

**Sixty-fifth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 3, 2017**

SENATE BILL NO. 2170
(Senators Hogue, D. Larson)
(Representatives Brabandt, Klemin)
(At the request of the Commission on Uniform State Laws)

AN ACT to create and enact a new chapter to title 14 of the North Dakota Century Code, relating to the Uniform Recognition and Enforcement of Canadian Protection Orders Act; to provide a penalty; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 14 of the North Dakota Century Code is created and enacted as follows:

Definitions.

1. "Canadian domestic violence protection order" means a judgment or part of a judgment or order issued in a civil proceeding by a court of Canada under the law of the issuing jurisdiction which relates to domestic violence and prohibits a respondent from:
 - a. Being in physical proximity to a protected individual or following a protected individual;
 - b. Directly or indirectly contacting or communicating with a protected individual or other individual described in the order;
 - c. Being within a certain distance of a specified place or location associated with a protected individual; or
 - d. Molesting, annoying, harassing, or engaging in threatening conduct directed at a protected individual.
2. "Domestic protection order" means an injunction or other order, issued by a tribunal under the domestic or family violence laws of the issuing court, to prevent an individual from engaging in violent or threatening acts against, harassment of, direct or indirect contact or communication with, or being in physical proximity to another individual.
3. "Issuing court" means the court that issues a Canadian domestic violence protection order.
4. "Protected individual" means an individual protected by a Canadian domestic violence protection order.
5. "Respondent" means the individual against whom a Canadian domestic violence protection order is issued.
6. "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 domestic violence protection orders.
7. "Tribunal" means a court, agency, or other entity authorized by law to issue or modify a domestic violence protection order.

Nonjudicial enforcement of order.

1. A law enforcement officer of this state, upon determining there is probable cause to believe a valid Canadian domestic violence protection order exists and that the order has been violated, shall enforce the Canadian domestic violence protection order as if it were the order of a tribunal of this state. Presentation of a record of a Canadian domestic violence protection order that identifies both a protected individual and a respondent and, on its face, is currently in effect, constitutes probable cause to believe that a valid 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.
2. If a record of a Canadian domestic violence protection order is not presented, the officer may consider other information in determining whether there is probable cause to believe a valid Canadian domestic violence protection order exists.
3. If a law enforcement officer of this state determines an otherwise valid Canadian domestic violence protection order cannot be enforced because the respondent has not been notified or served with the order, the officer shall inform the protected individual that the officer will make reasonable efforts to contact the respondent. After informing the respondent and serving the order, the officer shall allow the respondent a reasonable opportunity to comply with the order before enforcing the order.
4. If a law enforcement officer determines an individual is a protected individual, the officer shall inform the individual of available local victim services.
5. Registration or filing of an order in this state is not required for the enforcement of a valid foreign protection order under this chapter.

Judicial enforcement of order.

1. A tribunal may issue an order enforcing or refusing to enforce a Canadian domestic violence protection order on application of:
 - a. A person authorized by the law of this state other than this chapter to seek enforcement of a domestic protection order; or
 - b. A respondent.
2. A tribunal shall follow the procedures of this state for enforcement of a domestic protection order. An order entered under this section is limited to the enforcement of the terms of the Canadian domestic violence protection order as provided in this chapter.
3. A Canadian domestic violence protection order is valid if it:
 - a. Identifies a protected individual and a respondent;
 - b. Is currently in effect;
 - c. Was issued by a tribunal that had jurisdiction over the parties and matter under the law of the issuing court; and
 - d. Was issued after the respondent was provided with reasonable notice and had an opportunity to be heard before the tribunal issued the order or, in the case of an order ex parte, the respondent was given notice and has had or will have an opportunity to be heard within a reasonable time after the issuing of the order, in a manner consistent with the rights of the respondent to due process.

4. An individual authorized under the law of this state to seek enforcement of a Canadian domestic violence protection order establishes a prima facie case for its validity by presenting an order valid on its face.
5. Absence of any of the criteria for validity of a Canadian domestic violence protection order is an affirmative defense in an action seeking enforcement of the order.
6. A tribunal of this state may enforce the provisions of a Canadian domestic violence protection order against a party to the order in which each party is a protected individual and respondent if:
 - a. The party seeking enforcement of the order filed a pleading requesting the order from the issuing court; and
 - b. The tribunal made specific findings that entitled the party to the enforcement sought.

Registration of order.

1. Any individual may register a Canadian domestic violence protection order in this state. To register the order, an individual shall present a certified copy of the order to any clerk of district court in this state.
2. Upon receipt of a Canadian domestic violence protection order, the clerk of the district court shall register the order in accordance with this section. After the order is registered, the clerk of district court shall furnish to the individual registering the order a certified copy of the registered order and transmit a copy of the order to the appropriate law enforcement agency.
3. A registered Canadian domestic violence protection order that is inaccurate or is not currently in effect must be corrected or removed from the registry in accordance with the law of this state.
4. An individual registering a Canadian domestic violence protection order shall file an affidavit by the protected individual that, to the best of the individual's knowledge, the order is currently in effect.
5. A registered Canadian domestic violence protection order may be entered in any existing state or federal registries of protection orders, in accordance with state or federal law.
6. A fee may not be charged for the registration of a Canadian domestic violence protection order or the correction or removal of a protection order.

Immunity.

This state or a local governmental agency, or a law enforcement officer, prosecuting attorney, clerk of district court, or any state or local governmental official acting in an official capacity, is immune from civil and criminal liability for an act or omission arising out of the registration or enforcement of a Canadian domestic violence protection order or the detention or arrest of an alleged violator of a Canadian domestic violence protection order if the act or omission is done in good faith in an effort to comply with this chapter.

Other remedies.

Pursuing remedies under this chapter does not preclude a protected individual from pursuing other legal or equitable remedies against the respondent.

Penalty.

Violation of a Canadian domestic violence protection order under this chapter is a class A misdemeanor. A second or subsequent violation of a Canadian domestic violence protection order is a class C felony.

SECTION 2. APPLICATION. Section 1 of this Act applies to any Canadian domestic violence protection order issued before, on, or after August 1, 2017, including any continuing action for enforcement of a Canadian domestic violence protection order commenced before August 1, 2017. A request for enforcement of a Canadian domestic violence protection order brought after July 31, 2017, for violations of a Canadian domestic violence protection order occurring before August 1, 2017, is governed by the provisions of section 1 of this Act.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-fifth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2170.

Senate Vote: Yeas 45 Nays 0 Absent 2

House Vote: Yeas 85 Nays 5 Absent 4

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2017.

Approved at _____ M. on _____, 2017.

Governor

Filed in this office this _____ day of _____, 2017,

at _____ o'clock _____ M.

Secretary of State