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AB-2426 Consumer protection: false advertising: digital goods. (2023-2024)

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Assembly Bill No. 2426

CHAPTER 513

An act to add Section 17500.6 to the Business and Professions Code, relating to consumer protection.

[Approved by Governor September 24, 2024. Filed with Secretary of State September 24, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2426, Irwin. Consumer protection: false advertising: digital goods.

Existing law makes it unlawful for any person doing business in California and advertising to consumers in California to make any false or misleading advertising claim. Existing law makes a person who violates specified false advertising provisions liable for a civil penalty, as specified, and provides that a person who violates those false advertising provisions is guilty of a misdemeanor.

This bill would, subject to specified exceptions, additionally prohibit a seller of a digital good from advertising or offering for sale a digital good, as defined, to a purchaser with the terms "buy," "purchase," or any other term which a reasonable person would understand to confer an unrestricted ownership interest in the digital good, or alongside an option for a time-limited rental, unless the seller receives at the time of each transaction an affirmative acknowledgment from the purchaser, or the seller provides to the consumer before executing each transaction a clear and conspicuous statement, as specified. By expanding the scope of a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 17500.6 is added to the Business and Professions Code, to read:

17500.6. (a) For purposes of this section, the following definitions apply:

(1) "Clear and conspicuous" means in a manner that clearly calls attention to the language, such as 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.

(2) "Digital application or game" means any application or game that a person accesses and manipulates using a specialized electronic gaming device, computer, mobile device, tablet, or other device with a display screen, including any add-ons or additional content for that application or game.

(3) "Digital audio work" means a work that results from the fixation of a series of musical, spoken, or other sounds that are transferred electronically, including prerecorded or live songs, music, readings of books or other written materials, speeches, ringtones, or other sound recording.

(4) "Digital audiovisual work" means a series of related images that, when shown in succession, impart an impression of motion, together with accompanying sounds. "Digital audiovisual work" includes motion pictures, musicals, videos, news and entertainment programs, and live events.

(5) "Digital book" means a work that is generally recognized in the ordinary and usual sense as a book that is transferred electronically, including a work of fiction or nonfiction.

(6) "Digital code" means a code that provides the person that holds the code a right to obtain an additional digital good, a digital audiovisual work, digital audio work, or digital book that may be obtained by any means, including tangible forms and electronic mail, regardless of whether the code is designated as song code, video code, or book code. "Digital code" includes codes used to access or obtain any specified digital goods, or any additional digital goods that have been previously purchased, and promotion cards or codes that are purchased by a retailer or other business entity for use by the retailer's or entity's customers.

(7) "Digital good" means a digital audiovisual work, digital audio work, digital book, digital code, or digital application or game, whether electronically or digitally delivered or accessed. "Digital good" does not include a cable television service, satellite relay television service, or any other distribution of television, video, or radio service.

(b) (1) It shall be unlawful for a seller of a digital good to advertise or offer for sale a digital good to a purchaser with the terms "buy," "purchase," or any other term which a reasonable person would understand to confer an unrestricted ownership interest in the digital good, or alongside an option for a time-limited rental, unless either of the following occur:

(A) The seller receives at the time of each transaction an affirmative acknowledgment from the purchaser indicating all of the following:

(i) That the purchaser is receiving a license to access the digital good.

(ii) A complete list of restrictions and conditions of the license.

(iii) That access to the digital good may be unilaterally revoked by the seller if they no longer hold a right to the digital good, if applicable.

(B) The seller provides to the consumer before executing each transaction a clear and conspicuous statement that does both of the following:

(i) States in plain language that "buying" or "purchasing" the digital good is a license.

(ii) Includes a hyperlink, QR code, or similar method to access the terms and conditions that provide full details on the license.

(2) Any affirmative acknowledgment from the purchaser or clear and conspicuous statement pursuant to paragraph (1) shall be distinct and separate from any other terms and conditions of the transaction that the purchaser acknowledges or agrees to.

(3) This section does not require a person to download a digital good, or prohibit a person from storing a digital good on a server for access through the internet.

(4) This section does not apply to any of the following:

(A) Any subscription-based service that advertises or offers for sale access to any digital good solely for the duration of the subscription.

(B) Any digital good that is advertised or offered to a person for no monetary consideration.

(C) Any digital good that is advertised or offered to a person that the seller cannot revoke access to after the transaction, which includes making the digital good available at the time of purchase for permanent offline download to an external storage source to be used without a connection to the internet.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.