

Senate Bill No. 568

Passed the Senate August 30, 2013

Secretary of the Senate

Passed the Assembly August 26, 2013

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2013, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Chapter 22.1 (commencing with Section 22580) to Division 8 of the Business and Professions Code, relating to the Internet.

LEGISLATIVE COUNSEL'S DIGEST

SB 568, Steinberg. Privacy: Internet: minors.

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 consumers, as specified.

Existing federal law requires an operator of an Internet Web site or online service directed to a child, as defined, or an operator of an Internet Web site or online service that has actual knowledge that it is collecting personal information from a child to provide notice of what information is being collected and how that information is being used, and to give the parents of the child the opportunity to refuse to permit the operator's further collection of information from the child.

This bill would, on and after January 1, 2015, prohibit an operator of an Internet Web site, online service, online application, or mobile application, as specified, from marketing or advertising specified types of products or services to a minor. The bill would prohibit an operator from knowingly using, disclosing, compiling, or allowing a 3rd party to use, disclose, or compile, the personal information of a minor for the purpose of marketing or advertising specified types of products or services. The bill would also make this prohibition applicable to an advertising service that is notified by an operator of an Internet Web site, online service, online application, or mobile application that the site, service, or application is directed to a minor.

The bill would, on and after January 1, 2015, require the operator of an Internet Web site, online service, online application, or mobile application to permit a minor, who is a registered user of the operator's Internet Web site, online service, online application,

or mobile application, to remove, or to request and obtain removal of, content or information posted on the operator's Internet Web site, service, or application by the minor, unless the content or information was posted by a 3rd party, any other provision of state or federal law requires the operator or 3rd party to maintain the content or information, or the operator anonymizes the content or information. The bill would require the operator to provide notice to a minor that the minor may remove the content or information, as specified.

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

SECTION 1. Chapter 22.1 (commencing with Section 22580) is added to Division 8 of the Business and Professions Code, to read:

CHAPTER 22.1. PRIVACY RIGHTS FOR CALIFORNIA MINORS IN
THE DIGITAL WORLD

22580. (a) An operator of an Internet Web site, online service, online application, or mobile application directed to minors shall not market or advertise a product or service described in subdivision (i) on its Internet Web site, online service, online application, or mobile application directed to minors.

(b) An operator of an Internet Web site, online service, online application, or mobile application:

(1) Shall not market or advertise a product or service described in subdivision (i) to a minor who the operator has actual knowledge is using its Internet Web site, online service, online application, or mobile application and is a minor, if the marketing or advertising is specifically directed to that minor based upon information specific to that minor, including, but not limited to, the minor's profile, activity, address, or location sufficient to establish contact with a minor, and excluding Internet Protocol (IP) address and product identification numbers for the operation of a service.

(2) Shall be deemed to be in compliance with paragraph (1) if the operator takes reasonable actions in good faith designed to avoid marketing or advertising under circumstances prohibited under paragraph (1).

(c) An operator of an Internet Web site, online service, online application, or mobile application directed to minors or who has actual knowledge that a minor is using its Internet Web site, online service, online application, or mobile application, shall not knowingly use, disclose, compile, or allow a third party to use, disclose, or compile, the personal information of a minor with actual knowledge that the use, disclosure, or compilation is for the purpose of marketing or advertising products or services to that minor for a product described in subdivision (i).

(d) “Minor” means a natural person under 18 years of age who resides in the state.

(e) “Internet Web site, online service, online application, or mobile application directed to minors” mean an Internet Web site, online service, online application, or mobile application, or a portion thereof, that is created for the purpose of reaching an audience that is predominately comprised of minors, and is not intended for a more general audience comprised of adults. Provided, however, that an Internet Web site, online service, online application, or mobile application, or a portion thereof, shall not be deemed to be directed at minors solely because it refers or links to an Internet Web site, online service, online application, or mobile application directed to minors by using information location tools, including a directory, index, reference, pointer, or hypertext link.

(f) “Operator” means any person or entity that owns an Internet Web site, online service, online application, or mobile application. It does not include any third party that operates, hosts, or manages, but does not own, an Internet Web site, online service, online application, or mobile application on the owner’s behalf or processes information on the owner’s behalf.

(g) This section shall not be construed to require an operator of an Internet Web site, online service, online application, or mobile application to collect or retain age information about users.

(h) (1) With respect to marketing or advertising provided by an advertising service, the operator of an Internet Web site, online service, online application, or mobile application directed to minors shall be deemed to be in compliance with subdivision (a) if the operator notifies the advertising service, in the manner required by the advertising service, that the site, service, or application is directed to minors.

(2) If an advertising service is notified, in the manner required by the advertising service, that an Internet Web site, online service, online application, or mobile application is directed to minors pursuant to paragraph (1), the advertising service shall not market or advertise a product or service on the operator's Internet Web site, online service, online application, or mobile application that is described in subdivision (i).

(i) The marketing and advertising restrictions described in subdivisions (a) and (b) shall apply to the following products and services as they are defined under state law:

(1) Alcoholic beverages, as referenced in Sections 23003 to 23009, inclusive, and Section 25658.

(2) Firearms or handguns, as referenced in Sections 16520, 16640, and 27505 of the Penal Code.

(3) Ammunition or reloaded ammunition, as referenced in Sections 16150 and 30300 of the Penal Code.

(4) Handgun safety certificates, as referenced in Sections 31625 and 31655 of the Penal Code.

(5) Aerosol container of paint that is capable of defacing property, as referenced in Section 594.1 of the Penal Code.

(6) Etching cream that is capable of defacing property, as referenced in Section 594.1 of the Penal Code.

(7) Any tobacco, cigarette, or cigarette papers, or blunt wraps, or any other preparation of tobacco, or any other instrument or paraphernalia that is designed for the smoking or ingestion of tobacco, products prepared from tobacco, or any controlled substance, as referenced in Division 8.5 (commencing with Section 22950) and Sections 308, 308.1, 308.2, and 308.3 of the Penal Code.

(8) BB device, as referenced in Sections 16250 and 19910 of the Penal Code.

(9) Dangerous fireworks, as referenced in Sections 12505 and 12689 of the Health and Safety Code.

(10) Tanning in an ultraviolet tanning device, as referenced in Sections 22702 and 22706.

(11) Dietary supplement products containing ephedrine group alkaloids, as referenced in Section 110423.2 of the Health and Safety Code.

(12) Tickets or shares in a lottery game, as referenced in Sections 8880.12 and 8880.52 of the Government Code.

(13) Salvia divinorum or Salvinorin A, or any substance or material containing Salvia divinorum or Salvinorin A, as referenced in Section 379 of the Penal Code.

(14) Body branding, as referenced in Sections 119301 and 119302 of the Health and Safety Code.

(15) Permanent tattoo, as referenced in Sections 119301 and 119302 of the Health and Safety Code and Section 653 of the Penal Code.

(16) Drug paraphernalia, as referenced in Section 11364.5 of the Health and Safety Code.

(17) Electronic cigarette, as referenced in Section 119405 of the Health and Safety Code.

(18) Obscene matter, as referenced in Section 311 of the Penal Code.

(19) A less lethal weapon, as referenced in Sections 16780 and 19405 of the Penal Code.

(j) The marketing and advertising restrictions described in subdivisions (a), (b), and (c) shall not apply to the incidental placement of products or services embedded in content if the content is not distributed by or at the direction of the operator primarily for the purposes of marketing and advertising of the products or services described in subdivision (i).

(k) “Marketing or advertising” means, in exchange for monetary compensation, to make a communication to one or more individuals, or to arrange for the dissemination to the public of a communication, about a product or service the primary purpose of which is to encourage recipients of the communication to purchase or use the product or service.

22581. (a) An operator of an Internet Web site, online service, online application, or mobile application directed to minors or an operator of an Internet Web site, online service, online application, or mobile application that has actual knowledge that a minor is using its Internet Web site, online service, online application, or mobile application shall do all of the following:

(1) Permit a minor who is a registered user of the operator’s Internet Web site, online service, online application, or mobile application to remove or, if the operator prefers, to request and obtain removal of, content or information posted on the operator’s Internet Web site, online service, online application, or mobile application by the user.

(2) Provide notice to a minor who is a registered user of the operator's Internet Web site, online service, online application, or mobile application that the minor may remove or, if the operator prefers, request and obtain removal of, content or information posted on the operator's Internet Web site, online service, online application, or mobile application by the registered user.

(3) Provide clear instructions to a minor who is a registered user of the operator's Internet Web site, online service, online application, or mobile application on how the user may remove or, if the operator prefers, request and obtain the removal of content or information posted on the operator's Internet Web site, online service, online application, or mobile application.

(4) Provide notice to a minor who is a registered user of the operator's Internet Web site, online service, online application, or mobile application that the removal described under paragraph (1) does not ensure complete or comprehensive removal of the content or information posted on the operator's Internet Web site, online service, online application, or mobile application by the registered user.

(b) An operator or a third party is not required to erase or otherwise eliminate, or to enable erasure or elimination of, content or information in any of the following circumstances:

(1) Any other provision of federal or state law requires the operator or third party to maintain the content or information.

(2) The content or information was stored on or posted to the operator's Internet Web site, online service, online application, or mobile application by a third party other than the minor, who is a registered user, including any content or information posted by the registered user that was stored, republished, or reposted by the third party.

(3) The operator anonymizes the content or information posted by the minor who is a registered user, so that the minor who is a registered user cannot be individually identified.

(4) The minor does not follow the instructions provided to the minor pursuant to paragraph (3) of subdivision (a) on how the registered user may request and obtain the removal of content or information posted on the operator's Internet Web site, online service, online application, or mobile application by the registered user.

(5) The minor has received compensation or other consideration for providing the content.

(c) This section shall not be construed to limit the authority of a law enforcement agency to obtain any content or information from an operator as authorized by law or pursuant to an order of a court of competent jurisdiction.

(d) An operator shall be deemed compliant with this section if:

(1) It renders the content or information posted by the minor user no longer visible to other users of the service and the public even if the content or information remains on the operator's servers in some form.

(2) Despite making the original posting by the minor user invisible, it remains visible because a third party has copied the posting or reposted the content or information posted by the minor.

(e) This section shall not be construed to require an operator of an Internet Web site, online service, online application, or mobile application to collect age information about users.

(f) "Posted" means content or information that can be accessed by a user in addition to the minor who posted the content or information, whether the user is a registered user or not, of the Internet Web site, online service, online application, or mobile application where the content or information is posted.

22582. This chapter shall become operative on January 1, 2015.

SEC. 2. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

Approved _____, 2013

Governor