
Technology & Economic Development Committee

HB 2180

Brief Description: Enacting the digital world privacy act.

Sponsors: Representatives Morris and Morrell.

Brief Summary of Bill

- Establishes a right to remove or obtain removal of certain online postings.
- Requires internet operators to provide clear and conspicuous notice of how removal of online postings may be obtained.

Hearing Date: 1/16/14

Staff: Jasmine Vasavada (786-7301).

Background:

Relevant laws.

California Senate Bill 568:

In September 2013 California enacted a law that requires websites and applications to provide an "eraser button" to its users under the age of 18. Senate Bill 568, often referred to as the "Eraser Button" law, requires operators of websites, online services, and mobile applications directed toward users under the age of 18 to: (1) notify minors of their right to remove posted content (whether on their own or by the operator upon request), and (2) provide instructions on how to do so. In addition, the California Eraser Button law also includes various provisions directed at advertising or marketing certain prohibited items to minors. The California law does not state a specific private cause of action or statutory penalty, but it is expected to be enforced in civil lawsuits by the government and private parties under California's unfair competition law.

Common Law Privacy Right:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Washington recognizes a cause of action based on a common law theory of invasion of privacy. However, there is generally no liability under the common law for public disclosure of a fact that has already lost its private nature by being exposed to the public.

Washington Consumer Protection Act:

The Consumer Protection Act (CPA), enacted in 1961, governs all transactions between consumers and the public unless exempted by statute. It allows consumers to bring private suits against individuals and businesses that engage in unfair and deceptive business practices. As construed by the Washington Supreme Court, a consumer must be able to show that an unfair or deceptive act or practice, occurring in the course of trade or commerce, affecting the public interest, causes harm to the consumer's business or property. The Legislature has made some violations *per se* or "automatic" violations.

In analyzing injuries to a plaintiff's "business or property," Washington courts have interpreted "business" to mean commercial ventures and have construed "property" to exclude injuries to a plaintiff's person or body. Emotional damages, even if related to the business or property damage, are not recoverable under the CPA.

Summary of Bill:

An operator must allow a registered user to remove or request and obtain removal of content or information that the user has posted online.

"Operator" means a person or entity that owns an internet web site, online service, online application, or mobile application, or portion thereof.

"Registered user" means a natural person who resides in the state of Washington and who has created an account for the purpose of accessing the internet web site, online service, online application, or mobile application.

The operator must provide clear and conspicuous instructions on how the user may remove content or information posted on the operator's service. Instead of providing a direct mechanism by which a user may remove the post, the operator may require the user to first request removal of the post.

The right to remove or obtain removal of posted content does not apply in five circumstances: (1) when a provision of law requires the information to be maintained; (2) when the information was reposted by a third party; (3) if the operator has anonymized the content, so that the registered user cannot be identified; (4) if the user fails to follow instructions in seeking to obtain removal of the content; and (5) if the user has received compensation or other consideration for providing the content. In addition, an operator is deemed compliant under two circumstances. First, instead of removing a posting, the operator may render the content or information no longer visible to other users of the service and the public. Second, an operator is compliant if it attempts to render a posting invisible, but the information remains visible because a third party has copied the posting or reposted the content or information posted by the user.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect January 1, 2015.