SPONSOR: Sen. Gay & Sen. Lockman & Sen. S. McBride &
Sen. Pinkney & Sen. Sturgeon & Sen. Townsend &
Rep. Longhurst & Rep. Minor-Brown
Sens. Hansen, Hoffner, Poore, Sokola; Reps. Baumbach,
Bush, Harris, Heffernan, K. Johnson, Lynn, Morrison,
Neal, Wilson-Anton

DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

SENATE BILL NO. 158

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO ADDRESS CONFIDENTIALITY.

WHEREAS, in the aftermath of the Dobbs decision, anti-choice supporters have shifted their attention to states that protect the right to an abortion after dozens of clinics were forced to close in states where abortion is banned; and

WHEREAS, according to the National Abortion Federation, clinics in protective states saw a major increase in violence and disruption the year Roe fell, which continued in 2022 with stalking incidents and clinic obstructions increasing by 913% and 538% respectively; and

WHEREAS, Delaware clinics are not exempt from this troubling trend, as evidenced in 2020 when a Newark clinic was fire-bombed; and

WHEREAS, reproductive health care service providers offer important services for patients and deserve to feel safe working in their profession without fear of harm; and

WHEREAS, allowing reproductive health care service providers to participate in Delaware's Address Confidentiality Program provides an important safety opportunity.

NOW, THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 96, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 9611. Definitions.

When used in this subchapter, the following words and phrases shall have the meanings ascribed to them in this section except where the context clearly indicates a different meaning:

(1) "Actual address" shall mean a residential address, school address or work address of an individual.

(2) "Image" includes, but is not limited to, any photograph, video, sketch, or computer-generated image that provides a means to visually identify the person depicted.

(3) "Internet" has the meaning used in § 931 of this title.

(4) “Law-enforcement agency” means the police department of any political subdivision of this State, the Delaware State Police, the Capitol Police, and the Delaware Department of Justice.

(5) “Post or display publicly” means to communicate, transmit, or otherwise make available to any other person.

(6) “Program” means the Address Confidentiality Program of the Department of Justice.

(7) “Program participant” means any person certified by the Department of Justice as eligible to participate in the address confidentiality program established by this subchapter.

(8) “Protected witnesses” means any person to whom the Department of Justice is providing witness protection services pursuant to this chapter.

(9) “Substitute address” means the official address or confidential address designated by the Attorney General.

(10) “Victim of domestic violence” means a person who is a victim of domestic violence as that term is defined by § 1041 of Title 10, or any equivalent provision in the laws of any other state, the United States, or any territory, District or subdivision thereof or any other foreign jurisdiction.

(11) “Victim of human trafficking” means a victim of an offense set forth in § 787 of this title, or any equivalent provision in the laws of any other state, the United States, or any territory, District or subdivision thereof, or any other foreign jurisdiction. This definition is to include victims of both “labor” and “sex” trafficking.

(12) “Victim of sexual assault” means a victim of an offense set forth in §§ 768 through 780, and 787 of this title, or any equivalent provision in the laws of any other state, the United States, or any territory, District or subdivision thereof or any other foreign jurisdiction.

(13) “Victim of stalking” means a victim of an offense set forth in §§ 1312 and 1312A [transferred to § 1312] of this title, or any equivalent provision in the laws of any other state, the United States, or any territory, District or subdivision thereof or any other foreign jurisdiction.

(14) “Reproductive health services” has the same meaning as defined in § 1702 of Title 24.

(15) “Reproductive health service provider or employee” means a person who provides or assists in providing reproductive health services.

§ 9612. Address Confidentiality Program.

(a) The Department of Justice shall establish a program to be known as the Address Confidentiality Program. Upon application and certification, persons eligible pursuant to this subchapter shall be provided a substitute address by the Program.

(b) The Program shall forward all correspondence sent by first class, express, registered and certified mail at no

expense to a program participant and may arrange to receive and forward other classes or kinds of mail at the program participant's expense.

(c) Upon a person's certification for participation in the Program, the Department of Justice will provide notice of that fact and the program participant's substitute address to the appropriate officials and parties involved in an ongoing civil or criminal case in which a program participant is a victim, witness, or party.

(d) All records relating to applicants and program participants are the property of the Department of Justice. These records, including but not limited to program applications, a participants' actual addresses and waiver proceedings, shall be deemed to be confidential, and shall also not be subject to the provisions of Chapter 100 of Title 29.

§ 9613. Persons eligible to apply.

All of the following persons are eligible to apply to become program participants:

(1) A victim of domestic violence, sexual assault, human trafficking, or stalking who has filed for a protection from abuse order or who is or was named as a victim in any criminal or delinquency proceeding brought for the purpose of determining liability for the commission of any crime or offense as those terms are defined in § 233 of this title, and who further states that he or she fears future violent acts by the perpetrator of the abuse.

(2) A person who has a valid agreement with the Department of Justice as set out in § 9601(f) of this title.

(3) A person who is a member of the same household as a program participant. A parent or guardian may apply to the program on behalf of a minor; or in the case of an adult individual who is incapacitated, application may be made by the person holding power of attorney.

(4) A person who has obtained or is seeking relief from a domestic violence program or service, as certified by the director of that program or his or her designee.

(5) A person who is a reproductive health service provider or employee who fears for such person's safety because of providing reproductive health services.

§ 9615. Agency use of designated address.

Federal, state and local government agencies shall accept the substitute address designated on a valid program participation card issued to the program participant by the Program as the program participant's address except ~~as follows:~~ when any of the following apply:

(1) When the federal, state or local government agency has been granted a waiver pursuant to § 9617 of this ~~title; or~~ title.

(2) When the program participant is any of the following:

a. A released offender complying with pretrial supervision, probation or parole or similar requirements imposed by any other ~~jurisdiction; or~~ jurisdiction.

b. A convicted sexual offender who has fulfilled the offender's sentence but must register the offender's community residence as required under §§ 4120-4121 of this title or any similar registration requirement imposed by any other jurisdiction.

§ 9616. Disclosure of actual address.

The Department of Justice shall not disclose the actual address of a program participant except ~~when:~~ when any of the following apply:

(1) A federal, state or local government agency has been granted a waiver by the Program and the disclosure is made pursuant to § 9617 of this ~~title; or~~ title.

(2) The Program determines that disclosure is required due to an emergency and the disclosure is made pursuant to § 9618 of this ~~title; or~~ title.

(3) A court of competent jurisdiction orders the Program to disclose the program participant's actual address and disclosure is made pursuant to the court order.

§ 9616A. Publicly posting or displaying program participant's actual address, telephone number, or image on the Internet.

(a) No person shall post or display publicly on the Internet, or solicit, sell, or trade on the Internet, the actual address, telephone number, or image of a program participant with the intent to do either of the following:

(1) Incite another person to imminently use that information to commit a crime involving violence or a threat of violence against, or to cause bodily harm to, the program participant identified in the posting or display, or any member of the program participant's ~~household; or~~ household.

(2) Threaten the program participant identified in the posting or display, or any member of the program participant's household, in a manner that places the person or persons threatened in objectively reasonable fear for their personal safety.

(b) No person shall post or display publicly on the Internet the actual address or telephone number of a program participant if that program participant, a parent or guardian of that program participant if the program participant is a minor, or a person holding power of attorney for the program participant if the program participant is an incapacitated adult individual, has made a written demand of that person not to disclose the program participant's actual address or telephone number. A written demand made under this subsection shall include a sworn statement declaring that the program participant is subject to the protection of this subchapter and describing a reasonable fear for the safety of that program

participant or any member of the program participant's household, based on a violation of subsection (a) of this section. A written demand made under this subsection shall be effective for 3 years even if the program participant's certification is withdrawn or canceled, or the program participant's participation is otherwise terminated, before the end of the 3-year period. This subsection shall not apply to a person defined in § 4320(4) of Title 10.

(c) An interactive computer service or access software provider, as defined in 47 U.S.C. § 230(f), shall not be liable under this section unless the interactive computer service or access software provider intends to abet or cause bodily harm that is likely to occur or threatens to cause bodily harm to a program participant or any person residing at or regularly present at the same actual address.

§ 9618. Emergency disclosure.

The Program shall establish a system to promptly respond to requests for emergency disclosures if the ~~disclosure:~~ disclosure satisfies any of the following conditions:

(1) ~~Will~~ It will prevent physical harm or significant economic loss to a program participant or to a program participant's family ~~member;~~ member.

(2) ~~Is~~ It is made to a law-enforcement agency for law-enforcement purposes and the circumstances warrant immediate disclosure.

SYNOPSIS

This Act permits an individual who is a reproductive health care services provider or employee to apply for participation in Delaware's Address Confidentiality Program, which allows participants to keep their actual address confidential by applying to the Department of Justice for a substitute address to which all mail will be delivered.

This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

Author: Senator Gay