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

980

2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. PHEFFER, ENGLEBRIGHT -- Multi-Sponsored by -- M. of A. LUPARDO, McDONOUGH -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the general business law, in relation to personal information restrictions for public records

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

Section 1. The general business law is amended by adding a new section 399-j to read as follows:

S 399-J. PERSONAL INFORMATION RESTRICTIONS FOR PUBLIC RECORDS. 1. NO PERSON OR BUSINESS ENTITY SHALL INTENTIONALLY CREATE AN INSTRUMENT AVAILABLE FOR PUBLIC INSPECTION THAT IS TO BE FILED WITH OR SUBMITTED TO AN AGENCY CONTAINING PERSONAL IDENTIFYING INFORMATION OF ANY OTHER PERSON, UNLESS SUCH OTHER PERSON IS A DEPENDENT CHILD OR HAS CONSENTED TO THE INCLUSION OF SUCH PERSONAL IDENTIFYING INFORMATION, WHICH IS NOT:

(A) RELEVANT AND NECESSARY TO ACCOMPLISH THE PURPOSE OF THE FILING; OR

(B) REQUIRED BY FEDERAL, STATE OR LOCAL LAW, RULE OR REGULATION, OR BY COURT RULE.

FOR THE PURPOSE OF THIS SECTION, THE PRINTING OR OTHER REPRODUCTION OF A DOCUMENT RECEIVED BY ELECTRONIC OR ANY OTHER MEANS DOES NOT CONSTITUTE CREATION OF THE DOCUMENT.

2. ANY AGENCY THAT RECEIVES INSTRUMENTS FOR FILING SHALL POST IN A PLACE OR PLACES, CLEARLY VISIBLE TO ALL PERSONS, ADJACENT TO OR NEAR THE LOCATION WHERE SUCH AGENCY HAS DESIGNATED FOR THE RECEIPT OF INSTRUMENTS FOR FILING, A NOTICE DESCRIBING THE PROHIBITION CONTAINED IN SUBDIVISION ONE OF THIS SECTION AND SUBDIVISION SIX OF SECTION THREE HUNDRED NINETY-NINE-DD, AS ADDED BY CHAPTER TWO HUNDRED SEVENTY-NINE OF THE LAWS OF TWO THOUSAND EIGHT, OF THIS ARTICLE.

3. FOR PURPOSES OF THIS SECTION THE FOLLOWING TERMS SHALL MEAN:

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

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(A) "AGENCY" MEANS ANY STATE OR MUNICIPAL 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 OR ANY ONE OR MORE MUNICIPALITIES THEREOF, EXCEPT THE JUDICIARY OR THE STATE LEGISLATURE;

(B) "PERSONAL IDENTIFYING INFORMATION" MEANS A DRIVER'S LICENSE NUMBER, MOTHER'S MAIDEN NAME, CONSUMER CREDIT ACCOUNT NUMBER OR CODE, SAVINGS ACCOUNT NUMBER OR CODE, CHECKING ACCOUNT NUMBER OR CODE, OR DEBIT CARD NUMBER OR CODE.

4. UPON ANY VIOLATION OF THE PROVISIONS OF THIS SECTION, AN APPLICATION MAY BE MADE BY THE ATTORNEY GENERAL IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK TO A COURT OR JUSTICE HAVING JURISDICTION TO ISSUE AN INJUNCTION, AND UPON NOTICE TO THE DEFENDANT OF NOT LESS THAN FIVE DAYS, TO ENJOIN AND RESTRAIN THE CONTINUANCE OF THE VIOLATION. IF IT SHALL APPEAR TO THE SATISFACTION OF THE COURT OR JUSTICE THAT THE DEFENDANT HAS VIOLATED THIS SECTION, AN INJUNCTION MAY BE ISSUED BY THE COURT OR JUSTICE, ENJOINING AND RESTRAINING ANY FURTHER VIOLATION, WITHOUT REQUIRING PROOF THAT ANY PERSON HAS, IN FACT, BEEN INJURED OR DAMAGED THEREBY. IN ANY SUCH PROCEEDING, THE COURT MAY MAKE ALLOWANCES TO THE ATTORNEY GENERAL AS PROVIDED IN PARAGRAPH SIX OF SUBDIVISION (A) OF SECTION EIGHT THOUSAND THREE HUNDRED THREE OF THE CIVIL PRACTICE LAW AND RULES, AND DIRECT RESTITUTION. IN CONNECTION WITH AN APPLICATION MADE UNDER THIS SECTION, THE ATTORNEY GENERAL IS AUTHORIZED TO TAKE PROOF AND TO MAKE A DETERMINATION OF THE RELEVANT FACTS AND TO ISSUE SUBPOENAS IN ACCORDANCE WITH THE CIVIL PRACTICE LAW AND RULES. ANY PENALTY OR INJUNCTION FOR A VIOLATION OF SUBDIVISION ONE OF THIS SECTION SHALL BE ASSESSED AGAINST THE PERSON OR BUSINESS ENTITY THAT CREATED THE INSTRUMENT. NO PERSON, BUSINESS ENTITY OR AGENCY SHALL BE DEEMED TO HAVE VIOLATED THE PROVISIONS OF SUBDIVISION ONE OF THIS SECTION IF SUCH PERSON, BUSINESS ENTITY OR AGENCY HAD NO INVOLVEMENT IN THE CREATION OF THE INSTRUMENT, OR CREATED THE INSTRUMENT WITHOUT THE INTENTION OR KNOWLEDGE THAT THE INSTRUMENT WAS TO BE FILED WITH AN AGENCY.

S 2. This act shall take effect on the ninetieth day after it shall have become a law.