

Assembly Bill No. 32

CHAPTER 403

An act to amend Section 6254.21 of the Government Code, relating to public records.

[Approved by Governor October 11, 2009. Filed with
Secretary of State October 11, 2009.]

LEGISLATIVE COUNSEL'S DIGEST

AB 32, Lieu. Public officials: personal information.

(1) Existing law prohibits a person, business, or association from publicly posting or publicly displaying on the Internet the home address or telephone number of any elected or appointed official if that official has made a written demand of that person, business, or association to not disclose his or her home address or telephone number. Upon receiving a written demand, a person, business, or association is prohibited from transferring the official's information to any other person, business, or association. Existing law also prohibits soliciting, selling, or trading on the Internet the home address or telephone number of an elected or appointed official with the intent to cause bodily harm to the official or to any person residing at the official's home address. Existing law provides various remedies for violation of these provisions.

This bill would require a person, business, or association, upon receiving the written demand of an elected or appointed official, to remove the official's home address or telephone number from public display on the Internet within 48 hours of the delivery of the demand, and to continue to ensure that information is not reposted on the same Internet Web site, a subsidiary site, or any other Internet Web site maintained by the recipient of the written demand.

The bill would specifically exempt a telephone corporation, as defined, from the prohibition on transferring a public official's home address or telephone number after receipt of a written demand if the transfer is necessary in the event of an emergency, to collect a debt owed to the telephone corporation or its affiliate, or as otherwise authorized by state or federal law.

The bill would allow an elected or appointed official to designate the official's employer, a related governmental entity, or any voluntary professional association of similar officials to act, on behalf of that official, as that official's agent with regard to making a written demand or seeking enforcement of these posting requirements. A written demand made by an official's agent would be required to include a statement describing a threat or fear for the official's safety or the safety of those residing in the official's home.

(2) Under existing law, a public official is authorized to petition a court for injunctive or declarative relief if his or her home address and telephone number are publicly posted despite a written demand, and the court is empowered to grant official court costs and reasonable attorney's fees for the action.

This bill would authorize a court to also impose a fine not exceeding \$1,000 for violation of an order for an injunction or declarative relief.

The people of the State of California do enact as follows:

SECTION 1. Section 6254.21 of the Government Code is amended to read:

6254.21. (a) No state or local agency shall post the home address or telephone number of any elected or appointed official on the Internet without first obtaining the written permission of that individual.

(b) No person shall knowingly post the home address or telephone number of any elected or appointed official, or of the official's residing spouse or child, on the Internet knowing that person is an elected or appointed official and intending to cause imminent great bodily harm that is likely to occur or threatening to cause imminent great bodily harm to that individual. A violation of this subdivision is a misdemeanor. A violation of this subdivision that leads to the bodily injury of the official, or his or her residing spouse or child, is a misdemeanor or a felony.

(c) (1) (A) No person, business, or association shall publicly post or publicly display on the Internet the home address or telephone number of any elected or appointed official if that official has made a written demand of that person, business, or association to not disclose his or her home address or telephone number.

(B) A written demand made under this paragraph by a state constitutional officer, a mayor, or a Member of the Legislature, a city council, or a board of supervisors shall include a statement describing a threat or fear for the safety of that official or of any person residing at the official's home address.

(C) A written demand made under this paragraph by an elected official shall be effective for four years, regardless of whether or not the official's term has expired prior to the end of the four-year period.

(D) (i) A person, business, or association that receives the written demand of an elected or appointed official pursuant to this paragraph shall remove the official's home address or telephone number from public display on the Internet within 48 hours of delivery of the written demand, and shall continue to ensure that this information is not reposted on the same Internet Web site, subsidiary site, or any other Internet Web site maintained by the recipient of the written demand.

(ii) After receiving the elected or appointed official's written demand, the person, business, or association shall not transfer the appointed or elected official's home address or telephone number to any other person, business, or association through any other medium.

(iii) Clause (ii) shall not be deemed to prohibit a telephone corporation, as defined in Section 234 of the Public Utilities Code, or its affiliate, from transferring the elected or appointed official's home address or telephone number to any person, business, or association, if the transfer is authorized by federal or state law, regulation, order, or tariff, or necessary in the event of an emergency, or to collect a debt owed by the elected or appointed official to the telephone corporation or its affiliate.

(E) For purposes of this paragraph, "publicly post" or "publicly display" means to intentionally communicate or otherwise make available to the general public.

(2) An official whose home address or telephone number is made public as a result of a violation of paragraph (1) may bring an action seeking injunctive or declarative relief in any court of competent jurisdiction. If a court finds that a violation has occurred, it may grant injunctive or declarative relief and shall award the official court costs and reasonable attorney's fees. A fine not exceeding one thousand dollars (\$1,000) may be imposed for a violation of the court's order for an injunction or declarative relief obtained pursuant to this paragraph.

(3) An elected or appointed official may designate in writing the official's employer, a related governmental entity, or any voluntary professional association of similar officials to act, on behalf of that official, as that official's agent with regard to making a written demand pursuant to this section. A written demand made by an agent pursuant to this paragraph shall include a statement describing a threat or fear for the safety of that official or of any person residing at the official's home address.

(d) (1) No person, business, or association shall solicit, sell, or trade on the Internet the home address or telephone number of an elected or appointed official with the intent to cause imminent great bodily harm to the official or to any person residing at the official's home address.

(2) Notwithstanding any other law, an official whose home address or telephone number is solicited, sold, or traded in violation of paragraph (1) may bring an action in any court of competent jurisdiction. If a jury or court finds that a violation has occurred, it shall award damages to that official in an amount up to a maximum of three times the actual damages but in no case less than four thousand dollars (\$4,000).

(e) An interactive computer service or access software provider, as defined in Section 230(f) of Title 47 of the United States Code, shall not be liable under this section unless the service or provider intends to abet or cause imminent great bodily harm that is likely to occur or threatens to cause imminent great bodily harm to an elected or appointed official.

(f) For purposes of this section, "elected or appointed official" includes, but is not limited to, all of the following:

- (1) State constitutional officers.
- (2) Members of the Legislature.
- (3) Judges and court commissioners.
- (4) District attorneys.
- (5) Public defenders.

- (6) Members of a city council.
 - (7) Members of a board of supervisors.
 - (8) Appointees of the Governor.
 - (9) Appointees of the Legislature.
 - (10) Mayors.
 - (11) City attorneys.
 - (12) Police chiefs and sheriffs.
 - (13) A public safety official, as defined in Section 6254.24.
 - (14) State administrative law judges.
 - (15) Federal judges and federal defenders.
 - (16) Members of the United States Congress and appointees of the President.
- (g) Nothing in this section is intended to preclude punishment instead under Sections 69, 76, or 422 of the Penal Code, or any other provision of law.