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H.B. 429*
133rd General Assembly

Bill Analysis

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Version: As Reported by House Civil Justice

Primary Sponsor: Reps. LaRe and Abrams

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SUMMARY

- Eliminates a requirement that an applicant for the Address Confidentiality Program (Safe at Home Program) be changing residence in order to be eligible for the program.
- 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.
- Allows program participants who purchase real property after the effective date of the bill to maintain address confidentiality with local authorities by submitting a notice to the county recorder.
- Creates a procedure under which a program participant seeking to purchase real property can give notice of confidentiality to any person involved in the acquisition process.
- Enumerates conditions under which the participant's property records are no longer confidential, including by sale of the property or court order.
- Provides a process to allow a person to view confidential real property records for purposes of a title examination.
- 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.

* This analysis was prepared before the report of the House Civil Justice Committee appeared in the House Journal. Note that the legislative history may be incomplete.

- 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 respond to program applications, requests for disclosures, title examination requests, or requests by a city law director for access to a program participant's confidential information in the Ohio Law Enforcement Gateway, within ten business days.
- Requires the Secretary to send out notice of cancellation of registration in the program to county officials within ten business days of cancellation of registration.
- Requires the Secretary to forward to a program participant any periodicals to which the participant subscribes.
- Exempts certain professions from liability for failure to discover a defect in title, failure to properly record or index title, or failure to alert a professional of the need to seek confidential information, when such failure was the proximate result of an individual's participation in the program.
- Updates the fee county recorders charge for certifying photocopies of recorded documents to apply to both copies and electronic records of recorded documents.
- Updates the fee county recorders charge for entering marginal references by separate recorded instrument to apply to entering or indexing any reference by separate recorded instrument.
- Establishes that fees county recorders charge for recording electronic documents may be paid by electronic fund transfer, automated clearing house, or other electronic means.
- Limits a recording fee exemption for municipalities that act as subsidiaries of land banks to instances where the documents being recorded pertain to the land bank's operations.

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

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. (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.)²

Secretary of State must respond within ten business days

The Secretary of State must respond to applications to the program within ten business days.³

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.⁴

Real property records

The bill allows a program participant who purchases real property after becoming a program participant, and after the effective date of the bill, to maintain confidentiality with local offices. Under current law, any government entity must use the participant's substitute address in lieu of the participant's real address if the participant so requests. The bill allows participants who acquire an ownership interest in real property after being certified as a participant to submit a real property confidentiality notice to the county recorder of the county where the real property is located. The county recorder then 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, all of whom are bound by confidentiality. Additionally, the program participant may deliver a real property confidentiality notice to the court of common pleas if the participant is party to a proceeding there. The clerk must notify the Secretary that the clerk received the notice, and is otherwise bound to confidentiality. If the participant's registration with the program is cancelled, the Secretary must notify the above local authorities within ten business days.

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

² R.C. 111.42.

³ R.C. 111.42(C).

⁴ R.C. 111.43(A).

The program participant's confidential address, or any information that may be used to identify the property must not appear alongside the participant's name in publicly available records, such as a county auditor's property tax database or a county recorder's database of property ownership records. Offices like these may keep confidential records with this information, and must redact the address or any other information identifying the property from any public version of the record, unless authorized to do otherwise.

A local official may disclose a participant's confidential information only to the following persons:

- The staff of the office, in order to carry out the duties of the office;
- The program participant;
- A person identified by the program participant in a notarized statement to the Secretary of State, if the Secretary has issued a written authorization to the local authority to disclose that information to the person;
- A person authorized by the Secretary to perform a title examination on the property (see "**Title examinations**," below); or
- Another person, pursuant to a court order.

If an entity authorized to receive confidential information under this section requests such information from the Secretary, the Secretary must respond within ten business days. 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. Any person involved with the acquisition process served by a confidentiality notice may not disclose the confidential information in the notice.

The bill specifies that any person who knowingly discloses information that is subject to a real property confidentiality notice in any manner not authorized by law 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.

The bill requires the Secretary to include information about real property confidentiality notices in the packet provided to each new program participant.

If the participant ceases to own the property, revokes the confidentiality notice, or has the certification canceled, then the information concerning the participant's interest in the property is no longer confidential. If the certification is canceled, the Secretary is required to notify the relevant local officials.⁵

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, and 2303.12. See also R.C. 2929.24 and 2929.28, not in the bill.

Title examinations

If a person wishes to perform a title examination on the property, such as when the program participant is selling the property, that person must apply to the Secretary of State for authorization. The application must state the purpose for which that person is applying, the applicant's relationship to the participant, and a statement that the applicant will treat the information as confidential, among other requirements. 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.⁶

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.⁷

Authorized disclosure of 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. The Secretary, within ten business days, must determine whether the authorization is adequate, then disclose the information if appropriate. For example, a program participant may authorize the Secretary to confirm the program participant's residence in a particular school district for enrollment purposes without exposing the family's actual address. The requestor authorized to receive confidential information may request only that information required under normal circumstances, and the disclosure may not be required as a condition of receiving any services to which the participant is otherwise entitled. 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." The Secretary must include information about the process to authorize such a disclosure in the packet provided to new program participants.⁸

⁶ R.C. 111.431(E).

⁷ R.C. 111.46(B).

⁸ R.C. 111.42(C)(5) and 111.43(E).

Child custody or 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 if another party to the proceeding requests access to, or the court of its own accord seeks to disclose, the participant's confidential address or telephone number. Upon the other party's request, the court must direct the requestor to file a pleading explaining the necessity of the disclosure. After the requestor has filed a pleading, or if the court seeks to disclose the information sua sponte, the court must schedule a hearing, and provide a copy of the pleading, if filed, to the program participant. The requestor must show, or the court must find if seeking to disclose sua sponte, by clear and convincing evidence, why the disclosure is necessary, and that the disclosure does not pose a risk of harm to the participant or the child. If the requestor meets this burden and the court grants the request, the court must document its findings of fact and may disclose the information or may direct the program participant to disclose the information.⁹

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.¹⁰

Exemption from liability for property-related professions

Under the bill, real estate brokers, land professionals,¹¹ title examiners, attorneys, and county officials are not liable for damages resulting from the 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 of the need to seek confidential information, when that failure was the proximate result of an individual's participation in the Address Confidentiality Program.¹²

County recorder fees

Existing law allows a county recorder to charge fees for certifying photocopies of records. The bill allows a county recorder to charge fees for certifying copies or electronic records, such as a PDF. Additionally, under existing law the county recorder may charge a fee for entering marginal references by a recorded instrument separate from the main instrument. The bill allows a county recorder to charge a fee for indexing, as well as entering, any reference,

⁹ R.C. 111.46(D).

¹⁰ R.C. 111.43(D).

¹¹ See R.C. 4735.023, not in the bill, for a description of "land professional."

¹² R.C. 111.431(H).

not merely marginal references. Additionally, the bill allows the fees to be paid electronically, by automated clearing house, or by other electronic means.

Under existing law, county recorder fees for recording, indexing, copying, or filing do not apply to county land reutilization corporations, their wholly owned subsidiaries, or their electing subdivisions. The bill specifies that the fee exemption applies to such wholly owned subsidiaries or electing subdivision only if the subsidiary or subdivision is acting in a capacity consistent with the purpose of the land reutilization program.¹³

HISTORY

Action	Date
Introduced	11-26-19
Reported, H. Civil Justice	---

H0429-RH-133/ec

¹³ R.C. 317.32 and 5301.255. For more information on county land reutilization programs, please see Chapter 1724 of the Revised Code, and R.C. 5722.01, neither of which are in the bill.