

SENATE, No. 3014

STATE OF NEW JERSEY
215th LEGISLATURE

INTRODUCED NOVEMBER 7, 2013

Sponsored by:
Senator M. TERESA RUIZ
District 29 (Essex)

SYNOPSIS

Prohibits a person from charging a fee to stop publishing personal identifying information obtained through the criminal justice system.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning the disclosure of certain personal identifying
2 information and supplementing Title 2A of the New Jersey
3 Statutes.

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7
8 1. The Legislature finds and declares:

9 a. There is a longstanding tradition in the United States and
10 New Jersey of providing the public with access to information
11 pertaining to the operations of the criminal justice system, including
12 information about those arrested, accused, charged, prosecuted, and
13 convicted of criminal offenses.

14 b. The public has a right to information concerning the
15 functioning of the criminal justice system and those who have
16 committed, or are accused of committing, criminal offenses.
17 Because there is an important public interest in promoting
18 transparency in our criminal justice system, an individual's right to
19 privacy may yield to this interest. We must, however, also be
20 sensitive to the interests in avoiding undue humiliation of innocent
21 defendants and in promoting rehabilitation of convicted offenders.
22 These latter considerations are heightened in light of the potentially
23 unlimited duration and worldwide dissemination of such
24 information once published on the Internet.

25 c. Some unscrupulous profiteers have sought to take advantage
26 of the availability of criminal justice system information with the
27 potential to harm or embarrass those arrested for, accused of, or
28 prosecuted for a criminal offense. These private entities engage in
29 an extortionate practice of publishing, or threatening to publish, on
30 an Internet web site information such as mug shots or rap sheets,
31 unless the subject agrees to pay a fee to remove or prevent Internet
32 publication of the potentially embarrassing picture or information.
33 While the law authorizes public access to this type of information,
34 such companies obtain these governmental records with the true
35 intent of coercing subjects to pay the web site operator to remove
36 the information in order to avoid embarrassment, adverse
37 employment or social consequences, and other repercussions.
38 These companies do not obtain this information for any purpose
39 related to the public's right to know or maintaining the integrity of
40 the criminal justice system.

41 d. This practice differs materially from the conduct of private
42 companies that obtain or review publicly-available criminal history
43 background information provided through governmental databases,
44 for purposes of conducting criminal background checks to
45 determine if an individual is suitable for employment, volunteer
46 work or for similar purposes. Companies performing legitimate
47 criminal background checks do not attempt to extort payment from
48 the subjects of the search to refrain from disclosing to the inquiring

1 party true and accurate criminal history background information. It
2 is the element of extortionate profiteering that makes this noxious
3 practice objectionable and contrary to the public policy of this
4 State.

5 e. It is not the Legislature's intent to limit public access to this
6 type of information or its publication, or to impinge on the interests
7 of free speech or transparency. Public access and disclosure are not
8 the problem that demands redress, but rather the conduct of seeking
9 to profit by threatening exposure of such information.

10 f. Accordingly, it is altogether fitting and proper to protect the
11 citizens of New Jersey from this form of exploitation by
12 establishing a civil cause of action and civil penalty to discourage
13 the solicitation of pecuniary benefit by threatening to disclose
14 criminal justice system information which identifies or presents
15 such information in a context that identifies the person as having
16 been arrested, charged, prosecuted, or convicted of a criminal
17 offense.

18

19 2. a. (1) No person shall solicit or accept any pecuniary benefit
20 in consideration for refraining from the disclosure of personal
21 identifying information of any person which identifies or is
22 presented in a context which identifies the person as having been
23 arrested, charged, prosecuted, or convicted of any criminal offense
24 including, but not limited to, criminal history record background
25 information and any photograph of the person taken at the time of
26 arrest.

27 (2) No person who commits a violation of paragraph (1) of this
28 subsection shall disclose or cause to be disclosed personal
29 identifying information of any person which identifies or is
30 presented in a context which identifies the person as having been
31 arrested, charged, prosecuted, or convicted of any criminal offense,
32 including but not limited to criminal history record background
33 information and any photograph of the person taken at the time of
34 arrest.

35 b. For purposes of this section:

36 "Disclosure" means publication, distribution, circulation,
37 dissemination, presentation, exhibition, advertisement, or offering,
38 by any means including, but not limited to, the Internet.

39 "Pecuniary benefit" is benefit in the form of money, property,
40 commercial interests, or anything else the primary significance of
41 which is economic gain;

42 "Personal identifying information" means any name, address or
43 other information that may be used, alone or in conjunction with
44 any other information, to identify a specific individual, and any
45 photographic image, reproduction or other depiction of a person.

46 c. In addition to any other right of action or recovery otherwise
47 available under the laws of this State, a person who knowingly
48 violates the provisions of subsection a. of this section shall be liable

S3014 RUIZ

4

1 to the person whose personal identifying information was the
2 subject of the violation, who may bring a civil action in the
3 Superior Court.

4 The court may award:

5 (1) actual damages, but not less than liquidated damages
6 computed at the rate of \$1,000 for each violation of paragraph (1)
7 of this subsection and \$10,000 for each violation of paragraph (2) of
8 this subsection;

9 (2) punitive damages upon proof of willful or reckless disregard
10 of the law;

11 (3) reasonable attorney's fees and other litigation costs
12 reasonably incurred; and

13 (4) any other preliminary and equitable relief the court
14 determines to be appropriate.

15 d. In addition to the liability provided under subsection c. of
16 this section and any other right of action or recovery otherwise
17 available under the laws of this State, a person violating the
18 provisions of subsection a. of this section shall be liable for a civil
19 penalty of not less than \$500 for each act in violation of paragraph
20 (1) of subsection a. of this section and a civil penalty of not less
21 than \$1,000 for each act in violation of paragraph (2) of subsection
22 a. of this section. The penalty prescribed by this section shall be
23 collected and enforced by summary proceedings under the "Penalty
24 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).
25

26 3. This act shall take effect immediately.
27
28

29 STATEMENT
30

31 This bill prohibits a person from soliciting or accepting any
32 pecuniary benefit in exchange for not disclosing certain personal
33 identifying information of another individual. The personal
34 identifying information protected under the bill is information that
35 identifies a person as having been arrested, charged, prosecuted, or
36 convicted of any criminal offense, including but not limited to
37 criminal history record background information and any photograph
38 of the person taken at the time of arrest. The bill also prohibits the
39 disclosure of the protected personal identifying information by the
40 person soliciting a pecuniary benefit.

41 The purpose of this bill is to protect the public from
42 unscrupulous persons who publish criminal justice system
43 information in order to harm or embarrass those arrested or
44 prosecuted for a criminal offense. Some of these persons operate
45 websites where they publish mug shots or rap sheets and require the
46 subject to pay a fee to prevent publication of or remove the
47 potentially embarrassing picture or information. These fees can
48 range from \$30 to several hundred dollars or higher. While the law

S3014 RUIZ

1 authorizes public access to this type of information, citizens should
2 be protected from companies who obtain the information with the
3 intent to coerce persons to pay for removal of the information in
4 order to avoid embarrassment, adverse employment or social
5 consequences, and other repercussions.

6 Under the bill's provisions, "personal identifying information" is
7 defined as a name, address or other information that may be used,
8 alone or in conjunction with any other information, to identify a
9 specific individual, and any photographic image, reproduction or
10 other depiction of a person.

11 The bill further provides that a person who knowingly violates
12 the bill's provisions is liable to the person whose personal
13 identifying information was disclosed, who may bring a civil action
14 in the Superior Court. The court may award: (1) actual damages,
15 but not less than liquidated damages computed at the rate of \$1,000
16 for each solicitation to refrain from disclosure of protected
17 information and \$10,000 for each actual disclosure of the
18 information; (2) punitive damages upon proof of willful or reckless
19 disregard of the law; (3) reasonable attorney's fees and other
20 litigation costs reasonably incurred; and (4) any other preliminary
21 and equitable relief the court determines to be appropriate.

22 In addition, a person shall be liable for a civil penalty of not less
23 than \$500 for each act of solicitation prohibited by the bill and a
24 civil penalty of not less than \$1,000 for each act of disclosure
25 prohibited under the bill. This penalty is to be collected and
26 enforced by summary proceedings under the "Penalty Enforcement
27 Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).