S T A T E O F N E W Y O R K

2517--B

2009-2010 Regular Sessions

I N S E N A T E

February 23, 2009

Introduced by Sen. THOMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the civil rights law, in relation to regulating the collection, recording and disclosing of confidential information by state employees obtained by state employees in the course of official duties

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The civil rights law is amended by adding a new section 50-f to read as follows:

S 50-F. DISCLOSURE OF CONFIDENTIAL INFORMATION BY STATE EMPLOYEES. 1. DEFINITIONS. AS USED IN THIS SECTION, "CONFIDENTIAL INFORMATION" MEANS ANY INFORMATION MAINTAINED OR OBTAINED BY A STATE AGENCY, STATE OFFICER OR STATE EMPLOYEE CONCERNING AN INDIVIDUAL'S HEALTH OR DISABILITY STATUS, INCOME TAX RECORDS, SEXUAL ORIENTATION, STATUS AS A VICTIM OF DOMESTIC VIOLENCE, STATUS AS A CRIME VICTIM OR WITNESS, PUBLIC ASSISTANCE STATUS, IMMIGRATION STATUS OR ANY INFORMATION THAT IS OTHERWISE PROTECTED FROM DISCLOSURE BY ANY PROVISION OF FEDERAL, STATE OR LOCAL LAW.

2. PROCEDURE FOR THE DISCLOSURE OF CONFIDENTIAL INFORMATION.

A. EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH B OF THIS SUBDIVISION, NO STATE OFFICER OR STATE EMPLOYEE SHALL DISCLOSE CONFIDENTIAL INFORMATION TO ANYONE EXCEPT ANOTHER STATE OFFICER OR STATE EMPLOYEE ACTING IN THE SCOPE OF HIS OR HER OFFICIAL DUTIES.

B. CONFIDENTIAL INFORMATION MAY BE DISCLOSED BY A STATE OFFICER OR STATE EMPLOYEE ONLY IF:

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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(I) THE STATE AGENCY EMPLOYING SUCH OFFICER OR EMPLOYEE IS REQUIRED BY LAW TO DISCLOSE SUCH CONFIDENTIAL INFORMATION AND PROVIDED THAT SUCH DISCLOSURE IS LIMITED TO THAT REQUIRED BY LAW; OR

(II) THE STATE AGENCY EMPLOYING SUCH OFFICER OR EMPLOYEE HAS BEEN AUTHORIZED, IN WRITING SIGNED BY THE INDIVIDUAL OR, IF THE INDIVIDUAL IS A MINOR OR OTHERWISE INCOMPETENT, SIGNED BY THE INDIVIDUAL'S PARENT OR LEGAL GUARDIAN, TO DISCLOSE SUCH CONFIDENTIAL INFORMATION, AND PROVIDED THAT THE DISCLOSURE IS LIMITED TO THAT AUTHORIZED IN WRITING BY THE INDIVIDUAL; OR

(III) THE DISCLOSURE OF CONFIDENTIAL INFORMATION IS NECESSARY TO COOPERATE WITH A LAW ENFORCEMENT AGENCY OR AGENCIES INVESTIGATING THAT CRIMINAL ACTIVITY.

3. PROCEDURE FOR COLLECTING AND RECORDING CONFIDENTIAL INFORMATION. THIS SUBDIVISION SHALL APPLY TO ANY DOCUMENTATION, QUESTIONNAIRE, INTERVIEW SHEET OR OTHER OFFICIAL FORM USED TO APPLY FOR OR OTHERWISE ACCESS BENEFITS OR SERVICES PROVIDED BY THE STATE.

A. NO STATE OFFICER OR STATE EMPLOYEE SHALL MAKE INQUIRY REGARDING COLLECTING OR RECORDING OF CONFIDENTIAL INFORMATION OF ANY INDIVIDUAL, WHEN SUCH INDIVIDUAL, ON HIS OR HER BEHALF OR ON BEHALF OF ANOTHER, IS APPLYING FOR OR IS RECEIVING ANY SERVICE OR BENEFIT PROVIDED BY THE STATE, UNLESS SUCH CONFIDENTIAL INFORMATION IS SPECIFICALLY REQUIRED BY FEDERAL OR STATE LAW TO BE PROVIDED AS A CONDITION OF RECEIPT OF SUCH SERVICE OR BENEFIT.

B. IF CONFIDENTIAL INFORMATION IS REQUIRED BY FEDERAL OR STATE LAW TO BE PROVIDED AS A CONDITION OF RECEIPT OF A SERVICE OR BENEFIT PROVIDED BY THE STATE, THE STATE OFFICER OR EMPLOYEE SHALL MAKE ONLY THOSE INQUIRIES NECESSARY TO DETERMINE IF AN APPLICANT OR RECIPIENT IS QUALIFIED FOR AND OTHERWISE MEETS THE CONDITIONS FOR RECEIPT OF SUCH SERVICE OR BENEFIT.

4. PENALTIES FOR UNAUTHORIZED DISCLOSURE. ANY STATE OFFICER OR EMPLOYEE WHO VIOLATES THE PROVISIONS OF THIS SECTION SHALL BE SUBJECT TO A FINE OF NOT LESS THAN ONE HUNDRED DOLLARS. ANY STATE OFFICER OR EMPLOYEE SHALL BE SUBJECT TO A FINE OF NOT LESS THAN THREE HUNDRED DOLLARS FOR EACH VIOLATION OCCURRING WITHIN FIVE YEARS OF A PRIOR VIOLATION.

5. OTHER LAWS RESPECTING CONFIDENTIALITY. NOTHING IN THIS SECTION SHALL BE DEEMED TO LIMIT, ABRIDGE OR OTHERWISE AFFECT ANY OTHER PROTECTION IN FEDERAL, STATE OR LOCAL LAW RESPECTING THE CONFIDENTIALITY OF INFORMATION.

6. SEVERABILITY. IF ANY SUBDIVISION, SENTENCE, CLAUSE, PHRASE OR OTHER PORTION OF THIS SECTION IS, FOR ANY REASON, DECLARED UNCONSTITUTIONAL OR INVALID, IN WHOLE OR IN PART, BY ANY COURT OF COMPETENT JURISDICTION, SUCH PORTION SHALL BE DEEMED SEVERABLE, AND SUCH UNCONSTITUTIONALITY OR INVALIDITY SHALL NOT AFFECT THE VALIDITY OF THE REMAINING PORTIONS OF THIS SECTION, WHICH REMAINING PORTIONS SHALL CONTINUE IN FULL FORCE AND EFFECT.

S 2. Section 51 of the civil rights law, as amended by chapter 674 of the laws of 1995, is amended to read as follows:

S 51. Action for injunction and for damages. 1. Any person whose name, portrait, picture or voice is used within this state for advertising purposes or for the purposes of trade without the written consent first obtained as above provided may maintain an equitable action in the supreme court of this state against the person, firm or corporation so using his name, portrait, picture or voice, to prevent and restrain the use thereof; and may also sue and recover damages for any injuries sustained by reason of such use and if the defendant shall have knowingly used such person's name, portrait, picture or voice in such manner as

is forbidden or declared to be unlawful by section fifty of this article, the jury, in its discretion, may award exemplary damages. But nothing contained in this article shall be so construed as to prevent any person, firm or corporation from selling or otherwise transferring any material containing such name, portrait, picture or voice in whatever medium to any user of such name, portrait, picture or voice, or to any third party for sale or transfer directly or indirectly to such a user, for use in a manner lawful under this article; nothing contained in this article shall be so construed as to prevent any person, firm or corporation, practicing the profession of photography, from exhibiting in or about his or its establishment specimens of the work of such establishment, unless the same is continued by such person, firm or corporation after written notice objecting thereto has been given by the person portrayed; and nothing contained in this article shall be so construed as to prevent any person, firm or corporation from using the name, portrait, picture or voice of any manufacturer or dealer in connection with the goods, wares and merchandise manufactured, produced or dealt in by him which he has sold or disposed of with such name, portrait, picture or voice used in connection therewith; or from using the name, portrait, picture or voice of any author, composer or artist in connection with his literary, musical or artistic productions which he has sold or disposed of with such name, portrait, picture or voice used in connection therewith. Nothing contained in this section shall be construed to prohibit the copyright owner of a sound recording from disposing of, dealing in, licensing or selling that sound recording to any party, if the right to dispose of, deal in, license or sell such sound recording has been conferred by contract or other written document by such living person or the holder of such right. Nothing contained in the foregoing sentence shall be deemed to abrogate or otherwise limit any rights or remedies otherwise conferred by federal law or state law.

2. A. ANY PERSON WHOSE CONFIDENTIAL INFORMATION WAS DISCLOSED IN VIOLATION OF SECTION FIFTY-F OF THIS ARTICLE MAY MAINTAIN AN EQUITABLE ACTION IN THE SUPREME COURT OF THIS STATE AGAINST THE PERSON OR PERSONS, FIRM OR CORPORATION DIRECTLY RESPONSIBLE FOR DISCLOSING SUCH CONFIDENTIAL INFORMATION, TO PREVENT AND RESTRAIN THE USE THEREOF.

B. IN ADDITION TO SUING FOR INJUNCTIVE RELIEF PURSUANT TO PARAGRAPH A OF THIS SUBDIVISION, AN AGGRIEVED PARTY MAY INSTITUTE A CIVIL ACTION AGAINST THE PERSON OR PERSONS, FIRM, OR CORPORATION DIRECTLY RESPONSIBLE FOR DISCLOSING THE CONFIDENTIAL INFORMATION FOR THE GREATER OF HIS OR HER ACTUAL DAMAGES OR ONE THOUSAND DOLLARS. IN ADDITION TO ANY MONETARY AWARD, AN AGGRIEVED INDIVIDUAL IS ENTITLED TO COSTS AND HIS OR HER ACTUAL ATTORNEYS' FEES.

S 3. This act shall take effect on the one hundred eightieth day after it shall have become a law.