

By: Senator(s) Tollison

To: Judiciary, Division B

SENATE BILL NO. 2992
(As Sent to Governor)

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

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

22 (c) "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 (d) "Protected individual" means an individual
27 protected by a protection order.

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

32 acts against, harassment of, contact or communication with, or
33 physical proximity to another individual.

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

36 (g) "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 (h) "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 (1) 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. In a proceeding to
56 enforce a foreign protection order, the tribunal shall follow the
57 procedures of this state for the enforcement of protection orders.

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

64 (3) A tribunal of this state may not enforce under this
65 chapter an order or provision of an order with respect to support.

66 (4) A protection order is valid if it:

67 (a) Identifies the protected individual and the
68 respondent;

69 (b) Is in effect at the time enforcement is being
70 sought;

71 (c) Was issued by a tribunal that had jurisdiction over
72 the parties and matter under the law of the issuing state; and

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

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

83 (6) Absence of any of the criteria for validity of a foreign
84 protection order is an affirmative defense in an action seeking
85 enforcement of the order.

86 (7) A tribunal of this state may enforce the provisions of a
87 mutual foreign protection order which favor a respondent only if:

88 (a) The respondent filed a written pleading seeking a
89 protection order from the tribunal of the issuing state; and

90 (b) The tribunal of the issuing state made specific
91 findings in favor of the respondent.

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

93 (1) A law enforcement officer of this state, upon
94 determining that there is probable cause to believe that a valid
95 foreign protection order exists and that the order has been
96 violated, shall enforce the order as if it were the order of a

97 tribunal of this state. Presentation of a protection order that
98 identifies both the protected individual and the respondent, and
99 on its face is in effect at the time enforcement is being sought,
100 constitutes probable cause to believe that a valid foreign
101 protection order exists. For the purposes of this section, the
102 protection order may be inscribed on a tangible medium or may have
103 been stored in an electronic or other medium if it is retrievable
104 in perceivable form. Presentation of a certified copy of a
105 protection order is not required for enforcement.

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

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

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

121 **SECTION 5. Registration of order.**

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

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

127 (b) Present a certified copy of the order to the
128 Department of Human Services and request that the order be
129 registered.

130 (2) Upon receipt of a protection order, the chancery clerk
131 shall register the order in accordance with this section. After
132 the order is registered, the chancery clerk shall furnish to the
133 individual registering the order a certified copy of the
134 registered order.

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

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

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

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

158 **SECTION 7. Transitional provision.** This chapter applies to
159 any protection order issued before the effective date of this act,
160 including any continuing action for enforcement of a foreign
161 protection order commenced before the effective date of this act.
162 A request for enforcement of a foreign protection order brought on

163 or after the effective date of this act for violations of a
164 foreign protection order occurring before the effective date of
165 this act is governed by the provisions of this act.

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

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

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

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

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

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

194 (b) Granting possession to the petitioner of the
195 residence or household to the exclusion of the defendant by

196 evicting the defendant and/or restoring possession to the
197 petitioner;

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

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

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

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

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

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

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

228 93-21-16. (1) * * * A protective order from another
229 jurisdiction issued to protect the applicant from domestic
230 violence as defined in Section 97-3-7, or a protection order as
231 defined in Section 2 of this act, issued by a tribunal of another
232 state shall be accorded full faith and credit by the courts of
233 this state and enforced in this state as provided for in the
234 Uniform Interstate Enforcement of Domestic Violence Protection
235 Orders Act.

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

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

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

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