

SENATE Substitute for HOUSE BILL No. 2928

AN ACT concerning victims; relating to domestic violence, sexual assault, trafficking or stalking; address confidentiality; authorizing the secretary of state to perform certain duties and functions; requiring employers to allow leave for certain purposes.

Be it enacted by the Legislature of the State of Kansas:

Section 1. The legislature finds that persons attempting to escape from actual or threatened domestic violence, sexual assault, trafficking or stalking frequently establish new addresses in order to prevent their assailants or probable assailants from finding them. The purpose of sections 1 to 8, inclusive, and amendments thereto, of this act is to enable state and local agencies to respond to requests for public records without disclosing the location of a victim of domestic violence, sexual assault, trafficking or stalking, to enable interagency cooperation with the secretary of state in providing address confidentiality for victims of domestic violence, sexual assault, trafficking 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.

Sec. 2. The following words and phrases when used in sections 1 to 8, inclusive, and amendments thereto, of this act shall have the meanings respectively ascribed to them herein, unless the context clearly requires otherwise:

- (a) "Abuse" means:
 - (1) Causing or attempting to cause physical harm;
 - (2) placing another person in fear of imminent physical harm;
 - (3) causing another person to engage involuntarily in sexual relations by force, threats or duress, or threatening to do so;
 - (4) engaging in mental abuse, which includes threats, intimidation and acts designed to induce terror;
 - (5) depriving another person of necessary health care, housing or food; or
 - (6) unreasonably and forcibly restraining the physical movement of another.
- (b) "Confidential address" means a residential street address, school street address or work street address of an individual, as specified on the individual's application to be a program participant under sections 1 to 8, inclusive, and amendments thereto, of this act.
- (c) "Confidential mailing address" means an address that is recognized for delivery by the United States postal service.
- (d) "Domestic violence" means abuse committed against a victim or the victim's spouse or dependent child by:
 - (1) A current or former spouse of the victim;
 - (2) a person with whom the victim shares parentage of a child in common;
 - (3) a person who is cohabitating with, or has cohabitated with, the victim;
 - (4) a person who is related by blood or marriage; or
 - (5) a person with whom the victim has or had a dating or engagement relationship.
- (e) "Program participant" means a person certified as a program participant under section 3, and amendments thereto.
- (f) "Enrolling agent" means state and local agencies, law enforcement offices, nonprofit agencies and any others designated by the secretary of state that provide counseling and shelter services to victims of domestic violence, sexual assault, trafficking or stalking.
- (g) "Sexual assault" means an act which if committed in this state would constitute any crime defined in article 35 of chapter 21 of the Kansas Statutes Annotated.
- (h) "Stalking" means an act which if committed in this state would constitute "stalking" as defined by K.S.A. 60-31a01, and amendments thereto.
- (i) "Trafficking" means an act which if committed in this state would constitute the crime of trafficking as defined by K.S.A. 2005 Supp. 21-3446, and amendments thereto.

Sec. 3. (a) An adult person, an adult family member residing with the victim, a parent or guardian acting on behalf of a minor, or a guardian acting on behalf of an incapacitated person, may apply by and through an enrolling agent to have an address designated by the secretary of state serve as the person's address or the address of the minor or incapacitated

person. Program participants shall not apply directly to the secretary of state. 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 signed by the applicant and enrolling agent under penalty of perjury and providing:

(1) A statement by the applicant that the applicant has good reason to believe that the applicant, or the minor or incapacitated person on whose behalf the application is made, is a victim of domestic violence, sexual assault, trafficking or stalking and:

(i) That the applicant fears for the applicant's safety or the applicant's children's safety or the safety of the minor or incapacitated person on whose behalf the application is made; or

(ii) that by virtue of living with an enrolled program participant, the applicant fears that the knowledge or publication of the applicants' whereabouts will put the enrolled participant in danger.

(2) A designation of the secretary of state as agent for purposes of service of process and for the purpose of receipt of mail.

(3) The confidential mailing address where the applicant can be contacted by the secretary of state, and the phone number or numbers where the applicant can be called by the secretary of state.

(4) The confidential address or addresses that the applicant requests not be disclosed for the reason that disclosure will increase the risk of domestic violence, sexual assault, trafficking or stalking.

(5) Evidence that the applicant or the minor or incapacitated person on whose behalf the application is made, is a victim of domestic violence, sexual assault, trafficking or stalking, or is an adult family member residing with the victim. This evidence may include any of the following:

(A) Law enforcement, court or other federal, state or local government records or files.

(B) Documentation from a public or private entity that provides assistance to victims of domestic violence, sexual assault, trafficking or stalking.

(C) Documentation from a religious, medical or other professional from whom the applicant has sought assistance in dealing with the alleged domestic violence, sexual assault, trafficking or stalking.

(D) Other forms of evidence as determined by the secretary of state.

(6) A statement of whether there are any existing court orders involving the applicant for child support, child custody or child visitation and whether there are any active court actions involving the applicant for child support, child custody or child visitation, the name and address of legal counsel of record and the last known address of the other parent or parents involved in those court orders or court actions.

(7) The signature of the applicant and of any individual or representative of any enrolling agent who assisted in the preparation of the application, and the date on which the applicant signed the application.

(b) Applications shall be filed in accordance with procedures prescribed by the secretary of state.

(c) Upon filing a properly completed application, the secretary of state shall certify the applicant as a program participant. Applicants shall be certified for four years following the date of filing unless the certification is withdrawn or invalidated before that date. The secretary of state shall by rule and regulation establish a renewal procedure.

(d) Upon certification in the program, in any case where there are court orders or court actions identified in subsection (a)(6), the secretary of state shall, within 10 days, notify the other parent or parents of the address designated by the secretary of state for the program participant and the designation of the secretary of state as agent for purpose of service of process. The notice shall be given by mail, return receipt requested, postage prepaid, to the last known address of the other parent to be notified. A copy shall also be sent to that parent's counsel of record.

(e) A person who falsely attests in an application that disclosure of the applicant's address would endanger the applicant's safety or the safety of 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, shall be punishable under K.S.A. 21-3711, and amendments thereto, or other applicable statutes.

Sec. 4. (a) If the program participant obtains a legal name change after being certified as a program participant, the secretary of state shall cancel certification of the program participant.

(b) The secretary of state may cancel a program participant's certification if there is a change in the residential address from the one listed on the application, unless the program participant provides the secretary of state with seven days' prior notice of the change of address.

(c) The secretary of state may cancel certification of a program participant if mail forwarded by the secretary to the program participant's address is returned as nondeliverable.

(d) The secretary of state shall cancel certification of a program participant who applies using false information.

Sec. 5. (a) A program participant may request that state and local agencies use the address designated by the secretary of state as the participant's address. When creating a new public record or amending or updating an existing record, state and local agencies shall accept the address designated by the secretary of state as a program participant's substitute address, unless the secretary of state has determined that:

(1) The agency has a bona fide statutory or administrative requirement for the use of the address which would otherwise be confidential under sections 1 to 8, inclusive, and amendments thereto, of this act; and

(2) this address will be used only for those statutory and administrative purposes.

(b) A program participant may use the address designated by the secretary of state as the participant's work address.

(c) The office of the secretary of state shall forward all first class mail, and other items designated by rule and regulation, to the appropriate program participants.

Sec. 6. (a) The secretary of state is authorized to adopt rules and regulations for the proper implementation of sections 1 to 8, inclusive, and amendments thereto, of this act.

(b) The secretary of state shall prescribe by rule and regulation voting procedures to maintain confidentiality of the addresses of program participants.

Sec. 7. The secretary of state shall not make any records in a program participant's file available for inspection or copying, other than the address designated by the secretary of state, except under the following circumstances:

(a) If requested by a law enforcement agency, to the law enforcement agency in accordance with procedures prescribed by rules and regulations;

(b) if directed by a court order, to a person identified in the order; or

(c) if requested by a state or local agency, to verify the participation of a specific program participant, in which case the secretary may only confirm participation in the program.

Sec. 8. The secretary of state shall designate enrolling agents to assist persons applying to be program participants. The secretary of state may collaborate with enrolling agents to develop a training curriculum. Any assistance rendered to applicants by the office of the secretary of state or its designees shall not be construed as legal advice.

Sec. 9. As used in sections 9 and 10, and amendments thereto, of this act:

(a) "Domestic violence" means abuse as defined in K.S.A. 60-3102, and amendments thereto.

(b) "Sexual assault" means any crime defined in K.S.A. 21-3502 (rape), 21-3503 (indecent liberties with a child), 21-3504 (aggravated indecent liberties with a child), 21-3505 (criminal sodomy), 21-3506 (aggravated criminal sodomy), 21-3602 (incest) or 21-3603 (aggravated incest), and amendments thereto.

Sec. 10. (a) An employer may not discharge or in any manner discriminate or retaliate against an employee who is a victim of domestic violence or a victim of sexual assault for taking time off from work to:

(1) Obtain or attempt to obtain any relief, including, but not limited to, a temporary restraining order, restraining order or other injunctive

relief to help ensure the health, safety or welfare of the victim or the victim's child or children;

(2) seek medical attention for injuries caused by domestic violence or sexual assault;

(3) obtain services from a domestic violence shelter, domestic violence program or rape crisis center as a result of domestic violence or sexual assault; or

(4) make court appearances in the aftermath of domestic violence or sexual assault.

(b) (1) As a condition of taking time off for a purpose set forth in subsection (a), the employee shall give the employer reasonable advance notice of the employee's intention to take time off, unless such advance notice is not feasible. Within 48 hours after returning from the requested time off, the employee shall provide documentation which may include, but is not limited to, that described in subsection (b)(2) to support taking time off for a purpose set forth in subsection (a).

(2) When an unscheduled absence occurs, the employer shall not take any action against the employee if the employee, within 48 hours after the beginning of the unscheduled absence, provides a certification to the employer in the form of any of the following:

(A) A police report indicating that the employee was a victim of domestic violence or sexual assault;

(B) a court order protecting or separating the employee from the perpetrator of an act of domestic violence or sexual assault, or other evidence from the court or prosecuting attorney that the employee has appeared in court; or

(C) documentation from a medical professional, domestic violence advocate or advocate for victims of sexual assault, health care provider or counselor that the employee was undergoing treatment for physical or mental injuries or abuse resulting in victimization from an act of domestic violence or sexual assault.

(c) To the extent allowed by law, the employer shall maintain the confidentiality of any employee requesting leave under subsection (a), as well as the confidentiality of any supporting documentation provided by the employee to the employer relating to a purpose set forth in subsection (a).

(d) An employee may use any accrued paid leave or, if paid leave is unavailable to the employee, unpaid leave, not to exceed a total of eight days per calendar year, as time off for a purpose specified in subsection (a), unless a longer period of time is otherwise available to an employee under the applicable terms of employment or is provided by a collective bargaining agreement. The entitlement of any employee under this section shall not be diminished by any collective bargaining agreement term or condition.

Sec. 11. This act shall take effect and be in force from and after January 1, 2007, and its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.