

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2076

2001 SENATE JUDICIARY

SB 2076

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2076

Senate Judiciary Committee

Conference Committee

Hearing Date January 16th, 2001

Tape Number	Side A	Side B	Meter #
I	X		26.0
I	X	X	0.0-36.1
Committee Clerk Signature			

Minutes: SENATOR TRAYNOR opened the hearing on SB 2076: A BILL FOR AN ACT TO CREATE AND ENACT A NEW CHAPTER TO TITLE 14 OF THE NORTH DAKOTA CENTURY CODE, RELATING TO THE UNIFORM INTERSTATE ENFORCEMENT OF DOMESTIC VIOLENCE PROTECTION ORDERS ACT; TO AMEND AND REENACT SECTION 14-07.1-06 OF THE NORTH DAKOTA CENTURY CODE, RELATING TO PENALTIES FOR VIOLATION OF A PROTECTION ORDER; TO REPEAL SECTION 14-07.1-02.2 OF THE NORTH DAKOTA CENTURY CODE, RELATING TO FOREIGN DOMESTIC VIOLENCE PROTECTION ORDERS; TO PROVIDE A PENALTY; AND TO PROVIDE FOR APPLICATION.

JAY BURINGURD, representing the Uniform Laws Commission. Some states have adopted this act. Goes on further to explain the bill. Current law page 2, line 5 includes harassment.. Current law doesn't include page 3 line 31, electronic transactions or tangible medium. This amendment respects immunity. Current law provides protection to law officer; after this law is

passed it will expand protection. Current law provides for a class B, this will change to a class A.

SENATOR NELSON What's the difference between new law and old law. We get along fine with are current law, why change?

JAY BURINGURD ND is more protective.

SENATOR LYSON how does law enforcement know about this? Most counties can't do this.

JAY BURINGURD I don't know what other procedures are in other counties. If there is a registry, law officers can get them.

SENATOR TRAYNOR could a temporary restraining order be part of a protection order?

JAY BURINGURD the requirements must be valid under line 8, page 3.

SENATOR TRAYNOR page 4 officer determines; does this place a burden on the officer, is he now the judge?

JAY BURINGURD no.

SENATOR TRENBEATH officer can determine probable cause. What happens when respondent convinces him he hasn't been served?

JAY BURINGURD I don't know.

SENATOR TRENBEATH page 2 line 18. We can do for others that we can't do for our own.

JAY BURINGURD valid concern. They can enforce order because it was issued in other state.

SENATOR TRAYNOR is existing law a uniform law?

JAY BURINGURD no, but similar.

SENATOR TRAYNOR when was this bill created?

JAY BURINGURD summer 2000.

Page 3

Senate Judiciary Committee

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SENATOR TRAYNOR is this a mistake in drafting, regarding the stiffing of the penalty of the crime.

JAY BURINGURD yes.

SENATOR WATNE page 5 line 6- don't we have fees already established.

JAY BURINGURD it's waved for these types of orders.

SENATOR TRENBEATH line 12 page 5- is this a typo

JAY BURINGURD yes.

BONNIE PALLECK, speaking on behalf of the ND council on Abused Women's services.

Testifies in favor of SB 2076. (testimony attached)

SB 2076 end of side A

SENATOR TRAYNOR these are a additions to the Bill?

BONNIE PALLECK yes. My testimony tracks the amendments.

SENATOR TRAYNOR is the current law working well?

BONNIE PALLECK we believe it is.

SENATOR TRAYNOR there are 18 amendments to your proposed bill. Would, if these are implemented, this mirror the uniform state law?

BONNIE PALLECK I believe so.

MR. OLSON, representing state attorney and police officers, supports SB 2076. Exposure will be potential order. Valid or invalid (meter # 30) Cop at risk. Line 10 page 5. Explains amendments.

SENATOR TRAYNOR would you write that down?

MR OLSON (32.8) repeats himself.

Page 4

Senate Judiciary Committee

Bill/Resolution Number SB 2076

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SENATOR TRAYNOR closed the hearing on SB 2076. After the discussion SENATOR

NELSON MOTIONED TO DO NOT PASS. SECONDED BY SENATOR BERCIER.

THE ROLL CALL VOTE INDICATED 7 YEAS, 0 NAYS, AND 0 ABSENT AND NOT

VOTING.

10151.0201
Title.

Prepared by the Legislative Council staff

January 15, 2001

PROPOSED AMENDMENTS TO SENATE BILL NO. 2076

Page 5, line 15, replace "A" with "Q"

Renumber accordingly

Date: January 16th, 2001
 Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2076

Senate Judiciary Committee

Subcommittee on _____
 or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass

Motion Made By Nelson Seconded By Bercier

Senators	Yes	No	Senators	Yes	No
Traynor, J. Chairman	X		Bercier, D.	X	
Watne, D. Vice Chairman	X		Nelson, C.	X	
Dever, D.	X				
Lyson, S.	X				
Trenbeath, T.	X				

Total (Yes) 7 No _____

Absent _____

Floor Assignment Nelson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
January 16, 2001 5:00 p.m.

Module No: SR-06-1101
Carrier: C. Nelson
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2076: Judiciary Committee (Sen. Traynor, Chairman) recommends DO NOT PASS
(7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2076 was placed on the
Eleventh order on the calendar.

2001 TESTIMONY

SB 2076

202-8370
 202-8370
 202-8370
 Crisis Center
 2028
 KE
 natives for
 Families
 1-888-662-7378
 DICKINSON
 Domestic Violence and
 Rape Crisis Center
 225-4506
 ELLENDALE
 Kedish House
 349-4729
 FARGO
 Rape and Abuse Crisis Center
 300-344-7273
 FORT BERTHOLD RESERVATION
 Coalition Against
 Domestic Violence
 527-4171
 FORT YATES
 Tender Heart Against
 Domestic Violence
 854-3402
 GRAFTON
 Tri-County Crisis
 Intervention Center
 352-4242
 GRAND FORKS
 Domestic Violence
 Crisis Center
 JAMES TOWN
 G.A.F.E. Shelter
 388-353-7233
 McLEAN COUNTY
 McLean Family
 Resource Center
 500-551-8543
 MERCER COUNTY
 Women's Action and
 Resource Center
 873-2274
 MINOT
 Domestic Violence Crisis
 Center
 352-2258
 RANSOM COUNTY
 Resource Network
 383-5001
 STANLEY
 Domestic Violence Program,
 W.W. ND
 523-3033
 SULLY COUNTY
 Women's Action and
 Resource Center
 572-2274
 SULLY COUNTY
 Crisis Center
 SULLY COUNTY
 Family Crisis Shelter
 572-2274

Senator Jack Traynor
 Chair, Senate Judiciary Committee
 SB 2076
 January 16, 2001

Chair Traynor and Members of the Committee:

My name is Bonnie Palecek and I am speaking on behalf of the ND Council on Abused Women's Services. I am here in support of SB 2076 and to offer some amendments which we believe would maintain the overall intent and content of the proposed Uniform Act, while preserving the clarity and essential provisions of our current North Dakota statute.

14-07.1-02.2, North Dakota's statute relating to full faith and credit for protection orders, was passed just last session, in 1999. It was crafted to comply with the existing statute provisions under the federal Violence Against Women Act passed 1994. In the interim period between the passage of the federal Act and the passage of the ND statute, we relied on ND Attorney General's opinion which affirmed the authority of courts in ND to recognize so-called "foreign protection orders" with full faith and credit.

The federal Full Faith and Credit Act signified a monumental shift in judicial thinking which reflected an acknowledgment of the realities of someone caught in a domestic violence situation. For example, consider a battered woman in Austin, Texas before 1995 who decides to leave and flees home to North Dakota. She has been in an Austin shelter and received a protection order with the assistance of advocates there, but she wants to come home to her parents in Bismarck.

But what about her protection order? It isn't good here, and if she has to apply for another one, she will need to reveal where she is because her abuser will receive notice of the new hearing time and place (as well he should under his due process rights).

What the full faith and credit provisions of both federal and state law do for her now is to allow her protection order to be enforced in North Dakota immediately *as though it had been issued here*. If her abuser stalks her here, and she produces the order for law enforcement, they must enforce it just like they would any other order. The same holds true for tribal orders. Every jurisdiction must honor every other jurisdiction's orders provided that.

- (1) the respondent knew about the order and was given a chance to be heard according to due process rights;
- (2) the order was currently in effect;
- (3) the issuing court had jurisdiction over the parties and the subject matter.



The order can be presented to the officer in any form. A faxed order, or one from a copy machine will be enough if the officer believes it to be valid. In fact, the officer may even take the victim's word for it that an order exists and has been served, if he/she has probable cause to believe that is true.

As I said previously, the Full Faith and Credit Act stemmed from a simple concept with sweeping implications. It represents a huge shift, and frankly the federal statute gave few guidelines to states and tribes as to how it should be implemented.

And so states did the best they could to honor the federal law and pass implementing statutes. To date, most of the states have passed such legislation. In North Dakota, our coalition was assisted by attorneys from the National Full Faith and Credit Project who specialize in this Act and its implementation from the perspective of victim advocacy. They provided training here as well as assistance in drafting the current ND statute.

Over the last two years, training materials have been developed on a national level as well as here in North Dakota in order to encourage implementation of the Act. That training continues, and a multi-disciplinary team appointed by our Supreme Court will be attending a conference in Seattle next month.

I share this history with you to reveal the depth of our investment in this issue. On behalf of victims everywhere in the country, we have a lot at stake in not only the concept of full faith and credit, but its effective implementation as well.

And so it is in that spirit that I offer a series of amendments which we believe will allow us to build on the training and protocol development which has already been initiated as well as taking advantage of the momentum and added benefits of being part of a national movement toward uniform laws in this area.

Our proposed amendments fall into three categories:

- (1) those needed to mesh the proposed new statute with current ND law and practice;
- (2) those necessary for clarity;
- (3) those which we believe would better reflect the intent of the federal provisions of 18 USC 2265 and 2266 (200).

First, allow me to suggest three amendments in the first category:

(1) In line 24, on p. 4, relating to the registering of the order, there is a need to clarify that in ND it is law enforcement, not the clerk of court, who enters orders into a "registry" (in ND currently that is CWIS, current warrant information system). Eventually, the registry will be tied into a nationwide FBI Registry; therefore, we would suggest adding language from our current statute after "issuing state" in l. 24: "If a foreign order is filed under this subsection, the clerk of district court shall transmit a copy of the order to the appropriate local law enforcement agency as provided under section 14-07.1-03."

The second amendment would preserve language in ND's current statute which makes it a crime to falsify an order. From 14-07.1-02.2 (4): "Any person who intentionally provides a law enforcement officer with a copy of a foreign domestic violence protection order known by that person to be false or invalid, or who denies having been served with a protection order when that person has been served with such an order, is guilty of a class A misdemeanor."

The third amendment would honor the equal participation of tribal courts in full faith and credit implementation by using the language in our current statute in the definition: p. 2 (ll 11-14) "State" means a state of the United States, Indian tribe, the District of Columbia, or a commonwealth territory, or possession of the United States." This language affords equal footing to tribes rather than including them as an afterthought.

The second category of amendments we believe would enhance clarity and thus make training and using the statute in the field easier. It is essential that the statute be understandable, particularly to the law enforcement officers and victim advocates who use it in the field.

(1) The first amendment suggested here would add "or tribe" to p. 1, line 21, after "state," and add "or tribe" after "issuing state" on l. 22 as well as after "means the state" also on l. 22. This would clarify an important issue for us in North Dakota, an issue not without difficulty, that state and tribal courts, at least relating to this Act, have equal standing.

(2) The second clarifying amendment is on p. 3 ll. 10-11. Language in 2076 seems very vague. The respondent is given an opportunity to be heard "within a reasonable time after the issuing of the order consistent with the rights of the respondent to due process." By adding after "within" on l. 11 "the time required by the law of the issuing state, or, in any event within" a reasonable time, we feel clearer parameters would be set. This also tracks the language of the federal law and points us first to the time frame designated by the law of the issuing state. This also underscores the intent of the federal law.

In addition, the language in l. 10 is unclear and may be misleading. Here, in the case of an ex parte order, 2076 states that "the respondent was given notice and afforded the opportunity to be heard." This could be interpreted to mean that the full hearing must have been held before the order is deemed valid, which, of course, defeats the whole intent to honor ex parte orders which meet the conditions set forth.

We suggest that this could be remedied by stating the respondent "was given notice of an opportunity to be heard" rather than "afforded" this opportunity (l. 10).

(3) Next, on p. 3, line 22, we suggest tracking the federal language once again for clarity and replacing "in favor of the respondent" with: "findings that each party was entitled to such an order."

(4) The fourth amendment in this category would replace language in 2076 which seems very cumbersome. Language in our current ND statute already provides for

