



2017 ASSEMBLY BILL 451

July 26, 2017 - Introduced by Representatives TUSLER, STUCK, ANDERSON, BALLWEG, BRANDTJEN, BERCEAU, BROSTOFF, CONSIDINE, FIELDS, GENRICH, JACQUE, KULP, MILROY, MURSAU, SPIROS, SPREITZER, SUBECK and ZEPNICK, cosponsored by Senators RISSER, WANGGAARD, JOHNSON, OLSEN and L. TAYLOR. Referred to Committee on Family Law.

AUTHORS SUBJECT TO CHANGE

1 **AN ACT** *to create* 813.1283 of the statutes; **relating to:** the Uniform Recognition
2 and Enforcement of Canadian Domestic Violence Protection Orders Act and
3 providing a criminal penalty.

Analysis by the Legislative Reference Bureau

This bill adopts the Uniform Recognition and Enforcement of Canadian Domestic Violence Protection Orders Act, approved and recommended by the National Conference of Commissioners on Uniform State Laws in 2015. This bill requires the courts of this state to recognize and enforce civil domestic violence protection orders issued by Canadian courts.

Current law incorporates the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act, which allows recognition and enforcement of domestic violence protection orders from other states. This bill expands recognition to civil domestic protection orders issued by Canadian courts. The bill does not address recognition of Canadian criminal orders or custody issues. Under this bill, a law enforcement officer or tribunal can recognize and enforce a civil order issued by a Canadian court that requires no direct or indirect contact with an individual protected by a Canadian domestic violence protection order. A Canadian domestic violence protection order is defined in the bill to mean a judgment or part of a judgment or order issued in a civil proceeding by a court of Canada that relates to domestic violence and prohibits a person from 1) being in physical proximity to or following a protected individual; 2) directly or indirectly contacting or communicating with a protected individual; 3) being within a certain distance of a

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place or location associated with a protected individual; or 4) molesting, annoying, harassing, or engaging in threatening conduct directed at a protected individual.

The bill provides uniform procedures for enforcement of Canadian domestic violence protection orders. Under the bill, law enforcement officers must determine whether there is probable cause to believe that a valid order exists and has been violated. The bill provides that if a protected individual can provide direct proof of the existence of a facially valid order, for example, by presenting a paper copy or accessing an electronic registry, the copy or registry conclusively establishes probable cause. However, if there is no such direct proof, the bill allows law enforcement to consider other information and make a determination whether there is probable cause to believe that a valid protection order exists and has been violated. If the officer determines that the order cannot be enforced because the person against whom the order was issued has not received appropriate notice, the officer is required to provide notice to the protected individual and then make a reasonable effort to notify the person against whom the order was issued and allow that person an opportunity to comply with the order.

A person against whom an order is enforced will have sufficient opportunity to demonstrate that the order is invalid if and when the case is brought before the enforcing tribunal. Under the bill, a tribunal, defined in the bill as a court, agency, or other entity authorized to establish, enforce, or modify a domestic protection order, may issue an order to enforce or refusing to enforce a Canadian domestic violence protection order following the procedures set forth in current law for enforcement of domestic protection orders. The bill provides immunity for officials for acts and omissions arising out of the filing or enforcement of a Canadian domestic violence protection order, if the act or omission was a good faith effort to comply with the requirements for filing or enforcement.

This bill includes some modifications from, or additions to, the model language recommended by National Conference of Commissioners on Uniform State Laws. For example, as recommended by the National Conference of Commissioners on Uniform State Laws, this bill provides an optional procedure for filing a Canadian domestic violence protection order, but does not require individuals seeking enforcement of a protection order to file the order. The filing procedures in this bill, however, follow the procedures set forth in current law under the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act rather than the model language. This bill also includes a penalty provision for violation of a condition of a protection order.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 1 **SECTION 1.** 813.1283 of the statutes is created to read:
- 2 **813.1283 Uniform Recognition and Enforcement of Canadian**
- 3 **Domestic Violence Protection Orders Act. (1) SHORT TITLE.** This section may

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1 be cited as the Uniform Recognition and Enforcement of Canadian Domestic
2 Violence Protection Orders Act.

3 (2) DEFINITIONS. In this section:

4 (a) “Canadian domestic violence protection order” means a judgment or part
5 of a judgment or order issued in a civil proceeding by a court of Canada under law
6 of the issuing jurisdiction which relates to domestic violence and prohibits a
7 respondent from doing any of the following:

8 1. Being in physical proximity to a protected individual or following a protected
9 individual.

10 2. Directly or indirectly contacting or communicating with a protected
11 individual or other individual described in the order.

12 3. Being within a certain distance of a specified place or location associated
13 with a protected individual.

14 4. Molesting, annoying, harassing, or engaging in threatening conduct directed
15 at a protected individual.

16 (b) “Domestic protection order” means an injunction or other order issued by
17 a tribunal which relates to domestic or family violence laws to prevent an individual
18 from engaging in violent or threatening acts against, harassment of, direct or
19 indirect contact or communication with, or being in physical proximity to another
20 individual.

21 (c) “Issuing court” means the court that issues a Canadian domestic violence
22 protection order.

23 (d) “Law enforcement officer” means an individual authorized by law of this
24 state other than this section to enforce a domestic protection order.

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1 (e) “Person” means an individual, estate, business or nonprofit entity, public
2 corporation, government or governmental subdivision, agency, or instrumentality, or
3 other legal entity.

4 (f) “Protected individual” means an individual protected by a Canadian
5 domestic violence protection order.

6 (g) “Record” means information that is inscribed on a tangible medium or that
7 is stored in an electronic or other medium and is retrievable in perceivable form.

8 (h) “Respondent” means an individual against whom a Canadian domestic
9 violence protection order is issued.

10 (i) “State” means a state of the United States, the District of Columbia, Puerto
11 Rico, the U.S. Virgin Islands, a federally recognized American Indian tribe or band,
12 or any territory or insular possession subject to the jurisdiction of the United States.

13 (j) “Tribunal” means a court, agency, or other entity authorized by law of this
14 state other than this section to establish, enforce, or modify a domestic protection
15 order.

16 **(3) ENFORCEMENT BY A LAW ENFORCEMENT OFFICER.** (a) If a law enforcement
17 officer determines under par. (b) or (c) that there is probable cause to believe a valid
18 Canadian domestic violence protection order exists and the order has been violated,
19 the officer shall enforce the terms of the Canadian domestic violence protection order
20 as if the terms were in an order of a tribunal. Presentation to a law enforcement
21 officer of a certified copy of a Canadian domestic violence protection order is not
22 required for enforcement.

23 (b) Presentation to a law enforcement officer of a record of a Canadian domestic
24 violence protection order that identifies both a protected individual and a respondent

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1 and on its face is in effect constitutes probable cause to believe that a valid order
2 exists.

3 (c) If a record of a Canadian domestic violence protection order is not presented
4 as provided in par. (b), a law enforcement officer may consider other information in
5 determining whether there is probable cause to believe that a valid Canadian
6 domestic violence protection order exists.

7 (d) If a law enforcement officer determines that an otherwise valid Canadian
8 domestic violence protection order cannot be enforced because the respondent has
9 not been notified of or served with the order, the officer shall notify the protected
10 individual that the officer will make reasonable efforts to contact the respondent,
11 consistent with the safety of the protected individual. After notice to the protected
12 individual and consistent with the safety of the individual, the officer shall make a
13 reasonable effort to inform the respondent of the order, notify the respondent of the
14 terms of the order, provide a record of the order, if available, to the respondent, and
15 allow the respondent a reasonable opportunity to comply with the order before the
16 officer enforces the order.

17 (e) If a law enforcement officer determines that an individual is a protected
18 individual, the officer shall inform the individual of available local victim services.

19 **(4) ENFORCEMENT BY A TRIBUNAL.** (a) A tribunal may issue an order enforcing
20 or refusing to enforce a Canadian domestic violence protection order on application
21 by any of the following:

22 1. A person authorized by law of this state other than this section to seek
23 enforcement of a domestic protection order.

24 2. A respondent.

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1 (b) In a proceeding under par. (a), the tribunal shall follow the procedures of
2 this state for enforcement of a domestic protection order under s. 813.12, 813.122,
3 813.123, or 813.125. An order entered under this subsection is limited to the
4 enforcement of the terms of the Canadian domestic violence protection order as
5 described in sub. (2) (a).

6 (c) A Canadian domestic violence protection order is enforceable under this
7 subsection if all of the following are true:

8 1. The order identifies a protected individual and a respondent.

9 2. The order is valid and in effect.

10 3. The issuing court had jurisdiction over the parties and the subject matter
11 under law applicable in the issuing court.

12 4. The order was issued after any of the following:

13 a. The respondent was given reasonable notice and had an opportunity to be
14 heard before the court issued the order.

15 b. In the case of an ex parte order, the respondent was given a reasonable notice
16 and had or will have an opportunity to be heard within a reasonable time after the
17 order was issued, in a manner consistent with the right of the respondent to due
18 process.

19 (d) A Canadian domestic violence protection order valid on its face is prima
20 facie evidence of its enforceability under this subsection.

21 (e) A claim that a Canadian domestic violence protection order does not comply
22 with par. (c) is an affirmative defense in a proceeding seeking enforcement of the
23 order. If the tribunal determines that the order is not enforceable, the tribunal shall
24 issue an order that the Canadian domestic violence protection order is not

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1 enforceable under this subsection and sub. (3) and may not be registered under sub.
2 (5).

3 (f) This subsection applies to enforcement of a provision of a Canadian domestic
4 violence protection order against a party to the order in which each party is a
5 protected individual and respondent only if the party seeking enforcement of the
6 order filed a pleading requesting the order from the issuing court and the court made
7 specific findings that entitled the party to the enforcement sought.

8 **(5) FILING.** (a) A certified copy of any Canadian domestic violence protection
9 order, or of a modification of a Canadian domestic violence protection order that is
10 on file with the circuit court may be filed in the office of the clerk of circuit court of
11 any county of this state. The clerk may not charge a fee for the filing of a Canadian
12 domestic violence protection order. The clerk shall treat any Canadian domestic
13 violence protection order or modification so filed in the same manner as a judgment
14 of the circuit court. Filing of a Canadian domestic violence protection order under
15 the laws of this state is not required for its enforcement under this section.

16 (b) Within one business day after a Canadian domestic violence protection
17 order or a modification of a foreign protection order is filed under this subsection, the
18 clerk of circuit court shall send a copy of the Canadian domestic violence protection
19 order or modification of the order to the sheriff in that circuit or to the local law
20 enforcement agency that is the central repository for orders and injunctions in that
21 circuit.

22 (c) The sheriff or law enforcement agency that receives a copy of a Canadian
23 domestic violence protection order or of a modification of an order from the clerk
24 under par. (b) shall enter the information received concerning the order or
25 modification of an order into the transaction information for management of

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1 enforcement system no later than 24 hours after receiving the information. The
2 sheriff or law enforcement agency shall make available to other law enforcement
3 agencies, through a verification system, information on the existence and status of
4 any order or modification of an order filed under this subsection. The information
5 need not be maintained after the order or modification is no longer in effect.

6 **(6) IMMUNITY.** A state, state agency, local governmental agency, law
7 enforcement officer, prosecuting attorney, clerk of court, and state or local
8 governmental official acting in an official capacity are immune from civil and
9 criminal liability for an act or omission arising out of the filing or enforcement of a
10 Canadian domestic violence protection order or the detention or arrest of an alleged
11 violator of a Canadian domestic violence protection order if the act or omission was
12 a good faith effort to comply with this section.

13 **(7) OTHER REMEDIES.** An individual who seeks a remedy under this section may
14 seek other legal or equitable remedies.

15 **(8) UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In applying and construing
16 this section, consideration must be given to the need to promote uniformity of the law
17 with respect to its subject matter among states that enact it.

18 **(9) RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE**
19 **ACT.** This section modifies, limits, and supersedes the Electronic Signatures in
20 Global and National Commerce Act, 15 USC 7001 to 7031, but does not modify, limit,
21 or supersede section 101 (c) of that act, 15 USC 7001 (c), or authorize electronic
22 delivery of any of the notices described in section 103 (b) of that act, 15 USC 7003 (b).

23 **(10) APPLICABILITY.** This section applies to a Canadian domestic violence
24 protection order issued before, on, or after the effective date of this subsection
25 [LRB inserts date], and to a continuing action for enforcement of a Canadian

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1 domestic violence protection order commenced before, on, or after the effective date
2 of this subsection [LRB inserts date]. A request for enforcement of a Canadian
3 domestic violence protection order made on or after the effective date of this
4 subsection [LRB inserts date], for a violation of the order occurring before, on, or
5 after the effective date of this subsection [LRB inserts date], is governed by this
6 section.

7 **(11m)** PENALTY. A person who knowingly violates a condition of a Canadian
8 domestic violence protection order or modification of a Canadian domestic violence
9 protection order that is enforceable under this section shall be fined not more than
10 \$10,000 or imprisoned for not more than 9 months or both. If a Canadian domestic
11 violence protection order and any modification of that order that is enforceable under
12 this section remains current and in effect at the time that a court convicts a person
13 for a violation of that order or modification of that order, but that order or
14 modification has not been filed under this section, the court shall direct the clerk of
15 circuit court to file the order and any modification of the order.

16 **(END)**