STATE OF NEW YORK

4561

2017-2018 Regular Sessions

IN SENATE

February 17, 2017

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:

Section 1. The civil rights law is amended by adding a new section 50-f to read as follows:

§ 50-f. Right to be forgotten act. 1. Upon the request from an individual, all search engines, indexers, publishers and any other persons or entities that make available, on or through the internet or other widely used computer-based network, program or service, information about the requester, shall remove information, articles, identifying information and other content about such individual, and links or indexes to any of the same, that is "inaccurate", "irrelevant", "inadequate" or "excessive" within thirty days of such request, and without replacing such removed information, article or content with any disclaimer, takedown notice, hyperlink, or other replacement notice, information or content, or cooperating with any other person or entity who does any of the foregoing. For purposes of this section, "inaccurate", "irrelevant", "inadequate", or "excessive" shall mean content, which after a significant lapse in time from its first publication, is no longer material to current public debate or discourse, especially when considered in light of the financial, reputational and/or demonstrable other harm that the information, article or other content is causing to the requester's professional, financial, reputational or other interest, with the exception of content related to convicted felonies, legal matters relating to violence, or a matter that is of significant current public interest, and as to which the requester's role with 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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2. Search engines, indexers, publishers and any other persons or entities that make available, on the internet or other widely used computer-based network, program or service, content about an individual which, within thirty days after receiving a removal request, have not removed all requested information and content that is inaccurate, irrelevant, inadequate or excessive, and without replacing such removed information or content with any disclaimer, takedown notice, hyperlink, or other replacement notice, information or content, or cooperating with any other person or entity who does any of the foregoing, shall be subject to, as administered by the secretary of state, either an action for actual monetary loss for each such violation, or statutory damages in the amount of two hundred fifty dollars after such removal request for each day of such violation, whichever is greater. In addition to such penalty, any such party who does not timely remove any such information, article, content, links or indexes also shall be liable to and shall pay to the requester any and all costs and attorney's fees incurred while enforcing his or her rights under this act.

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

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

3. an action to recover damages for assault, battery, false imprisonment, malicious prosecution, libel, **except libel as defined under subdivision nine of this section,** slander, false words causing special damages, or a violation of the right of privacy under section fifty-one of the civil rights law;

9. an action for libel for publications on the internet or other widely used computer-based network, program or service. The statute of limitations shall begin to accrue when the information, article or other content is completely removed from the internet or other widely used computer-based network, program or service, regardless of whether such content also was or is published elsewhere, and regardless of when such content was first published on the internet or otherwise.

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

§ 4. This act shall take effect immediately.