

AMENDED IN SENATE MARCH 31, 2011

AMENDED IN SENATE MARCH 23, 2011

SENATE BILL

No. 636

Introduced by Senator Corbett

(Coauthor: Senator Leno)

(Coauthors: Assembly Members Jeffries, Portantino, and Smyth)

February 18, 2011

An act to amend Sections 6206.7, 6208, and 6215.7 of, and to add Sections ~~6208.1 and 6208.2~~ *6208.1, 6208.2, and 6218.01* to, the Government Code, relating to personal information.

LEGISLATIVE COUNSEL'S DIGEST

SB 636, as amended, Corbett. Personal information: Internet disclosure prohibition.

Existing law authorizes victims of domestic violence or stalking and reproductive health care providers, employees, and volunteers, as defined, to complete an application to be approved by the Secretary of State for the purposes of enabling state and local agencies to respond to requests for public records without disclosing a program participant's residence address contained in any public record. Existing law prohibits the Secretary of State from making a program participant's address publicly available, except in specified circumstances, including when the participant's program certification has been canceled.

This bill would specify, instead, that a participant's personal address may be revealed after termination of certification only if the participant's termination resulted from the program manager determining that false information was used as a subterfuge to avoid detection of illegal or criminal activity or apprehension by law enforcement.

~~This bill would also, for purposes of the program for victims of domestic violence or stalking, authorize a program participant to obtain a written form that the program participant may submit to an entity, as defined, that commercially operates an Internet Web site.~~

~~This bill would, for purposes of the program for victims of domestic violence or stalking, require an entity that commercially operates the Internet Web site and that receives the program participant opt-out form to remove the participant's personal information from public display on the Internet Web site within 2 days, as specified. The bill would also prohibit an entity from soliciting, selling, or trading on the Internet specified information of a program participant or a family member of a program participant, as specified. Violation of these provisions would be subject to specified civil penalties.~~

This bill would, for purposes of the program for victims of domestic violence or stalking, prohibit a person, business, or association from knowingly and intentionally publicly posting or displaying on the Internet, or soliciting, selling, or trading on the Internet, specified personal information of a program participant or other persons residing at the same address with a prescribed intent to cause great bodily harm or place a person in objectively reasonable fear for his or her personal safety. The bill would also prohibit a person, business, or association from intentionally publicly posting or displaying on the Internet specified personal information of a program participant or other persons residing at the same address if the participant has made a demand on the person, business, or association to not disclose that information, as specified. Violation of these provisions would be subject to specified civil penalties.

~~The bill would, for purposes of the program for victims of domestic violence or stalking, prohibit a person from maliciously, and with the intent to obstruct justice or the due administration of the laws, or with the intent that another person imminently use that information to commit a crime involving violence or a threat of violence, posting on the Internet the home address, the telephone number, or personal identifying information of a *domestic violence or stalking victim* program participant or the program participant's family members who are participating in the program, *or a provider, employee, volunteer, or patient of a reproductive health facility or individual residing at the same address.* Violations of these provisions would be a crime, punishable as specified. By creating a new crime, this bill would impose a state-mandated local program.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

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

1 SECTION 1. Section 6206.7 of the Government Code is
2 amended to read:

3 6206.7. (a) A program participant may withdraw from program
4 participation by submitting to the address confidentiality program
5 manager written notification of withdrawal and his or her current
6 identification card. Certification shall be terminated on the date
7 of receipt of this notification.

8 (b) The address confidentiality program manager may terminate
9 a program participant's certification and invalidate his or her
10 authorization card for any of the following reasons:

11 (1) The program participant's certification term has expired and
12 certification renewal has not been completed.

13 (2) The address confidentiality program manager has determined
14 that false information was used in the application process or that
15 participation in the program is being used as a subterfuge to avoid
16 detection of illegal or criminal activity or apprehension by law
17 enforcement.

18 (3) The program participant no longer resides at the residential
19 address listed on the application, and has not provided at least
20 seven days' prior notice in writing of a change in address.

21 (4) A service of process document or mail forwarded to the
22 program participant by the address confidentiality program
23 manager is returned as nondeliverable.

24 (5) The program participant obtains a legal name change and
25 fails to notify the Secretary of State within seven days.

26 (c) If termination is a result of paragraph (1), (3), (4), or (5) of
27 subdivision (b), the address confidentiality program manager shall
28 send written notification of the intended termination to the program
29 participant. The program participant shall have five business days

1 in which to appeal the termination under procedures developed by
2 the Secretary of State.

3 (d) The address confidentiality program manager shall notify
4 in writing the county elections official and authorized personnel
5 of the appropriate county clerk's office, county recording office,
6 and department of health of the program participant's certification
7 withdrawal, invalidation, expiration, or termination.

8 (e) Upon receipt of this termination notification, authorized
9 personnel shall transmit to the address confidentiality program
10 manager all appropriate administrative records pertaining to the
11 program participant and the record transmitting agency is no longer
12 responsible for maintaining the confidentiality of a terminated
13 program participant's record.

14 (f) Following termination of program participant certification
15 as a result of paragraph (2) of subdivision (b), the address
16 confidentiality program manager may disclose information
17 contained in the participant's application.

18 SEC. 2. Section 6208 of the Government Code is amended to
19 read:

20 6208. The Secretary of State may not make a program
21 participant's address, other than the address designated by the
22 Secretary of State, or a program participant's name change
23 available for inspection or copying, except under any of the
24 following circumstances:

25 (a) If requested by a law enforcement agency, to the law
26 enforcement agency.

27 (b) If directed by a court order, to a person identified in the
28 order.

29 (c) If certification has been terminated as a result of paragraph
30 (2) of subdivision (b) of Section 6206.7.

31 ~~SEC. 4. Section 6208.1 is added to the Government Code, to~~
32 ~~read:~~

33 ~~6208.1. (a) Upon certification of the participant's application,~~
34 ~~the participant shall obtain a written opt-out form for submission~~
35 ~~to an entity that commercially operates an Internet Web site. The~~
36 ~~form shall notify the entity of the protected person and prevent the~~
37 ~~inclusion of the participant's addresses and telephone numbers on~~
38 ~~the Internet Web site. The form shall include a narrative description~~
39 ~~of the requirements imposed by this section.~~

1 ~~(b) (1) An entity that receives the opt-out form of a participant~~
2 ~~pursuant to this section shall remove the participant's personal~~
3 ~~information from public display on the Internet Web site within~~
4 ~~two days of delivery of the opt-out form, and shall continue to~~
5 ~~ensure that this information is not reposted on the same Internet~~
6 ~~Web site, a subsidiary Internet Web site, or any other Internet Web~~
7 ~~site maintained by the entity.~~

8 ~~(2) Any entity described in subdivision (a) that receives the~~
9 ~~opt-out form described in subdivision (a), shall not solicit, sell, or~~
10 ~~trade on the Internet the home address or telephone number of the~~
11 ~~program participant or a family member of a program participant~~
12 ~~who is also participating in the program.~~

13 ~~(c) An entity that violates subdivision (b) shall be subject to a~~
14 ~~civil penalty for each violation in the amount of five thousand~~
15 ~~dollars (\$5,000). An action for a civil penalty under this subdivision~~
16 ~~may be brought by any public prosecutor in the name of the people~~
17 ~~of the state and the penalty imposed shall be enforceable as a civil~~
18 ~~judgment.~~

19 ~~(d) A program participant whose home address or telephone~~
20 ~~number is made public as a result of a violation of subdivision~~
21 ~~(b) may bring an action seeking injunctive or declaratory relief in~~
22 ~~any court of competent jurisdiction. If a jury or court finds that a~~
23 ~~violation has occurred, it may grant injunctive or declaratory relief~~
24 ~~and shall award the program participant court costs and reasonable~~
25 ~~attorney's fees.~~

26 ~~(e) Notwithstanding any other provision of law, a program~~
27 ~~participant whose home address or telephone number is solicited,~~
28 ~~sold, or traded in violation of subdivision (b) may bring an action~~
29 ~~in any court of competent jurisdiction. If a jury or court finds that~~
30 ~~a violation has occurred, it shall award damages to that program~~
31 ~~participant in an amount up to a maximum of three times the actual~~
32 ~~damages, but in no case less than four thousand dollars (\$4,000).~~

33 ~~(f) Nothing in this section shall preclude prosecution under any~~
34 ~~other provision of law.~~

35 ~~(g) For purposes of this section, the term "entity" shall include~~
36 ~~a business, a state or local agency, a private entity, or an individual~~
37 ~~person.~~

38 *SEC. 3. Section 6208.1 is added to the Government Code, to*
39 *read:*

1 6208.1. (a) (1) No person, business, or association shall
2 knowingly and intentionally publicly post or publicly display on
3 the Internet the home address, home telephone number, or image
4 of a program participant or other individuals residing at the same
5 home address with the intent to do either of the following:

6 (A) Incite a third person to cause imminent great bodily harm
7 to the person identified in the posting or display, or to a coresident
8 of that person, where the third person is likely to commit this harm.

9 (B) Threaten the person identified in the posting or display, or
10 a coresident of that person, in a manner that places the person
11 identified or the coresident in objectively reasonable fear for his
12 or her personal safety.

13 (2) A participant whose home address, home telephone number,
14 or image is made public as a result of a violation of paragraph
15 (1) may do either or both of the following:

16 (A) Bring an action seeking injunctive or declarative relief in
17 any court of competent jurisdiction. If a jury or court finds that a
18 violation has occurred, it may grant injunctive or declarative relief
19 and shall award the successful plaintiff court costs and reasonable
20 attorney's fees.

21 (B) Bring an action for money damages in any court of
22 competent jurisdiction. In addition to any other legal rights or
23 remedies, if a jury or court finds that a violation has occurred, it
24 shall award damages to that individual in an amount up to a
25 maximum of three times the actual damages, but in no case less
26 than four thousand dollars (\$4,000).

27 (b) (1) No person, business, or association shall intentionally
28 publicly post or publicly display on the Internet the home address
29 or home telephone number of a participant if that individual has
30 made a written demand of that person, business, or association to
31 not disclose his or her home address or home telephone number.
32 A demand made under this paragraph shall include a sworn
33 statement declaring that the person is subject to the protection of
34 this section and describing a reasonable fear for the safety of that
35 individual or of any person residing at the individual's home
36 address, based on a violation of subdivision (a). A written demand
37 made under this paragraph shall be effective for four years,
38 regardless of whether or not the individual's program participation
39 has expired prior to the end of the four-year period.

1 (2) A participant whose home address or home telephone
2 number is made public as a result of a failure to honor a demand
3 made pursuant to paragraph (1) may bring an action seeking
4 injunctive or declarative relief in any court of competent
5 jurisdiction. If a jury or court finds that a violation has occurred,
6 it may grant injunctive or declarative relief and shall award the
7 successful plaintiff court costs and reasonable attorney's fees.

8 (3) This subdivision shall not apply to a person or entity defined
9 in Section 1070 of the Evidence Code.

10 (c) (1) No person, business, or association shall solicit, sell,
11 or trade on the Internet the home address, home telephone number,
12 or image of a participant with the intent to do either of the
13 following:

14 (A) Incite a third person to cause imminent great bodily harm
15 to the person identified in the posting or display, or to a coresident
16 of that person, where the third person is likely to commit this harm.

17 (B) Threaten the person identified in the posting or display, or
18 a coresident of that person, in a manner that places the person
19 identified or the coresident in objectively reasonable fear for his
20 or her personal safety.

21 (2) A participant whose home address, home telephone number,
22 or image is solicited, sold, or traded in violation of paragraph (1)
23 may bring an action in any court of competent jurisdiction. In
24 addition to any other legal rights and remedies, if a jury or court
25 finds that a violation has occurred, it shall award damages to that
26 individual in an amount up to a maximum of three times the actual
27 damages, but in no case less than four thousand dollars (\$4,000).

28 (d) An interactive computer service or access software provider,
29 as defined in Section 230(f) of Title 47 of the United States Code,
30 shall not be liable under this section unless the service or provider
31 intends to abet or cause bodily harm that is likely to occur or
32 threatens to cause bodily harm to a participant or any person
33 residing at the same home address.

34 (e) Nothing in this section is intended to preclude prosecution
35 under any other provision of law.

36 (f) For the purposes of this section, the following terms are
37 defined as follows:

38 (1) "Image" includes, but is not limited to, any photograph,
39 video, sketch, or computer-generated image that provides a means
40 to visually identify the person depicted.

1 (2) “Program participant” means a person certified as a
2 program participant in the manner described in Section 6206.

3 (3) “Publicly post” or “publicly display” means to communicate
4 or otherwise make available to the general public.

5 SEC. 4. Section 6208.2 is added to the Government Code, to
6 read:

7 6208.2. (a) (1) No person shall maliciously, and with the
8 intent to obstruct justice or the due administration of the laws, or
9 with the intent that another person imminently use that information
10 to commit a crime involving violence or a threat of violence, post
11 on the Internet the home address, the telephone number, or personal
12 identifying information of a program participant or the program
13 participant’s family members who are participating in the program.

14 (2) A violation of this subdivision is a misdemeanor punishable
15 by a fine of up to two thousand five hundred dollars (\$2,500), or
16 imprisonment of up to six months in a county jail, or by both that
17 fine and imprisonment.

18 (3) A violation of this subdivision that leads to the bodily injury
19 of the program participant, or of any of the program participant’s
20 family members who are participating in the program, is a
21 misdemeanor punishable by a fine of up to five thousand dollars
22 (\$5,000), or imprisonment of up to one year in a county jail, or by
23 both that fine and imprisonment.

24 (b) Nothing in this section shall preclude prosecution under any
25 other provision of law.

26 SEC. 5. Section 6215.7 of the Government Code is amended
27 to read:

28 6215.7. The Secretary of State may not make a program
29 participant’s address, other than the address designated by the
30 Secretary of State, available for inspection or copying, except
31 under any of the following circumstances:

32 (a) If requested by a law enforcement agency, to the law
33 enforcement agency.

34 (b) If directed by a court order, to a person identified in the
35 order.

36 (c) If certification has been terminated pursuant to paragraph
37 (2) of subdivision (b) of Section 6215.4.

38 SEC. 6. Section 6218.01 is added to the Government Code, to
39 read:

1 6218.01. (a) (1) No person shall maliciously, and with the
2 intent to obstruct justice or the due administration of the laws, or
3 with the intent that another person imminently use that information
4 to commit a crime involving violence or a threat of violence, post
5 on the Internet the home address, the telephone number, or
6 personal identifying information of a provider, employee, volunteer,
7 or patient of a reproductive health services facility or other
8 individuals residing at the same home address.

9 (2) A violation of this subdivision is a misdemeanor punishable
10 by a fine of up to two thousand five hundred dollars (\$2,500),
11 imprisonment of up to six months in a county jail, or by both that
12 fine and imprisonment.

13 (3) A violation of this subdivision that leads to the bodily injury
14 of the provider, employee, volunteer, or patient of a reproductive
15 health services facility or other individuals residing at the same
16 home address, is a misdemeanor punishable by a fine of up to five
17 thousand dollars (\$5,000), imprisonment of up to one year in a
18 county jail, or by both that fine and imprisonment.

19 (b) Nothing in this section shall preclude prosecution under any
20 other provision of law.

21 ~~SEC. 6.~~

22 SEC. 7. No reimbursement is required by this act pursuant to
23 Section 6 of Article XIII B of the California Constitution because
24 the only costs that may be incurred by a local agency or school
25 district will be incurred because this act creates a new crime or
26 infraction, eliminates a crime or infraction, or changes the penalty
27 for a crime or infraction, within the meaning of Section 17556 of
28 the Government Code, or changes the definition of a crime within
29 the meaning of Section 6 of Article XIII B of the California
30 Constitution.