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

2913

2009-2010 Regular Sessions

I N A S S E M B L Y

January 21, 2009

Introduced by M. of A. KOON -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law, in relation to establishing the "Address Confidentiality Act" which allows state and local agencies to respond to requests for public records without disclosing the location of certain victims

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

Section 1. Short title. This act shall be known and may be cited as the "Address Confidentiality Act".

S 2. Legislative intent. The legislature finds that persons attempting to escape from actual or threatened abuse, sexual assault, or threatened abuse, sexual assault, or stalking frequently establish new addresses in order to prevent their assailants or probable assailants from finding them. The purposes of the address confidentiality act are to enable state and local agencies to respond to requests for public records without disclosing the location of a victim of abuse, sexual assault, or stalking, to enable interagency cooperation with the office of the secretary of state in providing address confidentiality for victims of abuse, sexual assault, or stalking, and to enable state and local agencies to accept a program participant's use of an address designated by the secretary of state as a substitute mailing address.

S 3. The executive law is amended by adding a new article 21-C to read as follows:

ARTICLE 21-C

ADDRESS CONFIDENTIALITY ACT

SECTION 613. DEFINITIONS.

614. SUBSTITUTE ADDRESS; APPLICATION TO SECRETARY OF STATE; APPROVAL; CERTIFICATION; RENEWAL; PROHIBITED ACTS; VIOLATION; PENALTY.

615. CERTIFICATION; FORFEITURE OR CANCELLATION.

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

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616. ADDRESS OR SUBSTITUTE ADDRESS; USE.
617. VOTE AS ABSENTEE VOTER; AUTHORIZATION.
618. SECRETARY OF STATE; USE OF SUBSTITUTE ADDRESS; EXCEPTIONS.
619. PROGRAM PARTICIPANTS; APPLICATION ASSISTANCE.

S 613. DEFINITIONS. FOR PURPOSES OF THIS ARTICLE THE FOLLOWING WORDS AND PHRASES SHALL HAVE THE FOLLOWING MEANINGS:

1. "ABUSE" MEANS CAUSING OR ATTEMPTING TO CAUSE PHYSICAL HARM, PLACING ANOTHER PERSON IN FEAR OF PHYSICAL HARM, OR CAUSING ANOTHER PERSON TO ENGAGE INVOLUNTARILY IN SEXUAL ACTIVITY BY FORCE, THREAT OF FORCE, OR DURESS, WHEN COMMITTED BY (A) A PERSON AGAINST HIS OR HER SPOUSE, (B) A PERSON AGAINST HIS OR HER FORMER SPOUSE, (C) A PERSON RESIDING WITH THE VICTIM IF SUCH PERSON AND THE VICTIM ARE OR WERE IN A DATING RELATIONSHIP, (D) A PERSON WHO FORMERLY RESIDED WITH THE VICTIM IF SUCH PERSON AND THE VICTIM ARE OR WERE IN A DATING RELATIONSHIP, (E) A PERSON AGAINST A PARENT OF HIS OR HER CHILDREN, WHETHER OR NOT SUCH PERSON AND THE VICTIM HAVE BEEN MARRIED OR RESIDED TOGETHER AT ANY TIME, (F) A PERSON AGAINST A PERSON WITH WHOM HE OR SHE IS IN A DATING RELATIONSHIP, (G) A PERSON AGAINST A PERSON WITH WHOM HE OR SHE FORMERLY WAS IN A DATING RELATIONSHIP, OR (H) A PERSON RELATED TO THE VICTIM BY CONSANGUINITY OR AFFINITY;

2. "ADDRESS" MEANS A RESIDENTIAL STREET ADDRESS, SCHOOL ADDRESS, OR WORK ADDRESS OF AN INDIVIDUAL AS SPECIFIED ON THE INDIVIDUAL'S APPLICATION TO BE A PROGRAM PARTICIPANT;

3. "DATING RELATIONSHIP" MEANS AN INTIMATE OR SEXUAL RELATIONSHIP;

4. "PROGRAM PARTICIPANT" MEANS A PERSON CERTIFIED AS A PROGRAM PARTICIPANT PURSUANT TO SECTION SIX HUNDRED FOURTEEN OF THIS ARTICLE.

S 614. SUBSTITUTE ADDRESS; APPLICATION TO SECRETARY OF STATE; APPROVAL; CERTIFICATION; RENEWAL; PROHIBITED ACTS; VIOLATION; PENALTY. 1. AN ADULT, A PARENT OR GUARDIAN ACTING ON BEHALF OF A MINOR, OR A GUARDIAN ACTING ON BEHALF OF AN INCAPACITATED PERSON MAY APPLY TO THE SECRETARY OF STATE TO HAVE AN ADDRESS DESIGNATED BY THE SECRETARY OF STATE SERVE AS THE SUBSTITUTE ADDRESS OF SUCH ADULT, MINOR, OR INCAPACITATED PERSON. THE SECRETARY OF STATE SHALL APPROVE AN APPLICATION IF IT IS FILED IN THE MANNER AND ON THE FORM PRESCRIBED BY THE SECRETARY OF STATE AND IF IT CONTAINS:

(A) A SWORN STATEMENT BY THE APPLICANT THAT THE APPLICANT HAS GOOD REASON TO BELIEVE (I) THAT THE APPLICANT, OR THE MINOR OR INCAPACITATED PERSON ON WHOSE BEHALF THE APPLICATION IS MADE, IS A VICTIM OF ABUSE, SEXUAL ASSAULT, OR STALKING AND (II) THAT THE APPLICANT FEARS FOR HIS OR HER SAFETY, HIS OR HER CHILDREN'S SAFETY, OR THE SAFETY OF THE MINOR OR INCAPACITATED PERSON ON WHOSE BEHALF THE APPLICATION IS MADE;

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

(C) THE MAILING ADDRESS AND THE TELEPHONE NUMBER OR NUMBERS WHERE THE APPLICANT CAN BE CONTACTED BY THE SECRETARY OF STATE;

(D) THE NEW ADDRESS OR ADDRESSES THAT THE APPLICANT REQUESTS NOT BE DISCLOSED FOR THE REASON THAT DISCLOSURE WILL INCREASE THE RISK OF ABUSE, SEXUAL ASSAULT, OR STALKING; AND

(E) THE SIGNATURE OF THE APPLICANT AND OF ANY INDIVIDUAL OR REPRESENTATIVE OF ANY OFFICE DESIGNATED IN WRITING PURSUANT TO SECTION SIX HUNDRED NINETEEN OF THIS ARTICLE WHO ASSISTED IN THE PREPARATION OF THE APPLICATION AND THE DATE ON WHICH THE APPLICANT SIGNED THE APPLICATION.

2. APPLICATIONS SHALL BE FILED IN THE OFFICE OF THE SECRETARY OF STATE.

3. UPON FILING A PROPERLY COMPLETED APPLICATION, THE SECRETARY OF STATE SHALL CERTIFY THE APPLICANT AS A PROGRAM PARTICIPANT. SUCH

CERTIFICATION SHALL BE VALID FOR FOUR YEARS FOLLOWING THE DATE OF FILING UNLESS THE CERTIFICATION IS WITHDRAWN OR INVALIDATED BEFORE THAT DATE. THE SECRETARY OF STATE MAY BY RULE AND REGULATION ESTABLISH A RENEWAL PROCEDURE.

4. A PERSON WHO FALSELY ATTESTS IN AN APPLICATION THAT DISCLOSURE OF THE APPLICANT'S ADDRESS WOULD ENDANGER THE APPLICANT, THE APPLICANT'S CHILDREN, OR THE MINOR OR INCAPACITATED PERSON ON WHOSE BEHALF THE APPLICATION IS MADE, OR WHO KNOWINGLY PROVIDES FALSE OR INCORRECT INFORMATION UPON MAKING AN APPLICATION, IS GUILTY OF A CLASS B MISDEMEANOR.

S 615. CERTIFICATION; FORFEITURE OR CANCELLATION. 1. IF A PROGRAM PARTICIPANT OBTAINS A NAME CHANGE, HE OR SHE SHALL FORFEIT HIS OR HER CERTIFICATION AS A PROGRAM PARTICIPANT UNLESS THE PROGRAM PARTICIPANT APPLIES TO THE SECRETARY OF STATE FOR RECERTIFICATION AND PROVIDES DOCUMENTATION OF THE LEGAL NAME CHANGE.

2. THE SECRETARY OF STATE MAY CANCEL A PROGRAM PARTICIPANT'S CERTIFICATION IF THERE IS A CHANGE IN THE MAILING ADDRESS FROM THE ONE LISTED ON THE APPLICATION PURSUANT TO SECTION SIX HUNDRED FOURTEEN OF THIS ARTICLE, UNLESS THE PROGRAM PARTICIPANT PROVIDES THE SECRETARY OF STATE WITH NOTICE OF THE CHANGE OF ADDRESS IN SUCH MANNER AS IS PROVIDED BY RULES AND REGULATIONS ADOPTED AND PROMULGATED BY THE SECRETARY OF STATE.

3. THE SECRETARY OF STATE MAY CANCEL CERTIFICATION OF A PROGRAM PARTICIPANT'S ADDRESS IF MAIL FORWARDED TO THE PROGRAM PARTICIPANT'S ADDRESS IS RETURNED AS UNDELIVERABLE.

4. THE SECRETARY OF STATE SHALL CANCEL CERTIFICATION OF A PROGRAM PARTICIPANT WHO APPLIES USING FALSE INFORMATION.

S 616. ADDRESS OR SUBSTITUTE ADDRESS; USE. 1. A PROGRAM PARTICIPANT MAY REQUEST THAT STATE AND LOCAL AGENCIES USE THE ADDRESS DESIGNATED BY THE SECRETARY OF STATE AS THE PROGRAM PARTICIPANT'S SUBSTITUTE ADDRESS. WHEN CREATING A NEW PUBLIC RECORD, A STATE OR LOCAL AGENCY WHICH HAS A BONA FIDE STATUTORY, TAX SITUS, OR ADMINISTRATIVE REQUIREMENT FOR THE PARTICIPANT'S RESIDENCE ADDRESS MAY REQUEST THAT THE PARTICIPANT VERBALLY PROVIDE THE AGENCY WITH SUCH RESIDENCE ADDRESS IF THE AGENCY HAS THE CAPABILITY TO USE SUCH ADDRESS FOR SUCH BONA FIDE PURPOSE WITHOUT PERMANENTLY ENTERING IT INTO THE AGENCY'S RECORDS. IF THE AGENCY DOES NOT HAVE SUCH CAPABILITY, IT SHALL ACCEPT THE ADDRESS DESIGNATED BY THE SECRETARY OF STATE AS A PROGRAM PARTICIPANT'S SUBSTITUTE ADDRESS, UNLESS THE SECRETARY OF STATE DETERMINES THAT:

(A) THE STATE OR LOCAL AGENCY HAS A BONA FIDE STATUTORY, TAX SITUS, OR ADMINISTRATIVE REQUIREMENT FOR THE USE OF THE ADDRESS WHICH WOULD OTHERWISE BE CONFIDENTIAL UNDER THE ADDRESS CONFIDENTIALITY ACT; AND

(B) THE ADDRESS WILL BE USED ONLY FOR SUCH BONA FIDE STATUTORY, TAX SITUS, OR ADMINISTRATIVE REQUIREMENT.

2. THE SECRETARY OF STATE SHALL FORWARD ALL FIRST-CLASS MAIL TO EACH PROGRAM PARTICIPANT'S SUBSTITUTE ADDRESS.

S 617. VOTE AS ABSENTEE VOTER; AUTHORIZATION. 1. A PROGRAM PARTICIPANT WHO IS OTHERWISE QUALIFIED TO VOTE MAY APPLY AS AN ABSENTEE VOTER PURSUANT TO SECTION 8-400 OF THE ELECTION LAW. THE COUNTY CLERK OR ELECTION COMMISSIONER SHALL TRANSMIT THE ABSENTEE BALLOT TO THE PROGRAM PARTICIPANT AT THE ADDRESS DESIGNATED BY THE PROGRAM PARTICIPANT IN HIS OR HER APPLICATION AS AN ABSENTEE VOTER. NEITHER THE NAME NOR THE ADDRESS OF A PROGRAM PARTICIPANT SHALL BE INCLUDED IN ANY LIST OF REGISTERED VOTERS AVAILABLE TO THE PUBLIC.

2. THE COUNTY CLERK OR ELECTION COMMISSIONER SHALL NOT MAKE A PROGRAM PARTICIPANT'S ADDRESS CONTAINED IN VOTER REGISTRATION RECORDS AVAILABLE FOR PUBLIC INSPECTION OR COPYING EXCEPT UNDER THE FOLLOWING CIRCUMSTANCES:

(A) IF REQUESTED BY A LAW ENFORCEMENT AGENCY, TO THE LAW ENFORCEMENT AGENCY; OR

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

S 618. SECRETARY OF STATE; USE OF SUBSTITUTE ADDRESS; EXCEPTIONS. THE SECRETARY OF STATE SHALL NOT MAKE ANY RECORDS IN A PROGRAM PARTICIPANT'S FILE AVAILABLE FOR INSPECTION OR COPYING, OTHER THAN THE SUBSTITUTE ADDRESS DESIGNATED BY THE SECRETARY OF STATE, EXCEPT UNDER THE FOLLOWING CIRCUMSTANCES:

1. IF REQUESTED OF THE SECRETARY OF STATE BY THE CHIEF COMMANDING OFFICER OF A LAW ENFORCEMENT AGENCY OR THE OFFICER'S DESIGNEE IN THE MANNER PROVIDED FOR BY RULES AND REGULATIONS ADOPTED AND PROMULGATED BY THE SECRETARY OF STATE;

2. TO A PERSON IDENTIFIED IN A COURT ORDER UPON THE RECEIPT BY THE SECRETARY OF STATE OF THAT COURT ORDER WHICH SPECIFICALLY ORDERS THE DISCLOSURE OF A PARTICULAR PROGRAM PARTICIPANT'S ADDRESS AND THE REASONS STATED THEREFOR; OR

3. TO VERIFY THE PARTICIPATION OF A SPECIFIC PROGRAM PARTICIPANT, IN WHICH CASE THE SECRETARY OF STATE MAY ONLY CONFIRM OR DENY INFORMATION SUPPLIED BY THE REQUESTER.

S 619. PROGRAM PARTICIPANTS; APPLICATION ASSISTANCE. THE SECRETARY OF STATE SHALL DESIGNATE STATE AND LOCAL AGENCIES AND NONPROFIT ENTITIES THAT PROVIDE COUNSELING AND SHELTER SERVICES TO VICTIMS OF ABUSE, SEXUAL ASSAULT, OR STALKING TO ASSIST PERSONS APPLYING TO BE PROGRAM PARTICIPANTS. ANY ASSISTANCE OR COUNSELING RENDERED BY THE OFFICE OF THE SECRETARY OF STATE OR ITS DESIGNEES TO SUCH APPLICANTS SHALL NOT BE DEEMED LEGAL ADVICE OR THE PRACTICE OF LAW.

S 4. This act shall take effect on the one hundred eightieth day after it shall have become a law. The secretary of state is authorized to promulgate any and all rules and regulations and take any other measures necessary to implement this act on or before such date.