

CHAPTER 87

(HB 222)

AN ACT relating to a crime victim address protection program within the Department of State.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 14 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 10 of this Act unless the context otherwise requires:

- (1) *"Address" means a residential street address, school address, or work address of an individual, as specified on the application of an individual to be a program participant under this section;*
- (2) *"Applicant" means a person applying for certification in the address confidentiality program under Sections 1 to 10 of this Act;*
- (3) *"Criminal offense against a victim who is a minor" has the same meaning as in KRS 17.500;*
- (4) *"Domestic violence and abuse" has the same meaning as in KRS 403.720;*
- (5) *"Program participant" means a person certified as a program participant under Sections 1 to 10 of this Act;*
- (6) *"Sex crime" means an offense or an attempt to commit an offense defined in:*
 - (a) *KRS Chapter 510;*
 - (b) *KRS 530.020;*
 - (c) *KRS 530.064(1)(a);*
 - (d) *KRS 531.310;*
 - (e) *KRS 531.320; or*
 - (f) *Any criminal attempt to commit an offense specified in this subsection, regardless of the penalty for the attempt;*
- (7) *"Specified offense" means:*
 - (a) *Domestic violence and abuse;*
 - (b) *Stalking;*
 - (c) *A sex crime;*
 - (d) *A criminal offense against a victim who is a minor;*
 - (e) *A similar federal offense; or*
 - (f) *A similar offense from another state or territory; and*
- (8) *"Stalking" means conduct prohibited under KRS 508.140 and 508.150.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 14 IS CREATED TO READ AS FOLLOWS:

- (1) *On or after July 1, 2013, the Secretary of State shall create a crime victim address protection program.*
- (2) *The crime victim address protection program shall be open to victims of a specified offense who are United States citizens and residents of Kentucky, without any cost to the program participant.*
- (3) *The Secretary of State shall require that each person employed in the Office of the Secretary of State directly responsible for the administration of the crime victim address protection program submit his or her fingerprints to the Department of State. The Department of State shall exchange fingerprint data with the Kentucky State Police and the Federal Bureau of Investigation in order to conduct a criminal history background check of each employee directly responsible for the administration of the program.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 14 IS CREATED TO READ AS FOLLOWS:

- (1) *Upon the creation of the crime victim address protection program, an applicant, a parent or guardian acting on behalf of a minor, a guardian acting on behalf of a person who is declared incompetent, or a designee of an applicant or a parent or guardian of a minor or a guardian of a person declared incompetent who cannot for any reason apply themselves, may apply to the Secretary of State to have an address designated by the Secretary of State serve for voting purposes as the address of the applicant, the minor, or the incompetent 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 by administrative regulation and if it contains:*
- (a) *A sworn statement by the applicant that:*
 - 1. *The applicant or the minor or the incompetent person on whose behalf the application is made is a victim of a specified offense in an ongoing criminal case or in a criminal case that resulted in a conviction by a judge or jury or by a defendant's guilty plea; or*
 - 2. *The applicant or the minor or the incompetent person on whose behalf the application is made has been granted an emergency protective order or a domestic violence order under KRS Chapter 403 by a court of competent jurisdiction within the Commonwealth of Kentucky and the order is in effect at the time of application;*
 - (b) *A sworn statement by the applicant that disclosure of the address of the applicant would endanger the safety of the applicant or the safety of the children of the applicant, or the minor or incompetent person on whose behalf the application is made.*
 - (c) *The mailing address and the phone 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 a specified offense; and*
 - (e) *The signature of the applicant and of a representative of any office designated under Section 6 of this Act as a referring agency who assisted in the preparation of the application, and the date on which the applicant signed the application.*
- (2) *Applications shall be filed with the Office of the Secretary of State.*
- (3) *Upon the filing of a properly completed application, the Secretary of State shall certify the applicant as a program participant if the applicant is not required to register as a sex offender or is not otherwise prohibited from participating in the program.*
- (4) *Applicants shall be certified for two (2) years following the date of filing unless the certification is withdrawn or invalidated before that date. The Secretary of State shall promulgate an administrative regulation to establish a renewal procedure.*
- (5) *A person who falsely attests in an application that disclosure of the address of the applicant would endanger the safety of the applicant or the safety of the children of the applicant, or the minor or incompetent person on whose behalf the application is made, or who knowingly provides false or incorrect information upon making an application may be found guilty of a violation of KRS 523.030.*
- (6) *The addresses of individuals applying for entrance into the crime victim address confidentiality program and the addresses of those certified as program participants shall be exempt from disclosure under the Kentucky Open Records Act, KRS 61.870 to KRS 61.884.*
- (7) *A program participant shall notify the Office of the Secretary of State of a change of address within seven (7) days of the change of address.*

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 14 IS CREATED TO READ AS FOLLOWS:

- (1) *The Secretary of State may cancel certification of a program participant if within fourteen (14) days:*
- (a) *From the date of the program participant changing his or her name, the program participant fails to notify the Secretary of State that he or she has obtained a name change; however, the program participant may reapply under his or her new name; or*
 - (b) *From the date of changing his or her address, the program participant fails to notify the Secretary of State of the change of address.*
- (2) *The Secretary of State shall cancel certification of a program participant who applies using false information.*

- (3) *The Secretary of State shall send notice of certification cancellation to the program participant. The notice of certification cancellation shall set out the reasons for cancellation. The program participant has the right to appeal the decision within thirty (30) days under procedures established by the Office of the Secretary of State by administrative regulation.*
- (4) *The Secretary of State shall cancel certification of a program participant who is required to register as a sex offender.*
- (5) *A program participant may withdraw from the program by providing the Secretary of State with notice of his or her intention to withdraw from the program. The Secretary of State shall promulgate by administrative regulations a secure procedure by which to ensure that the program participant's request for withdrawal is legitimate.*

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 14 IS CREATED TO READ AS FOLLOWS:

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

- (1) *If directed by a court order signed by a judge or justice of a court of competent jurisdiction within the Commonwealth of Kentucky; or*
- (2) *Upon written request by the chief law enforcement officer of a city or county, or the commander of a Department of Kentucky State Police post or branch, if related to an ongoing official investigation. Requests shall include the reason the information is needed by the law enforcement agency.*

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 14 IS CREATED TO READ AS FOLLOWS:

The Secretary of State shall establish a list of state and local agencies and nonprofit agencies that provide counseling and shelter services to victims of a specified offense to assist persons applying to be program participants. Any assistance and counseling rendered to applicants by the Office of the Secretary of State or its designees shall in no way be construed as legal advice.

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 14 IS CREATED TO READ AS FOLLOWS:

- (1) *A program participant who is otherwise qualified to vote may register to vote and apply for and submit a mail-in absentee ballot under this section.*
- (2) *Using the authority granted under subsection (1) of Section 10 of this Act, the State Board of Elections shall design a system allowing a county clerk to shield from public view all voting records of a program participant, including the name and address of a program participant, and allowing a program participant to vote by mail-in absentee ballot. This authority may be used to modify statutory or regulatory requirements that would lead to disclosure of the program participant's name and address, but shall not include authority to waive or modify any other requirements relative to the program participant's qualifications to vote, including age and geographic residency.*
- (3) *The program participant may receive mail-in absentee ballots for all elections in the jurisdiction in which that individual resides in the same manner as a person requesting an absentee ballot under subsection (1)(a) of Section 11 of this Act. The county clerk shall transmit a mail-in absentee ballot to the program participant at the address designated by the participant in his or her application.*
- (4) *Neither the name nor the address of a program participant shall be included in any list of registered voters available to the public, including any list inspected under KRS 116.095.*

➔SECTION 8. A NEW SECTION OF KRS CHAPTER 14 IS CREATED TO READ AS FOLLOWS:

Nothing in this chapter, nor participation in the program created in this chapter, shall affect custody or visitation orders in effect prior to or during program participation.

➔SECTION 9. A NEW SECTION OF KRS CHAPTER 14 IS CREATED TO READ AS FOLLOWS:

No actionable duty or any right of action shall accrue against the state, a county, a municipality, an agency of the state or county or municipality, or an employee of the state or county or municipality in the event of negligent disclosure of a program participant's actual address.

➔SECTION 10. A NEW SECTION OF KRS CHAPTER 14 IS CREATED TO READ AS FOLLOWS:

- (1) *The State Board of Elections may promulgate administrative regulations to implement Sections 7 and 11 of this Act.*

(2) ***The Secretary of State may promulgate administrative regulations to implement Sections 1 to 6, 8, and 9 of this Act.***

➔Section 11. KRS 117.085 is amended to read as follows:

- (1) All requests for an application for an absentee ballot may be transmitted by telephone, facsimile machine, by mail, by electronic mail, or in person. Except as provided in paragraph (b) of this subsection, all applications for an absentee ballot shall be transmitted only by mail to the voter or in person at the option of the voter, except that the county clerk shall hand an application for an absentee ballot to a voter permitted to vote by absentee ballot who appears in person to request the application, or shall mail the application to a voter permitted to vote by absentee ballot who requests the application by telephone, facsimile machine, or mail. The absentee ballot application may be requested by the voter or the spouse, parents, or children of the voter, but shall be restricted to the use of the voter. Except for qualified voters who apply pursuant to the requirements of KRS 117.075 and 117.077, those who are incarcerated in jail but have yet to be convicted, military personnel confined to a military base on election day, and persons who qualify under paragraph (a)7. of this subsection, absentee ballots shall not be mailed to a voter's residential address located in the county in which the voter is registered. In the case of ballots returned by mail, the county clerk shall provide an absentee ballot, two (2) official envelopes for returning the ballot, and instructions for voting to a voter who presents a completed application for an absentee ballot as provided in this section and who is properly registered as stated in his or her application.
- (a) The following voters may apply to cast their votes by mail-in absentee ballot if the application is received not later than the close of business hours seven (7) days before the election:
1. Voters permitted to vote by absentee ballot pursuant to KRS 117.075;
 2. Voters who are residents of Kentucky who are members of the Armed Forces, dependents of members of the Armed Forces, and citizens residing overseas;
 3. Voters who are students who temporarily reside outside the county of their residence;
 4. Voters who are incarcerated in jail who have been charged with a crime but have not been convicted of the crime;
 5. Voters who change their place of residence to a different state while the registration books are closed in the new state of residence before an election of electors for President and Vice President of the United States, who shall be permitted to cast an absentee ballot for electors for President and Vice President of the United States only;
 6. Voters who temporarily reside outside the state but who are still eligible to vote in this state;~~and~~
 7. Voters who are prevented from voting in person at the polls on election day and from casting an absentee ballot in person in the county clerk's office on all days absentee voting is conducted prior to election day because their employment location requires them to be absent from the county all hours and all days absentee voting is conducted in the county clerk's office; **and**
 8. ***Voters who are program participants in the Secretary of State's crime victim address confidentiality protection program as authorized by Section 7 of this Act.***
- (b) Residents of Kentucky who are members of the Armed Forces, dependents of members of the Armed Forces, and overseas citizens, may apply for an absentee ballot by means of the federal post-card application, which may be transmitted to the county clerk's office by mail or by facsimile machine. The application may be used to register, reregister, and to apply for an absentee ballot. If the federal post-card application is received at any time not less than seven (7) days before the election, the county clerk shall affix his or her seal to the application form upon receipt.
- (c) Absentee voting shall be conducted in the county clerk's office or other place designated by the county board of elections and approved by the State Board of Elections during normal business hours for at least the twelve (12) working days before the election. A county board of elections may permit absentee voting to be conducted on a voting machine for a period longer than the twelve (12) working days before the election.
- (d) Any qualified voter in the county who is not permitted to vote by absentee ballot under paragraph (a) of this subsection who will be absent from the county on any election day may, at any time during normal business hours on those days absentee voting is conducted in the county clerk's office, make application

in person to the county clerk to vote on a voting machine in the county clerk's office or other place designated by the county board of elections and approved by the State Board of Elections.

- (e) The following voters may, at any time during normal business hours on those days absentee voting is conducted in the county clerk's office, make application in person to the county clerk to vote on a voting machine in the county clerk's office or other place designated by the county board of elections and approved by the State Board of Elections:
1. Voters who are residents of Kentucky who are members of the Armed Forces, dependents of members of the Armed Forces, and citizens residing overseas, who will be absent from the county on any election day;
 2. Voters who are students who temporarily reside outside the county of their residence;
 3. Voters who have surgery scheduled that will require hospitalization on election day, and the spouse of the voter;
 4. Voters who temporarily reside outside the state but who are still eligible to vote in this state and who will be absent from the county on any election day;
 5. Voters who are residents of Kentucky who are members of the Armed Forces confined to a military base on election day and who learn of that confinement within seven (7) days or less of an election and are not eligible for a paper absentee ballot under this subsection; and
 6. A voter who is a pregnant woman in her last trimester of pregnancy at the time she wishes to vote under this paragraph. The application form for a voter under this subparagraph shall be prescribed by the State Board of Elections, which shall contain the woman's sworn statement that she is in fact in her last trimester of pregnancy at the time she wishes to vote.
- (f) Voters who change their place of residence to a different state while the registration books are closed in the new state of residence before a presidential election shall be permitted to cast an absentee ballot for President and Vice President only, by making application in person to the county clerk to vote on a voting machine in the county clerk's office or other place designated by the county board of elections and approved by the State Board of Elections.
- (g) Any member of the county board of elections, any precinct election officer appointed to serve in a precinct other than that in which he or she is registered, any alternate precinct election officer, any deputy county clerk, any staff for the State Board of Elections, and any staff for the county board of elections may vote on a voting machine in the county clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections, up to the close of normal business hours on the day before the election. The application form for those persons shall be prescribed by the State Board of Elections and, in the case of application by precinct election officers, shall contain a verification of appointment signed by a member of the county board of elections. If an alternate precinct election officer or a precinct election officer appointed to serve in a precinct other than that in which he or she is registered receives his or her appointment while absentee voting is being conducted in the county, such officer may vote on a voting machine in the county clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections, up to the close of normal business hours on the day before the election. In case of such voters, the verification of appointment shall also contain the date of appointment. The applications shall be restricted to the use of the voter only.
- (h) The members of the county board of elections or their designees who provide equal representation of both political parties may serve as precinct election officers, without compensation, for all absentee voting performed on a voting machine in the county clerk's office or other place designated by the county board of elections and approved by the State Board of Elections. If the members of the county board of elections or their designees serve as precinct election officers for the absentee voting, they shall perform the same duties and exercise the same authority as precinct election officers who serve on the day of an election. If the members of the county board of elections or their designees do not serve as precinct election officers for the absentee voting, the county clerk or deputy county clerks shall supervise the absentee voting.
- (i) Any individual qualified to appoint challengers for the day of an election may also appoint challengers to observe all absentee voting performed at the county clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections, and those challengers may

exercise the same privileges as challengers appointed for observing voting on the day of an election at a regular polling place.

- (2) The clerk shall type the name of the voter permitted to vote by absentee ballot on the application form for that person's use and no other. The absentee ballot application form shall be in the form prescribed by the State Board of Elections, shall bear the seal of the county clerk, and shall contain the following information: name, residential address, precinct, party affiliation, statement of the reason the person cannot vote in person on election day, statement of where the voter shall be on election day, statement of compliance with residency requirements for voting in the precinct, and the voter's mailing address for an absentee ballot. The form shall be verified and signed by the voter. A notice of the actual penalty provisions in KRS 117.995(2) and (5) shall be printed on the application.
- (3) If the county clerk finds that the voter is properly registered as stated in his or her application and qualifies to receive an absentee ballot by mail, he or she shall mail to the voter an absentee ballot, two (2) official envelopes for returning the ballot, and instructions for voting. The county clerk shall complete a postal form for a certificate of mailing for ballots mailed within the fifty (50) states, and it shall be stamped by the postal service when the ballots are mailed. An absentee ballot may be transmitted by facsimile machine to a resident of Kentucky who is a member of the Armed Forces, a dependent of a member of the Armed Forces, or a citizen residing overseas.
- (4) Absentee ballots which are requested prior to the printing of the ballots shall be mailed by the county clerk to the voter within three (3) days of the receipt of the printed ballots; and absentee ballots which are requested subsequent to the receipt of the ballots by the county clerk shall be mailed to the voter within three (3) days of the receipt of the request.
- (5) The clerk shall cause ballots to be printed fifty (50) days prior to each primary or general election.
- (6) The outer envelope shall bear the words "Absentee Ballot" and the address and official title of the county clerk and shall provide space for the voter's signature, voting address, precinct number, and signatures of two (2) witnesses if the voter signs the form with the use of a mark instead of the voter's signature. A detachable flap on the inner envelope shall provide space for the voter's signature, voting address, precinct number, signatures of two (2) witnesses if the voter signs the form with the use of a mark instead of the voter's signature and notice of penalty provided in KRS 117.995(5). The clerk shall type the voter's address and precinct number in the upper left hand corner of the outer envelope and of the detachable flap on the inner envelope immediately below the blank space for the voter's signature. The inner envelope shall be blank. The clerk shall retain the application and the postal form required by subsection (3) of this section for twenty-two (22) months after the election.
- (7) Any person who has received an absentee ballot by mail but who knows at least seven (7) days before the date of the election that he or she will be in the county on election day and who has not voted pursuant to the provisions of KRS 117.086 shall cancel his or her absentee ballot and vote in person. The voter shall return the absentee ballot to the county clerk's office no later than seven (7) days prior to the date of the election. Upon the return of the absentee ballot, the clerk shall mark on the outer envelope of the sealed ballot or the unmarked ballot the words "Canceled because voter appeared to vote in person." Sealed envelopes so marked shall not be opened. The clerk shall remove the voter's name from the list of persons who were sent absentee ballots, and the voter may vote in the precinct in which he or she is properly registered.
- (8) Any voter qualified for a mail-in absentee ballot who does not receive a requested mail-in ballot within a reasonable amount of time shall contact the county clerk, who shall reissue a second ballot. The county clerk shall keep a record of the absentee ballots issued and returned by mail, and the absentee voting that is performed on the voting machine in the county clerk's office or other place designated by the county board of elections and approved by the State Board of Elections, to verify that only the first voted ballot to be returned by the voter is counted. Upon the return of any ballot after the first ballot is returned, the clerk shall mark on the outer envelope of the sealed ballot the words "Canceled because ballot reissued."
- (9) Any member of the military who has received an absentee ballot by mail but who knows that he or she will be in the county on election day and who has not voted pursuant to the provisions of KRS 117.086 shall cancel his or her absentee ballot and vote in person. The voter shall return the absentee ballot to the county clerk's office on or before election day. Upon the return of the absentee ballot, the clerk shall mark on the outer envelope of the sealed ballot or the unmarked ballot the words "Canceled because voter appeared to vote in person." Sealed envelopes so marked shall not be opened. The clerk shall remove the voter's name from the list of persons who were sent absentee ballots, provide the voter with written authorization to vote at the precinct, and the voter may vote in the precinct in which he or she is properly registered.

Signed by Governor March 22, 2013.