

Senate Bill No. 636

Passed the Senate August 15, 2011

Secretary of the Senate

Passed the Assembly July 14, 2011

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2011, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 6206.5, 6206.7, 6208, 6215.3, 6215.4, and 6215.7 of, and to add Sections 6208.1, 6208.2, and 6218.01 to, the Government Code, relating to personal information.

LEGISLATIVE COUNSEL'S DIGEST

SB 636, 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, 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 prohibit a person from 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 with the intent that another person imminently use that information to commit a crime involving violence or a threat of violence against the participant or the program participant's family members who are participating in the program. 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.

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

SECTION 1. Section 6206.5 of the Government Code is amended to read:

6206.5. (a) The Secretary of State may cancel a program participant's certification if there is a change in the residential address from the one listed on the application, unless the program participant provides the Secretary of State with at least seven days' prior notice of the change of address.

(b) The Secretary of State may cancel a program participant's certification if the program participant changes his or her name from the one listed in the application and fails to notify the Secretary of State of the name change within seven days of the change.

(c) The Secretary of State may cancel certification of a program participant if mail forwarded by the secretary to the program participant's address is returned as nondeliverable.

(d) The Secretary of State shall cancel certification of a program participant who applies using false information.

(e) Except as provided in subdivision (f) of Section 6206.7 or subdivision (c) of Section 6208, any records or documents pertaining to a program participant shall be held confidential for a period of three years after termination of certification.

(f) All records or documents pertaining to a program participant shall be retained for a period of three years after termination of certification and then destroyed, except for change of name records, which shall be retained permanently.

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 3. Section 6208 of the Government Code is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) 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 bodily harm that is likely to occur or threatens to cause bodily harm to a participant or any person residing at the same home address.

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

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

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

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

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

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

6208.2. (a) (1) No person shall post, with the intent that another person imminently use that information to commit a crime involving violence or a threat of violence against the participant

or the program participant's family members who are participating in the program on the Internet the home address, the telephone number, or personal identifying information of a program participant or the program participant's family members who are participating in the program.

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

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

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

SEC. 6. Section 6215.3 of the Government Code is amended to read:

6215.3. (a) The Secretary of State may cancel a program participant's certification if there is a change in the residential address from the one listed on the application, unless the program participant provides the Secretary of State with at least seven days' prior notice of the change of address.

(b) The Secretary of State may cancel a program participant's certification if mail forwarded by the secretary to the program participant's address is returned as nondeliverable.

(c) The Secretary of State shall cancel certification of a program participant who applies using false information.

(d) The Secretary of State shall cancel certification of a program participant who fails to disclose a change in employment status, or termination as a provider or volunteer.

(e) Except as provided in subdivision (f) of Section 6215.4 or subdivision (c) of Section 6215.7, any records or documents pertaining to a program participant shall be held confidential.

(f) All records or documents pertaining to a program participant shall be retained for a period of three years after termination of certification and then destroyed without further notice.

SEC. 7. Section 6215.4 of the Government Code is amended to read:

6215.4. (a) A program participant may withdraw from program participation by submitting to the address confidentiality program manager written notification of withdrawal and his or her current identification card. Certification shall be terminated on the date of receipt of this notification.

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

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

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

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

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

(5) The program participant who is a provider, employee, or volunteer fails to disclose a change in employment, or termination as volunteer or provider.

(c) If termination is a result of paragraph (1), (3), (4), or (5) of subdivision (b), the address confidentiality program manager shall send written notification of the intended termination to the program participant. The program participant shall have five business days in which to appeal the termination under procedures developed by the Secretary of State.

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

(e) Upon receipt of this termination notification, authorized personnel shall transmit to the address confidentiality program manager all appropriate administrative records pertaining to the program participant and the record transmitting agency is no longer

responsible for maintaining the confidentiality of a terminated program participant's record.

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

SEC. 8. Section 6215.7 of the Government Code is amended to read:

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

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

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

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

SEC. 9. Section 6218.01 is added to the Government Code, to read:

6218.01. (a) (1) No person shall post, with the intent that another person imminently use that information to commit a crime involving violence or a threat of violence against the provider, employee, volunteer, or patient of a reproductive health service facility or other individuals residing at the same home address on the Internet the home address, the telephone number, or personal identifying information of a provider, employee, volunteer, or patient of a reproductive health services facility or other individuals residing at the same home address.

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

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

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

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2011

Governor