

ACT 115

S.B. NO. 2346

A Bill for an Act Relating to Address Confidentiality.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
ADDRESS CONFIDENTIALITY PROGRAM**

§ -1 **Definitions.** As used in this chapter:

“Actual address” means a residential, work, or school address as specified on an applicant’s application and includes the applicant’s county of residence and voting precinct.

“Address confidentiality program” or “program” means the program established by section -2.

“Agency” means an agency or instrumentality of the State or any of its political subdivisions.

“Applicant” includes a primary applicant and a secondary applicant.

“Application assistant” means a current employee or volunteer serving a victim services organization who is certified by the program pursuant to this chapter to assist individuals with applications to participate in the program; provided that an application assistant shall not be an employee of the program.

“Department” means the department of the attorney general.

“Domestic abuse” shall have the same meaning as in section 586-1.

“Primary applicant” means an individual who is applying to participate in the address confidentiality program as a victim of domestic abuse, a sexual offense, or stalking; provided that a parent or guardian applying on behalf of a minor or an incapacitated person shall not be considered a primary applicant; provided further that a parent or guardian may apply as a secondary applicant under section -4.

“Program director” means the director of the address confidentiality program.

“Program participant” or “participant” means an individual accepted into the address confidentiality program, and includes a primary participant and a secondary participant.

“Public record” means all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, digital data, artifacts, or other documentary material, regardless of physical form or characteristics, made or received pursuant to law or ordinance in connection with the transaction of public business by a state or local government agency.

“Sexual offense” means an act described in section 707-730, 707-731, 707-732, 707-733, 707-733.6, 707-734, 707-741, 707-750, 707-752, 707-756, 707-757, or 707-759.

“Stalking” means any act described in sections 711-1106.4 and 711-1106.5.

“Substitute address” means an address that is used instead of an actual address and assigned to a participant under the address confidentiality program.

“Victim services organization” means a nonprofit, nongovernmental organization that provides assistance to, or advocates for, victims of domestic abuse or sexual violence, including rape crisis centers; an organization operating a shelter or providing professional counseling services; or an organization that provides assistance with the legal process including but not limited to the victim-witness assistance program and victim-witness assistance units established in section 28-111.

§ -2 Address confidentiality program; established. (a) There is established the address confidentiality program in the department of the attorney general to protect the confidentiality of the actual address of a victim of domestic abuse, a sexual offense, or stalking and to prevent the victim’s assailants or potential assailants from finding the victim through public records. The program shall:

- (1) Assign a substitute address to the program participant that shall be used by agencies;
- (2) Receive first-class, certified, or registered mail sent to a program participant at the substitute address and forward the mail to the program participant at no cost to the program participant; provided that the program shall not be required to track or maintain records of mail or to forward packages, bulk mail, or pre-sorted mail; provided further that the program shall maintain a log of certified or registered mail or service of legal process received on behalf of a program participant; and
- (3) Act as the agent of the program participant for purposes of service of all legal process in the State.

(b) The program shall consist of a program director and other personnel necessary for the efficient functioning of the program. The program director and personnel shall be appointed without regard to chapter 76, but shall be subject to chapter 89.

(c) The program director shall designate application assistants to assist applicants with the application process and assist in the certification of the applicant; provided that any assistance provided shall not be construed as legal advice.

§ -3 Filing and certification of applications; authorization card. (a) A primary applicant may apply to participate in the address confidentiality program and shall be assisted by an application assistant; provided that:

- (1) A parent or guardian may act on behalf of a minor who resides with the parent or guardian; and

- (2) A guardian shall act on behalf of an incapacitated individual.
- (b) The application shall be as prescribed by the program director and shall contain the following:
 - (1) The primary applicant's name;
 - (2) A statement by the primary applicant that the primary applicant is a victim of domestic abuse, a sexual offense, or stalking and that the primary applicant fears for the primary applicant's safety;
 - (3) Evidence that the primary applicant is a victim of domestic abuse, a sexual offense, or stalking, including any of the following:
 - (A) Records or files of a court or government agency including but not limited to police reports, valid restraining orders, injunctions against harassment, and documents from criminal cases;
 - (B) Documentation from a domestic abuse program, agency, or facility including but not limited to a women's shelter or safe house;
 - (C) Documentation from a sexual assault program; or
 - (D) Documentation from a medical professional, mental health provider, or other class of professionals designated by the program director from whom the primary applicant has sought assistance in dealing with the alleged domestic abuse, sexual offense, or stalking;
 - (4) A statement by the primary applicant that disclosure of the primary applicant's actual address will endanger the primary applicant's safety;
 - (5) A statement by the primary applicant that the primary applicant has confidentially relocated to an address in the State or will relocate to an address in the State within thirty days of the date of application and will not disclose the location to assailants or known potential assailants;
 - (6) The primary applicant's written consent that the program shall serve as the agent for the primary applicant for purposes of service of process and receiving mail;
 - (7) The mailing address and telephone number where the primary applicant may be contacted by the program;
 - (8) The actual address of the primary applicant;
 - (9) A statement as to whether there is any existing court order or court action involving the primary applicant or an individual identified in paragraph (10) related to dissolution of marriage proceedings, child support, or the allocation of parental responsibilities or parenting time, including the court that issued the order or has jurisdiction over the action;
 - (10) The name of any person who resides with the primary applicant who may apply as a secondary applicant pursuant to section -4 to ensure the safety of the primary applicant;
 - (11) The primary applicant's sworn statement that the information contained in the application is true;
 - (12) The application assistant's statement that the application assistant has met with and discussed the application with the primary applicant and that the application assistant recommends that the primary applicant be assigned a substitute address; and
 - (13) The date and signature of the primary applicant, the application assistant, and, if applicable, the primary applicant's parent or guardian.

(c) Upon the determination that an application has been properly completed, the program director may certify the primary applicant as a program participant and issue the program participant an address confidentiality program authorization card that shall include the participant's substitute address and remain valid for a period of time set forth by the program director; provided that the certification may be canceled pursuant to section -6.

(d) A certification may be renewed by filing a renewal application with the program no more than thirty days, but at least five days, prior to the expiration of the existing certification.

§ -4 Filing and certification of secondary applicants; authorization card. (a) The parent, spouse, domestic partner, child, or legal dependent of a program participant who resides at the same actual address as the program participant and whose participation in the program is necessary for the safety of the program participant may apply to the program as a secondary applicant and shall be assisted by an application assistant; provided that:

- (1) A parent or guardian may act on behalf of a minor who resides with the parent or guardian; and
- (2) A guardian shall act on behalf of an incapacitated individual.

(b) The application shall be as prescribed by the program director and shall contain the following:

- (1) The name of the secondary applicant;
- (2) The actual address of the secondary applicant;
- (3) The name of the program participant;
- (4) The actual address of the program participant;
- (5) A statement by the secondary applicant that disclosure of the secondary applicant's actual address will endanger the program participant's safety;
- (6) A statement by the program participant that the secondary applicant's participation is necessary for the program participant's safety;
- (7) A statement by the secondary applicant that the secondary applicant has confidentially relocated with the program participant or will confidentially relocate with the program participant within thirty days of the date of the application and will not disclose the location to assailants or known potential assailants of the program participant;
- (8) The secondary applicant's written consent that the program shall serve as the secondary applicant's agent for purposes of service of legal process and receiving mail;
- (9) The mailing address and telephone number where the secondary applicant may be contacted by the program;
- (10) The secondary applicant's sworn statement that the information contained in the application is true;
- (11) The program participant's sworn statement that the information contained in the secondary applicant's application is true;
- (12) An application assistant's statement that the application assistant has met with and discussed the application with the secondary applicant and the program participant and that the application assistant recommends that the secondary applicant be assigned a substitute address; and
- (13) The date and signature of the secondary applicant, program participant, application assistant, and, if applicable, the secondary applicant's parent or guardian.

(c) Upon a determination that an application has been properly completed, the program director may certify the secondary applicant as a secondary program participant and issue the secondary program participant an address confidentiality program authorization card that shall include the program participant's substitute address and remain valid for the same period of time as the program participant's certification; provided that the certification may be canceled pursuant to section -6 or if the program participant's certification is canceled for any reason.

(d) The secondary program participant shall submit an application to renew certification at the same time as the program participant.

(e) This chapter shall apply to the secondary program participant as if the secondary program participant was a program participant.

§ -5 Change of name, address, or telephone number. (a) Within thirty days of a legal name change, a program participant shall provide the program with a certified copy of a judgment, order, or any other documentation the program director deems to be sufficient evidence of the name change.

(b) Within ten days of a change in actual address or telephone number, a program participant shall notify the program of the change.

§ -6 Certification cancellation. (a) A program participant's certification shall be canceled if:

- (1) The program participant submits a written request for withdrawal of the certification;
- (2) The program participant fails to notify the program of a change in the program participant's legal name, mailing address, actual address, or telephone number;
- (3) The program participant knowingly submitted false information on the program application;
- (4) Mail forwarded by the program to the program participant is returned as undeliverable;
- (5) A renewal application pursuant to section -3(d) is not received or approved by the program; or
- (6) The program participant's mailing or actual address is not located in the State.

(b) The program director shall send to the program participant a notice of cancellation that includes the reasons for cancellation.

(c) An individual who ceases to be a program participant shall be responsible for notifying persons who use the substitute address that the substitute address is no longer valid.

(d) In accordance with program policies, any mail returned as undeliverable or any mail that continues to be received by the program following a certification cancellation may be returned to the sender or destroyed sixty days after the certification cancellation date.

§ -7 Appeal. Within thirty days of the date of the notice of denial of an application or of certification cancellation, an applicant or program participant may submit a written appeal to the department; provided that the appeal shall not be treated as a contested case as defined in chapter 91, and the appeal process shall not include a hearing and the department's final determination shall not be subject to judicial review.

§ -8 Service of process. (a) The service of process upon an agent of the program shall constitute service upon the program participant.

(b) Upon the receipt of service, the program shall forward the served document to the program participant within three calendar days of receipt; provided that if there is a legal requirement to act within a prescribed period of ten days or less after the service of process, notice, or demand, five days shall be added to the prescribed period; provided further that the program is not required to mail the served document by certified or registered mail.

(c) The program shall maintain records of any served documents.

§ -9 Address use by state agencies; waiver request. (a) The program participant shall be responsible for requesting that an agency use the participant's substitute address for all purposes for which the agency requires or requests a residential, work, or school address.

(b) When a program participant submits a current and valid address confidentiality program authorization card to an agency, the agency shall accept the substitute address on the card as the program participant's actual address to be used when creating a new public record; provided that:

- (1) The agency shall adopt procedures to prevent any disclosure of the program participant's mailing address, actual address, and telephone numbers that may be on file with the agency;
- (2) Election officials shall use a program participant's actual address for purposes of determining residency pursuant to section 11-13; provided that the substitute address shall be used for all other purposes and the program participant's name, mailing address, actual address, or telephone number shall not be published in any list or register;
- (3) The department of education shall use a program participant's actual address for school admission or assignment and the substitute address for student records;
- (4) For tax purposes, the substitute address shall be used solely as a mailing address or for purposes of public records and the department of taxation may require the program participant to provide an actual address if the address is necessary for the assessment of any taxes; provided that the substitute address shall be used as a mailing address and the actual address shall remain confidential;
- (5) Law enforcement may require the program participant to provide an actual address for a legitimate law enforcement purpose; provided that the actual address shall remain confidential and used solely for the legitimate law enforcement purpose; and
- (6) The department of human services may require the program participant to provide an actual address if the actual address is necessary for the department of human services to perform its functions; provided that the substitute address shall be used as a mailing address and the actual address shall remain confidential.

(c) An agency may submit a request for a waiver from the program by submitting a waiver request to the program director who shall notify the agency of the waiver acceptance or denial and provide the agency with the reasons for acceptance or denial of the request. The waiver request shall be in writing, be in a form designated by the program director, and include:

- (1) A statement of how participation in the program restricts the agency's ability to satisfy the agency's obligations;
- (2) A statement that upon acceptance of the waiver, the agency shall only use the participant's actual address for the purposes stated in the waiver request; and

- (3) A copy of the agency's policies and procedures regarding the use and confidentiality of an actual address.

§ -10 Disclosure of actual address prohibited; penalty. (a) Disclosure by the program of a program participant's actual address shall be prohibited unless required by order of a court. There shall be a presumption that the disclosure of any record of the program constitutes an unwarranted invasion of privacy and any applicant or program participant has a significant privacy interest in any information provided to the program.

(b) No court shall order the disclosure of a program participant's actual address unless the court finds by clear and convincing evidence that:

- (1) The disclosure of the actual address is necessary for a legitimate purpose;
- (2) The use of the substitute address would unduly frustrate the legitimate purpose; and
- (3) Taking into consideration the safety of the program participant, there is no reasonable alternative to disclosure of the actual address.

The court shall enter into the record written findings and any conditions on the disclosure of the actual address that are necessary to reasonably protect the safety and privacy of the program participant.

(c) Any court order requiring the disclosure of a program participant's actual address shall be stayed for ten days after written legal notice of the order is personally served upon the program participant; provided that if the participant cannot be physically located, service of the notice by certified mail to an agent of the program, in accordance with section -8(a), shall satisfy the requirements of this subsection; provided further that if service of the notice is performed in accordance with section -8(a), the additional time period of five days provided in section -8(b) shall be added to the prescribed ten day time period provided in this subsection.

(d) No employee, volunteer, or any person with access to the records of the program or the records of any agency that has received a request from the program participant to use a substitute address shall knowingly disclose any address or telephone number of a program participant other than the substitute address.

(e) Any person who violates subsection (d) shall be guilty of a misdemeanor.

§ -11 Prohibitions; penalty. (a) No applicant or program participant shall falsely attest that disclosure of the applicant's or program participant's actual address will endanger the applicant's or program participant's safety or knowingly provide false information on an initial application or an application for renewal.

(b) An applicant or program participant who violates this section shall be fined not more than \$500.

§ -12 Indemnification. Nothing in this chapter shall be construed to create a cause of action against the State, the counties, or any of their employees, agencies, officials, or volunteers except as set forth in section -10.

§ -13 Rulemaking authority. The attorney general shall adopt rules pursuant to chapter 91 as necessary to carry out the purposes of this chapter."

SECTION 2. This Act shall take effect on July 1, 2018.

(Approved July 5, 2018.)