ASSEMBLY, No. 1463

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

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SYNOPSIS

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

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.

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

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

1. As used in this act:

"Business" means any corporation, company, partnership, firm, association, or other entity, and shall include a public entity.

"Public entity" means the State, and any county, municipality, district, public authority, public agency, and any other political subdivision or public body in the State.

"Records" means any material recorded or preserved by any means.

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

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

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

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

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

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

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

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

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

STATEMENT

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

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

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

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

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

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

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