

AMENDED IN ASSEMBLY JUNE 22, 2011

AMENDED IN SENATE APRIL 14, 2011

AMENDED IN SENATE MARCH 31, 2011

AMENDED IN SENATE MARCH 23, 2011

SENATE BILL

No. 636

Introduced by Senator Corbett

~~(Coauthor: Senator Leno)~~ *Coauthors: Senators Leno and Lieu*

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

February 18, 2011

An act to amend Sections ~~6206.7, 6208, 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, 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, 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.

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 6206.5 of the Government Code is
2 amended to read:

1 6206.5. (a) The Secretary of State may cancel a program
2 participant's certification if there is a change in the residential
3 address from the one listed on the application, unless the program
4 participant provides the Secretary of State with at least seven days'
5 prior notice of the change of address.

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

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

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

16 (e) ~~Any~~ Except as provided in subdivision (f) of Section 6206.7
17 or subdivision (c) of Section 6208, any records or documents
18 pertaining to a program participant shall be ~~retained and~~ held
19 confidential for a period of three years after termination of
20 certification and then destroyed, except for change of name records,
21 which shall be retained permanently.

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

26 **SECTION 1.**

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

29 6206.7. (a) A program participant may withdraw from program
30 participation by submitting to the address confidentiality program
31 manager written notification of withdrawal and his or her current
32 identification card. Certification shall be terminated on the date
33 of receipt of this notification.

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

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

39 (2) The address confidentiality program manager has determined
40 that false information was used in the application process *to qualify*

1 *as a program participant* or that participation in the program is
2 being used as a subterfuge to avoid detection of illegal or criminal
3 activity or apprehension by law enforcement.

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

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

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

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

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

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

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

33 ~~SEC. 2.~~

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

36 6208. The Secretary of State may not make a program
37 participant's address, other than the address designated by the
38 Secretary of State, or a program participant's name change
39 available for inspection or copying, except under any of the
40 following circumstances:

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

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

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

7 ~~SEC. 3.~~

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

10 6208.1. (a) (1) No person, business, or association shall
11 knowingly and intentionally publicly post or publicly display on
12 the Internet the home address, home telephone number, or image
13 of a program participant or other individuals residing at the same
14 home address with the intent to do either of the following:

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

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

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

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

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

36 (b) (1) No person, business, or association shall knowingly and
37 intentionally publicly post or publicly display on the Internet the
38 home address or home telephone number of a participant if that
39 individual has made a written demand of that person, business, or
40 association to not disclose his or her home address or home

1 telephone number. A demand made under this paragraph shall
2 include a sworn statement declaring that the person is subject to
3 the protection of this section and describing a reasonable fear for
4 the safety of that individual or of any person residing at the
5 individual's home address, based on a violation of subdivision (a).
6 A written demand made under this paragraph shall be effective
7 for four years, regardless of whether or not the individual's program
8 participation has expired prior to the end of the four-year period.

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

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

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

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

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

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

36 (d) An interactive computer service or access software provider,
37 as defined in Section 230(f) of Title 47 of the United States Code,
38 shall not be liable under this section unless the service or provider
39 intends to abet or cause bodily harm that is likely to occur or

1 threatens to cause bodily harm to a participant or any person
2 residing at the same home address.

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

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

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

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

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

14 ~~SEC. 4.~~

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

17 6208.2. (a) (1) No person shall post, with the intent that
18 another person imminently use that information to commit a crime
19 involving violence or a threat of violence against the participant
20 or the program participant’s family members who are participating
21 in the program on the Internet the home address, the telephone
22 number, or personal identifying information of a program
23 participant or the program participant’s family members who are
24 participating in the program.

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

29 (3) A violation of this subdivision that leads to the bodily injury
30 of the program participant, or of any of the program participant’s
31 family members who are participating in the program, is a
32 misdemeanor punishable by a fine of up to five thousand dollars
33 (\$5,000), or imprisonment of up to one year in a county jail, or by
34 both that fine and imprisonment.

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

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

39 6215.3. (a) The Secretary of State may cancel a program
40 participant’s certification if there is a change in the residential

1 address from the one listed on the application, unless the program
2 participant provides the Secretary of State with at least seven days'
3 prior notice of the change of address.

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

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

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

12 (e) ~~Any~~ *Except as provided in subdivision (f) of Section 6215.4*
13 *or subdivision (c) of Section 6215.7, any records or documents*
14 *pertaining to a program participant shall be retained and held*
15 *confidential for a period of three years after termination of*
16 *certification and then destroyed without further notice.*

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

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

22 6215.4. (a) A program participant may withdraw from program
23 participation by submitting to the address confidentiality program
24 manager written notification of withdrawal and his or her current
25 identification card. Certification shall be terminated on the date
26 of receipt of this notification.

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

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

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

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

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

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

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

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

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

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

28 ~~SEC. 5.~~

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

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

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

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

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

1 ~~SEC. 6.~~

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

4 6218.01. (a) (1) No person shall post, with the intent that
5 another person imminently use that information to commit a crime
6 involving violence or a threat of violence against the provider,
7 employee, volunteer, or patient of a reproductive health service
8 facility or other individuals residing at the same home address on
9 the Internet the home address, the telephone number, or personal
10 identifying information of a provider, employee, volunteer, or
11 patient of a reproductive health services facility or other individuals
12 residing at the same home address.

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

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

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

25 ~~SEC. 7.~~

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