

5293

2011-2012 Regular Sessions

I N S E N A T E

May 3, 2011

Introduced by Sen. BALL -- 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:

1 Section 1. The executive law is amended by adding a new section 108 to
2 read as follows:
3 S 108. ADDRESS CONFIDENTIALITY PROGRAM. THERE IS CREATED IN THE
4 OFFICE OF THE SECRETARY OF STATE A PROGRAM TO BE KNOWN AS THE "ADDRESS
5 CONFIDENTIALITY PROGRAM" TO PROTECT VICTIMS OF DOMESTIC VIOLENCE BY
6 AUTHORIZING THE USE OF DESIGNATED ADDRESSES FOR SUCH VICTIMS AND THEIR
7 MINOR CHILDREN. THE PROGRAM SHALL BE ADMINISTERED BY THE SECRETARY OF
8 STATE.
9 1. DEFINITIONS. FOR THE PURPOSES OF THIS SECTION THE FOLLOWING WORDS
10 SHALL, UNLESS THE CONTEXT REQUIRES OTHERWISE, HAVE THE FOLLOWING MEAN-
11 INGS:
12 (A) "VICTIM OF DOMESTIC VIOLENCE" SHALL HAVE THE SAME MEANING AS IS
13 ASCRIBED TO SUCH TERM BY SECTION FOUR HUNDRED FIFTY-NINE-A OF THE SOCIAL
14 SERVICES LAW.
15 (B) "ACTUAL ADDRESS" MEANS THE RESIDENTIAL STREET ADDRESS, SCHOOL
16 ADDRESS OR WORK ADDRESS OF AN INDIVIDUAL, AS SPECIFIED ON HIS OR HER
17 APPLICATION TO BE A PROGRAM PARTICIPANT UNDER THIS SECTION.
18 (C) "PROGRAM PARTICIPANT" MEANS A PERSON CERTIFIED AS A PROGRAM
19 PARTICIPANT UNDER THIS SECTION.
20 (D) "MAIL" MEANS FIRST CLASS LETTERS DELIVERED VIA THE UNITED STATES
21 POSTAL SERVICE, INCLUDING PRIORITY, EXPRESS AND CERTIFIED MAIL, AND
22 EXCLUDING PACKAGES, PARCELS, PERIODICALS AND CATALOGUES, UNLESS THEY ARE

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

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1 CLEARLY IDENTIFIABLE AS PHARMACEUTICALS OR CLEARLY INDICATE THAT THEY
2 ARE SENT BY A GOVERNMENT AGENCY.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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