REFERENCE TITLE: address confidentiality program

State of Arizona House of Representatives Fifty-first Legislature Second Regular Session 2014

HB 2100

Introduced by Representatives Brophy McGee, Mesnard, Smith, Senators Gallardo, Hobbs, Reagan, Yee: Representative Dial

AN ACT

AMENDING SECTIONS 11-483, 41-161, 41-163, 41-164 AND 41-166, ARIZONA REVISED STATUTES; RELATING TO THE ADDRESS CONFIDENTIALITY PROGRAM.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona: 2 Section 1. Section 11-483, Arizona Revised Statutes, is amended to 3 read: 4 11-483. <u>Records maintained by county recorder: confidentiality:</u> 5 definitions 6 Α. Notwithstanding any other provision of this article, in any county 7 an eligible person may request that the general public be prohibited from accessing the unique identifier and the recording date contained in indexes 8 9 of recorded instruments maintained by the county recorder and may request the 10 county recorder to prohibit access to that person's residential address and 11 telephone number contained in instruments or writings recorded by the county 12 recorder. 13 B. An eligible person may request this action by filing an affidavit 14 that states all of the following on an application form developed by the 15 administrative office of the courts in agreement with an association of 16 counties, an organization of peace officers and the motor vehicle division of 17 the department of transportation: 18 The person's full legal name and residential address. 1. 19 2. The full legal description and parcel number of the person's 20 property. 21 3. Unless the person is the spouse or minor child of a deceased peace 22 officer or the person is a former public official, the position the person 23 currently holds and a description of the person's duties, except that an 24 eligible person who is protected under an order of protection or injunction 25 against harassment shall instead attach a copy of the order of protection or 26 injunction against harassment OR AN ELIGIBLE PERSON WHO IS A PARTICIPANT IN 27 THE ADDRESS CONFIDENTIALITY PROGRAM SHALL INSTEAD ATTACH A COPY OF THE 28 PARTICIPANT'S CURRENT AND VALID ADDRESS CONFIDENTIALITY PROGRAM AUTHORIZATION 29 CARD ISSUED PURSUANT TO SECTION 41-163 AND A STATEMENT OF CERTIFICATION 30 PROVIDED BY THE SECRETARY OF STATE'S OFFICE. 31 4. The reasons the person reasonably believes that the person's life 32 or safety or that of another person is in danger and that restricting access 33 pursuant to this section will serve to reduce the danger. 34 5. The document locator number and recording date of each instrument 35 for which the person requests access restriction pursuant to this section. 36 6. A copy of pages from each instrument that includes the document 37 locator number and the person's full legal name and residential address or 38 full legal name and telephone number. 39 C. If an eligible person is also requesting pursuant to section 11-484 40 that the general public be prohibited from accessing records maintained by 41 the county assessor and county treasurer, the eligible person may combine the 42 request pursuant to subsection B of this section with the request pursuant to 43 section 11-484 by filing one affidavit. The affidavit and subsequent action 44 by the appropriate authorities shall meet all of the requirements of this 45 section and section 11-484.

1 D. The affidavit shall be filed with the presiding judge of the 2 superior court in the county in which the affiant resides. To prevent 3 multiple filings, an eligible person who is a peace officer, spouse or minor child of a deceased peace officer, public defender, prosecutor, code 4 5 enforcement officer, corrections or detention officer, corrections support 6 staff member or law enforcement support staff member shall deliver the 7 affidavit to the peace officer's commanding officer, or to the head of the 8 prosecuting, public defender, code enforcement, law enforcement, corrections 9 or detention agency, as applicable, or that person's designee, who shall file the affidavits at one time. In the absence of an affidavit that contains a 10 11 request for immediate action and that is supported by facts justifying an 12 earlier presentation, the commanding officer, or the head of the prosecuting, 13 public defender, code enforcement, law enforcement, corrections or detention 14 agency, as applicable, or that person's designee, shall not file affidavits 15 more often than quarterly.

E. On receipt of an affidavit or affidavits, the presiding judge of the superior court shall file with the clerk of the superior court a petition on behalf of all requesting affiants. Each affidavit presented shall be attached to the petition. In the absence of an affidavit that contains a request for immediate action and that is supported by facts justifying an earlier consideration, the presiding judge may accumulate affidavits and file a petition at the end of each quarter.

23 F. The presiding judge of the superior court shall review the petition 24 and each attached affidavit to determine whether the action requested by each 25 affiant should be granted. If the presiding judge of the superior court concludes that the action requested by the affiant will reduce a danger to 26 27 the life or safety of the affiant or another person, the presiding judge of 28 the superior court shall order that the county recorder prohibit access for 29 five years to the affiant's residential address and telephone number 30 contained in instruments or writings recorded by the county recorder and made 31 available on the internet. If the presiding judge of the superior court 32 concludes that the affiant or another person is in actual danger of physical 33 harm from a person or persons with whom the affiant has had official dealings 34 and that action pursuant to this section will reduce a danger to the life or 35 safety of the affiant or another person, the presiding judge of the superior 36 court shall order that the general public be prohibited for five years from 37 accessing the unique identifier and the recording date contained in indexes 38 of recorded instruments maintained by the county recorder and identified 39 pursuant to subsection B of this section.

G. On motion to the court, if the presiding judge of the superior court concludes that an instrument or writing recorded by the county recorder has been redacted or sealed in error, that the original affiant no longer lives at the address listed in the original affidavit, that the cause for the original affidavit no longer exists or that temporary access to the instrument or writing is needed, the presiding judge may temporarily stay or permanently vacate all or part of the court order prohibiting public access to the recorded instrument or writing.

H. On entry of the court order, the clerk of the superior court shall file the court order and a copy of the affidavit required by subsection B of this section with the county recorder. No more than ten days after the date on which the county recorder receives the court order, the county recorder shall restrict access to the information as required by subsection F of this section.

9 I. If the court denies an affiant's request pursuant to this section, 10 the affiant may request a court hearing. The hearing shall be conducted by 11 the court in the county where the petition was filed.

12 J. The county recorder shall remove the restrictions on all records 13 restricted pursuant to this section by January 5 in the year after the court 14 order expires. The county recorder shall send by mail one notice to either 15 the former public official, peace officer, spouse or minor child of a 16 deceased peace officer, public defender, prosecutor, code enforcement 17 officer, corrections or detention officer, corrections support staff member 18 or law enforcement support staff member or the employing agency of a peace 19 officer, public defender, prosecutor, code enforcement officer, corrections 20 or detention officer, corrections support staff member or law enforcement 21 support staff member who was granted an order pursuant to this section of the 22 order's expiration date at least six months before the expiration date. If 23 the notice is sent to the employing agency, the employing agency shall 24 immediately notify the person who was granted the order of the upcoming 25 expiration date. The county recorder may coordinate with the county assessor 26 and county treasurer to prevent multiple notices from being sent to the same 27 person.

K. To include subsequent recordings in the court order, the eligible person shall present to the county recorder at the time of recordation a certified copy of the court order or shall provide to the county recorder the recording number of the court order. The county recorder shall ensure that public access shall be restricted pursuant to subsection A of this section.

L. This section shall not be interpreted to restrict access to public
 records for the purposes of perfecting a lien pursuant to title 12, chapter
 9, article 2.

M. This section does not prohibit access to the records of the county recorder by parties to the instrument, a law enforcement officer performing the officer's official duties pursuant to subsection N of this section, a title insurer, a title insurance agent or an escrow agent licensed by the department of insurance or the department of financial institutions.

N. A law enforcement officer is deemed to be performing the officer's
official duties if the officer provides a subpoena, court order or search
warrant for the records.

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0. For the purposes of this section:

2 1. "Code enforcement officer" means a person who is employed by a 3 state or local government and whose duties include performing field 4 inspections of buildings, structures or property to ensure compliance with 5 and enforce national, state and local laws, ordinances and codes.

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2. "Commissioner" means a commissioner of the superior court.

7 3. "Corrections support staff member" means an adult or juvenile 8 corrections employee who has direct contact with inmates.

9 4. "Eligible person" means a former public official, peace officer, spouse or minor child of a deceased peace officer, justice, judge, 10 11 commissioner, public defender, prosecutor, code enforcement officer, adult or juvenile corrections officer, corrections support staff member, probation 12 13 officer, member of the board of executive clemency, law enforcement support 14 staff member, national guard member who is acting in support of a law 15 enforcement agency, person who is protected under an order of protection or injunction against harassment, PERSON WHO IS A PARTICIPANT IN THE ADDRESS 16 17 CONFIDENTIALITY PROGRAM PURSUANT TO TITLE 41, CHAPTER 1, ARTICLE 3 or 18 firefighter who is assigned to the Arizona counterterrorism center in the 19 department of public safety.

5. "Former public official" means a person who was duly elected or appointed to Congress, the legislature or a statewide office, who ceased serving in that capacity and who was the victim of a dangerous offense as defined in section 13-105 while in office.

6. "Indexes" means only those indexes that are maintained by and located in the office of the county recorder, that are accessed electronically and that contain information beginning from and after January 1, 1987.

7. "Judge" means a judge of the United States district court, the United States court of appeals, the United States magistrate court, the United States bankruptcy court, the Arizona court of appeals, the superior court or a municipal court.

32 8. "Justice" means a justice of the United States or Arizona supreme
 33 court or a justice of the peace.

9. "Law enforcement support staff member" means a person who serves in the role of an investigator or prosecutorial assistant in an agency that investigates or prosecutes crimes, who is integral to the investigation or prosecution of crimes and whose name or identity will be revealed in the course of public proceedings.

39 10. "Peace officer" means any person vested by law, or formerly vested40 by law, with a duty to maintain public order and make arrests.

41 11. "Prosecutor" means a county attorney, a municipal prosecutor, the 42 attorney general or a United States attorney and includes an assistant or 43 deputy United States attorney, county attorney, municipal prosecutor or 44 attorney general. Sec. 2.

1 12. "Public defender" means a federal public defender, county public 2 defender, county legal defender or county contract indigent defense counsel 3 and includes an assistant or deputy federal public defender, county public 4 defender or county legal defender.

Section 41-161. Arizona Revised Statutes. is amended to read:

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41–161. <u>Definitions</u> In this article, unless the context otherwise requires:

8 1. "Actual address" means a residential, work or school address as 9 specified on the individual's application to be a program participant and 10 includes the county and voting precinct number.

11 2. "Address confidentiality program" means the program established 12 pursuant to this article in the office of the secretary of state to protect 13 the confidentiality of the actual address of a relocated victim of domestic 14 violence, a sexual offense or stalking.

15 3. "Applicant" means an individual identified as such in an 16 application received by the secretary of state pursuant to section 41-163.

17 4. "Application assistant" means a person designated by the secretary 18 of state to assist an applicant in the preparation of an application to 19 participate in the address confidentiality program.

20 5. "Domestic violence" has the same meaning prescribed in section 21 13-3601.

6. "Program participant" means an individual accepted into the address
 confidentiality program.

7. "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 entity.

30 8. "Sexual offense" means an offense included in title 13, chapter 14 31 or 35.1.

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9. "Stalking" means an offense prescribed in section 13-2923.

10. "State or local government entity" means every elected or appointed state or local public office, public officer or official, board, commission, bureau, committee, council, department, authority, agency, institution of higher education or other unit of the executive, legislative or judicial branch of this state or any city, town, county, school district PUBLIC SCHOOL or other kind of municipal, quasi-municipal or public corporation but does not include an agricultural improvement district.

40 11. "Substitute address" means an address that is designated by the 41 secretary of state under the address confidentiality program and that is used 42 instead of an actual address. 1 2 3 Sec. 3. Section 41-163, Arizona Revised Statutes, is amended to read: 41-163. <u>Filing and certification of applications: authorization</u> cards

<u>cards</u>

A. Beginning no later than December 31, 2012, On the recommendation of an application assistant, an individual may apply to the secretary of state to participate in the address confidentiality program. The following individuals may apply to the secretary of state to have an address designated by the secretary of state to serve as the substitute address of the individual and any individuals identified pursuant to subsection C, paragraph 10 OF THIS SECTION:

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1. An adult individual.

12 2. A parent or guardian acting on behalf of a minor if the minor 13 resides with the individual.

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3. A guardian acting on behalf of an incapacitated individual.

15 B. An application assistant shall assist the individual in the 16 preparation of the application. The application shall be dated, signed and 17 verified by the applicant and shall be signed and dated by the application 18 assistant who assisted in the preparation of the application. The signature 19 of the application assistant serves as the recommendation by the application 20 assistant that the applicant have an address designated by the secretary of 21 state to serve as the substitute address of the applicant. A minor or 22 incapacitated individual on whose behalf a parent or guardian completes an 23 application pursuant to the authority set forth in subsection A, paragraph $\frac{1}{2}$ 24 or 2 OR 3 OF THIS SECTION is considered the applicant, but any statements 25 that are required to be made by the applicant shall be made by the parent or 26 guardian acting on behalf of the minor or incapacitated individual.

C. The application shall be on a form prescribed by the secretary of state and shall contain all of the following:

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1. The applicant's name.

30 2. A statement by the applicant that the applicant is a victim of 31 domestic violence, a sexual offense or stalking and that the applicant fears 32 for the applicant's safety.

33 3. Evidence that the applicant is a victim of domestic violence, a 34 sexual offense or stalking. This evidence shall include at least one of the 35 following:

36 (a) Law enforcement, court or other state or local government entity
 37 or federal agency records or files.

(b) Documentation from a domestic violence program or facility,
 including a battered women's shelter or safe house, if the applicant is
 alleged to be a victim of domestic violence.

41 (c) Documentation from a sexual assault program if the applicant is 42 alleged to be a victim of a sexual offense.

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

1 4. A statement by the applicant that disclosure of the applicant's 2 actual address would endanger the applicant's safety.

5. A statement by the applicant that the applicant has confidentially relocated in the past ninety days or will confidentially relocate in this state.

6. A designation of the secretary of state as an agent for the 7 applicant for purposes of receiving certain mail SERVICE OF PROCESS AND FIRST 8 CLASS, REGISTERED AND CERTIFIED MAIL.

9 7. The mailing address and telephone number where the applicant can be 10 contacted by the secretary of state.

8. The actual address that the applicant requests not to be disclosed
 by the secretary of state and that directly relates to the increased risk of
 domestic violence, a sexual offense or stalking.

9. A statement as to whether there is any existing court order or court action involving the applicant or an individual identified pursuant to paragraph 10 of this subsection related to dissolution of marriage proceedings, child support or the allocation of parental responsibilities or parenting time. The statement shall include the name of the court that issued the order or that has jurisdiction over the action, the case number and the judge assigned to the case.

10. The name of any person who resides with the applicant and who also needs to be a program participant in order to ensure the safety of the applicant and, if the person named in the application is eighteen years of age or older, the consent of the person to be a program participant.

25 11. A statement by the applicant, under penalty of perjury, that to the 26 best of the applicant's knowledge, the information contained in the 27 application is true.

28 D. On determining that an application is properly completed, the 29 secretary of state shall certify the applicant and any individual who is 30 identified pursuant to subsection C, paragraph 10 OF THIS SECTION as program 31 participants. On certification, the secretary of state shall issue to the 32 program participant an address confidentiality program authorization card, 33 which shall include the program participant's substitute address. The card 34 remains valid while the program participant remains certified under the 35 program.

36 E. Applicants and individuals identified pursuant to subsection C, 37 paragraph 10 OF THIS SECTION are certified for four years following the date 38 of filing unless the certification is withdrawn or canceled before the end of 39 the four-year period. A program participant may withdraw the certification 40 by filing a request for withdrawal acknowledged before a notary public. A 41 certification may be renewed by filing a renewal application with the 42 secretary of state at least thirty days before the expiration of the current 43 certification. The renewal application shall be dated, signed and verified 44 by the applicant and signed and dated by the application assistant who 1 assisted in the preparation of the renewal application. The renewal 2 application shall contain:

3 1. Any statement or information that is required by subsection C OF4 THIS SECTION and that has changed from the original application or a prior 5 renewal application.

2. A statement by the applicant, under penalty of perjury, that to the 6 7 best of the applicant's knowledge, the information contained in the renewal 8 application and a prior application is true.

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Sec. 4. Section 41-164, Arizona Revised Statutes, is amended to read: 41-164. Change of name, address or telephone number:

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cancellation of certification 12 A. A program participant shall notify the secretary of state within 13 thirty days after the program participant has obtained a legal name change by 14 providing the secretary of state a certified copy of any judgment or order 15 evidencing the change or any other documentation the secretary of state deems

16 to be sufficient evidence of the name change. 17 B. A program participant shall notify the secretary of state of a 18 change in address or telephone number from the address or telephone number 19 listed for the program participant on the application pursuant to section 20 41-163, subsection C no later than seven days after the change occurs.

21 C. The certification of a program participant shall be canceled under 22 any of the following circumstances:

23 1. The program participant files a request for withdrawal of the certification pursuant to section 41-163, subsection E. 24

25 2. The program participant fails to notify the secretary of state of a 26 change in the program participant's name, address or telephone number listed 27 on the application pursuant to this section.

28 3. The program participant or parent or guardian who completes an 29 application on behalf of an applicant knowingly submitted false information 30 in the program application.

31 4. Mail forwarded to the program participant by the secretary of state 32 is returned as undeliverable.

33 D. If the secretary of state determines that there is one or more 34 grounds for canceling certification of a program participant pursuant to 35 subsection C of this section, the secretary of state shall send notice of 36 cancellation to the program participant. The notice of cancellation shall 37 set forth the reasons for cancellation. The program participant has thirty 38 days to appeal the cancellation decision under rules adopted by the secretary 39 of state.

40 E. An individual who ceases to be a program participant is responsible 41 for notifying any person who, STATE OR LOCAL GOVERNMENT ENTITY OR BUSINESS 42 THAT uses the substitute address that the designated substitute address is no 43 longer valid.

1 2 Sec. 5. Section 41-166, Arizona Revised Statutes, is amended to read: 41-166. Address use by state or local government entities

3 The program participant, and not the secretary of state, is Α. 4 responsible for requesting that a state or local government entity use the 5 program participant's substitute address as the program participant's residential, work or school address for all purposes for which the state or 6 7 local government entity requires or requests the residential, work or school 8 address.

9 Β. Except as otherwise provided in this section or unless the 10 secretary of state grants a state or local government entity's request for 11 disclosure pursuant to section 41-167, if a program participant submits a 12 current and valid address confidentiality program authorization card to the 13 state or local government entity, the state or local government entity shall 14 accept the substitute address designation on the card as the program 15 participant's address for use as the program participant's residential, work 16 or school address when creating a new public record. The substitute address 17 given to the state or local government entity is considered the last known 18 address for the program participant used by the state or local government 19 entity until the time that the state or local government entity receives 20 notification pursuant to section 41-164. The state or local government 21 entity may make a photocopy of the card for the records of the state or local 22 government entity and shall immediately return the card to the program 23 participant.

24 C. Except as otherwise provided in this section or by order of the 25 court, if a program participant submits a current and valid address 26 confidentiality program authorization card to the court, the court shall 27 accept the substitute address designation on the card as the program 28 participant's address for use as the program participant's residential, work 29 or school address. The substitute address given to the court is considered 30 the last known address for the program participant used by the court until 31 the time that the court receives notification pursuant to section 41-164. 32 The court may make a photocopy of the card for the court file and shall 33 return the card to the program participant.

34 D. The secretary of state shall send notice to the appropriate county 35 election official and recorder when a person becomes a program participant so that the participant's address can be kept confidential in the same manner as 36 37 prescribed by section 16-153. Before sending the notice, the secretary of state shall check the statewide database to determine whether the 38 39 participant's address is already protected as prescribed by section 16-153. 40 If a program participant would like to register to vote, other than online or 41 at a driver license examination facility, the participant shall present a 42 completed form with the participant's substitute address and address 43 confidentiality program card to the appropriate election official. The 44 program participant shall provide the election official with the 45 participant's actual physical address for precinct purposes.

1 Ε. A designated election official shall use the actual address of a 2 participant for precinct designation and a]] official program 3 election-related purposes and shall keep the program participant's actual 4 address confidential from the public. The election official shall use the 5 substitute address for all correspondence and mailings placed in the United States mail. The substitute address shall not be used as an address for 6 7 voter registration.

8 F. A state or local government entity's access to a program 9 participant's voter registration shall be governed by the disclosure process 10 set forth in section 41-167.

11 G. This section applies only to a program participant who submits a 12 current and valid address confidentiality program authorization card when 13 registering to vote.

H. A program participant who completes an application to register to vote at a driver license examination facility while receiving a driver license or an identification card is required to have the program participant's actual address on the driver license or identification card. A program participant whose driver license has the substitute address may register to vote, if otherwise eligible, pursuant to subsection E of this section.

I. The substitute address shall not be used for purposes of listing,
 appraising or assessing property taxes and collecting property taxes.

J. If a program participant is required by law to swear or affirm to the program participant's address, the program participant may use the participant's substitute address.

K. The substitute address shall not be used for purposes of assessing any taxes or fees on a motor vehicle or for titling or registering a motor vehicle. Notwithstanding any law to the contrary, any record that includes a program participant's actual address pursuant to this subsection shall be confidential and not available for inspection by anyone other than the program participant.

L. The substitute address shall not be used on any document related to real property recorded with a recorder. If a program participant would like to keep real property records confidential, the program participant shall comply with section 11-483.

M. A school district PUBLIC SCHOOL shall accept the substitute address as the address of record and shall verify student enrollment eligibility through the secretary of state. The secretary of state shall facilitate the transfer of student records from one school to another.

N. Except as otherwise provided in this section, a program participant's actual address and telephone number maintained by a state or local government entity or disclosed by the secretary of state is not a public record that is subject to inspection. This subsection shall not apply to the following: 1 1. Any public record created more than ninety days before the date 2 that the program participant applied to be certified in the program.

3 2. If A program participant WHO voluntarily requests that a state or 4 local government entity use the participant's actual address or voluntarily 5 gives the actual address to the state or local government entity.

6 0. For any public record created within ninety days before the date 7 that a program participant applied to be certified in the program, a state or local government entity shall redact the actual address from a public record 8 9 or change the actual address to the substitute address in the public record, if a program participant who presents a current and valid program 10 11 authorization card requests the entity that maintains the public record to use the substitute address instead of the actual address on the public 12 13 record.