply to, any of the following:

9 (1) A retail installment sale, as defined in Section 1802.5.

10 (2) A retail installment contract, as defined in Section 1802.6.

11 (3) A retail installment account, as defined in Section 1802.7.

12 (4) A lease or agreement that constitutes a security interest, as
13 defined in Section 1201 of the Commercial Code.

14 (5) A consumer credit contract, as defined in Section 1799.90.

15 (e) “Cash price” means the price of the personal property
16 described in the rental-purchase agreement that the consumer may
17 pay in cash to the lessor at the inception of the rental-purchase
18 agreement to acquire ownership of that personal property.

19 (f) “Cost of rental” means the difference between the total of
20 all periodic payments necessary to acquire ownership under the
21 rental-purchase agreement and the cash price of the rental property
22 that is subject to the rental-purchase agreement.

23 (g) “Fee” means any payment, charge, fee, cost, or expense,
24 however denominated, other than a rental payment.

25 (h) “Appliance” means and includes any refrigerator, freezer,
26 range including any cooktop or oven, microwave oven, washer,
27 dryer, dishwasher, or room air-conditioner or air purifier.

28 (i) “Electronic set” means and includes any television, radio,
29 camera, video game, or any type of device for the recording,
30 storage, copying, printing, transmission, display, or playback of
31 any sound or image, but does not include any item that is part of
32 a computer system.

33 (j) “Computer system” means a computer processor and a video
34 monitor, printer, and peripheral items primarily designed for use
35 with a computer. Audio and video devices, which are commonly
36 used for entertainment and into which data may be downloaded
37 from a computer, are not part of a computer system.

38 (k) “Lessor’s cost” means the documented actual cost, including
39 actual freight charges, of the rental property to the lessor from a

1 wholesaler, distributor, supplier, or manufacturer and net of any
2 discounts, rebates, and incentives.

3 (l) “Total of payments” means the total amount of periodic
4 payments necessary to acquire ownership of the property that is
5 the subject of the rental-purchase agreement if the consumer makes
6 all regularly scheduled payments.

7 (m) “Electronic device” means a desktop or laptop computer,
8 handheld device, tablet, smart phone, or other electronic product
9 or device that has a platform on which to download, install, or run
10 any software program, code, script, or other content.

11 (n) “Clear and prominent notice” means notice presented in an
12 understandable language and syntax, in the predominantly used
13 language for that communication, and that:

14 (1) In textual communications, the required disclosures are
15 *separate and apart from a privacy policy, data use policy, terms*
16 *of service, end-user license agreement, lease agreement, or other*
17 *similar document, and of a type, size, and location sufficiently*
18 *noticeable for an ordinary consumer to read and comprehend in*
19 *print that contrasts highly with the background on which they*
20 *appear.*

21 (2) In communications disseminated orally or through audible
22 means, the required disclosures are delivered in a volume and
23 cadence sufficient for an ordinary consumer to hear and
24 comprehend.

25 (3) In communications disseminated through video means, the
26 required disclosures are in writing in a form consistent with
27 paragraph (1) and appear on the screen for a duration sufficient
28 for an ordinary consumer to read and comprehend them, and in
29 the same language as the predominantly used language for that
30 communication.

31 (4) In communications made through interactive media,
32 including the Internet, online services, and software, the required
33 disclosures are unavoidable and presented in a form consistent
34 with paragraph (1), in addition to any audio or video presentation.

35 (o) “Geophysical location tracking technology” means hardware,
36 software, or an application that collects and reports data or
37 information that identifies the precise geophysical location of an
38 item, including, technologies that report the GPS coordinates of a
39 ~~computer or other item~~ *an electronic device*, the WiFi signals
40 available to or actually used by ~~a computer~~ *an electronic device*

1 to access the Internet, the telecommunication towers or connections
2 available to or actually used by a computer, the processing of any
3 reported data or information through geolocation lookup services,
4 or any information derived from any combination of the foregoing.

5 (p) “Monitoring technology” means any hardware, software, or
6 application utilized in conjunction with a computer that can cause
7 the computer to capture, monitor, record, or report information
8 about user activities ~~by recording keystrokes, clicks, or other~~
9 ~~user-generated actions, capturing screenshots of the information~~
10 ~~displayed on a computer monitor or screen, or activating the camera~~
11 ~~or microphone function of a computer to take photographs or record~~
12 ~~audio or visual content through the computer’s Internet Webcam~~
13 ~~or microphone. without the user’s knowledge.~~

14 (q) “Remote technical assistance” means collaborative access
15 by the user and technician to connect to an electronic device for
16 the purpose of providing technical support to the user.

17 (r) “Express consent” means a clear choice to either agree or
18 not agree to any geophysical location tracking technology or
19 remote technical assistance. Express consent does not include
20 consent given when either option is highlighted or preselected as
21 a default setting.

22 (s) “Fraud” means an action by the consumer that necessitates
23 the lessor’s recovery of the electronic device, limited to
24 nonpayment or another breach of the rental-purchase agreement.

25 SEC. 2. Section 1812.650 is added to the Civil Code, to read:

26 1812.650. (a) A lessor shall provide clear and prominent notice
27 to a consumer and obtain express consent from the consumer at
28 the time the lessor and the consumer enter into a rental-purchase
29 agreement for an electronic device if that device has geophysical
30 location tracking technology ~~installed.~~ *installed, and at any time*
31 *the geophysical location tracking technology is activated.* A lessor
32 shall not install geophysical location tracking technology on an
33 electronic device without first providing clear and prominent notice
34 to the consumer and obtaining express consent.

35 (b) A lessor shall not use, *sell, or share* geophysical location
36 tracking technology on an electronic device for any purpose other
37 than the prevention of fraud *or loss.*

38 (c) *Clear and prominent notification shall be displayed on an*
39 *electronic device if geophysical location tracking technology is*
40 *activated.*

1 (d) A lessor shall provide that any geophysical location tracking
2 technology that has been installed on an electronic device, or can
3 be activated by the lessor, expires following the lease period or
4 upon completion of the purchase of the electronic device.

5 (e)

6 (e) A lessor shall not use or install monitoring technology on
7 an electronic device for any purpose.

8 (f) A lessor shall provide clear and prominent notice to a
9 consumer and obtain express consent from the consumer for the
10 installation of any software that allows the use of remote technical
11 assistance and upon the activation and deactivation of any remote
12 technical assistance when requested by the consumer.

13 (g) A lessor shall not acquire any data when providing remote
14 technical assistance beyond what is necessary to provide assistance
15 to the user and beyond what the user has consented to. Any data
16 acquired during the period of consumer consented technical
17 assistance shall not be retained, used, or sold for any purpose.

18 SEC. 3. No reimbursement is required by this act pursuant to
19 Section 6 of Article XIII B of the California Constitution because
20 the only costs that may be incurred by a local agency or school
21 district will be incurred because this act creates a new crime or
22 infraction, eliminates a crime or infraction, or changes the penalty
23 for a crime or infraction, within the meaning of Section 17556 of
24 the Government Code, or changes the definition of a crime within
25 the meaning of Section 6 of Article XIII B of the California
26 Constitution.

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