

VIRGINIA ACTS OF ASSEMBLY -- 2011 SESSION

CHAPTER 97

An Act to amend and reenact § 2.2-515.2 of the Code of Virginia, to amend and reenact the second enactment of Chapter 599 of the Acts of Assembly of 2007, as amended by Chapter 649 of the Acts of Assembly of 2008, and to repeal the third enactment of Chapter 599 of the Acts of Assembly of 2007, as amended by Chapter 649 of the Acts of Assembly of 2008, relating to address confidentiality for victims of domestic violence.

[H 1757]

Approved March 15, 2011

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-515.2 of the Code of Virginia is amended and reenacted as follows:

§ 2.2-515.2. (Contingent scope of application - See Editor's notes) Address confidentiality program established; victims of domestic violence; application; disclosure of records.

A. As used in this section:

"Address" means a residential street address, school address, or work address of a person as specified on the person's application to be a program participant.

"Applicant" means a person who is a victim of domestic violence or is a parent or guardian of a minor child or incapacitated person who is the victim of domestic violence.

"Domestic violence" means an act as defined in § 38.2-508 and includes threat of such acts committed against an individual in a domestic situation, regardless of whether these acts or threats have been reported to law-enforcement officers. Such threat must be a threat of force which would place any person in reasonable apprehension of death or bodily injury.

"Domestic violence programs" means public and not-for-profit agencies the primary mission of which is to provide services to victims of sexual or domestic violence.

"Program participant" means a person certified by the Office of the Attorney General as eligible to participate in the Address Confidentiality Program.

B. The Statewide Facilitator for Victims of Domestic Violence shall establish a program to be known as the "Address Confidentiality Program" to protect victims of domestic violence by authorizing the use of designated addresses for such victims. An individual who is at least 18 years of age, a parent or guardian acting on behalf of a minor, a guardian acting on behalf of an incapacitated person, or an emancipated minor may apply in person, at domestic violence programs that provide services where the role of the services provider is (i) to assist the eligible person in determining whether the address confidentiality program should be part of such person's overall safety plan; (ii) to explain the address confidentiality program services and limitations; (iii) to explain the program participant's responsibilities; and (iv) to assist the person eligible for participation with the completion of application materials. The Office of the Attorney General shall approve an application if it is filed in the manner and on the form prescribed by the Attorney General and if the application contains the following:

1. A sworn statement by the applicant declaring to be true and correct under penalty of perjury that the applicant has good reason to believe that:

a. The applicant, or the minor or incapacitated individual on whose behalf the application is made, is a victim of domestic violence;

b. The applicant fears further violent acts from the applicant's assailant; and

c. The applicant is not on active parole or probation supervision requirements under federal, state, or local law.

2. A designation of the Office of the Attorney General as agent for the purpose of receiving mail on behalf of the applicant;

3. The applicant's actual address to which mail can be forwarded and a telephone number where the applicant can be called;

4. A listing of any minor children residing at the applicant's actual address, each minor child's date of birth, and each minor child's relationship to the applicant; and

5. The signature of the applicant and any person who assisted in the preparation of the application and the date.

C. Upon approval of a completed application, the Office of the Attorney General shall certify the applicant as a program participant. An applicant shall be certified for one year following the date of the institution of the program approval, unless the certification is withdrawn or invalidated before that date. A program participant may apply to be recertified every year.

D. Upon receipt of first-class mail addressed to a program participant, the Attorney General or his designee shall forward the mail to the actual address of the program participant. The actual address of a program participant shall be available only to the Attorney General and to those employees involved in

the operation of the Address Confidentiality Program and to law-enforcement officers. A program participant's actual address may be entered into the Virginia Criminal Information Network (VCIN) system so that it may be made known to law-enforcement officers accessing the VCIN system for law-enforcement purposes.

E. The Office of the Attorney General may cancel a program participant's certification if:

1. The program participant requests withdrawal from the program;
2. The program participant obtains a name change through an order of the court;
3. The program participant changes his residence address and does not provide seven days' notice to the Office of the Attorney General prior to the change of address;
4. The mail forwarded by the Office of the Attorney General to the address provided by the program participant is returned as undeliverable;
5. Any information contained in the application is false;
6. The program participant has been placed on parole or probation while a participant in the address confidentiality program; and
7. The applicant is required to register as a sex offender pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1.

For purposes of the address confidentiality program, residents of temporary housing for 30 days or less are not eligible to enroll in the address confidentiality program until a permanent residential address is obtained.

The application form shall contain a statement notifying each applicant of the provisions of this subsection.

F. A program participant may request that any state or local agency use the address designated by the Office of the Attorney General as the program participant's address, except when the program participant is purchasing a firearm from a dealer in firearms. The agency shall accept the address designated by the Office of the Attorney General as a program participant's address, unless the agency has received a written exemption from the Office of the Attorney General demonstrating to the satisfaction of the Attorney General that:

1. The agency has a bona fide statutory basis for requiring the program participant to disclose to it the actual location of the program participant;
2. The disclosed confidential address of the program participant will be used only for that statutory purpose and will not be disclosed or made available in any way to any other person or agency; and
3. A state agency may request an exemption by providing in writing to the Office of the Attorney General identification of the statute or administrative rule that demonstrates the agency's bona fide requirement and authority for the use of the actual address of an individual. A request for a waiver from an agency may be for an individual program participant, a class of program participants, or all program participants. The denial of an agency's exemption request shall be in writing and include a statement of the specific reasons for the denial. Acceptance or denial of an agency's exemption request shall constitute final agency action.

Any state or local agency that discloses the program participant's confidential address provided by the Office of the Attorney General shall be immune from civil liability unless the agency acted with gross negligence or willful misconduct.

A program participant's actual address shall be disclosed pursuant to a court order.

G. Records submitted to or provided by the Office of the Attorney General in accordance with this section shall be exempt from disclosure under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) to the extent such records contain information identifying a past or current program participant, including such person's name, actual and designated address, telephone number, and any email address. However, access shall not be denied to the person who is the subject thereof, or the parent or legal guardian of a program participant in cases where the program participant is a minor child or an incapacitated person, except when the parent or legal guardian is named as the program participant's assailant.

H. Neither the Office of the Attorney General, its officers or employees, or others who have a responsibility to a program participant under this section shall have any liability nor shall any cause of action arise against them in their official or personal capacity from the failure of a program participant to receive any first class mail forwarded to him by the Office of the Attorney General pursuant to this section. Nor shall any such liability or cause of action arise from the failure of a program participant to timely receive any first class mail forwarded by the Office of the Attorney General pursuant to this section.

2. That the second enactment of Chapter 599 of the Acts of Assembly of 2007, as amended by Chapter 649 of the Acts of Assembly of 2008, is amended and reenacted as follows:

2. That the provisions of this act shall be limited to and implemented solely within the Counties of Albemarle, Arlington, Augusta, Dickenson, Fairfax, Henry, Lee, Rockbridge, Russell, Scott, Washington, and Wise as well as the Cities of Buena Vista, Charlottesville, Lexington, Martinsville, Norfolk, and Roanoke. An an evaluation of the statewide implementation of the program shall be prepared by the Office of the Attorney General and the

results forwarded to the members of the Senate Committee on General Laws and the House Committee on General Laws by December 31, ~~2010~~ 2012.

3. That the third enactment of Chapter 599 of the Acts of Assembly of 2007, as amended by Chapter 649 of the Acts of Assembly of 2008, is repealed.