

[Third Reprint]

ASSEMBLY, No. 1238

STATE OF NEW JERSEY
215th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

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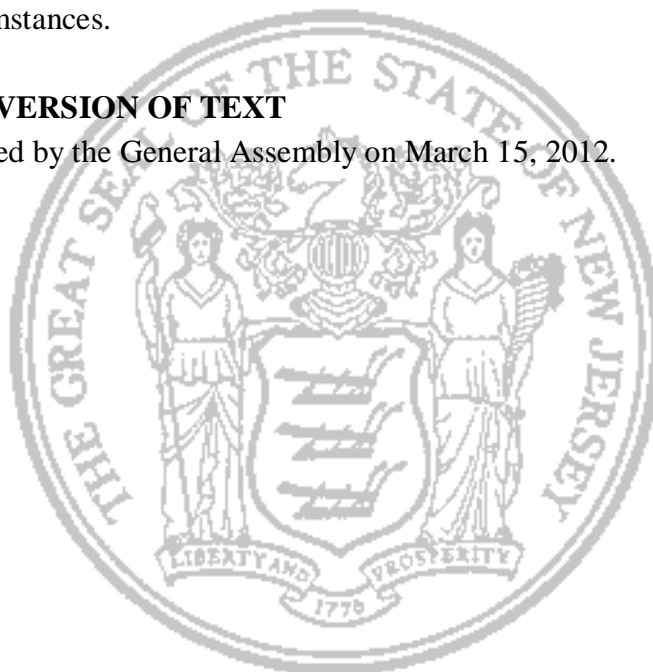
Assemblyman Diegnan, Assemblywoman Mosquera and Assemblyman Ramos

SYNOPSIS

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

CURRENT VERSION OF TEXT

As amended by the General Assembly on March 15, 2012.



(Sponsorship Updated As Of: 5/25/2012)

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. ²a. ³Except as otherwise provided in subsection b. of this
17 section, [A] a² A³ business shall destroy, or arrange for the
18 destruction of, all records stored on a digital copy machine ²which
19 was purchased by that business, and² which is no longer to be
20 retained by that business, by erasing or otherwise modifying those
21 records to make the records unreadable, undecipherable, or
22 nonreconstructable through generally available means.

23 ²b. (1) In the case of a digital copy machine which is leased,
24 ³[unless otherwise clearly specified in the leasing agreement,]³ the
25 lessor ³and the lessee³ shall be responsible for destroying, or
26 arranging for the destruction of, all records stored on a digital copy
27 machine, which is no longer to be retained by that business, by
28 erasing or otherwise modifying those records to make the records
29 unreadable, undecipherable, or nonreconstructable through
30 generally available means upon retaking possession of the machine
31 from the lessee at the termination of the period of the lease. ³This
32 responsibility shall be clearly stated in the lease agreement.³

33 (2) A lessor of a digital copy machine may charge a lessee a fee
34 for the destruction, or arranging for the destruction, of such records,
35 which fee shall be clearly specified in the lease agreement. ³The
36 fee shall not exceed one week’s value of the lease up to \$100 and
37 may only be charged if the lessee has not destroyed, or arranged for
38 the destruction, of such records.³

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

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly ACO committee amendments adopted January 30, 2012.

²Assembly ACO committee amendments adopted March 5, 2012.

³Assembly floor amendments adopted March 15, 2012.

1 the digital copy machine at the expiration of the fixed term. The
2 term “lease” shall not include a financing agreement for the
3 purchase of a digital copy machine.²

4
5 ¹3. ³[²a.]³ A manufacturer of a digital copy machine shall
6 include instructions with each digital copy machine, explaining how
7 to destroy, or arrange for the destruction of, all records stored on
8 that machine.¹

9 ³[²b.]³ A lessor of a digital copy machine shall provide a lessee
10 ³[who is contractually obligated to destroy, or arrange for the
11 destruction of, all records stored on that machine] in the lease
12 agreement³ with such instructions, or directions on how to obtain
13 such instructions, for each leased machine.²

14
15 ¹[3.] 4.¹ Any business ², lessor,² ¹or manufacturer¹ that
16 willfully or knowingly violates the provisions of ¹[this act] P.L. ,
17 c. (C.) (pending before the Legislature as this bill)¹ shall be
18 liable to a penalty of not more than ²[\$10,000] \$2,500² for the first
19 offense and not more than ²[\$20,000] \$5,000² for the second and
20 each subsequent offense to be collected in a summary proceeding
21 pursuant to the “Penalty Enforcement Law of 1999,” P.L.1999,
22 c.274 (C.2A:58-10 et seq.). The Attorney General shall enforce the
23 provisions of this act.

24
25 ¹[4.] 5.¹ A person damaged in business or property as a result
26 of a violation of this act may sue the actor therefor in the Superior
27 Court and may recover compensatory and punitive damages and the
28 cost of the suit including a reasonable attorney's fee, costs of
29 investigation and litigation.

30
31 ¹[5.] 6.¹ This act shall take effect ³[immediately] on the 60th
32 day following enactment [², but in the case of lease agreements of
33 digital copy machines, shall only apply to those lease agreements
34 which commence on or after the date of enactment²] and shall
35 apply to lease agreements of digital copy machines which are in
36 effect or entered into on or after the effective date, and sales of
37 digital copy machines which are concluded on or after the effective
38 date³.