

## CHAPTER 123

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

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

C.2A:58D-3 Findings, declarations relative to disclosure of certain personal identifying information.

1. The Legislature finds and declares:

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

b. The public has a right to information concerning the functioning of the criminal justice system and those who have committed, or are accused of committing, criminal offenses. Because there is an important public interest in promoting transparency in our criminal justice system, an individual's right to privacy may yield to this interest. However, it is necessary to be sensitive to the interests in avoiding undue humiliation of innocent defendants and in promoting rehabilitation of convicted offenders. These latter considerations are heightened in light of the potentially unlimited duration and worldwide dissemination of such information once published on the Internet.

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

d. This practice differs materially from the conduct of private companies that obtain or review publicly-available criminal history background information provided through governmental databases, for purposes of conducting criminal background checks to determine if an individual is suitable for employment, volunteer work, or for similar purposes. Companies performing legitimate criminal background checks do not attempt to extort payment from the subjects of the search to refrain from disclosing to the inquiring party true and accurate criminal history background information. It is the element of extortionate profiteering that makes this noxious practice objectionable and contrary to the public policy of this State.

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

f. Accordingly, it is altogether fitting and proper to protect the citizens of New Jersey from this form of exploitation by establishing a civil cause of action and civil penalty to discourage the solicitation of pecuniary benefit by threatening to disclose criminal justice

system information which identifies or presents such information in a context that identifies the person as having been arrested, charged, prosecuted, or convicted of a criminal offense.

C.2A:58D-4 Violations, penalties.

2. a. (1) A person shall not solicit or accept any pecuniary benefit in consideration for refraining from the disclosure of personal identifying information of any person which identifies, or is presented in a context which identifies, the person as having been arrested, charged, prosecuted, or convicted of any criminal offense including, but not limited to, criminal history record background information and any photograph of the person taken at the time of arrest.

(2) A person who commits a violation of paragraph (1) of this subsection shall not disclose or cause to be disclosed personal identifying information of any person which identifies, or is presented in a context which identifies, the person as having been arrested, charged, prosecuted, or convicted of any criminal offense including, but not limited to, criminal history record background information and any photograph of the person taken at the time of arrest.

b. For purposes of this section:

“Disclosure” means publication, distribution, circulation, dissemination, presentation, exhibition, advertisement, or offering by any means including, but not limited to, the Internet.

“Pecuniary benefit” means a benefit in the form of money, property, commercial interests, or anything else the primary significance of which is economic gain.

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

c. In addition to any other right of action or recovery otherwise available under the laws of this State, a person who knowingly violates the provisions of subsection a. of this section shall be liable to the person whose personal identifying information was the subject of the violation, who may bring a civil action in the Superior Court.

The court may award:

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

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

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

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

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

3. This act shall take effect immediately.

Approved July 21, 2017.