

HOUSE BILL NO. 213

INTRODUCED BY B. NEWMAN, GUTSCHE, HARRIS

BY REQUEST OF THE ATTORNEY GENERAL

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5 A BILL FOR AN ACT ENTITLED: "AN ACT ADOPTING THE UNIFORM INTERSTATE ENFORCEMENT OF  
6 DOMESTIC VIOLENCE PROTECTION ORDERS ACT; PROVIDING FOR THE ENFORCEMENT OF FOREIGN  
7 ORDERS OF PROTECTION INCLUDING CUSTODY AND VISITATION ORDERS; PROVIDING FOR JUDICIAL  
8 AND NONJUDICIAL ENFORCEMENT OF ORDERS OF PROTECTION; PROVIDING FOR REGISTRATION OF  
9 FOREIGN ORDERS OF PROTECTION; PROVIDING IMMUNITY FOR GOVERNMENTAL ENTITIES AND  
10 EMPLOYEES ENFORCING FOREIGN ORDERS OF PROTECTION; AMENDING SECTIONS 40-4-125 AND  
11 40-15-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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15 NEW SECTION. **Section 1. Short title.** [Sections 1 through 8] may be cited as the "Uniform  
16 Interstate Enforcement of Domestic Violence Protection Orders Act".

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18 NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 8], the following definitions  
19 apply:

20 (1) "Foreign protection order" means a protection order issued by a ~~tribunal~~ COURT of another  
21 state.

22 (2) "Issuing state" means the state whose ~~tribunal~~ COURT issues a protection order.

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

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

26 (5) "Protection order" means an injunction or other order issued by a ~~tribunal~~ COURT under the  
27 domestic violence or family violence laws of the issuing state to prevent an individual from engaging in  
28 violent or threatening acts against, harassment of, contact or communication with, or physical proximity  
29 to another individual.

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

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

4 ~~—— (8) "Tribunal" means a court, agency, or other entity authorized by law to issue or modify a~~  
5 ~~protection order.~~

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

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

17 (3) A court of this state shall enforce the provisions of a valid foreign protection order that govern  
18 custody and visitation if the order was issued in accordance with the jurisdictional requirements governing  
19 the issuance of custody and visitation orders in the issuing state.

20 (4) A court of this state may not enforce under [sections 1 through 8] a provision of a foreign  
21 protection order with respect to support.

22 (5) A foreign protection order is valid if it:

23 (a) identifies the protected individual and the respondent;

24 (b) is currently in effect;

25 (c) was issued by a ~~tribunal~~ COURT that had jurisdiction over the parties and subject matter under  
26 the law of the issuing state; and

27 (d) was issued after the respondent was given reasonable notice and had an opportunity to be  
28 heard before the ~~tribunal~~ COURT issued the order or, in the case of an order ex parte, the respondent was  
29 given notice and had an opportunity to be heard within a reasonable time after the order was issued,  
30 consistent with the rights of the respondent to due process.

1 (6) A foreign protection order valid on its face is prima facie evidence of its validity.

2 (7) Absence of any of the criteria for validity of a foreign protection order is an affirmative defense  
3 in an action seeking enforcement of the order.

4 (8) A court of this state may enforce provisions of a mutual foreign protection order that favor  
5 a respondent only if:

6 (a) the respondent filed a written pleading seeking a protection order from the ~~tribunal~~ COURT of  
7 the issuing state; and

8 (b) the ~~tribunal~~ COURT of the issuing state made specific findings in favor of the respondent.

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10 NEW SECTION. **Section 4. Nonjudicial enforcement of order.** (1) A law enforcement officer of  
11 this state, upon determining that there is probable cause to believe that a valid foreign protection order  
12 exists and that the order has been violated, shall enforce the order as if it were the order of a court of this  
13 state. Presentation of a protection order that identifies both the protected individual and the respondent  
14 and, on its face, is currently in effect constitutes probable cause to believe that a valid foreign protection  
15 order exists. For the purposes of this section, the protection order may be inscribed on a tangible medium  
16 or may have been stored in an electronic or other medium if it is retrievable in perceivable form.  
17 Presentation of a certified copy of a protection order is not required for enforcement.

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

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

26 (4) Registration or filing of an order in this state is not required for the enforcement of a valid  
27 foreign protection order pursuant to [sections 1 through 8].

28

29 NEW SECTION. **Section 5. Registration of order.** (1) Any individual may register a foreign  
30 protection order in this state. To register a foreign protection order, an individual shall:

1 (a) present a certified copy of the order to the department of justice; or  
2 (b) present a certified copy of the order to a clerk of ANY court or ~~the department of public health~~  
3 ~~and human services~~ TO ANY LOCAL LAW ENFORCEMENT AGENCY and request that the order be registered with  
4 the department of justice.

5 (2) Upon receipt of a foreign protection order, the department of justice shall register the order  
6 in accordance with this section. After the order is registered, the department of justice shall furnish to  
7 the individual registering the order a certified copy of the registered order.

8 (3) The department of justice shall register an order upon presentation of a copy of a protection  
9 order that has been certified by the issuing state. A registered foreign protection order that is inaccurate  
10 or is not currently in effect must be corrected or removed from the registry in accordance with the law  
11 of this state.

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

14 (5) A foreign protection order registered under [sections 1 through 8] MUST BE ENTERED INTO THE  
15 DATABASE OF THE NATIONAL CRIME INFORMATION CENTER OF THE UNITED STATES DEPARTMENT OF JUSTICE AND may  
16 be entered in any existing state or OTHER federal registry of protection orders, in accordance with applicable  
17 law.

18 (6) A fee may not be charged for the registration of a foreign protection order.

19

20 NEW SECTION. Section 6. Immunity. This state or a local governmental agency or a law  
21 enforcement officer, prosecuting attorney, clerk of court, or any state or local governmental official acting  
22 in an official capacity is immune from civil ~~and criminal~~ liability for an act or omission arising out of the  
23 registration or enforcement of a foreign protection order or the detention or arrest of an alleged violator  
24 of a foreign protection order if the act or omission was done in good faith in an effort to comply with  
25 [sections 1 through 8].

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27 NEW SECTION. Section 7. Other remedies. A protected individual who pursues remedies under  
28 [sections 1 through 8] is not precluded from pursuing other legal or equitable remedies against the  
29 respondent.

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1            NEW SECTION. Section 8. Uniformity of application and construction. In applying and construing  
 2 [sections 1 through 8], consideration must be given to the need to promote uniformity of the law with  
 3 respect to its subject matter among states that enact it.

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5            SECTION 9. SECTION 40-4-125, MCA, IS AMENDED TO READ:

6            "**40-4-125. Registration of orders.** (1) The clerk of court, justice of the peace, municipal court  
 7 judge, or city court judge shall, within 24 hours of receiving proof of service of an order under 40-4-121,  
 8 mail a copy of the order or any extension, modification, or termination ~~thereof~~ of the order along with a  
 9 copy of the proof of service to the appropriate law enforcement agencies designated in the order, which  
 10 shall, within 24 hours after receipt of the order, enter the order into the database of the national crime  
 11 information center of the United States department of justice and may enter the order into any existing  
 12 state or other federal registry of protection orders, in accordance with applicable law.

13            (2) Law enforcement agencies shall establish procedures, using an existing system for warrant  
 14 verification and the database of the national crime information center of the United States department of  
 15 justice, to ensure that peace officers at the scene of an alleged violation of a protective order are informed  
 16 of the existence and terms of ~~such~~ the order."

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18            SECTION 10. SECTION 40-15-303, MCA, IS AMENDED TO READ:

19            "**40-15-303. Registration of orders.** (1) The clerk of court, justice of the peace, municipal court  
 20 judge, or city court judge shall, within 24 hours of receiving proof of service of an order under 40-15-201,  
 21 40-15-204, or 40-15-301, mail a copy of the order or any extension, modification, or termination of the  
 22 order, along with a copy of the proof of service, to the appropriate law enforcement agencies designated  
 23 in the order, which shall, within 24 hours after receipt of the order, enter the order into the database of  
 24 the national crime information center of the United States department of justice and may enter the order  
 25 into any existing state or other federal registry of protection orders, in accordance with applicable law.

26            (2) Law enforcement agencies shall establish procedures, using an existing system for warrant  
 27 verification and the database of the national crime information center of the United States department of  
 28 justice, to ensure that peace officers at the scene of an alleged violation of an order of protection are  
 29 informed of the existence and terms of the order."

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1            NEW SECTION. **Section 11. Transitional provisions.** [Sections 1 through 8] apply to protection  
2 orders issued before [the effective date of this act] and to continuing actions for enforcement of foreign  
3 protection orders commenced before [the effective date of this act]. A request for enforcement of a  
4 foreign protection order made on or after [the effective date of this act] for violations of a foreign  
5 protection order occurring before [the effective date of this act] is governed by [sections 1 through 8].  
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7            NEW SECTION. **Section 12. Two-thirds vote required -- contingent voidness.** (1) Because  
8 [section 6] limits governmental liability, Article II, section 18, of the Montana constitution requires a  
9 two-thirds vote of the members of each house of the legislature for passage.

10            (2) If [this act] does not receive a two-thirds vote of the members of each house of the legislature,  
11 then [section 6] is void.  
12

13            NEW SECTION. **Section 13. Codification instruction.** [Sections 1 through 8] are intended to be  
14 codified as an integral part of Title 40, chapter 15, and the provisions of Title 40, chapter 15, apply to  
15 [sections 1 through 8].  
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17            NEW SECTION. **Section 14. Severability.** If a part of [this act] is invalid, all valid parts that are  
18 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its  
19 applications, the part remains in effect in all valid applications that are severable from the invalid  
20 applications.  
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22            NEW SECTION. **Section 15. Notification to tribal governments.** The secretary of state shall send  
23 a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little  
24 Shell band of Chippewa.  
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26            NEW SECTION. **Section 16. Effective date.** [This act] is effective on passage and approval.  
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