

By: Representative Watson

To: Judiciary A

HOUSE BILL NO. 970

1 AN ACT TO ENACT THE UNIFORM INTERSTATE ENFORCEMENT OF
 2 DOMESTIC VIOLENCE PROTECTION ORDERS ACT; TO SET FORTH DEFINITIONS;
 3 TO PROVIDE FOR THE UNIFORM ENFORCEMENT OF JUDICIAL ORDERS; TO
 4 PROVIDE FOR UNIFORM NONJUDICIAL ENFORCEMENT OF PROTECTION ORDERS;
 5 TO PROVIDE THAT THE STATE DEPARTMENT OF HUMAN SERVICES REGISTER
 6 FOREIGN PROTECTION ORDERS IN THIS STATE; TO PROVIDE CIVIL AND
 7 CRIMINAL IMMUNITY FOR THOSE PERSONS ACTING IN AN OFFICIAL CAPACITY
 8 REGARDING THE REGISTRATION OR ENFORCEMENT OF A FOREIGN PROTECTION
 9 ORDER; TO AMEND SECTIONS 93-21-13 AND 93-21-16, MISSISSIPPI CODE
 10 OF 1972, IN CONFORMITY THERETO; AND FOR RELATED PURPOSES.

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

12 **SECTION 1. Short title.** The provisions of Sections 1
 13 through 9 of this act may be cited as the Uniform Interstate
 14 Enforcement of Domestic Violence Protection Orders Act.

15 **SECTION 2. Definitions.** The following words and phrases
 16 shall have the meanings ascribed in this section unless the
 17 context clearly indicates otherwise:

18 (1) "Foreign protection order" means a protection order
 19 issued by a tribunal of another state.

20 (2) "Issuing state" means the state whose tribunal
 21 issues a protection order.

22 (3) "Mutual foreign protection order" means a foreign
 23 protection order that includes provisions issued in favor of both
 24 the protected individual seeking enforcement of the order and the
 25 respondent.

26 (4) "Protected individual" means an individual
 27 protected by a protection order.

28 (5) "Protection order" means an injunction or other
 29 order, issued by a tribunal under the domestic violence or family
 30 violence laws of the issuing state, to prevent an individual from
 31 engaging in violent or threatening acts against, harassment of,

32 contact or communication with, or physical proximity to another
33 individual.

34 (6) "Respondent" means the individual against whom
35 enforcement of a protection order is sought.

36 (7) "State" means a state of the United States, the
37 District of Columbia, Puerto Rico, the United States Virgin
38 Islands, or any territory or insular possession subject to the
39 jurisdiction of the United States. The term includes an American
40 Indian tribe or band that has jurisdiction to issue protection
41 orders.

42 (8) "Tribunal" means a court, agency, or other entity
43 authorized by law to issue or modify a protection order.

44 **SECTION 3. Judicial enforcement of order.**

45 (a) A tribunal of this state shall enforce the terms of a
46 valid foreign protection order, including terms that provide
47 relief that a tribunal of this state would lack power to provide
48 but for this section. A tribunal of this state shall enforce a
49 valid foreign protection order issued by a tribunal, whether the
50 order was obtained by independent action or in another proceeding,
51 if it is an order issued in response to a complaint, petition, or
52 motion filed by or on behalf of an individual seeking protection.
53 A tribunal of this state may not enforce an order issued by a
54 tribunal that does not recognize the standing of a protected
55 individual to seek enforcement of the order.

56 (b) A tribunal of this state shall enforce the provisions of
57 a valid foreign protection order which governs custody and
58 visitation. The custody and visitation provisions of the order
59 must have been issued in accordance with the jurisdictional
60 requirements governing the issuance of custody and visitation
61 orders in the issuing state.

62 (c) A tribunal of this state may not enforce under this
63 chapter an order or provision of an order with respect to support.

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

65 (1) Identifies the protected individual and the
66 respondent;
67 (2) Is in effect at the time enforcement is being
68 sought;

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

71 (4) Was issued after the respondent was provided with
72 reasonable notice and had an opportunity to be heard before the
73 tribunal issued the order or, in the case of an order ex parte,
74 the respondent was given notice and afforded an opportunity to be
75 heard within a reasonable time after the issuing of the order,
76 consistent with the rights of the respondent to due process.

77 (e) A person authorized under the law of this state to seek
78 enforcement of a foreign protection order establishes a prima
79 facie case for its validity by presenting an order valid on its
80 face.

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

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

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

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

90 **SECTION 4. Nonjudicial enforcement of order.**

91 (a) A law enforcement officer of this state, upon
92 determining that there is probable cause to believe that a valid
93 foreign protection order exists and that the order has been
94 violated, shall enforce the order as if it were the order of a
95 tribunal of this state. Presentation of a protection order that
96 identifies both the protected individual and the respondent, and
97 on its face is in effect at the time enforcement is being sought,

98 constitutes probable cause to believe that a valid foreign
99 protection order exists. For the purposes of this section, the
100 protection order may be inscribed on a tangible medium or may have
101 been stored in an electronic or other medium if it is retrievable
102 in perceivable form. Presentation of a certified copy of a
103 protection order is not required for enforcement.

104 (b) If the protection order is not presented, the officer
105 may consider other information in determining whether there is
106 probable cause to believe that a valid foreign protection order
107 exists.

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

116 (d) Registration or filing of an order in this state is not
117 required for the enforcement of a valid foreign protection order
118 under the provisions of this act.

119 **SECTION 5. Registration of order.**

120 (a) Any individual may register a foreign protection order
121 in this state. To register a foreign protection order, an
122 individual shall:

123 (1) Present a certified copy of the order to the
124 chancery clerk's office of any county in this state; or

125 (2) Present a certified copy of the order to the
126 Department of Human Services and request that the order be
127 registered.

128 (b) Upon receipt of a protection order, the chancery clerk
129 shall register the order in accordance with this section. After
130 the order is registered, the chancery clerk shall furnish to the

131 individual registering the order a certified copy of the
132 registered order.

133 (c) The Department of Human Services shall be responsible
134 for the registration of foreign protection orders, and it shall
135 register an order upon presentation of a copy of a protection
136 order which has been certified by the issuing state. A registered
137 foreign protection order which is inaccurate or is not in effect
138 at the time of registration shall be corrected or removed from the
139 registry in accordance with the law of this state.

140 (d) An individual registering a foreign protection order
141 shall file an affidavit by the protected individual that, to the
142 best of the individual's knowledge, the order is in effect at the
143 time of the registration.

144 (e) A foreign protection order registered under this act may
145 be entered in any existing state or federal registries of
146 protection orders, in accordance with state or federal law.

147 **SECTION 6. Immunity.** This state or a local governmental
148 agency, or a law enforcement officer, prosecuting attorney, clerk
149 of court, or any state or local governmental official acting in an
150 official capacity, is immune from civil and criminal liability for
151 an act or omission arising out of the registration or enforcement
152 of a foreign protection order or the detention or arrest of an
153 alleged violator of a foreign protection order if the act or
154 omission is done in good faith in an effort to comply with this
155 act.

156 **SECTION 7. Transitional provision.** This chapter applies to
157 any protection order issued before the effective date of this act,
158 including any continuing action for enforcement of a foreign
159 protection order commenced before the effective date of this act.
160 A request for enforcement of a foreign protection order brought on
161 or after the effective date of this act for violations of a
162 foreign protection order occurring before the effective date of
163 this act is governed by the provisions of this act.

164 **SECTION 8. Other remedies.** Pursuit of remedies under this
165 chapter does not preclude a protected individual from pursuing
166 other legal or equitable remedies against the respondent.

167 **SECTION 9. Severability clause.** If any provision of this
168 chapter or its application to any person or circumstance is held
169 invalid, the invalidity does not affect other provisions or
170 applications of this chapter which can be given effect without the
171 invalid provision or application, and to this end the provisions
172 of this chapter are severable.

173 **SECTION 10.** Section 93-21-13, Mississippi Code of 1972, is
174 amended as follows:

175 93-21-13. (1) A petition may be filed before the justice
176 court judge, municipal court judge or county court judge, in an ex
177 parte proceeding upon good cause shown, if the justice court
178 judge, municipal court judge or county court judge deems it
179 necessary to protect from abuse the petitioner, any minor
180 children, or any person alleged to be incompetent. Immediate and
181 present danger of abuse to the petitioner, any minor children, or
182 any person alleged to be incompetent, shall constitute good cause
183 for the purposes of this section.

184 (2) The justice court, municipal court and the county court
185 shall be empowered to grant any protective order or approve any
186 consent agreement to bring about a cessation of abuse of the
187 petitioner, any minor children, or any person alleged to be
188 incompetent, which relief may include:

189 (a) Directing the defendant to refrain from abusing the
190 petitioner, any minor children, or any person alleged to be
191 incompetent;

192 (b) Granting possession to the petitioner of the
193 residence or household to the exclusion of the defendant by
194 evicting the defendant and/or restoring possession to the
195 petitioner;

196 (c) When the defendant has a duty to support the
197 petitioner, any minor children, or any person alleged to be
198 incompetent living in the residence or household and the defendant
199 is the sole owner or lessee, granting possession to the petitioner
200 of the residence or household to the exclusion of the defendant by
201 evicting the defendant and/or restoring possession to the
202 petitioner, or by consent agreement allowing the defendant to
203 provide suitable, alternate housing; and

204 (d) Prohibiting the transferring, encumbering or
205 otherwise disposing of property mutually owned or leased by the
206 parties, except when in the ordinary course of business.

207 (3) Any order issued under subsection (2) of this section is
208 temporary and shall not exceed ten (10) days and shall expire as
209 of the date of the hearing in chancery court, at which time, the
210 petitioner may seek a temporary order from the chancery court.

211 (4) The court may amend its order or agreement at any time
212 upon subsequent petition by either party.

213 (5) A protection order * * * issued by a tribunal of another
214 state to protect the applicant from abuse as defined in Section
215 93-21-3 shall be accorded full faith and credit by the courts of
216 this state and enforced in this state as provided for in the
217 Uniform Interstate Enforcement of Domestic Violence Protection
218 Orders Act.

219 (6) Every order granting a protective order pursuant to this
220 section shall set forth the reasons for its issuance, shall
221 contain specific findings of fact regarding the existence of
222 abuse, shall be specific in its terms and shall describe in
223 reasonable detail the act or acts to be restrained.

224 **SECTION 11.** Section 93-21-16, Mississippi Code of 1972, is
225 amended as follows:

226 93-21-16. (1) * * * A protective order from another
227 jurisdiction issued to protect the applicant from domestic
228 violence as defined in Section 97-3-7, or a protection order as

229 defined in Section 2 of this act, issued by a tribunal of another
230 state shall be accorded full faith and credit by the courts of
231 this state and enforced in this state as provided for in the
232 Uniform Interstate Enforcement of Domestic Violence Protection
233 Orders Act.

234 (2) A protective order from another jurisdiction, or a
235 protection order as defined in Section 2 of this act and issued by
236 a tribunal of another state, is presumed to be valid if it meets
237 the requirements of Section 3(d) of this act.

238 (3) It is an affirmative defense in any action seeking
239 enforcement of a protective order issued in another jurisdiction,
240 or a protection order as defined in Section 2 of this act and
241 issued by a tribunal of another state, that any criteria for the
242 validity of the order is absent.

243 **SECTION 12.** The provisions of Sections 1 through 9 of this
244 act shall be codified as a separate chapter in Title 93,
245 Mississippi Code of 1972.

246 **SECTION 13.** The provisions of this act shall take effect and
247 be in force from and after July 1, 2004.