

HOUSE BILL No. 2268

AN ACT concerning the uniform interstate enforcement of domestic violence protection orders act; amending K.S.A. 2004 Supp. 21-3843 and repealing the existing section.

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

New Section 1. This act may be cited as the uniform interstate enforcement of domestic violence protection orders act.

New Sec. 2. In this act, these terms mean the following:

(a) “Foreign protection order” means a protection order issued by a tribunal of another state.

(b) “Issuing state” means the state whose tribunal issues a protection order.

(c) “Mutual foreign protection order” means a foreign protection order that includes provisions in favor of both the protected individual seeking enforcement of the order and the respondent.

(d) “Protected individual” means an individual protected by a protection order.

(e) “Protection order” means an injunction or other temporary or final order issued, by a tribunal under the domestic violence, family violence or anti-stalking laws of the issuing state, broadly construed, to prevent an individual from engaging in violent or threatening acts against, harassment of, contact or communication with, or physical proximity to, another individual.

(f) “Respondent” means the individual against whom enforcement of a protection order is sought.

(g) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band that has jurisdiction to issue protection orders.

(h) “Tribunal” means a court, agency or other entity authorized by law to issue or modify a protection order.

New Sec. 3. (a) A person authorized by the law of this state to seek enforcement of a protection order may seek enforcement of a valid protection order in a court of this state. The court shall enforce the terms of the protection order, including terms that provide relief that a court of this state would lack power to provide but for this section. The court shall enforce the order, whether the order was obtained by independent action or in another proceeding, if it is an order issued in response to a complaint, petition or motion filed by or on behalf of an individual seeking protection. In a proceeding to enforce a foreign protection order, the court shall follow the procedures of this state for the enforcement of protection orders.

(b) A court of this state may not enforce a foreign protection order issued by a tribunal of a state that does not recognize the standing of a protected individual to seek enforcement of that order.

(c) A court of this state shall enforce the provisions of a valid foreign protection order which govern custody and visitation, if the order was issued in accordance with the jurisdictional requirements governing the issuance of custody and visitation orders in the issuing state.

(d) A foreign protection order is valid if it:

(1) Identifies the protected individual and the respondent;

(2) is currently in effect;

(3) was issued by a tribunal that had jurisdiction over the parties and subject matter under the law of the issuing state; and

(4) was issued after the respondent was given reasonable notice and had an opportunity to be heard before the tribunal issued the order or, in the case of an ex parte order, the respondent was given notice and has had or will have an opportunity to be heard within a reasonable time after the order was issued in a manner consistent with the rights of the respondent to due process.

(e) A foreign protection order valid on its face is prima facie evidence of its validity.

(f) Absence of any of the criteria for validity of a foreign protection order is an affirmative defense in an action seeking enforcement of the order.

(g) A court of this state may enforce provisions of a mutual foreign protection order which favor a respondent only if:

- (1) The respondent filed a written pleading seeking a protection order from the tribunal of the issuing state; and
- (2) the tribunal of the issuing state made specific findings in favor of the respondent.

New Sec. 4. (a) A law enforcement officer of this state, upon determining that there is probable cause to believe that a valid foreign protection order exists and that the order has been violated, shall enforce the order as if it were the order of a court of this state. Presentation of a protection order that identifies both the protected individual and the respondent and, on its face, is currently in effect constitutes probable cause to believe that a valid foreign protection order exists. For the purposes of this section, the protection order may be inscribed on a tangible medium or may have been stored in an electronic or other medium if it is retrievable in perceivable form. Presentation of a certified copy of a protection order is not required for enforcement.

(b) If a foreign protection order is not presented, a law enforcement officer of this state may consider other information in determining whether there is probable cause to believe that a valid foreign protection order exists.

(c) If a law enforcement officer of this state determines that an otherwise valid foreign protection order cannot be enforced because the respondent has not been notified or served with the order, the officer shall inform the respondent of the order, make a reasonable effort to serve the order upon the respondent and allow the respondent a reasonable opportunity to comply with the order before enforcing the order.

(d) Registration or filing of an order in this state is not required for the enforcement of a valid foreign protection order pursuant to this act.

New Sec. 5. (a) Any individual may, but is not required, to register a foreign protection order in this state. To register a foreign protection order, an individual shall present a certified copy of the order to the sheriff in the county where the protection order will be enforced. Pursuant to K.S.A. 60-3112, and amendments thereto, the sheriff shall contact the issuing jurisdiction to verify the order and request that such jurisdiction enter the order, if it has not already been entered, into the national criminal information center and other appropriate databases.

(b) A fee shall not be charged for the registration of a foreign protection order.

(c) No sheriff's department accepting or registering a foreign protection order under this section may notify or require notification of the party against whom the protection order was filed of its filing or registration unless the individual protected by the protection order requests that the sheriff's department do so and the respondent has not already been notified of such filing or registration.

New Sec. 6. This state, a local governmental agency, a law enforcement officer, a prosecuting attorney, or any state or local governmental official acting in an official capacity is immune from civil and criminal liability for conduct arising out of the registration or enforcement of a foreign protection order or the detention or arrest of an alleged violator of a foreign protection order if the conduct was done in good faith in an effort to comply with this act.

New Sec. 7. A protected individual who pursues remedies under this act is not precluded from pursuing other legal or equitable remedies against the respondent.

New Sec. 8. In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

New Sec. 9. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application. To this end, the provisions of this act are severable.

New Sec. 10. This act applies to all protection orders issued and to continuing actions for enforcement of foreign protection orders commenced before and after July 1, 2005.

Sec. 11. K.S.A. 2004 Supp. 21-3843 is hereby amended to read as

follows: 21-3843. (a) Violation of a protective order is knowingly or intentionally violating:

(1) A protection from abuse order issued pursuant to K.S.A. 60-3105, 60-3106 and 60-3107, and amendments thereto;

(2) a protective order issued by a court *or tribunal* of any state or Indian tribe that is consistent with the provisions of 18 U.S.C. 2265, and amendments thereto;

(3) a restraining order issued pursuant to K.S.A. 38-1542, 38-1543, 38-1563 and 60-1607, and amendments thereto;

(4) an order issued *in this or any other state* as a condition of pretrial release, diversion, probation, suspended sentence or postrelease supervision that orders the person to refrain from having any direct or indirect contact with another person;

(5) an order issued *in this or any other state* as a condition of release after conviction or as a condition of a supersedeas bond pending disposition of an appeal, that orders the person to refrain from having any direct or indirect contact with another person; or

(6) a protection from stalking order issued pursuant to K.S.A. 2004 Supp. 60-31a05 or 60-31a06, and amendments thereto.

(b) As used in this section, “order” includes any order issued by a municipal or district court.

(c) Violation of a protective order is a class A person misdemeanor.

(d) This section shall be part of and supplemental to the Kansas criminal code.

Sec. 12. K.S.A. 2004 Supp. 21-3843 is hereby repealed.

Sec. 13. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.