Senate Engrossed House Bill

FILED
KEN BENNETT
SECRETARY OF STATE

State of Arizona
House of Representatives
Forty-ninth Legislature
Second Regular Session
2010

CHAPTER 229

HOUSE BILL 2602

AN ACT

AMENDING SECTION 11-483, ARIZONA REVISED STATUTES; RELATING TO COUNTY RECORDERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 11-483, Arizona Revised Statutes, is amended to read:

11-483. Records maintained by county recorder; confidentiality; definitions

A. Notwithstanding any other provision of this article, in any county an eligible person may request that the general public be prohibited from accessing the unique identifier and the recording date contained in indexes of recorded instruments maintained by the county recorder and may request the county recorder to prohibit access to that person's residential address and telephone number contained in instruments or writings recorded by the county recorder.

B. An eligible person may request this action by filing an affidavit that states all of the following on an application form developed by the administrative office of the courts in agreement with an association of counties, an organization of peace officers and the motor vehicle division of the department of transportation:

1. The person's full legal name and residential address.

2. The full legal description and parcel number of the person's property.

3. The position the person currently holds and a description of the person's duties, except that an eligible person who is protected under an order of protection or injunction against harassment shall instead attach a copy of the order of protection or injunction against harassment.

4. The reasons the person reasonably believes that the person's life or safety or that of another person is in danger and that restricting access pursuant to this section will serve to reduce the danger.

5. The document locator number and recording date of each instrument for which the person requests access restriction pursuant to this section.

6. A copy of pages from each instrument that includes the document locator number and the person's full legal name and residential address or full legal name and telephone number.

C. If an eligible person is also requesting pursuant to section 11-484 that the general public be prohibited from accessing records maintained by the county assessor and county treasurer, the eligible person may combine the request pursuant to subsection B of this section with the request pursuant to section 11-484 by filing one affidavit. The affidavit and subsequent action by the appropriate authorities shall meet all of the requirements of this section and section 11-484.

D. The affidavit shall be filed with the presiding judge of the superior court in the county in which the affiant resides. To prevent a multiplicity of filings, an eligible person who is a peace officer, public defender, prosecutor, code enforcement officer, corrections or detention officer, corrections support staff member or law enforcement support staff member shall deliver the affidavit to the peace officer's commanding officer,

or to the head of the prosecuting, public defender, code enforcement, law enforcement, corrections 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 request for immediate action and that is supported by facts justifying an earlier presentation, the commanding officer, or the head of the prosecuting, public defender, code enforcement, law enforcement, corrections or detention agency, as applicable, or that person's designee, shall not file affidavits 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.

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

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

J. The county recorder shall remove the restrictions on all records restricted pursuant to this section by January 5 in the year after the court order expires. The county recorder shall send by mail one notification to either the peace officer, public defender, prosecutor, code enforcement officer, corrections or detention officer, corrections support staff member or law enforcement support staff member or the employing agency of a peace officer, public defender, prosecutor, code enforcement officer, corrections or detention officer, corrections support staff member or law enforcement support staff member who was granted an order pursuant to this section of the order's expiration date at least six months before the expiration date. If the notice is sent to the employing agency, the employing agency shall immediately notify the person who was granted the order of the upcoming expiration date. The county recorder may coordinate with the county assessor and county treasurer to prevent multiple notices from being sent to the same 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.

~~N.~~ O. For the purposes of this section:

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

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

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

4. "Eligible person" means a peace officer, justice, judge, commissioner, public defender, prosecutor, code enforcement officer, adult or juvenile corrections officer, corrections support staff member, probation officer, member of the board of executive clemency, law enforcement support staff member, national guard member who is acting in support of a law enforcement agency, person who is protected under an order of protection or injunction against harassment or firefighter who is assigned to the Arizona counterterrorism center in the department of public safety.

5. "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.

6. "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.

7. "Justice" means a justice of the United States or Arizona supreme court or a justice of the peace.

8. "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.

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

10. "Prosecutor" means a county attorney, a municipal prosecutor, the attorney general or a United States attorney and includes an assistant or deputy United States attorney, county attorney, municipal prosecutor or attorney general.

11. "Public defender" means a federal public defender, county public defender, county legal defender or county contract indigent defense counsel and includes an assistant or deputy federal public defender, county public defender or county legal defender.

APPROVED BY THE GOVERNOR MAY 6, 2010.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 6, 2010.

Passed the House March 25, 20 10

by the following vote: 56 Ayes,

0 Nays, 4 Not Voting

Speaker of the House

Cheryl Laube

Chief Clerk of the House

Passed the Senate April 27, 20 10

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

_____ day of _____, 20_____

at _____ o'clock _____M.

_____
Secretary to the Governor

Approved this _____day of

_____

at _____o'clock _____M.

_____
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this _____ day of _____, 20_____

at _____ o'clock _____M.

_____
Secretary of State

H.B. 2602

HOUSE CONCURS IN SENATE AMENDMENTS AND FINAL PASSAGE

April 28, 2010,

by the following vote: 58 Ayes,

0 Nays, 2 Not Voting

Speaker of the House

Cheryl Laube

Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

29 day of April, 2010,

at 11:50 o'clock A. M.

Nicole Bendle

Secretary to the Governor

Approved this 6 day of

May, 2010,

at 10:55 o'clock A. M.

Janice K. Brewer

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 6th day of May, 2010,

at 3:08 o'clock P. M.

Ken Bennett

Secretary of State

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