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FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 578

(Senator Lee, *et al.*)

Judicial Proceedings

Environment and Transportation

Secretary of State – Address Confidentiality Programs – Shielding of Real
Property Records

This bill authorizes a participant in the Address Confidentiality Program for victims of domestic violence or the Human Trafficking Address Confidentiality Program (referred to collectively as ACP) to request the shielding of real property records under specified circumstances, and it establishes procedures for submitting such a request. The bill also makes multiple changes to both programs, including generally enabling a participant to use an address assigned by the Office of the Secretary of State as a substitute address. **The bill takes effect January 1, 2019.**

Fiscal Summary

State Effect: The bill’s requirements can be handled with existing resources, as discussed below. Revenues are not affected.

Local Effect: The bill’s requirements can be handled with existing resources, as discussed below. Revenues are not affected.

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill specifies that, until regulations that the Secretary of State must adopt take effect, compliance with the law as it was in effect immediately before the effective date of the bill must be deemed to be in compliance with the bill.

Address Confidentiality Program

Generally, the bill broadens the stated purpose of the ACP to include (1) enabling private entities to accept an ACP participant's alternate address and (2) generally enabling a participant to use an address designated by the Office of the Secretary of State as a substitute address.

Prohibition Against Obtaining and Disclosing ACP Participant Information: A person may not knowingly and intentionally obtain an ACP participant's actual address or phone number from the Secretary of State, the clerk of a circuit court, or any agency without authorization. A person may not knowingly and intentionally seek and obtain an ACP participant's actual address or telephone number from any other person if, at the time of obtaining the information, the person has specific knowledge that the actual address or telephone number belongs to an ACP participant. The bill expands the prohibition against an employee of the Secretary of State or other agency knowingly and intentionally disclosing an ACP participant's actual address or phone number to cover any person.

The bill establishes procedures for notifying a person that an individual is an ACP participant. It also states that a person may not knowingly disclose a participant's name, home address, work address, or school address, unless the person to whom the address is disclosed also lives, works, or goes to school at the disclosed address or the participant has provided written consent to the disclosure. The person to whom written consent is provided (1) may require the consent to be in a particular form and (2) must limit any disclosure to only those necessary for the purpose for which the consent is provided.

Service of Process: Notwithstanding any other provision of law, service of process on an individual by a person or an agency that has received "notice" that the individual is an ACP participant must be made in person on the participant, or by mail on the Secretary of State. Generally, "notice" means receipt of written notification on a form prescribed by the Secretary of State identifying an individual as an ACP participant. If service by publication is required, service is valid if the publication omits the name of the ACP participant, and the Secretary of State has been served by mail.

Request to Use Substitute Address

When an ACP participant presents the address designated by the Secretary of State to *any person*, that address must be accepted as the address of the participant. A person may not require an ACP participant to submit any address that could be used to physically locate the participant either (1) as a substitute or in addition to the designated address or (2) as a condition of receiving a service or benefit, unless the service or benefit would be *impossible* to provide without the participant's physical location.

A bank, a credit union, or any other financial institution defined under specified provisions of the Financial Institutions Article *may* require a request made by an ACP participant to be in writing and on a form prescribed by the Secretary of State identifying an individual as a program participant.

Recordation of Instruments for Address Confidentiality Program Participants

Generally, an ACP participant who acquires an ownership interest in real property while participating in the program may request the shielding of real property records concerning the property.

Submitting a Request to Shield Documents

To request the shielding of real property records, an ACP participant or any agent of a participant must submit to the clerk of the circuit court and the appropriate county finance office a specified real property ACP notice, the deed or other instrument to be recorded, and the standard intake sheet required under Title 3 of the Real Property Article. If an ACP participant intends to request the shielding of real property records, the participant may not submit any instrument for recordation electronically. A separate notice is required for each property in which the ACP participant acquires an ownership interest.

The ACP participant must send a copy of the real property ACP notice to the Secretary of State. The clerk of the circuit court must provide a copy of any notice received under the bill to the State Department of Assessments and Taxation and the State Archives. Generally, a real property ACP notice applies to the instrument submitted for recordation at the same time as the notice and any other instrument concerning the property identified in the real property ACP notice that is subsequently presented for recordation during the time that the ACP participant holds a record interest in the property and is an ACP participant. The bill specifies that a real property ACP notice is not a public record.

Prohibition Against Disclosure by a Clerk of the Circuit Court

Generally, a clerk of the circuit court and any State or local agency that receives a real property ACP notice under the bill may not disclose the ACP participant's identity information in conjunction with the property identified. However, a program participant's identity information may be disclosed in conjunction with a property identified in a real property ACP notice if (1) the ACP participant consents to the disclosure for a specific purpose identified in a writing acknowledged by the program participant; (2) the information is subject to disclosure under a court order; or (3) the Secretary of State authorizes the disclosure for the purpose of performing a bona fide title examination.

The prohibition against disclosure continues until (1) the program participant consents to the termination of the real property ACP notice in a writing acknowledged by the ACP participant; (2) the real property ACP notice is terminated in accordance with a court order; (3) the participant no longer holds a record interest in the property; or (4) the Secretary of State gives written notice to the clerk of the circuit court that the individual named in the notice is no longer an ACP participant.

Requirement to Establish Uniform Statewide Procedures

All State and local agencies must establish uniform procedures for maintaining records, including tax, utility, and zoning records, in accordance with the bill. The clerks of the circuit courts, in conjunction with the Administrative Office of the Courts, must establish uniform statewide procedures for recording deeds and other instruments to comply with the bill. The procedures must, at a minimum, include provisions for shielding recorded instruments that contain an ACP participant's actual address or identity information, providing notice to the public of the existence of a shielded instrument, and instructions for requesting access to the shielded instrument.

Requests to Access Shielded Documents

On request, the Secretary of State may authorize the disclosure of shielded real property records for the purpose of performing a bona fide title examination. Any request must include specified information. Within two business days, the Secretary of State must provide a written response approving or denying the request. The Secretary of State may only approve the request if the Secretary of State confirms that the property subject to the title examination is the property identified in the real property ACP notice of the program participant. If the property belongs to an individual who is no longer an ACP participant, the Secretary of State must give written notice to the clerk of the appropriate circuit court and the State Archives, and the clerk and the State Archives must cease shielding all real property records relating to the property.

Cancellation of Participation

If an individual has requested the shielding of property records under the bill, the Secretary of State must send written notice to the clerk of the appropriate circuit court within 30 days after the individual ceases to be an ACP participant.

Miscellaneous Provisions

The bill requires the Secretary of State to adopt regulations to carry out the bill. New provisions related to the shielding of real property records may not be interpreted to (1) require the Secretary of State to identify other agencies that may possess information

on an ACP participant; (2) require the clerk of a circuit court or any State or local agency to independently determine whether the clerk or agency maintains information on a participant; or (3) prohibit the clerk of a circuit court or any State or local agency from sharing a program participant's information with the Secretary of State for the purpose of facilitating compliance with the bill.

Current Law/Background: Generally, a custodian of a public record, including a deed transferring real property, must permit inspection of the record at a reasonable time. A custodian has to deny inspection of a public record or any part of a public record if (1) the public record is privileged or confidential by law or (2) the inspection would be contrary to a State statute, a federal statute or regulation, the Maryland Rules, or an order of a court of record.

Requirements for a Deed in Maryland

A signed deed is generally considered to be sufficient to convey an interest in a property if it includes (1) the names of the grantor and grantee; (2) a description of the property sufficient to identify it with reasonable certainty; and (3) the interest intended to be conveyed.

Address Confidentiality Program

The Maryland Safe at Home ACP is administered by the Office of the Secretary of State and serves victims of domestic violence and victims of human trafficking. The stated goal of ACP is to help victims of domestic violence and human trafficking, who have relocated or are about to relocate, in an effort to keep their perpetrators from finding them. ACP provides a substitute address for victims who have moved or are about to move to a new location unknown to their abuser, and it provides participants with confidential mail-forwarding service for first-class mail and legal papers.

The service limits an abuser's ability to access public information that identifies the new location of a program participant. In most cases, using the substitute address allows State and local agencies to respond to requests for public information without disclosing the participant's actual address. Although the Office of the Secretary of State may verify the participation of a participant in ACP, the office may not otherwise disclose any records of a participant without a court order.

ACP has special procedures in place for participants to interact with the Motor Vehicle Administration (MVA), State Board of Elections (SBE), and public schools (including community colleges). Using special procedures at MVA, participants can obtain a driver's license without revealing their residential addresses. SBE has an address confidentiality program that allows voters to have their actual addresses suppressed and, therefore, not

included in any public record. When a student presents his or her ACP authorization card, the school must accept the ACP substitute address. Verification of enrollment eligibility and transfer of school records are handled by ACP staff. Private companies do not have to accept the substitute address.

Enrollment is for four years unless canceled by the participant or ACP. Individuals may re-enroll at the end of each four-year term if they feel that they are still in danger. The Office of the Secretary of State advises that, as of January 2018, 902 individuals participate in ACP.

Task Force to Study Recording Deeds for Victims of Domestic Violence

Chapter 602 of 2016 established the Task Force to Study Recording Deeds for Victims of Domestic Violence to determine how to protect the identity and address of participants in ACP during the transfer of real property. The [final report](#) of the task force determined that the best option for protecting victims was to establish a deed shielding procedure that removes a deed and other recorded documents from public access, but allows for a bona fide title search. The report included draft legislation to implement the procedure, resulting in the present bill.

Minnesota Safe at Home Program

The Minnesota Safe at Home program is a statewide address confidentiality program administered by the Office of the Minnesota Secretary of State. Like ACP in Maryland, the program is designed to help people who fear for their safety maintain a confidential address.

Under provisions in place since 2014, Minnesota law allows for a Safe at Home participant to purchase a home after their enrollment and have all records regarding that property purchase and ownership privatized. The law does not accommodate retroactive privatization. For purposes of a home mortgage, a participant must disclose the address of the home to the lender. The participant may give a notice to the lender provided by the Safe at Home program that requires the lender to privatize the mortgage record and prohibit the sharing of specified information without signed consent from the participant. The lender must use the participant's Safe at Home program address for mailed correspondence.

Domestic Violence in Maryland

According to the 2015 Uniform Crime Report (the latest information readily available), 30,534 domestic violence crimes were reported in Maryland. Assault was by far the most frequently reported crime, with 25,996 incidents in calendar 2015. Of reported assaults, simple assaults comprised 21,054 incidents. There were 68 domestic violence homicides.

There were 604 reports of malicious destruction of property; specific information regarding harassment is not included in the Uniform Crime Report.

In fiscal 2016 (the latest information readily available), the circuit courts granted 1,784 temporary protective orders and 1,308 final protective orders. In fiscal 2017, the District Court granted 15,257 interim protective orders, 19,688 temporary protective orders, and 8,933 final protective orders.

Human Trafficking in Maryland

According to the Judiciary, there were 77 violations of § 11-303(a) of the Criminal Law Article (Human Trafficking – In General) and 70 violations of § 11-303(e) of the Criminal Law Article (Human Trafficking – Financial Benefit or Aiding and Abetting) filed in the District Court during fiscal 2017. The Maryland State Commission on Criminal Sentencing Policy advises that it received information on 11 individuals sentenced for misdemeanor human trafficking (in general) in the State’s circuit courts during fiscal 2017.

State Expenditures: The Administrative Office of the Courts advises that general fund expenditures increase by an estimated \$852,500 in fiscal 2019 for Judicial Information Systems to analyze and develop procedures to meet the bill’s requirements and implement necessary computer programing changes. The Department of Legislative Services (DLS) disagrees. While the bill does not establish procedures for maintaining records, the Task Force to Study Recording Deeds for Victims of Domestic Violence included recommended procedures for shielding documents in its final report. These procedures do not require any significant changes to existing programs or workflows for any agencies involved in the process. Additionally, as the Secretary of State anticipates fewer than 10 requests to shield real property records per year, the total impact on the Judiciary is expected to be minimal. Thus, DLS advises that the bill’s requirements can be handled with existing resources, as all other agencies advised. Should limited computer programing changes be necessary after further development of document shielding procedures, general fund expenditures for the Judiciary may increase minimally.

Local Expenditures: Because the Secretary of State anticipates fewer than 10 requests to shield real property records per year, the impact on any one circuit court in the State is expected to be negligible.

Additional Information

Prior Introductions: None.

Cross File: HB 633 (Delegate Healey, Chair, Environment and Transportation
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Committee, *et al.*) (By Request - Departmental - Secretary of State) – Environment and Transportation.

Information Source(s): Anne Arundel, Baltimore, Charles, and Montgomery counties; Maryland Association of Counties; cities of Frederick and Havre de Grace; Maryland Municipal League; Secretary of State; Judiciary (Administrative Office of the Courts); Maryland State Archives; State Department of Assessments and Taxation; Department of Legislative Services

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