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I N   A S S E M B L Y

August 4, 2010

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Introduced by COMMITTEE ON RULES -- (at request of M. of A. Jeffries) --  
read once and referred to the Committee on Governmental Operations

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:

1     Section 1. The civil rights law is amended by adding a new section  
2     50-f to read as follows:  
3     S 50-F. DISCLOSURE OF CONFIDENTIAL INFORMATION BY STATE EMPLOYEES. 1.  
4     DEFINITIONS. AS USED IN THIS SECTION, "CONFIDENTIAL INFORMATION" MEANS  
5     ANY INFORMATION MAINTAINED OR OBTAINED BY A STATE AGENCY, STATE OFFICER  
6     OR STATE EMPLOYEE CONCERNING AN INDIVIDUAL'S HEALTH OR DISABILITY  
7     STATUS, INCOME TAX RECORDS, SEXUAL ORIENTATION, STATUS AS A VICTIM OF  
8     DOMESTIC VIOLENCE, STATUS AS A CRIME VICTIM OR WITNESS, PUBLIC ASSIST-  
9     ANCE STATUS, IMMIGRATION STATUS OR ANY INFORMATION THAT IS OTHERWISE  
10    PROTECTED FROM DISCLOSURE BY ANY PROVISION OF FEDERAL, STATE OR LOCAL  
11    LAW.  
12    2. PROCEDURE FOR THE DISCLOSURE OF CONFIDENTIAL INFORMATION.  
13    A. EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH B OF THIS SUBDIVISION, NO  
14    STATE OFFICER OR STATE EMPLOYEE SHALL DISCLOSE CONFIDENTIAL INFORMATION  
15    TO ANYONE EXCEPT ANOTHER STATE OFFICER OR STATE EMPLOYEE ACTING IN THE  
16    SCOPE OF HIS OR HER OFFICIAL DUTIES.  
17    B. CONFIDENTIAL INFORMATION MAY BE DISCLOSED BY A STATE OFFICER OR  
18    STATE EMPLOYEE ONLY IF:  
19    (I) THE STATE AGENCY EMPLOYING SUCH OFFICER OR EMPLOYEE IS REQUIRED BY  
20    LAW TO DISCLOSE SUCH CONFIDENTIAL INFORMATION AND PROVIDED THAT SUCH  
21    DISCLOSURE IS LIMITED TO THAT REQUIRED BY LAW; OR  
22    (II) THE STATE AGENCY EMPLOYING SUCH OFFICER OR EMPLOYEE HAS BEEN  
23    AUTHORIZED, IN WRITING SIGNED BY THE INDIVIDUAL OR, IF THE INDIVIDUAL IS  
24    A MINOR OR OTHERWISE INCOMPETENT, SIGNED BY THE INDIVIDUAL'S PARENT OR  
25    LEGAL GUARDIAN, TO DISCLOSE SUCH CONFIDENTIAL INFORMATION, AND PROVIDED

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

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1 THAT THE DISCLOSURE IS LIMITED TO THAT AUTHORIZED IN WRITING BY THE  
2 INDIVIDUAL; OR

3 (III) THE DISCLOSURE OF CONFIDENTIAL INFORMATION IS NECESSARY TO COOP-  
4 ERATE WITH A LAW ENFORCEMENT AGENCY OR AGENCIES INVESTIGATING THAT CRIM-  
5 INAL ACTIVITY.

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

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

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

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

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

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

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

41 S 51. Action for injunction and for damages. 1. Any person whose  
42 name, portrait, picture or voice is used within this state for advertis-  
43 ing purposes or for the purposes of trade without the written consent  
44 first obtained as above provided may maintain an equitable action in the  
45 supreme court of this state against the person, firm or corporation so  
46 using his name, portrait, picture or voice, to prevent and restrain the  
47 use thereof; and may also sue and recover damages for any injuries  
48 sustained by reason of such use and if the defendant shall have knowingly  
49 used such person's name, portrait, picture or voice in such manner as  
50 is forbidden or declared to be unlawful by section fifty of this arti-  
51 cle, the jury, in its discretion, may award exemplary damages. But noth-  
52 ing contained in this article shall be so construed as to prevent any  
53 person, firm or corporation from selling or otherwise transferring any  
54 material containing such name, portrait, picture or voice in whatever  
55 medium to any user of such name, portrait, picture or voice, or to any  
56 third party for sale or transfer directly or indirectly to such a user,

1 for use in a manner lawful under this article; nothing contained in this  
2 article shall be so construed as to prevent any person, firm or corpo-  
3 ration, practicing the profession of photography, from exhibiting in or  
4 about his or its establishment specimens of the work of such establish-  
5 ment, unless the same is continued by such person, firm or corporation  
6 after written notice objecting thereto has been given by the person  
7 portrayed; and nothing contained in this article shall be so construed  
8 as to prevent any person, firm or corporation from using the name,  
9 portrait, picture or voice of any manufacturer or dealer in connection  
10 with the goods, wares and merchandise manufactured, produced or dealt in  
11 by him which he has sold or disposed of with such name, portrait,  
12 picture or voice used in connection therewith; or from using the name,  
13 portrait, picture or voice of any author, composer or artist in  
14 connection with his literary, musical or artistic productions which he  
15 has sold or disposed of with such name, portrait, picture or voice used  
16 in connection therewith. Nothing contained in this section shall be  
17 construed to prohibit the copyright owner of a sound recording from  
18 disposing of, dealing in, licensing or selling that sound recording to  
19 any party, if the right to dispose of, deal in, license or sell such  
20 sound recording has been conferred by contract or other written document  
21 by such living person or the holder of such right. Nothing contained in  
22 the foregoing sentence shall be deemed to abrogate or otherwise limit  
23 any rights or remedies otherwise conferred by federal law or state law.

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

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

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