

Date of Hearing: June 25, 2013

ASSEMBLY COMMITTEE ON ARTS, ENTERTAINMENT, SPORTS, TOURISM, AND
INTERNET MEDIA
Ian C. Calderon, Chair

SB 568 (Steinberg) – As Amended: June 20, 2013

SENATE VOTE: 37-0

SUBJECT: Privacy: Internet: minors.

SUMMARY: Prohibits, on and after January 1, 2015, an operator of an Internet Web site, online service, online application, or mobile application, as specified, from marketing specified types of products or services to a minor. Prohibits an operator from using, disclosing, compiling, or knowingly 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. This bill also makes this prohibition applicable to an advertising service, as specified.

Requires, on and after January 1, 2015, 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 publicly posted on the operator's Internet Web site, service, or application by the minor, subject to specified conditions and exceptions. Specifically, this bill:

- 1) Declares that the operator of an Internet Web site, online service, online application, or mobile application directed to minors or the operator of an Internet Web site, online service, online application, or mobile application has actual knowledge that a minor is using its Internet Web site, online service, online application, or mobile application shall not do any of the following:
 - a) Market or advertise a product or service on the Internet Web site, online service, online application, or mobile application directed to minors, or to a minor who the operator has actual knowledge is using its Internet Web site, online service, online application, or mobile application if the marketing or advertising is for a product, as defined.
 - b) Use, disclose, compile, or knowingly allow a third party to use, disclose, or compile, the personal information of a minor for the purpose of marketing or advertising products or services if the marketing or advertising is for a product, as defined.
- 2) Provides the following definitions:
 - a) "Minor" means a natural person under 18 years of age who resides in the state.
 - b) "Internet Web site, online service, online application, or mobile application directed to minors" means 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 primarily comprised of minors.

Clarifies 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.

- c) “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.
 - d) “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.
- 3) Declares that its provisions 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.
 - 4) States that, 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 shall be deemed to be in compliance 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.
 - 5) Provides that if an advertising service is notified that an Internet Web site, online service, online application, or mobile application is directed to minors 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 state or federal law expressly prohibits a minor from purchasing.
 - 6) Details the products and services that the marketing and advertising restrictions shall apply to (See Comment 6 below).
 - 7) Further requires that 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:
 - a) 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, online service, online application, or mobile application by the user.

- b) 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 request and obtain removal of, content or information posted on the operator's Internet Web site, online service, online application, or mobile application by that registered user.
 - c) 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 request and obtain the removal of content or information posted on the operator's Internet Web site, online service, online application, or mobile application.
 - d) 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 subdivision (b) does not ensure complete or comprehensive removal of the content or information on the operator's Internet Web site, online service, online application, or mobile application by the registered user.
- 8) Declares that 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:
- a) Any other provision of federal or state law requires the operator or third party to maintain the content or information.
 - b) The content or information was 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 republished or reposted by the third party.
 - c) 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.
 - d) The minor does not follow the instructions provided on how a 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 that registered user.
 - e) The minor has received compensation or other consideration for providing the content.
- 9) Provides that its provisions 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.
- 10) Declares that an operator shall be deemed compliant with this section if:
- a) 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.

b) 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.

11) Further declares that the provisions of this section shall not be construed to require an operator or an Internet Web site, online service, online application, or mobile application to collect age information about users.

12) Provides that the provisions of the bill become operative on January 1, 2015.

EXISTING LAW:

- 1) Provides that, among other rights, all people have an inalienable right to pursue and obtain privacy. (California Constitution, Article I, Section 1.)
- 2) Permits a person to bring an action in tort for an invasion of privacy and provides that in order to state a claim for violation of the constitutional right to privacy, a plaintiff must establish the following three elements:
 - a) A legally protected privacy interest;
 - b) A reasonable expectation of privacy in the circumstances; and
 - c) Conduct by the defendant that constitutes a serious invasion of privacy. (*Hill v. National Collegiate Athletic Association*, (1994) 7 Cal.4th 1). Recognizes four types of activities considered to be an invasion of privacy, giving rise to civil liability including the public disclosure of private facts. *Id.*
- 3) Provides that there is no reasonable expectation of privacy in information posted on an Internet Web site. The information is no longer a “private fact” that can be protected from public disclosure. (*Moreno v. Hanford Sentinel*, (2009) 172 Cal.App.4th 1125.)
- 4) 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. (15 United States Code, Section 6502.)

FISCAL EFFECT: None

COMMENTS:

- 1) Author's Statement:

According to the author, "Because of their still developing capacity for self-regulation, still developing critical thinking skills, still developing ability to use sound judgment, and susceptibility to peer pressure, children and adolescents are at greater risk than adults as they navigate through the digital world and experiment with social media. Children are

more susceptible to online marketing of harmful products and it is our responsibility to ensure that children are not bombarded with inappropriate advertisements while they are navigating sites directed towards children or served advertisements for products state and federal public policy deem are harmful for minors. It is especially inappropriate for operators to subject children to advertisements for products those children are legally barred from purchasing when the operator knows the person visiting the site at the time the advertisement is displayed is a minor. It is our responsibility as a state to ensure that operators of online sites do not put our children's safety in jeopardy.

"A large part of a child's social and emotional development is occurring while that child navigates through the digital world while online and through their cell phone. Young children and teens are still developing their critical thinking skills and judgment. We see examples in our homes and in the media of children having a tendency to reveal before they reflect. Existing state law does nothing to require that online operators permit minors to remove content or information they posted on the operator's site. Children should be allowed to erase that which they post because mistakes can follow a young person for a long time and impact their chances of getting into college and landing a job. This bill requires operators to permit children to delete what they post on the operator's website."

2) Argument in Support:

Common Sense Media supports this measure based upon their belief that, "Children have unprecedented access to digital content and products, and while this access creates incredible possibilities, it also brings obvious pitfalls. There are inherent privacy risks when our personally identifiable information is indiscriminately posted, indefinitely stored, and quietly collected and analyzed by marketers and identity thieves. Those risks are especially serious when it comes to kids and teens, who are tracked more closely and widely than adults. This bill adds much-needed online privacy protections for kids and teens in California, and ensures that they will be protected from advertising and marketing that promotes products that are harmful and illegal for children. It is the height of irresponsibility for sites that cater to minors to market products that minors cannot legally purchase.

"Additionally, as we live more and more of our lives online, it is imperative that our kids have the option to erase data they have shared, posted, or otherwise provided to an online or mobile company, oftentimes without clear consent or parental knowledge and guidance. This bill empowers kids, teens, and their families by providing this important option. Regardless of the platforms we use, our personal information belongs to us. It is not a commodity to be controlled and traded by online and mobile companies."

Children Now add in further support that this bill will help protect the personal information of minors by prohibiting site operators from using, disclosing, or compiling children and teen's personally identifiable information for purposes of marketing goods or services that minors can't legally purchase or participate in. They write the committee to say, "They are pleased that the bill will also prohibit site operators from marketing and displaying advertising for those kinds of products and services to minors since these products have already been determined to be inappropriate."

3) Background: The Internet, Social Media and Children:

Social networking Internet Web sites such as MySpace and Facebook have grown in use and become more popular with users who post messages and photos on a personal web page. Those personal pages, generated by the social networking Web site, may also display the user's address, phone number, birth date, or other personal identifying information. That information may then be displayed to the user's friends or to the general public. Although users may limit who may see their personal information, many users, including those under the age of 18, often share that information with their "friends". The list of "friends" for those users may include people who they do not personally know, resulting in the sharing of personal identifying information with unknown persons.

Children under the age of 18 are among the most avid users of the Internet and social networking Internet Web sites. A report by the Pew Foundation entitled *Social Media & Mobile Internet Use Among Teens and Young Adults* (February 2010) found that 93% of American teens aged 12-17 are online, and that 73% of these teens use social networking sites. (See <http://www.pewinternet.org/Reports/2010/Social-Media-and-Young-Adults.aspx>, as of April 20, 2013.) A 2005 survey by the Polly Klaas Foundation found that 42% of online teens post information about themselves on the Internet so others can contact them, and 56% have been asked personal questions online. (Polly Klaas Foundation, *Omnibuzz Research Poll Results*, <http://www.pollyklaas.org/internet-safety/internet-pdfs/PollingSummary.pdf>, as of April 20, 2013.) Additionally, 10% of children aged 8-12 surveyed said they communicate online with people they don't know. (See *id.*)

Many research organizations have found that the sharing of personal identifying information through social networking Internet Web sites poses a significant threat to personal privacy. A 2010 Consumer Reports survey found that, "Many social network users are naive about risks. Forty percent had posted their full birth date, exposing them to identity theft. Twenty-six percent of Facebook users with children had potentially exposed them to predators by posting the children's photos and names. And in one of four households with a Facebook account, users weren't aware of or didn't choose to use the service's privacy controls." (Consumer Reports, *Social insecurity: What millions of online users don't know can hurt them*, <http://www.consumerreports.org/cro/magazine-archive/2010/june/electronics-computers/social-insecurity/overview/index.htm>, as of April 20, 2013.)

Social network users under the age of 18 are particularly at risk. According to the American Academy of Pediatrics (AAP), "[T]he main risk to preadolescents and adolescents online today are risks from each other, risks of improper use of technology, lack of privacy, sharing too much information, or posting false information about themselves or others." (AAP, *The Impact of Social Media on Children, Adolescents, and Families*, <http://pediatrics.aappublications.org/content/127/4/800.full>, as of April 20, 2013.) "These types of behavior," according to the AAP, "put [minors'] privacy at risk." (*Id.*)

The posting of too much information may be intentional, or in some cases the result of unfamiliarity with a particular Web site or confusion about how information will be displayed across a social network. A study by Columbia University entitled *The Failure of Online Social Network Privacy Settings* found that 93.8% of participants revealed information that they intended to keep private, and that 84.6% of participants were hiding information that they actually wanted to share. (<http://academiccommons.columbia.edu/catalog/ac:135406>, as of April 20, 2013.)

This over-sharing and confusion has contributed to an environment where 92% of parents are concerned that their children shared too much information online, and 75% don't think social networking sites do a good job of protecting children's online privacy. (Common Sense Media, *Common Sense Media Poll*, <http://www.commonsensemedia.org/sites/default/files/privacypoll.pdf>, as of April 20, 2013.)

4) Federal Children's Online Privacy Protection Act:

In response to Congressional concerns about the safety of children online, the federal Child's Online Privacy Protection Act of 1998 (COPPA) was adopted, which requires the Federal Trade Commission (FTC) to issue and enforce a rule (the Rule) concerning children's online privacy. The FTC further notes that:

The primary goal of COPPA and the Rule is to place parents in control over what information is collected from their young children online. The Rule was designed to protect children under age 13 while accounting for the dynamic nature of the Internet. The Rule applies to operators of commercial websites and online services directed to children under 13 that collect, use, or disclose personal information from children, and operators of general audience websites or online services with actual knowledge that they are collecting, using, or disclosing personal information from children under 13. [*Federal Trade Commission: Frequently Asked Questions about the Children's Online Privacy Protection Rule* <<http://www.ftc.gov/privacy/coppafaqs.shtml>> (as of Apr. 19, 2013).]

On December 19, 2012, the FTC announced final amendments to COPPA in order to strengthen privacy protections for children and to give parents greater control over personal information that online services may collect from children. The New York Times' December 19, 2012 article entitled "New Online Privacy Rules for Children" reported:

"In an era of widespread photo sharing, video chatting and location-based apps, the revised children's privacy rule makes clear that companies must obtain parental consent before collecting certain details that could be used to identify, contact or locate a child. These include photos, video and audio as well as the location of a child's mobile device.

"While the new rule strengthens such safeguards, it could also disrupt online advertising. Web sites and online advertising networks often use persistent identification systems - like a cookie in a person's browser, the unique serial number on a mobile phone, or the I.P. address of a computer - to collect information about a user's online activities and tailor ads for that person.

"The new rule expands the definition of personal information to include persistent IDs if they are used to show child behavior-based ads. It also requires third parties like ad networks and social networks that know they are operating on children's sites to notify and obtain consent from parents before collecting such personal information. And it makes children's sites responsible for notifying parents about data collection by third parties integrated into their services." (Singer, *New Online Privacy Rules for Children*, (The New York Times [Dec. 19, 2012] <http://www.nytimes.com>, Apr. 19, 2013.)

5) SB 568 Has Two Major Provision; a Prohibition Related to Services or Products That a Minor Cannot Legally Purchase, and a Requirement to Allow Minors to Remove Content Which They Have Posted:

a) Prohibition on Marketing or Advertising:

First, this bill would expressly prohibit the marketing or advertising of a product or service to a minor, if the minor cannot legally purchase the product or participate in the service in the State of California. That prohibition technically restricts the commercial speech of the operator of the Web site or other online service by prohibiting the operator from delivering the message (even though the underlying product cannot lawfully be purchased), but, the mere fact that it restricts speech does not mean that such a restriction would violate the First Amendment of the United States Constitution or Article I of the California Constitution.

Generally speaking, the First Amendment, and Article I of the California Constitution, act to protect the freedom of expression of the citizens of California. Commercial speech, which is done on behalf of a company or individual for purpose of making a profit, has not been afforded full protection under the First Amendment by the United States Supreme Court. In order to be upheld as a valid restriction on commercial speech, the proposed law must meet the following four-part test:

- i) The speech must be about a lawful activity and cannot be false or misleading;
- ii) The government must have a substantial interest;
- iii) The law must directly advance the governmental interest asserted; and
- iv) The law must be no more extensive than necessary. [*Central Hudson Gas v. Public Service Commission* (1980) 447 U.S. 559.]

In this case, the proposed restriction would appear to be a valid restriction on commercial speech since, as a threshold matter, one may argue that it is not lawful to advertise products to a minor that the minor cannot purchase. Even if the speech is lawful, the State of California arguably has a strong interest in taking steps to prevent illegal products from being sold to minors, and, the proposed law would advance that interest in a manner that does not cover products which are legal for minors to purchase in California. Although a determination regarding the First Amendment is ultimately for the courts, it would appear that the proposed restriction on marketing and advertising could survive such a challenge.

In addition, similar to the above provision, this bill would further prohibit an operator from using, disclosing, compiling, or knowingly allowing a third party to use, disclose, or compile the personal information of a minor for purpose of marketing goods or services that the minor cannot legally purchase.

b) Ability For Minors to Remove Content or Information, and Exceptions:

As of January 1, 2015, this bill would require an operator of an Internet Web site, online service, online application, or mobile application to:

- i) Permit a minor to remove content or information they submitted or posited on the website, service, or application; and
- ii) Provide notice to a minor of his or her ability to remove content and a notification that removal does not ensure complete or comprehensive removal of content or information.

This bill would additionally provide that an operator or a third party is not required to erase or otherwise eliminate content or information in either of the following circumstances:

- i) Any other provision of federal or state law requires the operator or third party to maintain the information; or
- iii) The content was submitted by a third party.

Those limitations ensure compliance with other laws and protect the speech rights of third parties who may use a statement by a minor in the context of their own speech (for example, a user on Twitter who “retweets” a minor’s “tweet” with their own commentary).

Similarly, this bill would state that the ability for a minor to remove information 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.

6) Recent Amendments Provide a Listing of Products Which May Not be Marketed to Minors:

The author has recently amended the bill to clarify the scope of products and activities which may not be marketed to children. The list is as follows:

- a) Alcoholic beverages, as referenced in Business and Professions Code Sections 23003-23009, and 25658.
- b) Firearms or handguns, as referenced in Penal Code Sections 16520, 16640, and 27505.
- c) Ammunition or reloaded ammunition, as referenced in Penal Code Sections 16150 and 30300.
- d) Handgun safety certificates, as referenced in Penal Code Sections 31625 and 31655.
- e) Aerosol container of paint that is capable of defacing property, as referenced in Penal Code Section 594.1.
- f) Etching cream that is capable of defacing property, as referenced in Penal Code Section 594.1.

- g) Any tobacco, cigarette, or cigarette papers, or blunts 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 Penal Code Sections 308, 308.1, 308.2, 308.3, and Business and Professions Code Sections 22950-22963.
 - h) BB device, as referenced in Penal Code Sections 16250 and 19910.
 - i) Dangerous fireworks, as referenced in Health and Safety Code Sections 12505 and 12689.
 - j) Tanning in an ultraviolet tanning device, as referenced in Business and Professions Code Sections 22702 and 22706.
 - k) Dietary supplement products containing ephedrine group alkaloids, as referenced in Health and Safety Code Section 110423.2.
 - l) Tickets or shares in lottery games, as referenced in Government Code Sections 8880.12 and 8880.52.
 - m) Salvia divinorum or Salvinorin A, or any substance or material containing Salvia divinorum or Salvinorin A, as referenced in Penal Code Section 379.
 - n) Body piercing, as referenced in Penal Code Section 652 and Health and Safety Code Section 119302.
 - o) Body branding, as referenced in Health and Safety Code Section 119301 and 119302.
 - p) Permanent tattoo, as referenced in Penal Code Section 653 and Health and Safety Code Sections 119301 and 119302.
 - q) Drug paraphernalia, as referenced in Health and Safety Code Section 11364.5.
 - r) Electronic cigarette, as referenced in Health and Safety Code Section 119405.
 - s) Harmful matter or obscene matter, as referenced in Penal Code Sections 311, 313, and 313.1.
 - t) Laser pointer, as referenced in Penal Code Sections 417.25 and 417.27.
 - u) A less lethal weapon, as referenced in Penal Code Sections 16780 and 19405.
- 7) Prior and Related Legislation:
- b) SB 501 (Corbett) would require social networking Web sites to remove the personal information of a registered user, upon request, and permit a parent or legal guardian of a registered user who identifies himself or herself as under 18 years of age to request the

social networking internet Web sites to remove personal identifying information of their children. Status: SB 501 is currently pending before this committee.

- c) AB 1291 (Lowenthal) would create the Right to Know Act of 2013, repealing and reorganizing certain provisions of existing law pertaining to the disclosure of a consumer's personal information. Status: Assembly Judiciary Committee.
- d) AB 632 (Davis) of the 2009-10 Legislative Session, would have required a social networking Internet Web site to provide a disclosure to users that an image which is uploaded onto the Web site is capable of being copied, without consent, by persons who view the image, or copied in violation of the privacy policy, terms of use, or other policy of the site. AB 632 was vetoed.
- e) SB 1361 (Corbett) of the 2009-10 Legislative Session, would have prohibited a social networking Internet Web site, as defined, from displaying, to the public or other registered users, the home address or telephone number of a registered user of that Internet Web site who is under 18 years of age, as provided. SB 1361 failed passage in this committee.
- f) SB 242 (Corbett) of the 2011-12 Legislative Session, would have prohibited a social networking Internet Web site from displaying the home address or telephone number, in specified text fields, of a registered user who identifies himself or herself as under 18 years of age. SB 242 failed passage on the Senate Floor.
- g) SB 761 (Lowenthal) of the 2011-12 Legislative Session, would have required the Attorney General, by July 1, 2012, to adopt regulations that would require online businesses to provide California consumers with a method for the consumer to opt out of the collection or use of his or her information by the business. SB 761 was returned to the Secretary of the Senate by the Senate Appropriations Committee pursuant to Joint Rule 56.

REGISTERED SUPPORT / OPPOSITION:

Support

California Partnership to End Domestic Violence
Children Now
Common Sense Media
Crime Victims United of California

Opposition

None on file

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