

September 2000

Introduced by

1 A BILL for an Act to create and enact a new chapter to title 14 of the North Dakota Century
2 Code, relating to the uniform interstate enforcement of domestic violence protection orders act;
3 to amend and reenact section 14-07.1-06 of the North Dakota Century Code, relating to
4 penalties for violation of a protection order; to repeal section 14-07.1-02.2 of the North Dakota
5 Century Code, relating to foreign domestic violence protection orders; to provide a penalty; and
6 to provide for application.

7 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

8 **SECTION 1. AMENDMENT.** Section 14-07.1-06 of the 1999 Supplement to the North
9 Dakota Century Code is amended and reenacted as follows:

10 **14-07.1-06. Penalty for violation of a protection order.** Whenever a protection order
11 is granted under section 14-07.1-02 or 14-07.1-03 and the respondent or person to be
12 restrained has been served a copy of the order, a violation of the order is a class A
13 misdemeanor and also constitutes contempt of court. A second or subsequent violation of a
14 protection order is a class C felony. ~~Violation of a foreign protection order entitled to full faith~~
15 ~~and credit recognition under section 14-07.1-02.2 is a class A misdemeanor. A second or~~
16 ~~subsequent violation of such an order is a class C felony.~~

17 **SECTION 2.** A new chapter to title 14 of the North Dakota Century Code is created and
18 enacted as follows:

19 **Definitions.** In this chapter:

- 20 1. "Foreign protection order" means a protection order issued by a tribunal of another
21 state.
- 22 2. "Issuing state" means the state whose tribunal issues a protection order.

- 1 3. "Mutual foreign protection order" means a foreign protection order that includes
2 provisions issued in favor of both the protected individual seeking enforcement of
3 the order and the respondent.
- 4 4. "Protected individual" means an individual protected by a protection order.
- 5 5. "Protection order" means an injunction or other order, issued by a tribunal under
6 the domestic violence or family violence laws of the issuing state, to prevent an
7 individual from engaging in violent or threatening acts against, harassment of,
8 contact or communication with, or physical proximity to another individual.
- 9 6. "Respondent" means the individual against whom enforcement of a protection
10 order is sought.
- 11 7. "State" means a state of the United States, the District of Columbia, Puerto Rico,
12 the United States Virgin Islands, or any territory or insular possession subject to
13 the jurisdiction of the United States. The term includes an Indian tribe or band that
14 has jurisdiction to issue protection orders.
- 15 8. "Tribunal" means a court, agency, or other entity authorized by law to issue or
16 modify a protection order.

17 **Judicial enforcement of order**

- 18 1. A tribunal of this state shall enforce the terms of a valid foreign protection order,
19 including terms that provide relief that a tribunal of this state would lack power to
20 provide but for this section. A tribunal of this state shall enforce a valid foreign
21 protection order issued by a tribunal, whether the order was obtained by
22 independent action or in another proceeding, if it is an order issued in response to
23 a complaint, petition, or motion filed by or on behalf of an individual seeking
24 protection. A tribunal of this state may not enforce an order issued by a tribunal
25 that does not recognize the standing of a protected individual to seek enforcement
26 of the order.
- 27 2. A tribunal of this state shall enforce the provisions of a valid foreign protection
28 order which governs custody and visitation. The custody and visitation provisions
29 of the order must have been issued in accordance with the jurisdictional
30 requirements governing the issuance of custody and visitation orders in the issuing
31 state.

- 1 3. A tribunal of this state may not enforce under this chapter an order or provision of
2 an order with respect to support.
- 3 4. A protection order is valid if it:
 - 4 a. Identifies the protected individual and the respondent;
 - 5 b. Is currently in effect;
 - 6 c. Was issued by a tribunal that had jurisdiction over the parties and matter
7 under the law of the issuing state; and
 - 8 d. Was issued after the respondent was provided with reasonable notice and
9 had an opportunity to be heard before the tribunal issued the order or, in the
10 case of an order ex parte, the respondent was given notice and afforded an
11 opportunity to be heard within a reasonable time after the issuing of the order,
12 consistent with the rights of the respondent to due process.
- 13 5. A person authorized under the law of this state to seek enforcement of a foreign
14 protection order establishes a prima facie case for its validity by presenting an
15 order valid on its face.
- 16 6. Absence of any of the criteria for validity of a foreign protection order is an
17 affirmative defense in an action seeking enforcement of the order.
- 18 7. A tribunal of this state may enforce the provisions of a mutual foreign protection
19 order which favor a respondent only if:
 - 20 a. The respondent filed a written pleading seeking a protection order from the
21 tribunal of the issuing state; and
 - 22 b. The tribunal of the issuing state made specific findings in favor of the
23 respondent.

24 **Nonjudicial enforcement of order.**

- 25 1. A law enforcement officer of this state, upon determining that there is probable
26 cause to believe that a valid foreign protection order exists and that the order has
27 been violated, shall enforce the order as if it were the order of a tribunal of this
28 state. Presentation of a protection order that identifies both the protected individual
29 and the respondent and, on its face, is currently in effect constitutes probable
30 cause to believe that a valid foreign protection order exists. For the purposes of
31 this section, the protection order may be inscribed on a tangible medium or may

1 have been stored in an electronic or other medium if it is retrievable in perceivable
2 form. Presentation of a certified copy of a protection order is not required for
3 enforcement.

4 2. If the protection order is not presented, the officer may consider other information
5 in determining whether there is probable cause to believe that a valid foreign
6 protection order exists.

7 3. If a law enforcement officer of this state determines that an otherwise valid foreign
8 protection order cannot be enforced because the respondent has not been notified
9 or served with the order, the officer shall inform the respondent of the order and
10 make a reasonable effort to serve the order upon the respondent. After informing
11 the respondent and serving the order, the officer shall allow the respondent a
12 reasonable opportunity to comply with the order before enforcing the order.

13 4. Registration or filing of an order in this state is not required for the enforcement of a
14 valid foreign protection order under this chapter.

15 **Registration of order.**

16 1. Any individual may register a foreign protection order in this state. To register a
17 foreign protection order, an individual shall present a certified copy of the order to
18 any clerk of district court in this state.

19 2. Upon receipt of a protection order, the clerk of district court shall register the order
20 in accordance with this section. After the order is registered, the clerk of district
21 court shall furnish to the individual registering the order a certified copy of the
22 registered order.

23 3. The clerk of district court shall register an order upon presentation of a copy of a
24 protection order which has been certified by the issuing state. A registered foreign
25 protection order which is inaccurate or is not currently in effect shall be corrected or
26 removed from the registry in accordance with the law of this state.

27 4. An individual registering a foreign protection order shall file an affidavit by the
28 protected individual that, to the best of the individual's knowledge, the order is
29 currently in effect.

1 5. A foreign protection order registered under this chapter may be entered in any
2 existing state or federal registries of protection orders, in accordance with state or
3 federal law.

4 6. A fee may not be charged for the registration of a foreign protection order or the
5 correction or removal of a foreign protection order.

6 **Immunity.** This state or a local governmental agency, or a law enforcement officer,
7 prosecuting attorney, clerk of district court, or any state or local governmental official acting in
8 an official capacity, is immune from civil and criminal liability for an act or omission arising out of
9 the registration or enforcement of a foreign protection order or the detention or arrest of an
10 alleged violator of a foreign protection order if the act or omission is done in good faith in an
11 effort to comply with this chapter.

12 **Other remedies.** Pursuant of remedies under this chapter does not preclude a
13 protected individual from pursuing other legal or equitable remedies against the respondent.

14 **Penalty.** Violation of a protection order under this chapter is a class A misdemeanor. A
15 second or subsequent violation of such an order is a class A felony.

16 **SECTION 3. REPEAL.** Section 14-07.1-02.2 of the North Dakota Century Code is
17 repealed.

18 **SECTION 4. APPLICATION.** Section 2 of this Act applies to any protection order
19 issued before, on, or after August 1, 2001, including any continuing action for enforcement of a
20 foreign protection order commenced before August 1, 2001. A request for enforcement of a
21 foreign protection order brought after July 31, 2001, for violations of a foreign protection order
22 occurring before August 1, 2001, is governed by the provisions of section 2 of this Act.