

**ASSEMBLY, No. 564**

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**STATE OF NEW JERSEY**

**218th LEGISLATURE**

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PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

**Sponsored by:**

**Assemblyman PAUL D. MORIARTY**

**District 4 (Camden and Gloucester)**

**Assemblyman HERB CONAWAY, JR.**

**District 7 (Burlington)**

**Assemblyman DANIEL R. BENSON**

**District 14 (Mercer and Middlesex)**

**Co-Sponsored by:**

**Assemblywoman Mosquera**

**SYNOPSIS**

Requires destruction of records stored on digital copy machines under certain circumstances.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



1    **AN ACT** concerning records stored on certain digital copy machines  
2       and supplementing Title 2A of the New Jersey Statutes.

3

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

6

7       1. As used in this act:

8       “Business” means any corporation, company, partnership, firm,  
9       association, or other entity, and shall include a public entity.

10      “Public entity” means the State, and any county, municipality,  
11      district, public authority, public agency, and any other political  
12      subdivision or public body in the State.

13      “Records” means any material recorded or preserved by any  
14      means.

15

16      2. a. A business shall destroy, or arrange for the destruction of,  
17      all records stored on a digital copy machine which was purchased  
18      by that business, and which is no longer to be retained by that  
19      business, by erasing or otherwise modifying those records to make  
20      the records unreadable, undecipherable, or nonreconstructable  
21      through generally available means.

22      b. (1) In the case of a digital copy machine which is leased, the  
23      lessor and the lessee shall be responsible for destroying, or  
24      arranging for the destruction of, all records stored on a digital copy  
25      machine, which is no longer to be retained by that business, by  
26      erasing or otherwise modifying those records to make the records  
27      unreadable, undecipherable, or nonreconstructable through  
28      generally available means upon retaking possession of the machine  
29      from the lessee at the termination of the period of the lease. This  
30      responsibility shall be clearly stated in the lease agreement.

31      (2) A lessor of a digital copy machine may charge a lessee a fee  
32      for the destruction, or arranging for the destruction, of such records,  
33      which fee shall be clearly specified in the lease agreement. The fee  
34      shall not exceed one week’s value of the lease up to \$100 and may  
35      only be charged if the lessee has not destroyed, or arranged for the  
36      destruction, of such records.

37      c. For the purposes of this section, “lease” means a contract or  
38      other agreement between a lessor and a lessee for the use of a  
39      digital copy machine for a fixed period of time, whether or not the  
40      lessee has the option to purchase or otherwise become the owner of  
41      the digital copy machine at the expiration of the fixed term. The  
42      term “lease” shall not include a financing agreement for the  
43      purchase of a digital copy machine.

44

45      3. A manufacturer of a digital copy machine shall include  
46      instructions with each digital copy machine, explaining how to  
47      destroy, or arrange for the destruction of, all records stored on that  
48      machine.

1 A lessor of a digital copy machine shall provide a lessee in the  
2 lease agreement with such instructions, or directions on how to  
3 obtain such instructions, for each leased machine.  
4

5 4. Any business, lessor, or manufacturer that willfully or  
6 knowingly violates the provisions of P.L. , c. (C. ) (pending  
7 before the Legislature as this bill) shall be liable to a penalty of not  
8 more than \$2,500 for the first offense and not more than \$5,000 for  
9 the second and each subsequent offense to be collected in a  
10 summary proceeding pursuant to the "Penalty Enforcement Law of  
11 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). The Attorney General  
12 shall enforce the provisions of this act.  
13

14 5. A person damaged in business or property as a result of a  
15 violation of this act may sue the actor therefor in the Superior Court  
16 and may recover compensatory and punitive damages and the cost  
17 of the suit including a reasonable attorney's fee, costs of  
18 investigation and litigation.  
19

20 6. This act shall take effect on the 60th day following  
21 enactment and shall apply to lease agreements of digital copy  
22 machines which are in effect or entered into on or after the effective  
23 date, and sales of digital copy machines which are concluded on or  
24 after the effective date.  
25

#### 26 27 STATEMENT 28

29 This bill requires that a business destroy, or arrange for the  
30 destruction of, all records stored on a digital copy machine, which  
31 is no longer to be retained by that business, by erasing or otherwise  
32 modifying those records to make them unreadable, undecipherable,  
33 or nonreconstructable through generally available means. The bill  
34 also provides that if a digital copy machine is leased, the lessor and  
35 the lessee have the obligation to destroy, or arrange for destruction  
36 of stored information. A lessor may charge a lessee a fee for the  
37 destruction of records, but the fee cannot exceed one week's value  
38 of the lease, up to \$100, and may be charged if the lessee has not  
39 destroyed or arranged for the destruction of the records.

40 Under the bill, manufacturers of digital copiers would be  
41 responsible for providing instructions explaining how to destroy, or  
42 arrange for the destruction of, the records. For digital copy  
43 machines which are leased, a lessor is required to provide  
44 instructions or directions on where to obtain the instructions, to a  
45 lessee who is contractually obligated to destroy the records.

46 Recent news reports indicate that most digital copy machines use  
47 internal hard drives which store every document that has been  
48 scanned, printed, faxed, or emailed by the machine. Those

1 electronic records will remain on a hard drive until the hard drive is  
2 erased.

3 Under the bill, a business, lessor or manufacturer that willfully or  
4 knowingly violates the bill's provisions is liable to a penalty of not  
5 more than \$2,500 for the first offense and not more than \$5,000 for  
6 the second and each subsequent offense. The Attorney General is  
7 responsible for enforcement.

8 A person damaged in business or property as a result of a  
9 violation may sue in Superior Court and may recover compensatory  
10 and punitive damages and the cost of the suit including a reasonable  
11 attorney's fee and costs of investigation and litigation.

12 The bill also provides that the bill's provisions would take effect  
13 on the 60th day following enactment and applies to lease  
14 agreements of digital copy machines which are in effect or entered  
15 into on or after the effective date, and sales which are included on  
16 or after the effective date.