



SPONSOR: Rep. Barbieri & Rep. Hudson & Sen. Blevins
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Marshall, Peterson

HOUSE OF REPRESENTATIVES

148th GENERAL ASSEMBLY

HOUSE BILL NO. 102
AS AMENDED BY
HOUSE AMENDMENT NOS. 1 & 2

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO CONFIDENTIAL INFORMATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 941, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(a) Any aggrieved person who has reason to believe that any other person has been engaged, is engaged or is about to engage in an alleged violation of any provision of §§ 932-938 or § 9616A of this title may bring an action against such person and may apply to the Court of Chancery for:

- (1) An order temporarily or permanently restraining and enjoining the commencement or continuance of such act or acts;
- (2) An order directing restitution; or
- (3) An order directing the appointment of a receiver.

Subject to making due provisions for the rights of innocent persons, a receiver shall have the power to sue for, collect, receive and take into possession any property which belongs to the person who is alleged to have violated any provision of this subpart and which may have been derived by, been used in or aided in any manner such alleged violation. Such property shall include goods and chattels, rights and credits, moneys and effects, books, records, documents, papers, choses in action, bills, notes and property of every description including all computer system equipment and data, and including property with which such property has been commingled if it cannot be identified in kind because of such commingling. The receiver shall also have the power to sell, convey and assign all of the

foregoing and hold and dispose of the proceeds thereof under the direction of the Court. Any person who has suffered damages as a result of an alleged violation of any provision of §§ 932-938 or § 9616A of this title, and submits proof to the satisfaction of the Court that the person has in fact been damaged, may participate with general creditors in the distribution of the assets to the extent the person has sustained out-of-pocket losses. The Court shall have jurisdiction of all questions arising in such proceedings and may make such orders and judgments therein as may be required.

(b) The Court may award the relief applied for or such other relief as it may deem appropriate in equity.

(c) Independent of or in conjunction with an action under subsection (a) of this section, any person who suffers any injury to person, business or property may bring an action for damages against a person who is alleged to have violated any provision of §§ 932-938 or § 9616A of this title. The aggrieved person shall recover actual damages and damages for unjust enrichment not taken into account in computing damages for actual loss and treble damages where there has been a showing of willful and malicious conduct.

(d) Proof of pecuniary loss is not required to establish actual damages in connection with an alleged violation of § 935 of this title arising from misuse of private personal data.

(e) In any civil action brought under this section, the Court shall award to any aggrieved person who prevails reasonable costs and reasonable attorney's fees.

(f) The filing of a criminal action against a person is not a prerequisite to the bringing of a civil action under this section against such person.

(g) No civil action under this section may be brought but within 3 years from the date the alleged violation of §§ 932-938 or § 9616A of this title is discovered or should have been discovered by the exercise of reasonable diligence.

Section 2. Amend § 9611, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 9611. Definitions.

When used in this subchapter, the following words and phrases shall have the meanings ascribed to them in this section except where the context clearly indicates a different meaning:

(2) “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.

(3) “Internet” has the meaning used in § 931 of this title.

(4) “Post or display publicly” means to communicate, transmit, or otherwise make available to any other person.

Section 3. Amend Subchapter II of Chapter 96, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 9616A. Publicly posting or displaying program participant's actual address, telephone number, or image on the Internet.

(a) No person shall post or display publicly on the Internet, or solicit, sell, or trade on the Internet, the actual address, telephone number, or image of a program participant with the intent to do either of the following:

(1) Incite another person to imminently use that information to commit a crime involving violence or a threat of violence against, or to cause bodily harm to, the program participant identified in the posting or display, or any member of the program participant's household; or

(2) Threaten the program participant identified in the posting or display, or any member of the program participant's household, in a manner that places the person or persons threatened in objectively reasonable fear for their personal safety.

(b) No person shall post or display publicly on the Internet the actual address or telephone number of a program participant if that program participant, a parent or guardian of that program participant if the program participant is a minor, or a person holding power of attorney for the program participant if the program participant is an incapacitated adult individual, has made a written demand of that person not to disclose the program participant's actual address or telephone number. A written demand made under this paragraph shall include a sworn statement declaring that the program participant is subject to the protection of this subchapter and describing a reasonable fear for the safety of that program participant or any member of the program participant's household, based on a violation of subsection (a). A written demand made under this paragraph shall be effective for three years even if the program participant's certification is withdrawn or canceled, or the program participant's participation is otherwise terminated, before the end of the three-year period. This subsection shall not apply to a person defined in § 4320(4) of Title 10 of the Delaware Code.

(c) An interactive computer service or access software provider, as defined in § 230(f) of Title 47 of the United States Code, shall not be liable under this section unless the interactive computer service or access software provider intends to abet or cause bodily harm that is likely to occur or threatens to cause bodily harm to a program participant or any person residing at or regularly present at the same actual address.

Section 4. Amend § 9619 of Subchapter II, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 9619. Penalties.

(d) A person who violates subsection (a) of § 9616A of this subchapter is guilty of a class A misdemeanor, except that the violation is (i) a class G felony if the violation results in physical injury to the program participant or a member of the program participant's household, or (ii) a class D felony if the violation results in serious physical injury to the program participant or a member of the program participant's household.

(e) The remedies for aggrieved persons set forth in § 941 of this title are available to program participants for violations of § 9616A of this subchapter.

Section 5. This Act becomes effective 90 days after its enactment into law.