S T A T E O F N E W Y O R K

7379

I N S E N A T E

April 5, 2010

Introduced by Sen. ADAMS -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the executive law, in relation to authorizing the secretary of state to accept service of process and receipt of mail on behalf of victims of domestic violence for the purpose of maintaining the confidentiality of the location of such victims

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The executive law is amended by adding a new section 108 to read as follows:

S 108. ADDRESS CONFIDENTIALITY PROGRAM. THERE IS CREATED IN THE OFFICE OF THE SECRETARY OF STATE A PROGRAM TO BE KNOWN AS THE "ADDRESS CONFIDENTIALITY PROGRAM" TO PROTECT VICTIMS OF DOMESTIC VIOLENCE BY AUTHORIZING THE USE OF DESIGNATED ADDRESSES FOR SUCH VICTIMS AND THEIR MINOR CHILDREN. THE PROGRAM SHALL BE ADMINISTERED BY THE SECRETARY OF STATE.

1. DEFINITIONS. FOR THE PURPOSES OF THIS SECTION THE FOLLOWING WORDS SHALL, UNLESS THE CONTEXT REQUIRES OTHERWISE, HAVE THE FOLLOWING MEANINGS:

(A) "DOMESTIC VIOLENCE" MEANS AN ACT WHICH WOULD CONSTITUTE A VIOLATION OF THE PENAL LAW, INCLUDING, BUT NOT LIMITED TO, AN ACT AS DEFINED IN SUBDIVISION ONE OF SECTION EIGHT HUNDRED TWELVE OF THE FAMILY COURT ACT, WHERE SUCH ACT IS OR HAS ALLEGED TO HAVE BEEN COMMITTED BY A MEMBER OF THE SAME FAMILY OR HOUSEHOLD AS DEFINED IN SUBDIVISION ONE OF SECTION EIGHT HUNDRED TWELVE OF THE FAMILY COURT ACT, AND INCLUDES A THREAT OF ANY SUCH ACT, REGARDLESS OF WHETHER THE ACT OR THREAT THEREOF HAS BEEN REPORTED TO LAW ENFORCEMENT OFFICERS.

(B) "ACTUAL ADDRESS" MEANS THE RESIDENTIAL STREET ADDRESS, SCHOOL ADDRESS OR WORK ADDRESS OF AN INDIVIDUAL, AS SPECIFIED ON HIS OR HER APPLICATION TO BE A PROGRAM PARTICIPANT UNDER THIS SECTION.

(C) "PROGRAM PARTICIPANT" MEANS A PERSON CERTIFIED AS A PROGRAM PARTICIPANT UNDER THIS SECTION.

(D) "MAIL" MEANS FIRST CLASS LETTERS DELIVERED VIA THE UNITED STATES POSTAL SERVICE, INCLUDING PRIORITY, EXPRESS AND CERTIFIED MAIL, AND

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD16352-02-0

EXCLUDING PACKAGES, PARCELS, PERIODICALS AND CATALOGUES, UNLESS THEY ARE CLEARLY IDENTIFIABLE AS PHARMACEUTICALS OR CLEARLY INDICATE THAT THEY ARE SENT BY A GOVERNMENT AGENCY.

(E) "SUBSTITUTE ADDRESS" MEANS THE SECRETARY'S DESIGNATED ADDRESS FOR THE ADDRESS CONFIDENTIALITY PROGRAM.

(F) "SECRETARY" MEANS THE SECRETARY OF STATE.

2. ADDRESS CONFIDENTIALITY PROGRAM; APPLICATION; CERTIFICATION. (A) AN ADULT PERSON, A PARENT OR LEGAL GUARDIAN ACTING ON BEHALF OF A MINOR, OR A LEGAL GUARDIAN ACTING ON BEHALF OF AN INCAPACITATED PERSON, MAY APPLY TO THE SECRETARY TO HAVE AN ADDRESS DESIGNATED BY THE SECRETARY TO SERVE AS THE PERSON'S ADDRESS OR ADDRESS OF THE MINOR OR INCAPACITATED PERSON IN LIEU OF THE PERSON'S ACTUAL ADDRESS. THE SECRETARY SHALL APPROVE AN APPLICATION IF IT IS FILED IN THE MANNER AND ON THE FORM PRESCRIBED BY THE SECRETARY, AND IF IT INCLUDES:

(I) A SIGNED WRITTEN STATEMENT MADE UNDER OATH BY THE APPLICANT THAT:

(A) THE APPLICANT, OR THE MINOR OR INCAPACITATED PERSON ON WHOSE BEHALF THE APPLICATION IS MADE, IS A VICTIM OF DOMESTIC VIOLENCE;

(B) THE APPLICANT, OR THE MINOR OR INCAPACITATED PERSON ON WHOSE BEHALF THE APPLICATION IS MADE, HAS LEFT HIS OR HER RESIDENCE BECAUSE OF SUCH VIOLENCE;

(C) THE APPLICANT FEARS FOR HIS OR HER SAFETY OR HIS OR HER CHILDREN'S SAFETY, OR THE SAFETY OF THE MINOR OR INCAPACITATED PERSON ON WHOSE BEHALF THE APPLICATION IS MADE; AND

(D) THE PARENT OR LEGAL GUARDIAN APPLYING ON BEHALF OF A MINOR OR INCAPACITATED PERSON HAS LEGAL AUTHORITY TO ACT ON THE PERSON'S BEHALF;

(II) A DESIGNATION OF THE SECRETARY AS AGENT FOR PURPOSES OF SERVICE OF PROCESS AND FOR THE PURPOSE OF RECEIPT OF MAIL;

(III) THE MAILING ADDRESS WHERE THE APPLICANT CAN BE CONTACTED BY THE SECRETARY AND THE TELEPHONE NUMBER OR NUMBERS WHERE THE APPLICANT CAN BE CALLED BY THE SECRETARY;

(IV) THE ACTUAL ADDRESS OR ADDRESSES THAT THE APPLICANT REQUESTS NOT BE DISCLOSED BECAUSE OF THE INCREASED RISK OF DOMESTIC VIOLENCE; AND

(V) THE SIGNATURE OF THE APPLICANT AND THE NAME AND SIGNATURE OF ANY INDIVIDUAL OR REPRESENTATIVE OF ANY OFFICE DESIGNATED BY THE SECRETARY UNDER SUBDIVISION THREE OF THIS SECTION WHO ASSISTED IN THE PREPARATION OF THE APPLICATION, AND THE DATE ON WHICH THE APPLICANT SIGNED THE APPLICATION.

(B) THE SECRETARY SHALL ESTABLISH, DISTRIBUTE AND MAKE AVAILABLE A FORM FOR THE PURPOSE OF MAKING APPLICATIONS PURSUANT TO THIS SECTION.

(C) APPLICATIONS SHALL BE FILED WITH THE OFFICE OF THE SECRETARY.

(D) UPON RECEIPT OF A PROPERLY COMPLETED APPLICATION, THE SECRETARY SHALL CERTIFY THE APPLICANT AS A PROGRAM PARTICIPANT AND SHALL SERVE AS THE PARTICIPANT'S AGENT FOR SERVICE OF PROCESS AND RECEIPT OF MAIL FOR THE DURATION OF THE TERM OF CERTIFICATION.

(E) PARTICIPANTS SHALL BE CERTIFIED FOR FOUR YEARS FOLLOWING THE DATE OF FILING, UNLESS THE CERTIFICATION IS WITHDRAWN OR CANCELLED BEFORE THAT DATE. THE SECRETARY SHALL PROMULGATE RULES AND REGULATIONS FOR RENEWAL OF APPLICATIONS PURSUANT TO THIS SECTION.

3. DESIGNATION OF AGENCIES TO ASSIST APPLICANTS. THE SECRETARY SHALL DESIGNATE STATE, LOCAL OR NONPROFIT AGENCIES THAT PROVIDE COUNSELING, REFERRAL, SHELTER OR OTHER SPECIALIZED SERVICES TO VICTIMS OF DOMESTIC VIOLENCE TO ASSIST PERSONS APPLYING TO BE PROGRAM PARTICIPANTS. SUCH PERSONS PROVIDING ASSISTANCE SHALL BE TRAINED BY THE SECRETARY. ANY ASSISTANCE AND COUNSELING RENDERED BY AN OFFICER OF THE SECRETARY OR HIS OR HER DESIGNEES TO APPLICANTS SHALL IN NO WAY BE CONSTRUED AS LEGAL ADVICE.

4. USE AND ACCEPTANCE OF SUBSTITUTE ADDRESS; MAIL FORWARDING. (A) A PROGRAM PARTICIPANT MAY REQUEST THAT STATE AND LOCAL AGENCIES USE THE SUBSTITUTE ADDRESS. WHEN CREATING, MODIFYING OR MAINTAINING A PUBLIC RECORD, STATE AND LOCAL AGENCIES SHALL ACCEPT THE SUBSTITUTE ADDRESS UPON DEMONSTRATION BY A PROGRAM PARTICIPANT OF HIS OR HER CERTIFICATION IN THE PROGRAM, UNLESS THE SECRETARY WAIVES THIS REQUIREMENT AFTER DETERMINING THAT:

(I) THE AGENCY HAS A BONA FIDE STATUTORY OR ADMINISTRATIVE REQUIREMENT FOR THE USE OF THE PARTICIPANT'S ACTUAL ADDRESS WHICH WOULD OTHERWISE BE CONFIDENTIAL UNDER THIS SECTION; AND

(II) THE AGENCY HAS EXPLAINED HOW ITS ACCEPTANCE OF THE SUBSTITUTE ADDRESS WILL PREVENT THE AGENCY FROM MEETING ITS OBLIGATIONS UNDER THE LAW AND WHY IT CANNOT MEET ITS STATUTORY OR ADMINISTRATIVE OBLIGATION BY A CHANGE IN ITS INTERNAL PROCEDURES.

(B) ANY AGENCY RECEIVING A WAIVER SHALL MAINTAIN THE CONFIDENTIALITY OF THE PROGRAM PARTICIPANT'S ADDRESS BY REDACTING THE ACTUAL ADDRESS WHEN THE RECORD IS RELEASED TO ANY PERSON AND SHALL NOT MAKE THE PROGRAM PARTICIPANT'S ACTUAL ADDRESS AVAILABLE FOR INSPECTION OR COPYING, EXCEPT UNDER THE FOLLOWING CIRCUMSTANCES:

(I) IF REQUESTED BY A LAW ENFORCEMENT AGENCY FOR A LEGITIMATE LAW ENFORCEMENT PURPOSE AS DETERMINED BY THE LAW ENFORCEMENT AGENCY; OR

(II) IF DIRECTED BY A COURT ORDER TO A PERSON IDENTIFIED IN THE ORDER.

(C) UPON RECEIPT BY THE SECRETARY OF A PROCESS OR MAIL FOR A PARTICIPANT, THE OFFICE OF THE SECRETARY SHALL IMMEDIATELY FORWARD ALL SUCH PROCESS OR MAIL TO THE APPROPRIATE PROGRAM PARTICIPANTS AT THEIR ACTUAL ADDRESS, AND SHALL RECORD THE DATE OF SUCH FORWARDING.

(D) A PROGRAM PARTICIPANT MAY USE THE SUBSTITUTE ADDRESS AS HIS OR HER WORK ADDRESS.

(E) THE SECRETARY OR ANY MEMBER OF THE DEPARTMENT OF STATE WHO REASONABLY AND IN GOOD FAITH HANDLES ANY PROCESS OR MAIL ON BEHALF OF A PARTICIPANT IN ACCORDANCE WITH THIS SECTION SHALL BE IMMUNE FROM ANY CIVIL LIABILITY WHICH MIGHT OTHERWISE RESULT BY REASON OF SUCH ACTIONS.

5. CANCELLATION OF CERTIFICATION. (A) THE SECRETARY MAY CANCEL A PROGRAM PARTICIPANT'S CERTIFICATION IF, AFTER THE PASSAGE OF FOURTEEN DAYS:

(I) FROM THE DATE OF CHANGING HIS OR HER NAME, THE PROGRAM PARTICIPANT DOES NOT NOTIFY THE SECRETARY THAT HE OR SHE HAS OBTAINED A NAME CHANGE; HOWEVER, THE PROGRAM PARTICIPANT MAY REAPPLY UNDER HIS OR HER NEW NAME;

(II) FROM THE DATE OF CHANGING HIS OR HER ACTUAL ADDRESS, THE PROGRAM PARTICIPANT FAILS TO NOTIFY THE SECRETARY OF THE CHANGE OF SUCH ADDRESS; OR

(III) FROM THE DATE THE SECRETARY FIRST RECEIVES MAIL, FORWARDED TO THE PROGRAM PARTICIPANT'S ADDRESS, RETURNED AS NON-DELIVERABLE.

(B) THE SECRETARY SHALL CANCEL CERTIFICATION OF A PROGRAM PARTICIPANT WHO APPLIES USING FALSE INFORMATION.

(C) THE SECRETARY SHALL CANCEL CERTIFICATION OF A PROGRAM PARTICIPANT IF THE PARTICIPANT'S CERTIFICATION TERM HAS EXPIRED AND CERTIFICATION RENEWAL HAS NOT BEEN COMPLETED.

(D) THE SECRETARY SHALL SEND NOTICE OF CANCELLATION TO THE PROGRAM PARTICIPANT. NOTICE OF CANCELLATION SHALL SET OUT THE REASONS FOR CANCELLATION. THE PROGRAM PARTICIPANT SHALL HAVE THIRTY DAYS TO APPEAL THE CANCELLATION DECISION UNDER PROCEDURES DEVELOPED BY THE SECRETARY.

(E) PROGRAM PARTICIPANTS MAY WITHDRAW FROM THE PROGRAM BY GIVING THE SECRETARY WRITTEN NOTICE OF THEIR WITHDRAWAL AND HIS OR HER CURRENT IDENTIFICATION CARD. THE SECRETARY SHALL ESTABLISH, BY RULE, A SECURE PROCEDURE FOR ENSURING THAT THE REQUEST FOR WITHDRAWAL IS LEGITIMATE.

(F) ANY RECORDS OR DOCUMENTS PERTAINING TO A PROGRAM PARTICIPANT SHALL NOT BE A PUBLIC RECORD AND SHALL BE RETAINED AND HELD CONFIDENTIAL FOR A PERIOD OF THREE YEARS AFTER TERMINATION OF CERTIFICATION AND THEN DESTROYED.

6. DISCLOSURE OF PARTICIPANT'S ADDRESS PROHIBITED; EXCEPTIONS. THE SECRETARY SHALL NOT MAKE A PROGRAM PARTICIPANT'S ADDRESS, OTHER THAN THE SUBSTITUTE ADDRESS, AVAILABLE FOR INSPECTION OR COPYING, EXCEPT UNDER ANY OF THE FOLLOWING CIRCUMSTANCES:

(A) IF REQUESTED BY A LAW ENFORCEMENT AGENCY FOR A LEGITIMATE LAW ENFORCEMENT PURPOSE AS DETERMINED BY THE LAW ENFORCEMENT AGENCY; OR

(B) TO A PERSON IDENTIFIED IN A COURT ORDER, UPON THE SECRETARY'S RECEIPT OF THAT COURT ORDER WHICH SPECIFICALLY ORDERS THE DISCLOSURE OF A PARTICULAR PROGRAM PARTICIPANT'S ADDRESS AND THE REASONS STATED THEREFOR; OR

(C) TO VERIFY THE PARTICIPATION OF A SPECIFIC PROGRAM PARTICIPANT, IN WHICH CASE THE SECRETARY MAY ONLY CONFIRM INFORMATION SUPPLIED BY THE REQUESTER.

7. RULES AND REGULATIONS. THE SECRETARY SHALL PROMULGATE RULES AND REGULATIONS NECESSARY TO IMPLEMENT THE PROVISIONS OF THIS SECTION.

8. REPORT TO THE LEGISLATURE. THE SECRETARY SHALL SUBMIT TO THE LEGISLATURE, NO LATER THAN FEBRUARY FIRST OF EACH YEAR, A REPORT THAT INCLUDES FOR EACH COUNTY, THE TOTAL NUMBER OF APPLICATIONS RECEIVED, THE TOTAL NUMBER OF PERSONS PARTICIPATING IN THE PROGRAM ESTABLISHED BY THIS SECTION DURING THE PREVIOUS CALENDAR YEAR AND THE TOTAL NUMBER OF PIECES OF MAIL FORWARDED TO PROGRAM PARTICIPANTS DURING THE PREVIOUS CALENDAR YEAR.

S 2. This act shall take effect nine months from the date it shall have become a law; provided, however, that the secretary of state is authorized and directed to promulgate all rules, regulations and forms necessary to implement the provisions of this act, on its effective date, on or before such date.