87R735 EAS-F

By:  Thompson of Harris H.B. No. 866

A BILL TO BE ENTITLED

AN ACT

relating to the protection of certain information from disclosure in suits affecting the parent-child relationship and to service of process in those suits on a party whose information is protected from disclosure; providing a punishment for contempt of court.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Section 105.006, Family Code, is amended by amending Subsections (c), (e), and (f) and adding Subsections (c-1), (c-2), (c-3), and (c-4) to read as follows:

(c)  If a court finds after notice and hearing that requiring a party to provide the information required by this section to another party is likely to cause the child or a conservator harassment, abuse, serious harm, or injury, or to subject the child or a conservator to family violence, as defined by Section 71.004, the court may render a final order omitting the information required by this section and may:

(1)  order the information not to be disclosed to another party; or

(2)  render any other order the court considers necessary.

(c-1)  If a court renders an order under Subsection (c), the court shall:

(1)  require the party with respect to whom information is omitted under the final order to designate:

(A)  a substitute post office box address that the party may use in place of that party's true residential, business, or school address; and

(B)  an individual at that post office box address to act as agent to receive service of process and mail on the protected party's behalf;

(2)  inform the party of the party's right to designate the attorney general as the party's agent to receive service of process and mail on behalf of the party through the address confidentiality program created by Article 56.82, Code of Criminal Procedure, and provide the party with information regarding that program; and

(3)  if the party chooses to participate in the address confidentiality program described by Subdivision (2), provide the party with the application for the program.

(c-2)  The substitute address and name of the individual acting as the party's agent or the designation of the attorney general as the party's agent must be contained in the final order.

(c-3)  If a party designates a substitute address and an individual to act as the party's agent, any summons, writ, notice, demand, or process in a matter arising under Title 1 or Title 5 may be served on the designated individual in accordance with the Texas Rules of Civil Procedure.

(c-4)  If a party designates the attorney general as the party's agent, any summons, writ, notice, demand, or process in a matter arising under Title 1 or Title 5 may be served on the attorney general in accordance with Article 56.82, Code of Criminal Procedure.

(e)  Except as provided by Subsection (c), an order in a suit that orders child support or possession of or access to a child must also contain the following prominently displayed statement in boldfaced type, in capital letters, or underlined:

"UNLESS THE COURT HAS ORDERED A PARTY TO DESIGNATE A SUBSTITUTE ADDRESS AND AN INDIVIDUAL TO ACT AS AN AGENT TO RECEIVE SERVICE OF PROCESS, EACH PERSON WHO IS A PARTY TO THIS ORDER IS ORDERED TO NOTIFY EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY OF ANY CHANGE IN THE PARTY'S CURRENT RESIDENCE ADDRESS, MAILING ADDRESS, HOME TELEPHONE NUMBER, NAME OF EMPLOYER, ADDRESS OF EMPLOYMENT, DRIVER'S LICENSE NUMBER, AND WORK TELEPHONE NUMBER. THE PARTY IS ORDERED TO GIVE NOTICE OF AN INTENDED CHANGE IN ANY OF THE REQUIRED INFORMATION TO EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY ON OR BEFORE THE 60TH DAY BEFORE THE INTENDED CHANGE. IF THE PARTY DOES NOT KNOW OR COULD NOT HAVE KNOWN OF THE CHANGE IN SUFFICIENT TIME TO PROVIDE 60-DAY NOTICE, THE PARTY IS ORDERED TO GIVE NOTICE OF THE CHANGE ON OR BEFORE THE FIFTH DAY AFTER THE DATE THAT THE PARTY KNOWS OF THE CHANGE."

"IF THE COURT HAS ORDERED A PARTY TO DESIGNATE A SUBSTITUTE ADDRESS AND AN INDIVIDUAL TO ACT AS AN AGENT TO RECEIVE SERVICE OF PROCESS, THE PARTY IS ORDERED TO NOTIFY EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY OF ANY CHANGE IN THE PARTY'S DESIGNATED SUBSTITUTE ADDRESS OR AGENT, INCLUDING THE PARTY DESIGNATING OR CEASING TO DESIGNATE THE ATTORNEY GENERAL AS THE PARTY'S AGENT THROUGH THE ADDRESS CONFIDENTIALITY PROGRAM CREATED BY ARTICLE 56.82, CODE OF CRIMINAL PROCEDURE."

"THE DUTY TO FURNISH THIS INFORMATION TO EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY AND TO NOTIFY EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY OF ANY CHANGE REGARDING A DESIGNATED SUBSTITUTE ADDRESS OR AGENT CONTINUES AS LONG AS ANY PERSON, BY VIRTUE OF THIS ORDER, IS UNDER AN OBLIGATION TO PAY CHILD SUPPORT OR ENTITLED TO POSSESSION OF OR ACCESS TO A CHILD."

"FAILURE BY A PARTY TO OBEY THE ORDER OF THIS COURT TO PROVIDE EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY WITH THE CHANGE IN THE REQUIRED INFORMATION MAY RESULT IN FURTHER LITIGATION TO ENFORCE THE ORDER, INCLUDING CONTEMPT OF COURT. A FINDING OF CONTEMPT MAY BE PUNISHED BY CONFINEMENT IN JAIL FOR UP TO SIX MONTHS, A FINE OF UP TO $500 FOR EACH VIOLATION, AND A MONEY JUDGMENT FOR PAYMENT OF ATTORNEY'S FEES AND COURT COSTS. IF APPLICABLE, FAILURE BY A PARTY TO NOTIFY EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY OF ANY CHANGE IN THE PARTY'S DESIGNATED SUBSTITUTE ADDRESS OR AGENT MAY RESULT IN A DEFAULT JUDGMENT."

(f)  Except for an action in which contempt is sought, in any subsequent child support enforcement action, the court may:

(1)[~~,~~]  on a showing that diligent effort has been made to determine the location of a party, consider due process requirements for notice and service of process to be met with respect to that party on delivery of written notice to the most recent residential or employer address filed by that party with the court and the state case registry; or

(2)  on a showing that diligent effort has been made to determine the location of a party who is subject to an order rendered under Subsection (c), consider due process requirements for notice and service of process to be met with respect to that party on delivery of written notice to the most recent substitute address designated by the party.

SECTION 2.  Section 105.007, Family Code, is amended to read as follows:

Sec. 105.007.  COMPLIANCE WITH ORDER REQUIRING NOTICE OF CHANGE OF REQUIRED INFORMATION. (a) Except for a suit in which an order is rendered under Subsection (c), a [~~A~~] party shall comply with the order by giving written notice to each other party of an intended change in the party's current residence address, mailing address, home telephone number, name of employer, address of employment, and work telephone number.

(b)  Except for a suit in which an order is rendered under Subsection (c), the [~~The~~] party must give written notice by registered or certified mail of an intended change in the required information to each other party on or before the 60th day before the change is made. If the party does not know or could not have known of the change in sufficient time to provide 60-day notice, the party shall provide the written notice of the change on or before the fifth day after the date that the party knew of the change.

(c)  A party who has been ordered under Section 105.006(c) to designate a substitute address and an individual to act as an agent to receive service of process on the party's behalf, including a party who has designated the attorney general as the party's agent through the address confidentiality program created by Article 56.82, Code of Criminal Procedure, must give written notice of a change in either the substituted address or the designated agent by registered or certified mail on or before the 60th day before the change is made. If the party does not know or could not have known of the change in sufficient time to provide the 60-day notice, the party shall provide the written notice of the change on or before the fifth day after the date the party knew of the change [~~The court may waive the notice required by this section on motion by a party if it finds that the giving of notice of a change of the required information would be likely to expose the child or the party to harassment, abuse, serious harm, or injury~~].

SECTION 3.  Subtitle A, Title 5, Family Code, is amended by adding Chapter 112 to read as follows:

CHAPTER 112. SERVICE OF PROCESS ON PARTY WHOSE INFORMATION IS PROTECTED FROM DISCLOSURE

Sec. 112.001.  UNAUTHORIZED DISCLOSURE OR DUPLICATION PROHIBITED; CONTEMPT. (a) A party's information that is subject to an order of nondisclosure under Section 105.006(c) rendered before September 1, 2021, may be disclosed, copied, or otherwise duplicated only as provided by this chapter.

(b)  A person who violates the provisions of this chapter may be punished for contempt of court. A person who is found in contempt of court is subject to:

(1)  incarceration in the county jail for a period of not less than three days; and

(2)  a fine of not less than $200 for each instance of contempt.

Sec. 112.002.  REQUEST FOR DISCLOSURE. (a) A party who files any pleading seeking relief, including contempt, with respect to any matter arising under this title or Title 4 against a party whose information is subject to an order of nondisclosure under Section 105.006(c) rendered before September 1, 2021, may request disclosure of the other party's information to the clerk of the court and to a person authorized to serve process under this chapter solely for purposes of notice and service of process.

(b)  A party requesting disclosure under Subsection (a) must state in writing that the party does not have information necessary to satisfy the due process requirements for notice and service of process to the other party.

Sec. 112.003.  DISCLOSURE TO AUTHORIZED PERSON. (a) On receiving a request under Section 112.002, the clerk of the court shall send a request to the state case registry for the disclosure of the current residence address of the party whose information is subject to an order of nondisclosure under Section 105.006(c). The state case registry shall provide the requested information in writing to the clerk of the court not later than the 10th day after the date the state case registry receives the request. On disclosure of the address by the state case registry, the clerk of the court shall provide the information in writing to a person authorized to serve process under this chapter.

(b)  The information may only be provided in person at the office of the clerk of the court.

(c)  If a citation is issued, the clerk of the court shall ensure that the respondent is identified on the citation by name only.

Sec. 112.004.  PERSON AUTHORIZED TO SERVE PROCESS. Unless otherwise authorized by written court order, only a sheriff or constable may serve process under this chapter.

Sec. 112.005.  NOTICE SENT BY CLERK. Before or at the time the citation is issued, the clerk of the court must give notice to the party identified in the citation at the provided address that states the style and cause number of the case. The notice must contain the following prominently displayed statement in boldfaced type, in capital letters, or underlined:

"YOUR ADDRESS HAS BEEN WITHHELD FROM DISCLOSURE FROM A PARTY IN THE CAUSE NUMBER ABOVE. A CITATION HAS BEEN ISSUED TO GIVE YOU NOTICE THAT A SUIT HAS BEEN FILED. YOUR ADDRESS HAS BEEN PROVIDED TO A PERSON AUTHORIZED TO SERVE CITATION. YOUR ADDRESS HAS NOT BEEN DISCLOSED TO ANY OTHER PARTIES. A DISCLOSURE OF YOUR INFORMATION BY THE PERSON AUTHORIZED TO SERVE CITATION MAY RESULT IN THAT PERSON BEING HELD IN CONTEMPT OF COURT."

Sec. 112.006.  RETURN OF SERVICE. (a) The person who serves process under this chapter shall document that process was served by stating on the return of service that the respondent was served at "the residence address in the clerk's data sheet" or a similar statement. The above statement satisfies the requirement of Rule 107(b)(6), Texas Rules of Civil Procedure. The return may not state the physical location where process was served.

(b)  The person who serves process shall return to the clerk of the court the copy of the information provided under Section 112.003(a) with the return of service.

(c)  On receipt of the copy of the information provided under Section 112.003(a), the clerk of the court shall:

(1)  notate on the court's docket the return of the copy; and

(2)  destroy the copy.

Sec. 112.007.  WARNING REQUIRED. The clerk of the court shall attach to a copy of information provided under Section 112.003 the following prominently displayed statement in boldfaced type, in capital letters, or underlined:

"TO ANY PERSON AUTHORIZED TO SERVE PROCESS:

"THIS DOCUMENT CONTAINS INFORMATION SUBJECT TO A COURT ORDER OF NONDISCLOSURE AND IS PROVIDED TO YOU SOLELY FOR THE PURPOSE OF LOCATING AND EFFECTING SERVICE OF PROCESS ON THE NAMED PERSON. YOU MAY NOT DISPLAY THIS DOCUMENT OR DISCLOSE ANY OF THE INFORMATION CONTAINED IN THIS DOCUMENT TO ANY PERSON. YOU MAY NOT COPY OR OTHERWISE DUPLICATE THIS DOCUMENT OR THE INFORMATION IT CONTAINS. ON THE RETURN OF SERVICE, YOU SHALL STATE THE PLACE OF SERVICE ONLY AS "THE RESIDENCE ADDRESS IN CLERK'S DATA SHEET" OR A SIMILAR STATEMENT. YOU MUST RETURN THIS DOCUMENT TO THE CLERK WITH THE RETURN OF SERVICE. VIOLATION OF ANY OF THESE DIRECTIVES MAY BE PUNISHED AS CONTEMPT OF COURT."

SECTION 4.  Section 234.012, Family Code, is amended to read as follows:

Sec. 234.012.  RELEASE OF INFORMATION FROM STATE CASE REGISTRY. (a) Unless prohibited by a court in accordance with Section 105.006(c), the state case registry shall, on request and to the extent permitted by federal law, provide the information required under Sections 105.006 and 105.008 in any case included in the registry under Section 234.001(b) to:

(1)  any party to the proceeding;

(2)  an amicus attorney;

(3)  an attorney ad litem;

(4)  a friend of the court;

(5)  a guardian ad litem;

(6)  a domestic relations office;

(7)  a prosecuting attorney or juvenile court acting in a proceeding under Title 3; or

(8)  a governmental entity or court acting in a proceeding under Chapter 262.

(b)  Notwithstanding Subsection (a), the state case registry shall release information that was subject to an order of nondisclosure under Section 105.006(c) as necessary to respond to a request of a clerk of court made in accordance with Chapter 112. The state case registry shall release the information not later than the 10th day after the date the state case registry receives the request.

SECTION 5.  The changes in law made by this Act to Sections 105.006 and 105.007, Family Code, apply to a suit affecting the parent-child relationship pending in a trial court on or filed on or after the effective date of this Act.

SECTION 6.  Chapter 112, Family Code, as added by this Act, applies only to a suit affecting the parent-child relationship that is filed on or after the effective date of this Act. A suit filed before the effective date of this Act is governed by the law in effect on the date the suit is filed, and the former law is continued in effect for that purpose.

SECTION 7.  This Act takes effect September 1, 2021.