



2013 SENATE BILL 442

December 16, 2013 - Introduced by Senators RISSER, L. TAYLOR, MILLER, SHILLING and HARRIS, cosponsored by Representatives GOYKE, A. OTT, SARGENT, WACHS, BERCEAU, C. TAYLOR, RICHARDS and OHNSTAD. Referred to Committee on Transportation, Public Safety, and Veterans and Military Affairs.

1 **AN ACT to repeal** 806.247 (title) and 813.128 (1) (title); **to renumber** 806.247 (1)
2 (intro.), 806.247 (1) (a), 806.247 (2) (title), 806.247 (3) (b) and 813.128 (1) (b); **to**
3 **renumber and amend** 806.247 (1) (b), 806.247 (2) (a), 806.247 (2) (b), 806.247
4 (3) (title), 806.247 (3) (a), 806.247 (3) (c), 813.128 (1) (a), 813.128 (2) and 813.128
5 (3); **to amend** 175.35 (1) (at), 175.60 (9g) (a) 2., 806.245 (6), 813.12 (6) (am) 1.,
6 813.128 (title), 940.20 (1m) (a), 941.29 (1) (f), 968.07 (1m), 968.075 (2) (am),
7 973.075 (1) (b) 1m. f. and 973.075 (1) (bm); and **to create** 813.128 (1g) (b),
8 813.128 (1g) (c), 813.128 (1g) (d), 813.128 (1g) (f), 813.128 (1g) (g), 813.128 (2g)
9 (a) 3., 813.128 (2g) (a) 4., 813.128 (3g) (b) 3., 813.128 (3g) (c) to (i), 813.128 (6)
10 and 813.128 (7) of the statutes; **relating to:** the Uniform Interstate
11 Enforcement of Domestic Violence Protection Orders Act.

Analysis by the Legislative Reference Bureau

Current law gives domestic violence protection orders issued by another state or an Indian tribe full faith and credit in this state, allowing those orders to be enforced in courts in this state if they meet certain procedural requirements, including ensuring that the court had jurisdiction over the persons involved and the

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subject matter, and that the person subject to the order was provided with his or her right to due process. Current law establishes a method of filing a foreign protection order with a circuit court and requires the circuit court to send a copy of that order to the county sheriff or local law enforcement agency.

Additional current law gives law enforcement officers the authority to arrest a person subject to a protection order if the law enforcement officer has probable cause to believe the person has violated a valid foreign protection order. Under current law, court officials, prosecutors, and law enforcement officers are immune from any liability for his or her acts or omissions related to the filing of a foreign protection order or the detention or arrest of an alleged violator of a foreign protection order.

This bill consolidates those separate units of current law and creates additional statutory language to enact the 2002 Uniform Interstate Enforcement of Domestic Violence Protection Orders Act, as adopted by the National Conference of Commissioners on Uniform State Laws.

The Act defines "protection order" to be an injunction or other order, issued by a tribunal under the domestic violence, family violence, or antistalking laws of the issuing state, to prevent an individual from engaging in violent or threatening acts against, harassment of, contact or communication with, or physical proximity to another individual. The fact that the order has terms and conditions that are different from orders issued in the enforcing state, or come from tribunals that are not organized in the same fashion as the tribunals of the enforcing state, does not mean that the enforcing state may refuse enforcement. Any kind of a foreign order that is intended to prevent violence must be enforced. The term "tribunal," as used in the Act, is consistent with the usage of the Uniform Interstate Family Support Act, which has been enacted in every U.S. jurisdiction. Whether the enforcing body is a court or an agency, the term tribunal includes both within its scope.

A tribunal with jurisdiction to enforce orders may enforce a foreign protection order without any other prior perfecting or validating procedure. A valid foreign protection order must be enforced. A valid protection order is one that identifies the protected individual (the potential victim) and the respondent (the potential victimizer), is currently in effect, and was issued by a tribunal with full jurisdiction. An order valid on its face establishes a prima facie case for its validity. The presence of an order that identifies the protected individual and the respondent that is current constitutes probable cause to believe that a valid foreign protection order exists. Law enforcement officers who are not presented with an actual order may still act to enforce upon other information that provides probable cause to believe that a valid order exists.

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

1 **SECTION 1.** 175.35 (1) (at) of the statutes is amended to read:

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1 175.35 (1) (at) “Firearms restrictions record search” means a search of
2 department of justice records to determine whether a person seeking to purchase a
3 handgun is prohibited from possessing a firearm under s. 941.29. “Firearms
4 restrictions record search” includes a criminal history record search, a search to
5 determine whether a person is prohibited from possessing a firearm under s. 51.20
6 (13) (cv) 1., 2007 stats., a search in the national instant criminal background check
7 system to determine whether a person has been ordered not to possess a firearm
8 under s. 51.20 (13) (cv) 1., 51.45 (13) (i) 1., 54.10 (3) (f) 1., or 55.12 (10) (a), a search
9 to determine whether the person is subject to an injunction under s. 813.12 or
10 813.122, or a tribal injunction, as defined in s. 813.12 (1) (e), issued by a court
11 established by any federally recognized Wisconsin Indian tribe or band, except the
12 Menominee Indian tribe of Wisconsin, that includes notice to the respondent that he
13 or she is subject to the requirements and penalties under s. 941.29 and that has been
14 filed with the circuit court under s. ~~806.247 (3)~~ 813.128 (3g), and a search to
15 determine whether the person is prohibited from possessing a firearm under s.
16 813.125 (4m).

17 **SECTION 2.** 175.60 (9g) (a) 2. of the statutes is amended to read:

18 175.60 (9g) (a) 2. The department shall conduct a criminal history record
19 search and shall search its records and conduct a search in the national instant
20 criminal background check system to determine whether the applicant is prohibited
21 from possessing a firearm under federal law; whether the applicant is prohibited
22 from possessing a firearm under s. 941.29; whether the applicant is prohibited from
23 possessing a firearm under s. 51.20 (13) (cv) 1., 2007 stats.; whether the applicant
24 has been ordered not to possess a firearm under s. 51.20 (13) (cv) 1., 51.45 (13) (i) 1.,
25 54.10 (3) (f) 1., or 55.12 (10) (a); whether the applicant is subject to an injunction

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1 under s. 813.12 or 813.122, or a tribal injunction, as defined in s. 813.12 (1) (e), issued
2 by a court established by any federally recognized Wisconsin Indian tribe or band,
3 except the Menominee Indian tribe of Wisconsin, that includes notice to the
4 respondent that he or she is subject to the requirements and penalties under s.
5 941.29 and that has been filed with the circuit court under s. ~~806.247 (3)~~ 813.128 (3g);
6 and whether the applicant is prohibited from possessing a firearm under s. 813.125
7 (4m); and to determine if the court has prohibited the applicant from possessing a
8 dangerous weapon under s. 969.02 (3) (c) or 969.03 (1) (c) and if the applicant is
9 prohibited from possessing a dangerous weapon as a condition of release under s.
10 969.01.

11 **SECTION 3.** 806.245 (6) of the statutes is amended to read:

12 806.245 (6) A foreign protection order, as defined in s. ~~806.247 (1) (b)~~ 813.128
13 (1g) (e), issued by an Indian tribal court in this state shall be accorded full faith and
14 credit under s. ~~806.247~~ 813.128.

15 **SECTION 4.** 806.247 (title) of the statutes is repealed.

16 **SECTION 5.** 806.247 (1) (intro.) of the statutes is renumbered 813.128 (1g)
17 (intro).

18 **SECTION 6.** 806.247 (1) (a) of the statutes is renumbered 813.128 (1g) (a).

19 **SECTION 7.** 806.247 (1) (b) of the statutes is renumbered 813.128 (1g) (e) and
20 amended to read:

21 813.128 (1g) (e) “~~Foreign protection~~ Protection order” means any temporary or
22 permanent injunction or order of a civil or criminal court of the United States, of an
23 Indian tribe or of any other state issued for preventing by a tribunal to prevent an
24 individual from engaging in abuse, bodily harm, communication, contact,
25 harassment, physical proximity, threatening acts or violence by or to a another

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1 person, other than support or custody orders. This term includes an injunction or
2 order issued under the antistalking laws of the issuing state.

3 **SECTION 8.** 806.247 (2) (title) of the statutes is renumbered 813.128 (2g) (title).

4 **SECTION 9.** 806.247 (2) (a) of the statutes is renumbered 813.128 (2g) (a) and
5 amended to read:

6 813.128 (2g) (a) A foreign protection order shall be accorded full faith and
7 credit by the ~~courts~~ tribunals in this state and shall be enforced as if the order were
8 an order of a ~~court~~ tribunal of this state if the order meets all of the following
9 conditions:

10 1. The foreign protection order was obtained after providing the ~~person against~~
11 ~~whom the protection order was sought~~ respondent a reasonable notice and
12 opportunity to be heard sufficient to protect his or her right to due process. If the
13 foreign protection order is an ex parte injunction or order, the ~~person against whom~~
14 ~~the order was obtained~~ respondent shall have been given notice and an opportunity
15 to be heard within a reasonable time after the order was issued sufficient to protect
16 his or her right to due process.

17 2. The ~~court~~ tribunal that issued the order had jurisdiction over the parties and
18 over the subject matter.

19 **SECTION 10.** 806.247 (2) (b) of the statutes is renumbered 813.128 (2g) (c) and
20 amended to read:

21 813.128 (2g) (c) A foreign protection order issued against the person who filed
22 a written pleading with a ~~court~~ tribunal for a protection order is not entitled to full
23 faith and credit under this subsection if any of the following occurred:

24 1. No written pleading was filed seeking the foreign protection order against
25 ~~that~~ the person who filed a written pleading with a tribunal for a protection order.

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1 2. A cross or counter petition was filed but the ~~court~~ tribunal did not make a
2 specific finding that each party was entitled to a foreign protection order.

3 **SECTION 11.** 806.247 (3) (title) of the statutes is renumbered 813.128 (3g) (title)
4 and amended to read:

5 813.128 **(3g)** (title) FILING AND ENFORCEMENT OF A FOREIGN PROTECTION ORDER.

6 **SECTION 12.** 806.247 (3) (a) of the statutes is renumbered 813.128 (3g) (a) 1. and
7 amended to read:

8 813.128 **(3g)** (a) 1. A copy of any foreign protection order, or of a modification
9 of a foreign protection order that is on file with the circuit court, that is authenticated
10 in accordance with an act of congress, an Indian tribal legislative body or the statutes
11 of another state may be filed in the office of the clerk of circuit court of any county
12 of this state. The clerk may not charge a fee for the filing of a foreign protection order.
13 The clerk shall treat any foreign protection order or modification so filed in the same
14 manner as a judgment of the circuit court.

15 **SECTION 13.** 806.247 (3) (b) of the statutes is renumbered 813.128 (3g) (a) 2.

16 **SECTION 14.** 806.247 (3) (c) of the statutes is renumbered 813.128 (3g) (a) 3. and
17 amended to read:

18 813.128 **(3g)** (a) 3. The sheriff or law enforcement agency that receives a copy
19 of a foreign protection order or of a modification of an order from the clerk under ~~par.~~
20 ~~(b)~~ subd. 2. shall enter the information received concerning the order or modification
21 of an order into the transaction information for management of enforcement system
22 no later than 24 hours after receiving the information. The sheriff or law
23 enforcement agency shall make available to other law enforcement agencies,
24 through a verification system, information on the existence and status of any order

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1 or modification of an order filed under this subsection. The information need not be
2 maintained after the order or modification is no longer in effect.

3 **SECTION 15.** 813.12 (6) (am) 1. of the statutes is amended to read:

4 813.12 (6) (am) 1. If an injunction is issued or extended under sub. (4) or if a
5 tribal injunction is filed under s. ~~806.247 (3)~~ 813.128 (3g), the clerk of the circuit court
6 shall notify the department of justice of the injunction and shall provide the
7 department of justice with information concerning the period during which the
8 injunction is in effect and information necessary to identify the respondent for
9 purposes of a firearms restrictions record search under s. 175.35 (2g) (c) or a
10 background check under s. 175.60 (9g) (a).

11 **SECTION 16.** 813.128 (title) of the statutes is amended to read:

12 **813.128 (title) Foreign Uniform interstate enforcement of domestic**
13 **violence protection orders act.**

14 **SECTION 17.** 813.128 (1) (title) of the statutes is repealed.

15 **SECTION 18.** 813.128 (1) (a) of the statutes is renumbered 813.128 (2g) (b) and
16 amended to read:

17 813.128 (2g) (b) A foreign protection order or modification of the foreign
18 protection order that meets the requirements under s. ~~806.247 (2)~~ this section has
19 the same effect as an order issued under s. 813.12, 813.122, 813.123 or 813.125,
20 except that the foreign protection order or modification shall be enforced according
21 to its own terms.

22 **SECTION 19.** 813.128 (1) (b) of the statutes is renumbered 813.128 (3g) (b).

23 **SECTION 20.** 813.128 (1g) (b) of the statutes is created to read:

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1 813.128 (1g) (b) “Foreign mutual protection order” means a foreign protection
2 order that includes provisions in favor of both the individual seeking enforcement of
3 the order and the respondent.

4 **SECTION 21.** 813.128 (1g) (c) of the statutes is created to read:

5 813.128 (1g) (c) “Foreign protection order” means a protection order issued by
6 a tribunal other than a tribunal in this state.

7 **SECTION 22.** 813.128 (1g) (d) of the statutes is created to read:

8 813.128 (1g) (d) “Protected individual” means an individual protected by a
9 protection order.

10 **SECTION 23.** 813.128 (1g) (f) of the statutes is created to read:

11 813.128 (1g) (f) “Respondent” means the individual against whom enforcement
12 of a protection order is sought.

13 **SECTION 24.** 813.128 (1g) (g) of the statutes is created to read:

14 813.128 (1g) (g) “Tribunal” means a court, agency, or other entity of a state of
15 the United States, the District of Columbia, Puerto Rico, the United States Virgin
16 Islands, an American Indian tribe or band, or any territory or insular possession
17 subject to the jurisdiction of the United States, authorized by law to issue or modify
18 a protection order.

19 **SECTION 25.** 813.128 (2) of the statutes is renumbered 813.128 (4) and amended
20 to read:

21 813.128 (4) PENALTY. A person who knowingly violates a condition of a foreign
22 protection order or modification of a foreign protection order that is entitled to full
23 faith and credit under ~~s. 806.247~~ this section shall be fined not more than \$1,000 or
24 imprisoned for not more than 9 months or both. If a foreign protection order and any
25 modification of that order that is entitled to full faith and credit under ~~s. 806.247~~ this

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1 section remains current and in effect at the time that a court convicts a person for
2 a violation of that order or modification of that order, but that order or modification
3 has not been filed under ~~s. 806.247~~ this section, the court shall direct the clerk of
4 circuit court to file the order and any modification of the order.

5 **SECTION 26.** 813.128 (2g) (a) 3. of the statutes is created to read:

6 813.128 **(2g)** (a) 3. The order identifies the protected individual and the
7 respondent.

8 **SECTION 27.** 813.128 (2g) (a) 4. of the statutes is created to read:

9 813.128 **(2g)** (a) 4. The order is currently in effect.

10 **SECTION 28.** 813.128 (3) of the statutes is renumbered 813.128 (5) and amended
11 to read:

12 813.128 **(5)** IMMUNITY. A law enforcement officer, law enforcement agency,
13 prosecuting attorney, state, local, or Indian tribe or band governmental official, or
14 clerk of circuit court is immune from civil and criminal liability for his or her acts or
15 omissions arising out of a decision related to the filing of a foreign protection order
16 or modification or to the detention or arrest of an alleged violator of a foreign
17 protection order or modification if the act or omission is done in a good faith effort
18 to comply with this section and s. 806.247, 2011 stats.

19 **SECTION 29.** 813.128 (3g) (b) 3. of the statutes is created to read:

20 813.128 **(3g)** (b) 3. For the purposes of this paragraph, the protection order may
21 be inscribed on a tangible medium or may have been stored in an electronic or other
22 medium if it is retrievable in perceivable form. Presentation of a certified copy of a
23 protection order is not required for enforcement.

24 **SECTION 30.** 813.128 (3g) (c) to (i) of the statutes are created to read:

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1 813.128 **(3g)** (c) If a foreign protection order is not presented, a law enforcement
2 officer of this state may consider other information in determining whether there is
3 probable cause to believe that a valid foreign protection order exists.

4 (d) If a law enforcement officer of this state determines that an otherwise valid
5 foreign protection order cannot be enforced because the respondent has not been
6 notified or served with the order, the officer shall inform the respondent of the order,
7 make a reasonable effort to serve the order upon the respondent, and allow the
8 respondent a reasonable opportunity to comply with the order before enforcing the
9 order.

10 (e) A tribunal of this state shall enforce the provisions of a valid foreign
11 protection order that govern custody, physical placement, and visitation, if the order
12 was issued in accordance with the jurisdictional requirements governing the
13 issuance of custody, physical placement, and visitation orders in the issuing state.

14 (f) A foreign protection order that is valid on its face is prima facie evidence of
15 its validity.

16 (g) 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 (h) A tribunal of this state may enforce provisions of a foreign mutual protection
19 order that favor a respondent only if the respondent filed a written pleading seeking
20 a protection order from the tribunal of the issuing state and the tribunal of the
21 issuing state made specific findings in favor of the respondent.

22 (i) A tribunal of this state may not enforce a foreign protection order issued
23 by a tribunal of a state that does not recognize the standing of a protected individual
24 to seek enforcement of the order.

25 **SECTION 31.** 813.128 (6) of the statutes is created to read:

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1 813.128 (6) OTHER REMEDIES. A protected individual who pursues remedies
2 under this section is not precluded from pursuing other legal or equitable remedies
3 against the respondent.

4 **SECTION 32.** 813.128 (7) of the statutes is created to read:

5 813.128 (7) APPLICABILITY. This section applies to all of the following:

6 (a) A request made on or after the effective date of this paragraph [LRB
7 inserts date], for enforcement of a foreign protection order for a violation of the order,
8 regardless of when the order was issued or when the violation occurred.

9 (b) A continuing action for enforcement of a foreign protection order, regardless
10 of when the order was issued or when the action was commenced.

11 **SECTION 33.** 940.20 (1m) (a) of the statutes is amended to read:

12 940.20 (1m) (a) Any person who is subject to an injunction under s. 813.12 or
13 a tribal injunction filed under s. ~~806.247 (3)~~ 813.128 (3g) and who intentionally
14 causes bodily harm to the petitioner who sought the injunction by an act done
15 without the consent of the petitioner is guilty of a Class I felony.

16 **SECTION 34.** 941.29 (1) (f) of the statutes is amended to read:

17 941.29 (1) (f) Enjoined under an injunction issued under s. 813.12 or 813.122
18 or under a tribal injunction, as defined in s. 813.12 (1) (e), issued by a court
19 established by any federally recognized Wisconsin Indian tribe or band, except the
20 Menominee Indian tribe of Wisconsin, that includes notice to the respondent that he
21 or she is subject to the requirements and penalties under this section and that has
22 been filed under s. ~~806.247 (3)~~ 813.128 (3g).

23 **SECTION 35.** 968.07 (1m) of the statutes is amended to read:

