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

3584

2009-2010 Regular Sessions

I N A S S E M B L Y

January 27, 2009

Introduced by M. of A. BRENNAN, JOHN, PHEFFER, GREENE -- Multi-Sponsored by -- M. of A. KOON, LUPARDO -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the public officers law, in relation to electronic access to records

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

Section 1. The public officers law is amended by adding a new article 6-B to read as follows:

ARTICLE 6-B

ELECTRONIC ACCESS TO RECORDS

SECTION 99-A. SHORT TITLE.
99-B. DEFINITIONS.
99-C. ELECTRONIC ACCESS TO RECORDS.

S 99-A. SHORT TITLE. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS THE "ELECTRONIC ACCESS TO RECORDS ACT".

S 99-B. DEFINITIONS. AS USED IN THIS ARTICLE, UNLESS THE CONTEXT REQUIRES OTHERWISE:

1. "AGENCY" MEANS ANY STATE DEPARTMENT, BOARD, BUREAU, DIVISION, COMMISSION, COMMITTEE, PUBLIC AUTHORITY, PUBLIC CORPORATION, COUNCIL, OFFICE OR OTHER GOVERNMENTAL ENTITY PERFORMING A GOVERNMENTAL OR PROPRIETARY FUNCTION FOR THE STATE, EXCEPT THE JUDICIARY OR THE STATE LEGISLATURE.

2. "RECORD" MEANS ANY INFORMATION KEPT, HELD, FILED, PRODUCED OR REPRODUCED BY, AND CAN REASONABLY BE STORED ON AN ELECTRONIC DATA SYSTEM FOR PUBLIC ACCESS WITH OR FOR AN AGENCY OR THE STATE LEGISLATURE, IN ANY PHYSICAL FORM WHATSOEVER INCLUDING, BUT NOT LIMITED TO, REPORTS, STATEMENTS, EXAMINATIONS, MEMORANDA, OPINIONS, FOLDERS, FILES, BOOKS, MANUALS, PAMPHLETS, FORMS, PAPERS, DESIGNS, DRAWINGS, MAPS, PHOTOS, LETTERS, MICROFILMS, COMPUTER TAPES OR DISCS, RULES, REGULATIONS OR CODES.

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

LBD06367-01-9

3. "PERSONAL IDENTIFYING INFORMATION" MEANS A SOCIAL SECURITY NUMBER, A DRIVER'S LICENSE NUMBER, MOTHER'S MAIDEN NAME, A CONSUMER CREDIT ACCOUNT NUMBER OR CODE, A SAVINGS ACCOUNT NUMBER OR CODE, A CHECKING ACCOUNT NUMBER OR CODE, OR A DEBIT ACCOUNT NUMBER OR CODE.

S 99-C. ELECTRONIC ACCESS TO RECORDS. 1. WITHIN NINETY DAYS OF THE EFFECTIVE DATE OF THIS ARTICLE, THE SECRETARY OF STATE SHALL ESTABLISH A MECHANISM FOR FREE PUBLIC ACCESS TO RECORDS VIA THE INTERNET DATA NETWORK.

2. WITHIN ONE HUNDRED EIGHTY DAYS OF THE EFFECTIVE DATE OF THIS ARTICLE:

(A) EVERY AGENCY SHALL PROVIDE FREE PUBLIC ACCESS, VIA THE INTERNET DATA SYSTEM, PURSUANT TO THE MECHANISM ESTABLISHED BY THE SECRETARY OF STATE TO RECORDS CREATED ON OR AFTER SUCH DATE; AND

(B) EVERY AGENCY SHALL PROVIDE THE SECRETARY OF STATE WITH

(I) A LIST OF ALL EXISTING RECORDS THAT ARE MADE AVAILABLE VIA THE INTERNET AND

(II) A LIST OF ALL EXISTING RECORDS WHICH COULD BE MADE AVAILABLE AND FOR WHICH THERE IS A SUBSTANTIAL PUBLIC INTEREST IN ELECTRONIC ACCESS, AS DETERMINED BY THE VOLUME OF REQUESTS FOR SUCH RECORDS UNDER THE FREEDOM OF INFORMATION LAW AND OTHER INFORMATION INDICATING PUBLIC INTEREST. THE SECRETARY OF STATE SHALL POST THE INFORMATION PROVIDED PURSUANT TO THIS PARAGRAPH ON THE DEPARTMENT OF STATE WEBSITE. AN AGENCY SHALL PROVIDE UPDATES TO ITS LISTS AT SUCH TIMES AND IN SUCH MANNER AS THE SECRETARY OF STATE SHALL REQUIRE.

3. WITHIN ONE YEAR OF THE EFFECTIVE DATE OF THIS ARTICLE, EVERY AGENCY SHALL PROVIDE FREE PUBLIC ACCESS VIA THE INTERNET DATA NETWORK, PURSUANT TO THE MECHANISM ESTABLISHED BY THE SECRETARY OF STATE, TO RECORDS CREATED ON OR AFTER SUCH DATE.

4. THE TEMPORARY PRESIDENT OF THE SENATE AND THE SPEAKER OF THE ASSEMBLY SHALL PROMULGATE POLICIES FOR ACCESS TO THOSE STATE LEGISLATIVE RECORDS, AS DESCRIBED IN SECTION EIGHTY-EIGHT OF THIS CHAPTER, WHICH MAY REASONABLY BE STORED ON AN ELECTRONIC DATA SYSTEM FOR FREE PUBLIC ACCESS VIA THE INTERNET DATA NETWORK.

5. UNLESS AN AGENCY IS EXPLICITLY REQUIRED BY LAW TO POST PERSONAL IDENTIFYING INFORMATION ON THE INTERNET, AN AGENCY SHALL REMOVE FROM ANY IMAGE OR COPY OF A RECORD PLACED ON SUCH AGENCY'S INTERNET WEBSITE OR AN INTERNET WEBSITE USED BY SUCH AGENCY TO DISPLAY PUBLIC RECORDS OR OTHERWISE MAKE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC, PERSONAL IDENTIFYING INFORMATION CONTAINED IN SUCH RECORD.

6. THE SECRETARY OF STATE MAY PROMULGATE SUCH REGULATIONS AS ARE NECESSARY FOR THE IMPLEMENTATION OF THIS ARTICLE.

7. NOTHING IN THIS SECTION SHALL REQUIRE AN AGENCY TO PROVIDE ACCESS TO RECORDS TO A GREATER EXTENT THAN REQUIRED FOR SUCH RECORDS BY ARTICLE SIX OF THIS CHAPTER. NOTHING IN THIS SECTION SHALL BE CONSTRUED AS AUTHORIZING ACCESS TO OR DISCLOSURE OF ANY RECORDS WHEN SUCH ACTION WOULD BE PROHIBITED BY ARTICLE SIX-A OF THIS CHAPTER.

8. THE OFFICE FOR TECHNOLOGY, THE STATE UNIVERSITY OF NEW YORK, THE STATE ARCHIVES AND RECORDS ADMINISTRATION AND OTHER AGENCIES SHALL PROVIDE SUCH INFORMATION AND ASSISTANCE AS THE SECRETARY OF STATE SHALL REQUIRE IN IMPLEMENTING THIS ARTICLE.

S 2. Subparagraph iii of paragraph (b) of subdivision 1 of section 89 of the public officers law, as amended by chapter 182 of the laws of 2006, is amended to read as follows:

iii. promulgate rules and regulations with respect to the implementation of subdivision one and paragraph (c) of subdivision three of

section eighty-seven of this article AND WITH RESPECT TO THE IMPLEMENTATION OF ARTICLE SIX-B OF THIS CHAPTER;

S 3. Severability. If any provision of this act or the application thereof to any person or circumstance is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of this act or the application thereof to other persons and circumstances.

S 4. This act shall take effect on the sixtieth day after it shall have become a law.