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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Regular Session, 2004

ENROLLED

Committee Substitute for
SENATE BILL NO. 258

(By Senator Caldwell, et al)

PASSED February 19, 2004

In Effect ninety days from Passage

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COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 258

(SENATORS CALDWELL, DEMPSEY, MINARD, MINEAR, ROWE,
UNGER, HUNTER AND WHITE, *original sponsors*)

[Passed February 19, 2004; in effect ninety days from passage.]

AN ACT to amend and reenact §48-27-310, §48-27-802 and §48-27-903 of the code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §48-28-1, §48-28-2, §48-28-3, §48-28-4, §48-28-5, §48-28-6, §48-28-7, §48-28-8, §48-28-9 and §48-28-10, all relating to the enforcement of domestic violence protective orders generally; granting full faith and credit to out-of-state protection orders; expanding the West Virginia state police registry of in-state protective orders to include registration of out-of-state protection orders; expanding offenses and penalties for violations of in-state protective orders to include violations of conditions of bail, probation or parole which are intended to protect the personal safety of another; adopting the uniform interstate enforcement of domestic violence protection orders act; setting forth definitions;

providing for enforcement of out-of-state protection orders even if the relief sought would not be available in West Virginia; setting forth criteria for enforcement of out-of-state protection orders, including protection provisions of valid out-of-state orders governing custody and visitation and mutual protection orders; providing that an out-of-state protection order which appears authentic on its face is presumed to be valid; providing for nonjudicial enforcement of out-of-state protection orders by law-enforcement officers with probable cause to believe that a valid protection order exists and has been violated; providing for registration of an out-of-state protection order with the West Virginia state police; providing that registration is not a prerequisite to enforcement of an out-of-state protection order; providing immunity from civil or criminal liability for law-enforcement or other government officers or agencies for good faith acts or omissions undertaken in the course of enforcing an out-of-state protection order; providing criminal penalties for violation of out-of-state protection orders or conditions of bail, probation or parole; specifying that a protected individual may pursue other remedies; urging a construction of the act that encompasses uniformity of application and construction with other states that adopt it; and specifying the orders and actions to which the act is applicable.

Be it enacted by the Legislature of West Virginia:

That §48-27-310, §48-27-802 and §48-27-903 of the code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new article, designated §48-28-1, §48-28-2, §48-28-3, §48-28-4, §48-28-5, §48-28-6, §48-28-7, §48-28-8, §48-28-9 and §48-28-10, all to read as follows:

ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.

§48-27-310. Full faith and credit.

- 1 Any protective order issued pursuant to this article shall
- 2 be effective throughout the state in every county. Any
- 3 protection order issued by any other state of the United

4 States, the District of Columbia, Puerto Rico, the United
5 States Virgin Islands or any territory or insular possession
6 subject to the jurisdiction of the United States or any
7 Indian tribe or band that has jurisdiction to issue protec-
8 tion orders shall be accorded full faith and credit and
9 enforced in accordance with the provisions of article
10 twenty-eight of this chapter.

§48-27-802. Maintenance of registry by state police.

1 (a) The West Virginia state police shall maintain a
2 registry in which it shall enter certified copies of protec-
3 tive orders entered by courts from every county in this
4 state pursuant to the provisions of this article and of
5 protection orders issued by another jurisdiction pursuant
6 to its law: *Provided*, That the provisions of this subsection
7 are not effective until a central automated state law-
8 enforcement information system is developed.

9 (b) A petitioner who obtains a protective order pursuant
10 to this article, or a protection order from another jurisdic-
11 tion pursuant to its law, may register that order in any
12 county within this state where the petitioner believes
13 enforcement may be necessary.

14 (c) A West Virginia protective order may be registered by
15 the petitioner in a county other than the issuing county by
16 obtaining a copy of the order of the issuing court, certified
17 by the clerk of that court, and presenting that certified
18 order to the local office of the West Virginia state police
19 where the order is to be registered.

20 (d) Upon receipt of a certified order for registration, the
21 local office of the West Virginia state police shall provide
22 certified copies to any law-enforcement agency within its
23 jurisdiction, including any municipal police office and the
24 office of the sheriff.

25 (e) Nothing in this section precludes the enforcement of
26 an order in a county other than the county or jurisdiction
27 in which the order was issued if the petitioner has not

28 registered the order in the county in which an alleged
29 violation of the order occurs.

§48-27-903. Misdemeanor offenses for violation of protective order, repeat offenses, penalties.

1 (a) A respondent who abuses the petitioner or minor
2 children or who is physically present at any location in
3 knowing and willful violation of the terms of: (1) An
4 emergency or final protective order issued under the
5 provisions of this article or section five hundred nine,
6 article five of this chapter granting relief pursuant to the
7 provisions of this article; or (2) a condition of bail, proba-
8 tion or parole which has the express intent or effect of
9 protecting the personal safety of a particular person or
10 persons is guilty of a misdemeanor and, upon conviction
11 thereof, shall be confined in the county or regional jail for
12 a period of not less than one day nor more than one year,
13 which jail term shall include actual confinement of not less
14 than twenty-four hours, and shall be fined not less than
15 two hundred fifty dollars nor more than two thousand
16 dollars.

17 (b) A respondent who is convicted of a second or subse-
18 quent offense under subsection (a) of this section is guilty
19 of a misdemeanor and, upon conviction thereof, shall be
20 confined in the county or regional jail for not less than
21 three months nor more than one year, which jail term shall
22 include actual confinement of not less than twenty-four
23 hours, and fined not less than five hundred dollars nor
24 more than three thousand dollars, or both.

ARTICLE 28. UNIFORM INTERSTATE ENFORCEMENT OF DOMESTIC VIOLENCE PROTECTION ORDERS ACT.

§48-28-1. Title.

1 This article may be cited as the "Uniform Interstate
2 Enforcement of Domestic Violence Protection Orders Act".

§48-28-2. Definitions.

1 In this article:

2 (1) "Court" means a circuit court, family court or
3 magistrate court which has jurisdiction over domestic
4 violence proceedings pursuant to article twenty-seven of
5 this chapter.

6 (2) "Foreign protection order" means a protection order
7 issued by a tribunal of another state.

8 (3) "Issuing state" means the state whose tribunal issues
9 a protection order.

10 (4) "Mutual foreign protection order" means a foreign
11 protection order that includes provisions in favor of both
12 the protected individual seeking enforcement of the order
13 and the respondent.

14 (5) "Protected individual" means an individual protected
15 by a protection order.

16 (6) "Protection order" means an injunction or other
17 order, issued by a tribunal under the domestic violence,
18 family violence or antistalking laws of the issuing state, to
19 prevent an individual from engaging in violent or threat-
20 ening acts against, harassment of, contact or communica-
21 tion with, or physical proximity to another individual.

22 (7) "West Virginia protective order" means an order
23 issued pursuant to article twenty-seven of this chapter or
24 to section five hundred nine, article five of this chapter.

25 (8) "Respondent" means the individual against whom
26 enforcement of a protection order is sought.

27 (9) "State" means a state of the United States, the
28 District of Columbia, Puerto Rico, the United States
29 Virgin Islands or any territory or insular possession
30 subject to the jurisdiction of the United States. The term
31 includes an Indian tribe or band that has jurisdiction to
32 issue protection orders.

33 (10) "Tribunal" means a court, agency or other entity
34 authorized by law to issue or modify a protection order.

§48-28-3. Judicial enforcement of order.

1 (a) A person authorized by the law of this state to seek
2 enforcement of a West Virginia protective order may seek
3 enforcement of a valid foreign protection order in a court
4 of this state. The court shall enforce the terms of the
5 order, including terms that provide relief that a court of
6 this state would lack power to provide but for this section.
7 The court shall enforce the order, whether the order was
8 obtained by independent action or in another proceeding,
9 if it was issued in response to a complaint, petition or
10 motion filed by or on behalf of an individual seeking
11 protection. In a proceeding to enforce a foreign protection
12 order, the court shall follow the procedures of this state for
13 the enforcement of West Virginia protective orders.

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

18 (c) A court of this state shall enforce the provisions of a
19 valid foreign protection order which govern custody and
20 visitation if the order was issued in accordance with the
21 jurisdictional requirements governing the issuance of
22 custody and visitation orders in the issuing state or under
23 federal law and with the requirements set out in subsec-
24 tion (d) of this section.

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

26 (1) Identifies the protected individual and the respon-
27 dent;

28 (2) Is currently in effect;

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

32 (4) Was issued after the respondent was given reasonable
33 notice and had an opportunity to be heard before the
34 tribunal issued the order or, in the case of an order ex
35 parte, the respondent was given notice and has had or will
36 have an opportunity to be heard within a reasonable time
37 after the order was issued in a manner consistent with the
38 respondent's rights to due process of law.

39 (e) A foreign protection order which appears authentic
40 on its face is presumed to be valid.

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

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

47 (1) The respondent filed a written pleading seeking a
48 protection order from the tribunal of the issuing state; and

49 (2) The tribunal of the issuing state made specific
50 findings in favor of the respondent.

§48-28-4. Nonjudicial enforcement of order.

1 (a) A law-enforcement officer of this state, upon deter-
2 mining that there is probable cause to believe that a valid
3 foreign protection order exists and that the order has been
4 violated, shall enforce the order as if it were a West
5 Virginia protective order. Presentation of a foreign
6 protection order that identifies both the protected individ-
7 ual and the respondent and that appears, on its face, to be
8 authentic and currently in effect constitutes probable
9 cause to believe that a valid foreign protection order
10 exists. For the purposes of this section, the protection
11 order may be inscribed on a tangible medium or may have
12 been stored in an electronic or other medium if it is
13 retrievable in perceivable form. Presentation of a certified
14 copy of a protection order is not required for enforcement.

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

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

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

§48-28-5. Registration of order.

1 (a) Any individual may register a foreign protection
2 order in this state by:

3 (1) Presenting a certified copy of the order to a local
4 office of the West Virginia state police for registration in
5 accordance with the provisions of section eight hundred
6 two, article twenty-seven of this chapter; or

7 (2) Presenting a certified copy of the order to the clerk of
8 the court in which enforcement may be sought and request
9 that the order be forwarded to the West Virginia state
10 police for registration in accordance with the provisions of
11 section eight hundred two, article twenty-seven of this
12 chapter.

13 (b) An individual registering a foreign protection order
14 shall file an affidavit by the protected individual stating
15 that, to the best of the protected individual's knowledge,
16 the order is currently in effect.

17 (c) Upon receipt of a foreign protection order for regis-
18 tration, the local office of the West Virginia state police
19 shall:

20 (1) Provide certified copies of the order to any law-
21 enforcement agency within its jurisdiction, including any
22 municipal police office and the office of the sheriff;

23 (2) Register the order in accordance with the provisions
24 of this section and of section eight hundred two, article
25 twenty-seven of this chapter;

26 (3) Furnish to the individual registering the order a
27 certified copy of the registered order.

28 (d) A registered foreign protection order that is shown to
29 be inaccurate or not currently in effect must be corrected
30 or removed from the registry.

31 (e) A foreign protection order registered under this
32 article may be entered in any existing state or federal
33 registry of protection orders in accordance with applicable
34 law.

35 (f) A fee may not be charged for the registration of a
36 foreign protection order.

§48-28-6. Immunity.

1 This state or a local governmental agency, or a
2 law-enforcement officer, prosecuting attorney, clerk of
3 court or any state or local governmental official acting in
4 an official capacity, is immune from civil and criminal
5 liability for an act or omission arising out of the registra-
6 tion or enforcement of a foreign protection order or the
7 detention or arrest of an alleged violator of a foreign
8 protection order if the act or omission was done in good
9 faith in an effort to comply with this article.

§48-28-7. Criminal offenses and penalties.

1 (a) A respondent who abuses, as that term is defined in
2 section two hundred two, article twenty-seven of this
3 chapter, a protected individual or who is physically
4 present at any location in knowing and willful violation of
5 the terms of: (1) A valid foreign protection order; (2) a
6 protection order entered in any pending foreign divorce
7 action which enjoins the offending party from molesting or
8 interfering with another party or interfering with the
9 custodial or visitation rights of another person; or (3) a
10 condition of bail, probation or parole imposed in another
11 state which has the express intent or effect of protecting
12 the personal safety of a particular person or persons is
13 guilty of a misdemeanor and, upon conviction thereof,
14 shall be confined in the county or regional jail for a period
15 of not less than one day nor more than one year, which jail
16 term shall include actual confinement of not less than
17 twenty-four hours, and shall be fined not less than two
18 hundred fifty dollars nor more than two thousand dollars.

19 (b) A respondent who is convicted of a second or subse-
20 quent offense under subsection (a) of this section is guilty
21 of a misdemeanor and, upon conviction thereof, shall be
22 confined in the county or regional jail for not less than
23 three months nor more than one year, which jail term shall
24 include actual confinement of not less than twenty-four
25 hours, and fined not less than five hundred dollars nor
26 more than three thousand dollars.

§48-28-8. Other remedies.

1 A protected individual who pursues remedies under this
2 article is not precluded from pursuing other legal or
3 equitable remedies against the respondent.

§48-28-9. Uniformity of application and construction.

1 In applying and construing this act, consideration must
2 be given to the need to promote uniformity of the law with
3 respect to its subject matter among states that enact it.

§48-28-10. Transitional provision.

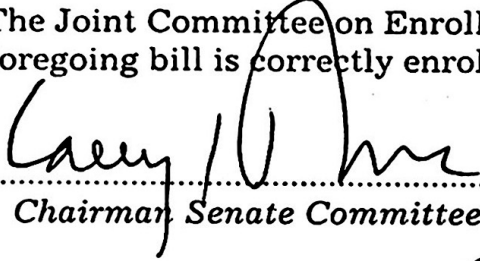
1 This article applies to:

2 (a) Foreign protection orders issued before the effective
3 date of this article; and

4 (b) Continuing actions for enforcement of foreign
5 protection orders commenced before the effective date of
6 this article. A request for enforcement, made on or after
7 the effective date of this article, of a foreign protection
8 order based on violations which occurred before the
9 effective date of this article is governed by this article.

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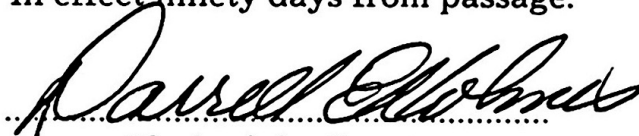
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


.....
Chairman, Senate Committee

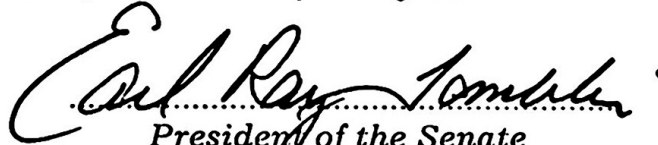

.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.


.....
Clerk of the Senate


.....
Clerk of the House of Delegates


.....
President of the Senate


.....
Speaker House of Delegates

The within is approved this the 3rd
Day of March, 2004.


.....
Governor

PRESENTED TO
GOVERNOR

Date 3/26/04

Time 6:45pm