

## HOUSE BILL No. 2697

By Committee on Judiciary

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AN ACT concerning the uniform interstate enforcement of domestic violence protection orders act; amending K.S.A. 2003 Supp.60-3108 and repealing the existing section.

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

New Section 1. 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 any injunction or other order issued for the purpose of preventing violent or threatening acts against, harassment of, contact or communication with or physical proximity to another individual. This includes any temporary or final order issued by a civil or criminal court whether obtained by filing an independent action or as part of another proceeding if any civil order issued was in response to a complaint, petition or motion filed by or on behalf of a person seeking protection.

(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. 2. (a) The tribunal shall enforce the terms of the protection order, including terms that provide relief that a tribunal of this state would lack power to provide but for this section. The tribunal shall enforce the

1 order, whether the order was obtained by independent action or in an-  
2 other proceeding, if it is an order issued in response to a complaint,  
3 petition or motion filed by or on behalf of an individual seeking protec-  
4 tion. In a proceeding to enforce a foreign protection order, the tribunal  
5 shall follow the procedures of this state for the enforcement of protection  
6 orders.

7 (b) A tribunal of this state shall enforce the provisions of a valid fore-  
8 eign protection order that governs custody and visitation if the order was  
9 issued in accordance with the jurisdictional requirements governing the  
10 issuance of custody and visitation orders in the issuing state.

11 (c) A foreign protection order is valid if it:

- 12 (1) identifies the protected individual and the respondent;
- 13 (2) is currently in effect;
- 14 (3) was issued by a tribunal that had jurisdiction over the parties and  
15 subject matter under the law of the issuing state; and
- 16 (4) was issued after the respondent was given reasonable notice and  
17 had an opportunity to be heard before the tribunal issued the order or,  
18 in the case of an ex parte order, the respondent was given notice and has  
19 had or will have an opportunity to be heard within a reasonable time after  
20 the order was issued in a manner consistent with the rights of the re-  
21 spondent to due process.

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

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

27 (f) A tribunal of this state may enforce provisions of a mutual foreign  
28 protection order which favor a respondent only if:

- 29 (1) The respondent filed a written pleading seeking a protection or-  
30 der from the tribunal of the issuing state; and
- 31 (2) the tribunal of the issuing state made specific findings in favor of  
32 the respondent.

33 New Sec. 3. In order to facilitate the interstate enforcement of fore-  
34 eign protection orders, tribunals in Kansas shall utilize the following form  
35 when issuing protection from abuse orders pursuant to K.S.A. 60-3101 et  
36 seq., and amendments thereto:

37 \_\_\_\_\_ (Name), : IN THE \_\_\_\_\_ COURT OF  
38 Plaintiff : \_\_\_\_\_ (County/Judicial District)  
39 : \_\_\_\_\_ (State/Territory)  
40 vs. : CIVIL ACTION -- LAW  
41 : PROTECTION/RESTRAINING ORDER  
42 \_\_\_\_\_ (Name), :  
43 Defendant : Docket No. \_\_\_\_\_, 200\_\_\_\_\_

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Certification of Protection/Restraining Order

It is hereby certified that the attached is a true and correct copy of the order entered in the above-captioned action on \_\_\_\_\_ (date) and that the original of the attached order was duly executed by the judicial authority whose signature appears thereon. The order expires on \_\_\_\_\_ (date).

The order is:  a civil protection/restraining order  
OR  a criminal protection/restraining order, that recognizes the standing of the plaintiff to seek enforcement of the order

It is further certified that:

- (a) The issuing court determined that it had jurisdiction over the parties and the subject matter under the laws of \_\_\_\_\_ (state or Indian tribe).
- (b) The defendant was given reasonable notice and had opportunity to be heard before this order was issued; or, if the order was issued ex parte, the defendant was given notice and had opportunity to be heard after the order was issued, consistent with the rights of the defendant to due process.
- (c) The order was otherwise issued in accordance with the requirements of the uniform interstate enforcement of domestic violence protection orders act and the violence against women act, 18 U.S.C. § 2265.

For custody and visitation orders:

The order was issued in accordance with the requirements of the uniform child custody jurisdiction act or the uniform child custody jurisdiction and enforcement act of this state and is consistent with the provisions of the parental kidnapping prevention act, 28 U.S.C. § 1738A.

The attached order shall be presumed to be valid and enforceable in this and other jurisdictions.

Signature of clerk of court or other authorized official: \_\_\_\_\_  
Judicial district: \_\_\_\_\_ Address: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Date: \_\_\_\_\_  
Seal:

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 tribunal 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

1 order exists.

2 (c) If a law enforcement officer of this state determines that an oth-  
3 erwise valid foreign protection order cannot be enforced because the  
4 respondent has not been notified or served with the order, the officer  
5 shall inform the respondent of the order, make a reasonable effort to  
6 serve the order upon the respondent and allow the respondent a reason-  
7 able opportunity to comply with the order before enforcing the order.

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

10 New Sec. 5. This state, a local governmental agency, a law enforce-  
11 ment officer, a prosecuting attorney, a clerk of court or any state or local  
12 governmental official acting in an official capacity is immune from civil  
13 and criminal liability for an act arising out of the registration or enforce-  
14 ment of a foreign protection order or the detention or arrest of an alleged  
15 violator of a foreign protection order if the act was done in good faith in  
16 an effort to comply with this act.

17 New Sec. 6. A protected individual who pursues remedies under this  
18 act is not precluded from pursuing other legal or equitable remedies  
19 against the respondent.

20 New Sec. 7. In applying and construing this uniform act, consider-  
21 ation must be given to the need to promote uniformity of the law with  
22 respect to its subject matter among states that enact it.

23 New Sec. 8. If any provision of this act or its application to any person  
24 or circumstance is held invalid, the invalidity does not affect other pro-  
25 visions or applications of this act that can be given effect without the  
26 invalid provision or application. To this end, the provisions of this act are  
27 severable.

28 New Sec. 9. This act applies to protection orders issued before July  
29 1, 2005, and to continuing actions for enforcement of foreign protection  
30 orders commenced before July 1, 2005. A request for enforcement of a  
31 foreign protection order made on or after July 1, 2005, for violations of  
32 a foreign protection order occurring before July 1, 2005, is governed by  
33 this act.

34 Sec. 10. K.S.A. 2003 Supp. 60-3108 is hereby amended to read as  
35 follows: 60-3108. A *certified* copy of any order under this act shall be  
36 issued to the plaintiff, the defendant and the police department of the  
37 city where the plaintiff resides. If the plaintiff does not reside in a city or  
38 resides in a city with no police department, a *certified* copy of the order  
39 shall be issued to the sheriff of the county where the order is issued or  
40 registered.

41 Sec. 11. K.S.A. 2003 Supp. 60-3108 is hereby repealed.

42 Sec. 12. This act shall take effect and be in force from and after its  
43 publication in the statute book.