

LEGISLATIVE BILL 228

Approved by the Governor March 20, 2003

Introduced by Government, Military and Veterans Affairs Committee:
Schimek, 27, Chairperson; Aguilar, 35; Brown, 6; Burling, 33;
Combs, 32; McDonald, 41; Smith, 48; and Preister, 5; Price, 26

AN ACT relating to domestic violence; to amend sections 32-331 and 84-907.03, Reissue Revised Statutes of Nebraska, and sections 60-484, 60-4,144, and 60-4,181, Revised Statutes Supplement, 2002; to adopt the Address Confidentiality Act; to provide a penalty; to change provisions relating to absentee voter, motor vehicle operator's license, and state identification card address confidentiality; to change provisions relating to use of a fund; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 10 of this act shall be known and may be cited as the Address Confidentiality Act.

Sec. 2. The Legislature finds that persons attempting to escape from actual or threatened abuse, sexual assault, or stalking frequently establish new addresses in order to prevent their assailants or probable assailants from finding them. The purposes of the Address Confidentiality Act are to enable state and local agencies to respond to requests for public records without disclosing the location of a victim of abuse, sexual assault, or stalking, to enable interagency cooperation with the office of the Secretary of State in providing address confidentiality for victims of abuse, sexual assault, 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. 3. For purposes of the Address Confidentiality Act:

(1) Abuse means causing or attempting to cause physical harm, placing another person in fear of physical harm, or causing another person to engage involuntarily in sexual activity by force, threat of force, or duress, when committed by (a) a person against his or her spouse, (b) a person against his or her former spouse, (c) a person residing with the victim if such person and the victim are or were in a dating relationship, (d) a person who formerly resided with the victim if such person and the victim are or were in a dating relationship, (e) a person against a parent of his or her children, whether or not such person and the victim have been married or resided together at any time, (f) a person against a person with whom he or she is in a dating relationship, (g) a person against a person with whom he or she formerly was in a dating relationship, or (h) a person related to the victim by consanguinity or affinity;

(2) Address means a residential street address, school address, or work address of an individual as specified on the individual's application to be a program participant;

(3) Dating relationship means an intimate or sexual relationship;

(4) Program participant means a person certified as a program participant under section 4 of this act;

(5) Sexual assault has the same meaning as in section 28-319, 28-320, 28-320.01, or 28-386; and

(6) Stalking has the same meaning as in sections 28-311.02 to 28-311.05.

Sec. 4. (1) An adult, a parent or guardian acting on behalf of a minor, or a guardian acting on behalf of an incapacitated person as defined in section 30-2601 may apply to the Secretary of State to have an address designated by the Secretary of State serve as the substitute address of such adult, minor, or incapacitated person. 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 and if it contains:

(a) A sworn statement by the applicant that the applicant has good reason to believe (i) that the applicant, or the minor or incapacitated person on whose behalf the application is made, is a victim of abuse, sexual assault, or stalking and (ii) that the applicant fears for his or her safety, his or her children's safety, or the safety of the minor or incapacitated person on whose behalf the application is made;

(b) A designation of the Secretary of State as agent for purposes of service of process and receipt of mail;

(c) The mailing address and the telephone number or numbers where

the applicant can be contacted by the Secretary of State;

(d) The new address or addresses that the applicant requests not be disclosed for the reason that disclosure will increase the risk of abuse, sexual assault, or stalking; and

(e) The signature of the applicant and of any individual or representative of any office designated in writing under section 9 of this act who assisted in the preparation of the application and the date on which the applicant signed the application.

(2) Applications shall be filed in the office of the Secretary of State.

(3) Upon filing a properly completed application, the Secretary of State shall certify the applicant as a program participant. Such certification shall be valid for four years following the date of filing unless the certification is withdrawn or invalidated before that date. The Secretary of State may by rule and regulation establish a renewal procedure.

(4) A person who falsely attests in an application that disclosure of the applicant's address would endanger the applicant, 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, is guilty of a Class II misdemeanor.

Sec. 5. (1) If a program participant obtains a name change, he or she shall forfeit his or her certification as a program participant unless the program participant applies to the Secretary of State for recertification and provides documentation of the legal name change.

(2) The Secretary of State may cancel a program participant's certification if there is a change in the mailing address from the one listed on the application under section 4 of this act, unless the program participant provides the Secretary of State with notice of the change of address in such manner as is provided by rules and regulations adopted and promulgated by the Secretary of State.

(3) The Secretary of State may cancel certification of a program participant if mail forwarded to the program participant's address is returned as undeliverable.

(4) The Secretary of State shall cancel certification of a program participant who applies using false information.

Sec. 6. (1) A program participant may request that state and local agencies use the address designated by the Secretary of State as the program participant's substitute address. When creating a new public record, a state or local agency which has a bona fide statutory, tax situs, or administrative requirement for the participant's residence address may request that the participant verbally provide the agency with such residence address if the agency has the capability to use such address for such bona fide purpose without permanently entering it into the agency's records. If the agency does not have such capability, it shall accept the address designated by the Secretary of State as a program participant's substitute address, unless the Secretary of State determines that:

(a) The state or local agency has a bona fide statutory, tax situs, or administrative requirement for the use of the address which would otherwise be confidential under the Address Confidentiality Act; and

(b) The address will be used only for such bona fide statutory, tax situs, or administrative requirement.

(2) The Secretary of State shall forward all first-class mail to each program participant's substitute address.

Sec. 7. (1) A program participant who is otherwise qualified to vote may apply as an absentee voter under sections 32-938 to 32-951. The county clerk or election commissioner shall transmit the absentee ballot to the program participant at the address designated by the program participant in his or her application as an absentee voter. Neither the name nor the address of a program participant shall be included in any list of registered voters available to the public.

(2) The county clerk or election commissioner shall not make a program participant's address contained in voter registration records available for public inspection or copying except under the following circumstances:

(a) If requested by a law enforcement agency, to the law enforcement agency; or

(b) If directed by a court order, to a person identified in the order.

Sec. 8. The Secretary of State shall not make any records in a program participant's file available for inspection or copying, other than the substitute address designated by the Secretary of State, except under the following circumstances:

(1) If requested of the Secretary of State by the chief commanding officer of a law enforcement agency or the officer's designee in the manner provided for by rules and regulations adopted and promulgated by the Secretary of State;

(2) To a person identified in a court order upon the receipt by the Secretary of State of that court order which specifically orders the disclosure of a particular program participant's address and the reasons stated therefor; or

(3) To verify the participation of a specific program participant, in which case the Secretary of State may only confirm or deny information supplied by the requester.

Sec. 9. The Secretary of State shall designate state and local agencies and nonprofit entities that provide counseling and shelter services to victims of abuse, sexual assault, or stalking to assist persons applying to be program participants. Any assistance or counseling rendered by the office of the Secretary of State or its designees to such applicants shall not be deemed legal advice or the practice of law.

Sec. 10. The Secretary of State may adopt and promulgate rules and regulations to carry out the Address Confidentiality Act.

Sec. 11. Section 32-331, Reissue Revised Statutes of Nebraska, is amended to read:

32-331. A registered voter may file an affidavit with the election commissioner or county clerk to have the information relating to his or her residence address and telephone number remain confidential. ~~The~~ If the registered voter is a program participant under the Address Confidentiality Act, the affidavit shall state that fact. If the registered voter is not a program participant under the act, the affidavit shall state that the county court or district court has issued an order upon a showing of good cause that a life-threatening circumstance exists in relation to the voter or a member of his or her household. The registered voter shall vote as an absentee voter under sections 32-938 to 32-951 in elections held after the filing of the affidavit. To terminate the affidavit and withdraw the confidential designation, the registered voter shall notify the election commissioner or county clerk in writing. The registered voter shall provide a valid mailing address to be used in place of the residence address for election, research, and government purposes. If the registered voter is a program participant under the act, the mailing address shall be as provided in the act. The election commissioner or county clerk may use the mailing address or the word "confidential" or a similar designation in place of the residence address in producing any list, roster, or register required under the Election Act. Those records declared confidential under this section shall be kept in a separate file from the other registered voter information. A county, election commissioner, or county clerk shall be liable in an action for negligence as a result of the disclosure of the confidential information if there is a showing of gross negligence or willfulness.

Sec. 12. Section 60-484, Revised Statutes Supplement, 2002, is amended to read:

60-484. (1) Except as otherwise provided in the Motor Vehicle Operator's License Act, no resident of the State of Nebraska shall operate a motor vehicle upon the alleys or highways of the State of Nebraska until the person has obtained an operator's license for that purpose.

(2) Application for an operator's license may be made on uniform blanks prepared and furnished by the director to the county treasurers and the examiners of the Department of Motor Vehicles prior to January 1, 2003. Such application may be made to an examiner in any county. The standard application blanks shall be sufficient in form and content to substantially carry out the purposes of the act.

(3) Beginning October 1, 2000, application for an operator's license may also be made in a manner prescribed by the department. Such application may be made to an examiner in any county. The examiner shall personally conduct the examination of the applicant and deliver to each successful applicant an examiner's certificate containing the statements made pursuant to subsection (4) of this section.

(4) In addition to any other information and questions necessary to comply with the requirements and purposes of the act, the applicant (a) shall provide his or her name, age, post office address, place of residence unless the applicant is a program participant under the Address Confidentiality Act, date of birth, sex, social security number, and brief description of himself or herself, (b) may complete the voter registration portion pursuant to section 32-308, (c) shall be provided the advisement language required by subsection (10) of section 60-6,197, (d) shall answer the following:

(i) Have you within the last three months (e.g. due to diabetes,

epilepsy, mental illness, head injury, stroke, heart condition, neurological disease, etc.):

- (A) lost voluntary control or consciousness ... yes ... no
- (B) experienced vertigo or multiple episodes of dizziness or fainting ... yes ... no
- (C) experienced disorientation ... yes ... no
- (D) experienced seizures ... yes ... no
- (E) experienced impairment of memory, memory loss ... yes ... no

Please explain:

(ii) Do you experience any condition which affects your ability to operate a motor vehicle? (e.g. due to loss of, or impairment of, foot, leg, hand, arm; neurological or neuromuscular disease, etc.) ... yes ... no

Please explain:

(iii) Since the issuance of your last driver's license/permit has your health or medical condition changed or worsened? ... yes ... no

Please explain, including how the above affects your ability to drive:, and (e) may answer the following:

(i) Do you wish to register to vote as part of this application process?

OPTIONAL - YOU ARE NOT REQUIRED TO ANSWER ANY OF THE FOLLOWING QUESTIONS:

- (ii) Do you wish to be an organ and tissue donor?
- (iii) Do you wish to receive any additional specific information regarding organ and tissue donation?
- (iv) Do you wish to donate \$1 to promote the Organ and Tissue Donor Awareness and Education Fund?

(5) Application for an operator's license shall be made under oath or affirmation of the applicant.

(6) The social security number shall not be printed on the operator's license and shall be used only (a) to furnish driver record information to the United States Selective Service System under section 60-483, (b) with the permission of the director in connection with the verification of the status of an individual's driving record in this state or any other state, or (c) for purposes of child support enforcement pursuant to section 42-358.08 or 43-512.06.

(7) (a) Except for an individual under the age of eighteen years, each individual applying for an operator's license or a state identification card shall furnish proof of date of birth and identity by a valid Nebraska operator's license, a valid Nebraska learner's permit, a valid Nebraska school permit, a valid operator's license from another state or jurisdiction of the United States, a certified birth certificate, a certified birth registration, a valid United States passport, a valid United States military identification card, United States military discharge papers, other United States-based identification as approved by the director, or information preserved in the digital system implemented under section 60-484.01.

(b) Any individual under the age of eighteen years applying for an operator's license or a state identification card shall provide a certified copy of his or her birth certificate, a certified birth registration, or other reliable proof of his or her identity and age accompanied by a certification signed by a parent or guardian explaining the inability to produce a copy of such birth certificate. The applicant may be required to furnish proof to the examiner that the parent or guardian signing the certification is in fact the parent or guardian of such applicant.

Sec. 13. Section 60-4,144, Revised Statutes Supplement, 2002, is amended to read:

60-4,144. (1) Application for any original or renewal commercial driver's license or application for any change of class of commercial motor vehicle, endorsement, or restriction may be made upon uniform blanks prepared and furnished by the director to the examiners of the Department of Motor Vehicles prior to January 1, 2003.

(2) Beginning October 1, 2000, application for any original or renewal commercial driver's license or application for any change of class of commercial motor vehicle, endorsement, or restriction may be made in a manner prescribed by the department. Such application may be made to an examiner in any county. The examiner shall personally conduct the examination of the applicant and deliver to each successful applicant an examiner's certificate containing the statements made pursuant to subsection (3) of this section.

(3) The application or examiner's certificate shall include the voter registration portion pursuant to section 32-308, the advisement language required by subsection (10) of section 60-6,197, and the following:

(a) The full name, the and current mailing address, and the residential addresses address of the applicant, except that if the applicant

is a program participant under the Address Confidentiality Act, he or she need not supply his or her residential address;

(b) A physical description of the applicant, including sex, height, weight, and eye and hair colors;

(c) The applicant's date of birth;

(d) The applicant's social security number;

(e) The applicant's signature;

(f) Certification that the commercial motor vehicle in which the applicant takes any driving skills examination is representative of the class of commercial motor vehicle that the applicant operates or expects to operate;

(g) The certification required pursuant to section 60-4,145 or 60-4,146;

(h) The following specific questions:

(i) Have you within the last three months (e.g. due to diabetes, epilepsy, mental illness, head injury, stroke, heart condition, neurological disease, etc.):

(A) lost voluntary control or consciousness ... yes ... no

(B) experienced vertigo or multiple episodes of dizziness or fainting ... yes ... no

(C) experienced disorientation ... yes ... no

(D) experienced seizures ... yes ... no

(E) experienced impairment of memory, memory loss ... yes ... no

Please explain:

(ii) Do you experience any condition which affects your ability to operate a motor vehicle? (e.g. due to loss of or impairment of foot, leg, hand, or arm; neurological or neuromuscular disease, etc.) ... yes ... no

Please explain:

(iii) Since the issuance of your last driver's license/permit has your health or medical condition changed or worsened? ... yes ... no

Please explain, including how the above affects your ability to drive:

(i) Do you wish to register to vote as part of this application process?

OPTIONAL - YOU ARE NOT REQUIRED TO ANSWER ANY OF THE FOLLOWING QUESTIONS:

(j) Do you wish to be an organ and tissue donor?

(k) Do you wish to receive any additional specific information regarding organ and tissue donation?

(l) Do you wish to donate \$1 to promote the Organ and Tissue Donor Awareness and Education Fund?

(4) Application shall be made under oath or affirmation of the applicant.

Sec. 14. Section 60-4,181, Revised Statutes Supplement, 2002, is amended to read:

60-4,181. (1) A state identification card shall be issued by the county treasurer after the person requesting the card (a) files an application or examiner's certificate with an examining officer, (b) furnishes two forms of proof of identification described in section 60-484, and (c) pays the fee prescribed in section 60-4,115 to the county treasurer. The state identification card shall contain the organ and tissue donor information specified in section 60-494.

(2) The application or examiner's certificate shall include the name, age, post office address, place of residence unless the applicant is a program participant under the Address Confidentiality Act, date of birth, sex, social security number, and physical description of the applicant, the voter registration portion pursuant to section 32-308, and the following:

(a) Do you wish to register to vote as part of this application process?

(b) Do you wish to be an organ and tissue donor?

(c) Do you wish to receive any additional specific information regarding organ and tissue donation?

(d) Do you wish to donate \$1 to promote the Organ and Tissue Donor Awareness and Education Fund?

(3) The director may summarily cancel any state identification card, and any judge or magistrate may order a state identification card canceled in a judgment of conviction, if the application or examiner's certificate for the card contains any false or fraudulent statements which were deliberately and knowingly made as to any matter material to the issuance of the card or if the application or examiner's certificate does not contain required or correct information. Any state identification card so obtained shall be void from the date of issuance. Any judgment of conviction ordering cancellation of a state identification card shall be transmitted to the director who shall cancel the card.

(4) Machine-readable information encoded on a state identification card shall be limited to the information appearing on the face of the card.

Sec. 15. Section 84-907.03, Reissue Revised Statutes of Nebraska, is amended to read:

84-907.03. There is hereby created the Secretary of State Administration Cash Fund. The fund shall consist of revenue received to defray costs as authorized in sections 84-901 to 84-908. The revenue shall be collected by the Secretary of State and remitted to the State Treasurer for credit to the fund. The fund shall be used to (1) offset expenses incurred as a result of such sections and (2) administer the Address Confidentiality Act.

Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 16. Original sections 32-331 and 84-907.03, Reissue Revised Statutes of Nebraska, and sections 60-484, 60-4,144, and 60-4,181, Revised Statutes Supplement, 2002, are repealed.