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

10387--A

I N A S S E M B L Y

May 25, 2016

Introduced by M. of A. PERRY, SEPULVEDA -- read once and referred to the Committee on Codes -- reported and referred to the Committee on Rules -- Rules Committee discharged, bill amended, ordered reprinted as amended and recommitted to the Committee on Rules

AN ACT to amend the civil rights law, in relation to recording certain law enforcement activities

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

Section 1. This act shall be known and may be cited as the "New Yorker's right to monitor act".

S 2. The civil rights law is amended by adding a new section 79-o to read as follows:

S 79-O. RECORDING CERTAIN ACTIVITIES. 1. DEFINITIONS. FOR PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "OFFICER" MEANS ANY PEACE OFFICER, POLICE OFFICER, SECURITY OFFICER, SECURITY GUARD OR SIMILAR OFFICIAL WHO IS ENGAGED IN A LAW ENFORCEMENT ACTIVITY;

(B) "LAW ENFORCEMENT ACTIVITY" MEANS ANY ACTIVITY BY AN OFFICER ACTING UNDER THE COLOR OF LAW; AND

(C) "RECORD" MEANS TO CAPTURE OR ATTEMPT TO CAPTURE ANY MOVING OR STILL IMAGE, SOUND, OR IMPRESSION THROUGH THE USE OF ANY RECORDING DEVICE, CAMERA, OR ANY OTHER DEVICE CAPABLE OF CAPTURING AUDIO, MOVING OR STILL IMAGES, OR BY WAY OF WRITTEN NOTES OR OBSERVATIONS.

2. RIGHT TO RECORD LAW ENFORCEMENT RELATED ACTIVITIES. A PERSON NOT UNDER ARREST OR IN THE CUSTODY OF A LAW ENFORCEMENT OFFICIAL HAS THE RIGHT TO RECORD LAW ENFORCEMENT ACTIVITY AND TO MAINTAIN CUSTODY AND CONTROL OF THAT RECORDING AND OF ANY PROPERTY OR INSTRUMENTS USED BY THAT PERSON TO RECORD LAW ENFORCEMENT ACTIVITIES, PROVIDED, HOWEVER, THAT A PERSON IN CUSTODY OR UNDER ARREST DOES NOT, BY THAT STATUS ALONE, FORFEIT THE RIGHT TO HAVE ANY SUCH RECORDINGS, PROPERTY AND EQUIPMENT MAINTAINED AND RETURNED TO HIM OR HER. NOTHING IN THIS SUBDIVISION SHALL BE CONSTRUED TO PERMIT A PERSON TO ENGAGE IN ACTIONS THAT PHYSICALLY INTERFERE WITH LAW ENFORCEMENT ACTIVITY OR OTHERWISE CONSTITUTE A CRIME

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

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DEFINED IN THE PENAL LAW INVOLVING OBSTRUCTING GOVERNMENTAL ADMINISTRATION.

3. PRIVATE RIGHT OF ACTION. (A) A CLAIM OF UNLAWFUL INTERFERENCE WITH RECORDING A LAW ENFORCEMENT ACTIVITY IS ESTABLISHED UNDER THIS SECTION WHEN A PERSON DEMONSTRATES THAT HE OR SHE EXERCISED OR ATTEMPTED TO EXERCISE THE RIGHT ESTABLISHED IN SUBDIVISION TWO OF THIS SECTION TO RECORD A LAW ENFORCEMENT ACTIVITY AND AN OFFICER ACTED TO INTERFERE WITH THAT PERSON'S RECORDING OF A LAW ENFORCEMENT ACTIVITY, INCLUDING BUT NOT LIMITED TO, BY:

(I) INTENTIONALLY PREVENTING OR ATTEMPTING TO PREVENT THAT PERSON FROM RECORDING LAW ENFORCEMENT ACTIVITY;

(II) THREATENING THAT PERSON FOR RECORDING A LAW ENFORCEMENT ACTIVITY;

(III) COMMANDING THAT THE PERSON CEASE RECORDING LAW ENFORCEMENT ACTIVITY WHEN THE PERSON WAS NEVERTHELESS AUTHORIZED UNDER LAW TO RECORD;

(IV) STOPPING, SEIZING, SEARCHING, TICKETING OR ARRESTING THAT PERSON BECAUSE THAT PERSON RECORDED A LAW ENFORCEMENT ACTIVITY; OR

(V) UNLAWFULLY SEIZING PROPERTY OR INSTRUMENTS USED BY THAT PERSON TO RECORD A LAW ENFORCEMENT ACTIVITY, UNLAWFULLY DESTROYING, OR SEIZING A RECORDED IMAGE OR RECORDED IMAGES OF A LAW ENFORCEMENT ACTIVITY, OR COPYING SUCH A RECORDING OF A LAW ENFORCEMENT ACTIVITY WITHOUT CONSENT OF THE PERSON WHO RECORDED IT OR APPROVAL FROM AN APPROPRIATE COURT.

(B) IT SHALL BE AN AFFIRMATIVE DEFENSE TO A CIVIL ACTION UNDER SUBPARAGRAPHS (I), (III) AND (IV) OF PARAGRAPH (A) OF THIS SUBDIVISION THAT AT THE TIME OF SUCH CONDUCT BY AN OFFICER, SUCH OFFICER HAD PROBABLE CAUSE TO ARREST THE PERSON RECORDING SUCH A LAW ENFORCEMENT ACTIVITY FOR A CRIME DEFINED IN THE PENAL LAW INVOLVING OBSTRUCTING GOVERNMENTAL ADMINISTRATION.

(C) A PERSON SUBJECT TO UNLAWFUL INTERFERENCE WITH RECORDING LAW ENFORCEMENT ACTIVITIES AS DESCRIBED IN PARAGRAPH (A) OF THIS SUBDIVISION MAY BRING AN ACTION FOR ANY VIOLATION OF THIS SECTION IN ANY COURT OF COMPETENT JURISDICTION FOR DAMAGES, INCLUDING PUNITIVE DAMAGES, FOR DECLARATORY AND INJUNCTIVE RELIEF, AND SUCH OTHER REMEDIES AS THE COURT MAY DEEM APPROPRIATE.

(D) IN ANY ACTION OR PROCEEDING BROUGHT PURSUANT TO THIS SECTION, THE COURT MAY ALLOW A PREVAILING PLAINTIFF REASONABLE ATTORNEY'S FEES AND EXPERT FEES AS A PART OF THE COSTS WHICH MAY BE RECOVERED.

(E) ANY ACTION OR PROCEEDING BROUGHT PURSUANT TO THIS SECTION SHALL BE COMMENCED NO LATER THAN THREE YEARS AFTER THE DATE ON WHICH THE VIOLATION OF THIS SECTION IS COMMITTED.

4. PRESERVATION OF RIGHTS. THIS SECTION SHALL BE IN ADDITION TO ALL RIGHTS, PROCEDURES, AND REMEDIES AVAILABLE UNDER THE UNITED STATES CONSTITUTION, 42 USC 1983, THE CONSTITUTION OF THE STATE OF NEW YORK AND ALL OTHER FEDERAL LAW, STATE LAW, LAW OF THE CITY OF NEW YORK OR THE ADMINISTRATIVE CODE OF THE CITY OF NEW YORK, AND ALL OTHER CIVIL REMEDIES, INCLUDING MONETARY DAMAGES, CREATED BY STATUTE, ORDINANCE, REGULATION OR COMMON LAW.

S 3. Severability. If any provision of this bill or any other provision of this local law, or any amendments thereto, shall be held invalid or ineffective in whole or in part or inapplicable to any person or situation, such holding shall not affect, impair or invalidate any portion of or the remainder of this act, and all other provisions thereof shall nevertheless be separately and fully effective and the application of any such provision to other persons or situations shall not be affected.

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