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H.B. 429
133rd General Assembly

Bill Analysis

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Version: As Passed by the House

Primary Sponsor: Reps. LaRe and Abrams

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SUMMARY

Changes to Address Confidentiality Program

- Requires the Secretary of State to process applications to participate in the Address Confidentiality Program (also known as the Safe at Home Program) within ten business days.
- Requires a program participant who requests a government entity to use the program participant's substitute address to provide the person's program authorization card as proof of the person's status.
- Eliminates a requirement that an applicant for the program be changing residence in order to be eligible.
- Allows a program participant who purchases real property after becoming a program participant, and after the effective date of the bill, to file a real property confidentiality notice with the county recorder to prevent local officials from disclosing the participant's property records to the public.
- Permits the disclosure of the participant's property records only under certain circumstances, such as to carry out governmental duties or to allow a title examination.
- Allows a program participant seeking to acquire real property to provide a confidentiality notice to any person involved in the acquisition process.
- Specifies that certain real estate professionals are not liable for damages resulting from their failure to discover a defect in title, to properly index or record an interest in property, or to alert a professional to rely on confidential information, when that failure is the proximate result of an individual's participation in the program.
- Allows a city law director or similar chief legal officer to request access to a participant's confidential real property information for a legitimate governmental purpose.

- Permits a program participant to authorize the Secretary of State to disclose the participant's confidential information to certain persons.
- Gives a program participant who is a party to a child custody or child support proceeding the right to notice and a hearing before the court may disclose the participant's confidential information to another party.
- Requires the Secretary to forward to a program participant any periodicals to which the participant subscribes.
- Requires the Secretary to notify new program participants about their ability to file a real property confidentiality notice, to give a confidentiality notice to persons involved in the process of acquiring real property, and to authorize the Secretary to disclose their confidential information, as permitted under the bill.

County recorder fees

- Allows a county recorder to charge fees for certifying electronic records or other copies of documents, in addition to photocopies of records.
- Permits a county recorder to charge a fee for entering or indexing any reference by a separate recorded instrument.
- Allows a county recorder to accept electronic payment of fees for electronic recording.
- Limits a recording fee exemption for a wholly owned subsidiary of a land bank or for a county that has a land bank to instances where the documents being recorded pertain to the land bank's operations.

Technical corrections

- Corrects incorrect cross-references to provisions of continuing law related to the Address Confidentiality Program and to county recorders.

DETAILED ANALYSIS

Background on the Address Confidentiality Program

The Address Confidentiality Program, also called Safe at Home, allows victims of domestic violence, stalking, human trafficking, rape, or sexual battery who fear for their safety to keep their addresses confidential and out of the public record. The Secretary of State assigns participants a substitute post office box address that they may use in place of their actual addresses and forwards their mail to their actual addresses. In general, a government entity must accept and use a program participant's substitute address, while private employers, private schools, and other nongovernmental entities may, but are not required to, accept that

address. The law also includes methods for program participants to have confidential voter registration records and for the Secretary to receive legal service of process on their behalf.¹

Changes to the Address Confidentiality Program

Application processing time

The bill requires the Secretary of State to process applications to participate in the program within ten business days, including validating the application, certifying the participant, and issuing the participant a program authorization card. Existing law does not include a time limit for the Secretary to process applications.²

Program authorization card

Under the bill, a program participant who requests a government entity to use the program participant's substitute address must provide the person's program authorization card as proof of the person's status. Current law allows, but does not require, a program participant to do so.³

Change of residence

The bill eliminates a requirement that an applicant for the Address Confidentiality Program be changing residences at the time of applying, allowing applicants to participate in the program without moving. However, as is discussed below, a participant's real property records are confidential under the bill only if the participant acquires the property *after* becoming a participant. Presumably, many applicants still will move when entering the program as part of a larger safety plan because their current addresses are known to their abusers.⁴

Real property

Real property confidentiality notice

The bill allows a program participant who purchases real property after becoming a program participant, and after the effective date of the bill, to prevent the participant's property records from being disclosed to the public. Although existing law requires a government entity to use a program participant's substitute address in lieu of the participant's real address if the participant so requests, the law currently does not include a method for a government office that needs to maintain records about a program participant's actual residence, such as a county auditor, to keep the participant's property records confidential.

Under the bill, a program participant who acquires an ownership interest in real property may submit a real property confidentiality notice to the county recorder of the county

¹ R.C. 111.42 and 111.43; see also R.C. 111.44, not in the bill.

² R.C. 111.42(C).

³ R.C. 111.43(A).

⁴ R.C. 111.42.

where the real property is located. The notice must be on a form prescribed by the Secretary of State and must include all of the following:

- The participant's full name;
- The last four digits of the participant's Social Security number;
- The date the participant's program certification expires;
- The participant's program participant identification number;
- The address at which the participant may receive mail through the Secretary's office;
- The legal description and street address of the real property, which must be the same as the legal description and street address included on any instrument, such as a deed, concerning the real property that includes the participant's name and that has been presented to the county recorder for recording;
- The participant's signature.

The county recorder must transmit copies of the notice to the Secretary of State and to the county auditor, treasurer, and engineer in the county where the real property is located. Additionally, the program participant may deliver a real property confidentiality notice to the court of common pleas if the participant is a party to a proceeding there. The clerk must notify the Secretary that the clerk received the notice. If the participant's program certification is canceled, the Secretary must notify those local authorities within ten business days.

When real property is subject to a confidentiality notice under the bill, the government offices that have received the notice are prohibited from disclosing the program participant's name or contact information in conjunction with the property's address, legal description, or parcel number. For example, the program participant's name and contact information must be redacted from the property's listing in the publicly available version of the county auditor's property tax database or the county recorder's database of property ownership records. If a member of the public requests a copy of a property record, the property's address, legal description, or parcel number must be redacted.

A local official may provide a participant's complete property record only under the following circumstances:

- The record is disclosed to the staff of the office in order to carry out the duties of the office.
- The program participant is the person requesting the record.
- The program participant has authorized the disclosure to the person requesting the record by submitting a notarized statement to the Secretary of State. Upon receiving that statement from the participant, the Secretary must issue a written authorization to the local official to make the disclosure.
- The Secretary has authorized the person to perform a title examination on the property (see "**Title examinations**," below).

- A court of competent jurisdiction has ordered the disclosure.

Any person who knowingly discloses information that is subject to a real property confidentiality notice in any manner not authorized by the bill is guilty of a first degree misdemeanor, which is punishable by a maximum penalty of six months in jail and a \$1,000 fine. Continuing law applies the same penalty to any person who wrongfully discloses a program participant's confidential address or telephone number.

If the participant ceases to own the property, submits a notarized revocation of the confidentiality notice to the county recorder, or has the participant's certification canceled, then the information concerning the participant's interest in the property is no longer confidential. If the certification is canceled, the Secretary or the county recorder, as applicable, must notify the relevant officials.⁵

Notice to private parties

The bill also allows a program participant seeking to acquire real property to provide a confidentiality notice to any person involved in the acquisition process, which could include realtors, lawyers, sellers, or others. The notice must be in writing and include all of the following:

- The participant's name;
- A statement that the participant is a program participant;
- A statement that the person receiving the notice is prohibited from disclosing the participant's name, telephone number, electronic mail address, or any other information that may be used to identify the participant, in conjunction with the street address, legal description, or other information identifying the real property, unless the participant provides written notice authorizing the disclosure for a specific purpose or a court of competent jurisdiction orders the disclosure.

Any person involved with the acquisition process who receives the confidentiality notice must not disclose the confidential information listed above, except as specifically authorized. A person who knowingly discloses that information in violation of the bill is guilty of a first degree misdemeanor.⁶

Title examinations

If a person wishes to perform a title examination on property that is subject to a confidentiality notice, such as when the program participant is selling the property, the bill requires that person to apply to the Secretary of State for authorization. The application must include the purpose for which that person is applying, the applicant's relationship to the

⁵ R.C. 111.42(C)(5), 111.43(B), 111.431, 111.432, 111.45, 111.99, 149.43, 315.25, 317.13, 319.28, 321.25, and 2303.12. See also R.C. 2929.24 and 2929.28, not in the bill.

⁶ R.C. 111.432 and 111.99.

participant, a legal description of the property, the applicant's signature, and a statement that the applicant will treat the information as confidential, along with any other information the Secretary requires.

The Secretary must approve the application within ten business days if it is properly completed and the Secretary determines that the applicant is seeking the information only for the purpose of performing a bona fide title examination. If the property is not subject to a confidentiality notice, the Secretary instead must notify the applicant of that fact within ten business days and, if applicable, notify local officials of that fact.⁷

Liability of real estate professionals

Under the bill, a real estate broker, oil and gas land professional, title examiner, attorney, or county official is not liable for damages resulting from the person's failure to discover a defect in title, failure to properly index or record a person's interest in property, or failure to alert a professional to rely on confidential information, when that failure was the proximate result of an individual's participation in the Address Confidentiality Program, notwithstanding the negligence of the real estate broker, land professional, title examiner, attorney, or county official.

For instance, if a property record was redacted because of a confidentiality notice and that redaction prevented a title examiner from discovering a lien on the property, the title examiner would not be liable for the mistake, even if the title examiner acted negligently.⁸

City law director access

The bill allows a city law director or similar chief legal officer to petition the Franklin County Court of Common Pleas or the court of common pleas of the county in which a parcel of real property is located for access to information that is subject to a real property confidentiality notice. The court must hold a hearing and, if necessary, notify the county recorder, auditor, treasurer, engineer, or clerk of the court of common pleas of the county in which the real property is located. The law director must prove that the law director has a legitimate governmental purpose to receive the information. Continuing law allows a city law director or similar chief legal officer to obtain a program participant's confidential address or telephone number from the Secretary using a similar process.

A law director or similar chief legal officer who intends to petition a court for access to information about a program participant that is kept by the Secretary or contained in a confidential property record may request the Secretary to confirm whether the person is a program participant. The bill requires the Secretary to provide that confirmation within ten business days after receiving the request.⁹

⁷ R.C. 111.431(E).

⁸ R.C. 111.431(H).

⁹ R.C. 111.46(B).

Authorized disclosure of other confidential information

The bill creates a process by which a participant may submit a form authorizing the Secretary of State to disclose the participant's information to certain persons, including a judge or magistrate, an official or employee of the Bureau of Motor Vehicles, a school administrator, an administrator of a public assistance program, an administrator of a food pantry, an official or employee of the U.S. Postal Service, or any other person identified on the form with a proper purpose. Within ten business days after receiving the form, the Secretary must determine whether the authorization is adequate, then disclose the information if appropriate.

For example, if a school district needs to confirm that a program participant lives in the district for enrollment purposes, the participant may authorize the Secretary to confirm to a district official that the participant lives in the district, without exposing the family's actual address.

The bill specifies that a person authorized to receive confidential information may request only the information that is required under normal circumstances. A person may not require a program participant to authorize a disclosure as a condition of receiving any services to which the participant is otherwise entitled.

Finally, when the Secretary discloses information to a person as authorized by a program participant, the disclosure must be accompanied by the following statement: "You are not permitted to redisclose the following information for any reason. Failure to protect the confidentiality of this information is a violation of state law."¹⁰

Child custody and child support proceedings

Under the bill, a program participant who is a parent, guardian, or legal custodian and is a party to a child custody or child support proceeding is entitled to notice and an opportunity for a hearing before the participant's confidential address or telephone number may be disclosed. This requirement applies when another party to the proceeding requests that information or when the court seeks to disclose the information on its own, without being asked to do so.

If another party to the proceeding requests the information, the court must direct the requesting party to file a pleading explaining why the disclosure is necessary. Before allowing the disclosure, the court must schedule a hearing, provide a copy of the pleading to the program participant, and give the parties adequate notice of the hearing. The party requesting the disclosure then must show, by clear and convincing evidence, that the disclosure is necessary and does not pose a risk of harm to the participant or the child. If the party requesting the disclosure meets this burden and the court grants the request, the court must document its findings of fact and may either disclose the information or direct the program participant to do so.

¹⁰ R.C. 111.42(C)(5) and 111.43(E).

If the court seeks to disclose the information on its own motion, the court still must schedule a hearing and give the parties adequate notice of the hearing. If the court determines by clear and convincing evidence that the disclosure is necessary and does not pose a risk of harm to the participant or the child, the court must document its findings of fact and may either disclose the information or direct the participant to do so.¹¹

Forwarding periodicals

The bill requires the Secretary of State to forward to a program participant any periodicals to which the participant subscribes, in addition to periodicals that are clearly identifiable as being sent by a governmental entity, as under continuing law. Currently, any periodicals not sent by a governmental entity require prior authorization for forwarding from the Secretary.¹²

Notice to program participants

The bill requires the Secretary of State to notify new program participants about their ability to file a real property confidentiality notice, to give a confidentiality notice to persons involved in the process of acquiring real property, and to authorize the Secretary to disclose their confidential information under certain circumstances, as permitted under the bill.¹³

County recorder fees

Electronic records and payments

The bill makes several changes to the law governing county recorder fees in order to account for electronic recordkeeping practices. First, the bill allows a county recorder to charge fees for certifying electronic records or other copies of documents, in addition to photocopies of records, as under continuing law. Additionally, under the bill, a county recorder may charge a fee for entering or indexing any reference by a separate recorded instrument, instead of only for entering marginal references. Finally, the bill allows a county recorder to accept electronic payment of fees for electronic recording by electronic funds transfer, automated clearing house or other electronic means.

County land banks

The bill creates an exception to an existing law that exempts a wholly owned subsidiary of a county land reutilization corporation (land bank), or the county that created the land bank, from the requirement to pay county recorder fees for recording, indexing, copying, or filing. The bill specifies that the fee exemption applies to such a subsidiary or county only if the subsidiary or county is acting in a capacity consistent with the purpose of the land bank program.

¹¹ R.C. 111.46(D).

¹² R.C. 111.43(D).

¹³ R.C. 111.42(C)(5).

For example, while continuing law exempts a county land bank from those county recorder fees, under the bill, the county that created the land bank may take advantage of the exemption only when it is acting in relation to the land bank program. The county is not exempt from the fees while it is engaged in other county business.¹⁴

Technical corrections

The bill corrects incorrect cross-references to provisions of continuing law that (1) allow a court to impose fines on certain felony offenders to benefit the Address Confidentiality Program Fund, and (2) govern the recording of a memorandum of trust.¹⁵

HISTORY

| Action | Date |
|----------------------------|----------|
| Introduced | 11-26-19 |
| Reported, H. Civil Justice | 06-11-20 |
| Passed House (92-0) | 06-11-20 |

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¹⁴ R.C. 317.32 and 5301.255.

¹⁵ R.C. 111.48 and 5301.255. See also R.C. 317.08 and 2929.18, not in the bill.