

# LEGALities

FROM MIKE FARHI

A NEWSLETTER FOR CLIENTS AND LAWYERS

Winter 2010

## New Anti-Bullying Law Will Soon Be in Effect

The new Anti-Bullying Bill of Rights sailed through the State Assembly on Nov. 22 by a vote of 71 to 1, with five abstentions. In the State Senate, it was approved 30-0. The new law will take effect after it is signed by Gov. Chris Christie.

The new law requires school personnel to take part in anti-bullying and suicide prevention training; the disciplining of administrators who fail to act on bullying complaints on or off school property; and requires school superintendents to make semi-annual reports on all acts of violence, bullying, intimidation, and harassment.

The bill's passage took a "fast track" after the suicide in September of Tyler Clementi, a Rutgers University freshman who was "outed" as gay on the Internet by two classmates.

One day after the bill's passage, the New Jersey Division on Civil Rights ruled there was probable cause to take legal action against the Emerson School Board for ignoring a gay student's repeated complaints of violence and harassment in 2006 and 2007. School board officials have denied the charges. A large increase in bullying claims is expected beginning next year.



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## Big News for Small Business Owners

When Congress passed the health care reform bill last year, a little-known provision requiring small businesses to notify the Internal Revenue Service of purchases greater than \$600 was highlighted by critics as a symbol of the bill's intrusiveness into the lives of average Americans.

That provision -- which has nothing to do with health care, by the way -- now looks like it's on the road to repeal. Businesses small and large have heavily criticized the rule, claiming that it will cause an overabundance of paperwork for hundreds of thousands of routine transactions every year.

But the U.S. Senate may take action before the end of the year. A bill has been prepared to officially end the reporting provision included in the "Patient Protection and Affordable Care Act." But according to Senate rules, it must receive 67 votes before it gets to the president's desk.

The alternative is a public relations disaster for Congress if the reporting requirement continues and the media reports stories of flower store owners, electricians and auto body shops having to fill out tax forms to pay their store leases, or for a piece of equipment.

### Inside this issue:

- *New Anti-Bullying Law*
- *Big News for Small Business Owners*
- *NJ Considers Limiting Lawyers Letters*
- *Marriage Issues*
- *Why is Credit Card Interest So High?*
- *Your Privacy and the Internet*
- *Kates Nussman Attorney Heads "Wills for Heroes"*

## New Jersey Considers Limiting Lawyers' Letters

If you've received a traffic ticket, you've soon after also gotten letters from lawyers trying to represent you; but mail deliveries to ticketed drivers may soon be getting smaller.

The New Jersey Legislature is considering bills that would force lawyers and other professionals to wait 30 days before contacting them, as well as accident victims, whose information was drawn from public-records searches.

Although most states, including New Jersey and Pennsylvania, prevent lawyers from soliciting clients in person or over the telephone, there are no restrictions on mail solicitation. Attorneys can obtain access to New Jersey police records through an electronic database run by the state, giving them access to hundreds of traffic violators.

"It's a consumer-protection issue," said State Senator Nicholas Scutari (D., Union), a civil-litigation lawyer who sponsored the State Senate bill. "We get calls from numerous people complaining about this. And it's not just attorneys; it's health-care professionals, investigators, chiropractors. It's a pretty unseemly practice."

On the other hand, some lawyers note that in the case of accident victims there are no rules preventing insurance-company representatives from accident scenes, where they can get victims to sign releases or give statements, and for those drivers who get tickets, the lawyers say, it's important for them to know their rights as soon as possible.

In either case, the situation presents a conflict between lawyers' constitutional freedom to provide information and cleaning up the profession's sometimes "ambulance-chasing" image.

Coming up in our next issue of

**LEGAL***ities*

***"Don't Sign That Contract!"***

## *A Marriage's Problems May Not End with Divorce*

We're told that one of every two marriages end in divorce. For couples with children, divorce is often followed by remarriage. What are the rights of step-parents and grandparents who may now face being "cut off" from time with their grandchildren? And what if the divorce makes a child too angry to want to see his/her parent?

As to step-parents, there is no legal right to visitation with stepchildren. But pursuing the issue may be worthwhile, if the step-parent has formed a good relationship with the child and if the application to the Court is made in good faith (not to harass or retaliate for issues in the former marriage). Courts look to the "best interests of the child," but the step-parent has the "burden of proof" to show that there is such a relationship, which can include reliance for financial support or love and comfort.

As for grandparents, sometimes the divorced couple hate each other so much that they retaliate by refusing to let the grandparents to visit with the children. But Courts are hesitant to deny a grandparent the right to visit with a grandchild. Getting that right means applying to the Court and the case may be referred to "custody mediation." There, a court-appointed mediator will try to get the parties to agree to a visitation schedule. If the grandparents and the objecting parent cannot agree, then a Judge will decide. Once again, the best interests of the child is the standard the Court will follow.

Finally, when a child does not want to see a parent, there are a few factors to consider in pursuing visitation. If the child is 16 or 17, then he/she is considered old enough to make an intelligent decision as to whether he/she wants to visit with their parent. However, a custodial parent has a legal duty to encourage visitation with their former spouse.

If the children are young, then the Courts will usually force the child to have visitation with their parent, even if they do not want to. It must always be remembered, that a parent has a constitutional right to have visitation with his/her child. It is very unlikely that a court will terminate visitation entirely. Most courts believe that it is in the child's best interest to have two parents jointly raise him or her.

## Why is Credit Card Interest So High?

Have you ever noticed that all your credit card bills seem to get mailed to South Dakota, Nevada or Delaware? More importantly, why can credit card companies ignore your state's usury law, which limits the amount of interest that can be charged on a loan, and charge whatever rate they want?

The answer lies in a 1978 Supreme Court ruling that changed the law and opened the door to the credit card industry to make use of the laws in states with weak usury laws.

At the time, a small number of states -- most notably South Dakota and Delaware -- saw an opportunity to expand their job bases during a deep recession by luring credit card companies to relocate there. The Court ruling let credit card issuers "export" nationally whatever interest rate was allowed in the state in which they were headquartered. To encourage the companies to relocate, some states simply dropped their usury laws. Some of the large issuers relocated and it became "anything goes" for credit card rates.

South Dakota was the first to offer what amounted to unlimited interest rates to lure card issuers into relocating their headquarters. Sioux Falls alone employs more than 8,000 people in financial services, including credit card issuers.

For consumers across the country, the impact was a dramatic increase in the availability of credit cards. According to the American Bankers Association, 38 percent of American households had at least one credit card in 1977, the year before the Supreme Court ruling. By 1989, the percentage of families with at least one credit card was 56 percent. Today, it's about 75 percent.

The increased availability came at a price. It's no coincidence that South Dakota is the home state for subprime card issuer First Premier Bank, which gained notoriety for offering a card with an interest rate of 79.9 percent.

It is unlikely that Congress or the President will push for a national usury law to stop predatory lending. As with homeowners in default on their mortgages, credit card users are pretty much on their own.

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## Your Privacy and The Internet

Last month, The New York Times reported that "privacy advocates are pushing (for rules) that would allow internet users to stop websites from surreptitiously tracking their online habits and collecting clues about age, salary, health, location and leisure activities."

We have a constitutional right to be left alone -- the right to pursue life, liberty and happiness without unwarranted scrutiny, physical or electronic invasion. This right is challenged by surreptitious data gathering on the internet.

New technology allows strangers to learn where your mouse sits on your desktop, what sites you visit and for how long, and to track your movement from one website to another. As more and more of our daily activities for work, for play, and everyday living involve the internet, our lives are open to surveillance and the misappropriation and misuse of personal information.

For example, if you seem to be getting an unusual number of electronic ads from weight loss firms, maybe you visited food.com once too often or just ordered a subscription to "Cooking Light." If you visit an "adult" talk or chat room, you may find yourself inundated with invitations to visit any number of more salacious porn sites.

Currently, there are no laws to deal with the proliferation of health care or medical information, or credit or financial information available on the web. There are no standards for use of the information collected. Consumers have no right to know who is collecting personal information about them, nor what information is collected or how it is being used. Unfortunately, the only advice, which is not particularly helpful, is to be extremely cautious and careful of how you use the internet.

## *Kates Nussman Attorney Named to Head Up “Wills for Heroes”*

Firm Associate *Erin E. Dowgin* has been named as the New Jersey coordinator for the **Wills for Heroes Foundation**. **Wills for Heroes** is a not-for-profit organization which, through volunteer attorneys, provides essential legal documents, free of charge, to our nation’s first responders as well as their spouses and partners. By providing free wills, living wills, and powers of attorney, **Wills for Heroes** works to give back to the community by "protecting those who protect us." We commend Erin for her service to those on who we depend so much, but too often take for granted. (<http://www.willsforheroes.org/>)

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To learn more about Kates, Nussman, Rapone, Ellis, & Farhi visit the website at

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## Do Children Have the Right to Remain Silent?

The U.S. Supreme Court has decided to hear the case of a young person interrogated by the police at his school without his parents or a lawyer present..

The case could determine whether the famous "Miranda" warnings -- which allow suspects to remain silent and to have access to an attorney -- should apply to children.

The 13-year old was questioned at his school by a police officer in September 2005 about burglaries that had occurred off school property and outside of school hours. Police questioned the youth in a confined conference room, with no parent or guardian present. During the interrogation, the teen admitted to having entered the houses with another juvenile and taking various items.

The defendant's lawyers want the court to exclude his statements he made to investigators in the case, saying his constitutional rights had been violated because he has not been informed that he had the right to remain silent.

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