



BUSINESS AND PROFESSIONS CODE SECTION 22575-22579

22575. (a) 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 shall conspicuously post its privacy policy on its Web site, or in the case of an operator of an online service, make that policy available in accordance with paragraph (5) of subdivision (b) of Section 22578.

An operator shall be in violation of this subdivision only if the operator fails to post its policy within 30 days after being notified of noncompliance.

- (a) The privacy policy required by subdivision
- (b) shall do all of the following:

- (1) Identify the categories of personally identifiable information that the operator collects through the Web site or online service about individual consumers who use or visit its commercial Web site or online service and the categories of third-party persons or entities with whom the operator may share that personally identifiable information.

- (2) If the operator maintains a process for an individual consumer who uses or visits its commercial Web site or online service to review and request changes to any of his or her personally identifiable information that is collected through the Web site or online service, provide a description of that process.

- (3) Describe the process by which the operator notifies consumers who use or visit its commercial Web site or online service of material changes to the operator's privacy policy for that Web site or online service.

- (4) Identify its effective date.

22576. An operator of a commercial Web site or online service that collects personally identifiable information through the Web site or online service from individual consumers who use or visit the commercial Web site or online service and who reside in California shall be in violation of this section if the operator fails to comply with the provisions of Section 22575 or with the provisions of its posted privacy policy in either of the following ways:

- (a) Knowingly and willfully.
- (b) Negligently and materially.

22577. For the purposes of this chapter, the following definitions apply:

- (a) The term "personally identifiable information" means individually identifiable information about an individual consumer collected online by the operator from that individual and maintained by the operator in an accessible form, including any of the following:

- (1) A first and last name.
 - (2) A home or other physical address, including street name and



name of a city or town.

(3) An e-mail address.

(4) A telephone number.

(5) A social security number.

(6) Any other identifier that permits the physical or online contacting of a specific individual.

(7) Information concerning a user that the Web site or online service collects online from the user and maintains in personally identifiable form in combination with an identifier described in this subdivision.

(b) The term "conspicuously post" with respect to a privacy policy shall include posting the privacy policy through any of the following:

(1) A Web page on which the actual privacy policy is posted if the Web page is the homepage or first significant page after entering the Web site.

(2) An icon that hyperlinks to a Web page on which the actual privacy policy is posted, if the icon is located on the homepage or the first significant page after entering the Web site, and if the icon contains the word "privacy." The icon shall also use a color that contrasts with the background color of the Web page or is otherwise distinguishable.

(3) A text link that hyperlinks to a Web page on which the actual privacy policy is posted, if the text link is located on the homepage or first significant page after entering the Web site, and if the text link does one of the following:

(A) Includes the word "privacy."

(B) Is written in capital letters equal to or greater in size than the surrounding text.

(C) Is written in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from the surrounding text of the same size by symbols or other marks that call attention to the language.

(4) Any other functional hyperlink that is so displayed that a reasonable person would notice it.

(5) In the case of an online service, any other reasonably accessible means of making the privacy policy available for consumers of the online service.

(c) The term "operator" means any person or entity that owns a Web site located on the Internet or an online service that collects and maintains personally identifiable information from a consumer residing in California who uses or visits the Web site or online service if the Web site or online service is operated for commercial purposes. It does not include any third party that operates, hosts, or manages, but does not own, a Web site or online service on the owner's behalf or by processing information on behalf of the owner.

(d) The term "consumer" means any individual who seeks or acquires, by purchase or lease, any goods, services, money, or credit for personal, family, or household purposes.



22578. It is the intent of the Legislature that this chapter is a matter of statewide concern. This chapter supersedes and preempts all rules, regulations, codes, ordinances, and other laws adopted by a city, county, city and county, municipality, or local agency regarding the posting of a privacy policy on an Internet Web site.

22579. This chapter shall become operative on July 1, 2004.

NOTE:

Q: Does our website need to follow the new 2004 Privacy Policy Legislation?

A: In 99.9% of the cases, the answer is "yes". The simple fact that a company has a Contact Us page with the ability to email said company (disclosing ones email address in the process - the most commonly collected personally identifiable data used to spam and solicit - likely even a name and phone number if they also include that, but which is generally automatically transmitted with the email address - all of which is defined as "personally identifiable information" by the new law), constitutes the need for a company to meet the 2004 Privacy Policy law.

Since nearly all sites have at a minimum a Contact Us page with an email, if not a full blown Contact Us form or some other sort of data collection form, customers can use to contact the business owner (which requires you to give at least 1 form of crucial "personally identifiable information" - an email address), it is in the companies best legal interest to protect themselves (and their visitors) by providing such a policy. This is true no matter the size of the website or the type of business.

Additionally, if your website has any type of data collection forms (Newsletter sign-up, Subscribe or Unsubscribe forms, Contact Forms, Tell-A-Friend forms, eCommerce order forms, etc.), you must also meet the requirements of the new law.