

# STATE OF NEW YORK

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4561

2017-2018 Regular Sessions

## IN SENATE

February 17, 2017

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Introduced by Sen. AVELLA -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the civil rights law and the civil practice law and rules, in relation to creating the right to be forgotten act

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 § 50-f. Right to be forgotten act. 1. Upon the request from an indi-  
4 vidual, all search engines, indexers, publishers and any other persons  
5 or entities that make available, on or through the internet or other  
6 widely used computer-based network, program or service, information  
7 about the requester, shall remove information, articles, identifying  
8 information and other content about such individual, and links or  
9 indexes to any of the same, that is "inaccurate", "irrelevant", "inade-  
10 quate" or "excessive" within thirty days of such request, and without  
11 replacing such removed information, article or content with any  
12 disclaimer, takedown notice, hyperlink, or other replacement notice,  
13 information or content, or cooperating with any other person or entity  
14 who does any of the foregoing. For purposes of this section, "inaccu-  
15 rate", "irrelevant", "inadequate", or "excessive" shall mean content,  
16 which after a significant lapse in time from its first publication, is  
17 no longer material to current public debate or discourse, especially  
18 when considered in light of the financial, reputational and/or demon-  
19 strable other harm that the information, article or other content is  
20 causing to the requester's professional, financial, reputational or  
21 other interest, with the exception of content related to convicted felo-  
22 nies, legal matters relating to violence, or a matter that is of signif-  
23 icant current public interest, and as to which the requester's role with  
24 regard to the matter is central and substantial.

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

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1 2. Search engines, indexers, publishers and any other persons or enti-  
2 ties that make available, on the internet or other widely used compu-  
3 ter-based network, program or service, content about an individual  
4 which, within thirty days after receiving a removal request, have not  
5 removed all requested information and content that is inaccurate, irrel-  
6 evant, inadequate or excessive, and without replacing such removed  
7 information or content with any disclaimer, takedown notice, hyperlink,  
8 or other replacement notice, information or content, or cooperating with  
9 any other person or entity who does any of the foregoing, shall be  
10 subject to, as administered by the secretary of state, either an action  
11 for actual monetary loss for each such violation, or statutory damages  
12 in the amount of two hundred fifty dollars after such removal request  
13 for each day of such violation, whichever is greater. In addition to  
14 such penalty, any such party who does not timely remove any such infor-  
15 mation, article, content, links or indexes also shall be liable to and  
16 shall pay to the requester any and all costs and attorney's fees  
17 incurred while enforcing his or her rights under this act.

18 3. The secretary of state shall oversee all right to be forgotten  
19 requests, filings, takedowns and if applicable, any penalties, judg-  
20 ments, costs and/or attorney's fees.

21 § 2. Subdivision 3 of section 215 of the civil practice law and rules  
22 is amended and a new subdivision 9 is added to read as follows:

23 3. an action to recover damages for assault, battery, false imprison-  
24 ment, malicious prosecution, libel, except libel as defined under subdi-  
25 vision nine of this section, slander, false words causing special  
26 damages, or a violation of the right of privacy under section fifty-one  
27 of the civil rights law;

28 9. an action for libel for publications on the internet or other wide-  
29 ly used computer-based network, program or service. The statute of limi-  
30 tations shall begin to accrue when the information, article or other  
31 content is completely removed from the internet or other widely used  
32 computer-based network, program or service, regardless of whether such  
33 content also was or is published elsewhere, and regardless of when such  
34 content was first published on the internet or otherwise.

35 § 3. Each and all of the sections and provisions of this act, shall  
36 apply to all articles and other content that either is presently being  
37 made available on the internet, or other widely used computer-based  
38 network, program or service, regardless of when such articles and other  
39 content was first so or otherwise posted, published or otherwise made  
40 available, or is so made available at a future date, and regardless of  
41 whether the respondent search engine, indexer, publisher or other person  
42 or entity is located within or without the state of New York or the  
43 United States of America, to the fullest extent permitted by the United  
44 States Constitution.

45 § 4. This act shall take effect immediately.