

SB 568—soon to be **California Business and Professions Code Sections 22580-82**—gives minors the right to remove posted content on their own or upon request. It also puts restrictions on what operators of websites, online services, and mobile apps directed to minors can now advertise, including via third-party advertisers. The new law defines which operators it applies to and sets forth specific responsibilities these operators must comply with. This quick reference guide is a first step in determining if the new law applies to you and what your responsibilities may be. This reference guide is only a start, and does not cover all of the specifics under the law, or the many exceptions that may apply. Definitions have been abbreviated in the interests of space. The full text of SB 568 is available at http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB568.

“Operator” means any person or entity that owns an Internet website, online service, online application, or mobile application. It does not include any third party that operates, hosts, or manages the above on the owner’s behalf or processes information on the owner’s behalf. *CAL. BUS. & PROF. CODE § 22580(1)*

Are you an operator of an Internet website, online service, online application, or mobile application?

“Customer” means an individual who is a resident of California who provides personal information to a business pursuant to an established business relationship, if the business relationship is primarily for personal, family, or household purposes. *CAL. CIV. CODE § 1798.83(e)(1)*

“Minor” means a natural person under 18 years of age who resides in the state. *CAL. BUS. & PROF. CODE § 22580(d)*

Do you direct your products and services to minors?

To **“direct”** means create for the purpose of reaching an audience that is predominantly comprised of minors, and is not intended for a more general audience comprised of adults. This does not include operators that merely link to other operators whose products and services are “directed” to minors. *CAL. BUS. & PROF. CODE § 22580(e)*

SB 568 may apply.

Do you use a third-party advertising service?

The law does not apply.

You must notify the advertising service that you face advertising restrictions, which the advertising service will also now face.
CAL. BUS. & PROF. CODE § 22580(h).

Cal. Bus. & Prof. Code § 22580(h) will not apply.

* The new law is *not* to be construed to require an operator to collect or retain age information about its users.
CAL. BUS. & PROF. CODE § 22580(g), § 22581(e)

Do you have actual knowledge* that a minor is using your Internet website, online service, online application or mobile application?

“Marketing or advertising” means to communicate a product or service for the primary purpose of encouraging recipients of the communication to purchase or use the product or service, in exchange for monetary compensation. *CAL. BUS. & PROF. CODE § 22580(k)*

Do you use a minor’s personal information, e.g. profile, activity, address, and physical location, to direct marketing or advertising to the minor?

SB 568 may apply.

SB 568 may apply – but only some portions.

The Law Applies: What Do You Need To Do?

Are you an operator of an Internet website, online service, online application, or mobile application that directs your products and services to minors?

Advertising Prohibitions

- You are prohibited from marketing or advertising the following items: Alcoholic beverages; firearms or handguns; ammunition or reloaded ammunition; handgun safety certificates; aerosol container of paint that is capable of defacing property; etching cream that is capable of defacing property; any tobacco, cigarette, or cigarette papers, or blunt wraps; BB device; dangerous fireworks; tanning in an ultraviolet tanning device; dietary supplement products containing ephedrine group alkaloids; tickets or shares in a lottery game; salvia divinorum or Salvinorin A; body branding; permanent tattoo; drug paraphernalia; electronic cigarette; obscene matter (as referenced in Cal. Penal Code § 311); a less lethal weapon (as referenced in Cal. Penal Code §§ 16780, 19405).
CAL. BUS. & PROF. CODE § 22580(i)
- You are prohibited from using the personal information of a minor to market or advertise prohibited items. *CAL. BUS. & PROF. CODE § 22580(c)*
- You are prohibited from allowing a third party to use the personal information of a minor to market or advertise prohibited items.
CAL. BUS. & PROF. CODE § 22580(c)
 - ▶ You must notify any third-party advertising services of your advertising prohibitions; the advertising service will face the same restrictions for products and services advertised through your product or service. *CAL. BUS. & PROF. CODE § 22580(h)*
- Exception: Does not apply to the incidental placement of the above products or services in content, if the content is not distributed by the operator for marketing and advertising purposes. *CAL. BUS. & PROF. CODE § 22580(j)*

Minor's Right to Remove Posted Content**

- You must permit a minor who is a registered user to remove or request removal of content or information posted on the operator's Internet website, online service, online application, or mobile application by the minor. *CAL. BUS. & PROF. CODE § 22581(a)(1)*
- You must provide notice to minors who are registered users that they have the right to remove or request removal of content they posted on the operator's Internet website, online service, online application, or mobile application. *CAL. BUS. & PROF. CODE § 22581(a)(2)*
- You must provide clear instructions on how to remove or request removal of the aforementioned content. *CAL. BUS. & PROF. CODE § 22581(a)(2)*
- You must provide notice to the minor the aforementioned removal of content does not ensure complete and comprehensive removal. *CAL. BUS. & PROF. CODE § 22581(4)*
- Notable Exceptions:
 - ▶ The content or information was stored or posted by a third party other than the minor seeking removal. *CAL. BUS. & PROF. CODE § 22581(b)(2)*
 - ▶ The operator makes the content or information anonymous, so that the minor cannot be identified. *CAL. BUS. & PROF. CODE § 22581(b)(3)*
 - ▶ The minor has received compensation or other consideration for providing the content. *CAL. BUS. & PROF. CODE § 22581(b)(5)*
 - ▶ A law enforcement agency requests the content or information. *CAL. BUS. & PROF. CODE § 22581(c)*
- You are deemed to be in compliance if you render the content or information posted by the minor user so that it is no longer visible to other users of the service and the public, even if the content remains on your servers in some form. *CAL. BUS. & PROF. CODE § 22581(d)(1)*
 - ▶ Even if a third party has copied the posting or reposted the content or information, you are still compliant so long as you made the original posting by the minor user invisible. *CAL. BUS. & PROF. CODE § 22581(d)(2)*

The Law Applies: What Do You Need To Do?

Are you an operator of an Internet website, online service, online application, or mobile application that has actual knowledge that a minor is using your Internet website, online service, online application, or mobile application?

Advertising Prohibitions

- You are prohibited from using the personal information of a minor to market or advertise prohibited items. *CAL. BUS. & PROF. CODE § 22580(c)*
- You are prohibited from allowing a third party to use the personal information of a minor to market or advertise prohibited items. *CAL. BUS. & PROF. CODE § 22580(c)*
- You are deemed to be in compliance if you “take reasonable actions in good faith designed to avoid marketing or advertising” prohibited items to a minor based on the minor’s personal information. *CAL. BUS. & PROF. CODE § 22580(b)(2)*

Minor’s Right to Remove Posted Content**

- See above.

Do you also use a minor’s personal information, e.g. profile, activity, address, and physical location, to direct marketing or advertising to the minor?

Advertising Prohibitions

- You are prohibited from marketing or advertising the following items: Alcoholic beverages; firearms or handguns; ammunition or reloaded ammunition; handgun safety certificates; aerosol container of paint that is capable of defacing property; etching cream that is capable of defacing property; any tobacco, cigarette, or cigarette papers, or blunt wraps; BB device; dangerous fireworks; tanning in an ultraviolet tanning device; dietary supplement products containing ephedrine group alkaloids; tickets or shares in a lottery game; salvia divinorum or Salvinorin A; body branding; permanent tattoo; drug paraphernalia; electronic cigarette; obscene matter (as referenced in Cal. Penal Code § 311); a less lethal weapon (as referenced in Cal. Penal Code §§ 16780, 19405). *CAL. BUS. & PROF. CODE § 22580(i)*

** “Posted” content refers to content or information that can be accessed by any user, whether the user is a registered user or not of the Internet website, online service, online application, or mobile application. *CAL. BUS. & PROF. CODE § 22581(f)*

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