

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

742I0550

HOUSE BILL NO. 1117

Introduced by: Representatives Michels, Adelstein, Cradduck, Cutler, Gillespie, Hunhoff, Kraus, LaRue, Madsen, Murschel, O'Brien, Olson (Mel), and Schafer and Senators Schoenbeck, Albers, de Hueck, Knudson, McCracken, Moore, and Sutton (Dan)

1 FOR AN ACT ENTITLED, An Act to provide for the enforcement of foreign domestic violence
2 protection orders.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 25-10 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Any domestic violence protection order issued by a court of competent jurisdiction of
7 another state, Indian tribe, the District of Columbia, or a commonwealth, territory, or possession
8 of the United States is enforceable as if the order was issued by a court in this state if all of the
9 following requirements are satisfied:

- 10 (1) The respondent received notice of the order in compliance with requirements of the
11 issuing jurisdiction;
- 12 (2) The order is in effect in the issuing jurisdiction;
- 13 (3) The issuing court had jurisdiction over the parties and the subject matter;
- 14 (4) The respondent was afforded reasonable notice and opportunity to be heard sufficient



1 to protect that person's right to due process. In the case of ex parte orders, notice and
2 opportunity to be heard must have been provided within the time required by the law
3 of the issuing jurisdiction; and, in any event, within a reasonable time after the order
4 was issued, sufficient to protect the respondent's due process rights; and

5 (5) If the order also provides protection for the respondent, a petition, application, or
6 other written pleading was filed with the issuing court seeking such an order and the
7 issuing court made specific findings that the respondent was entitled to the order.

8 Any protection order meeting the requirements of this section is a foreign domestic violence
9 protection order.

10 Section 2. That chapter 25-10 be amended by adding thereto a NEW SECTION to read as
11 follows:

12 Any person entitled to protection under a foreign domestic violence protection order may
13 file the foreign order in the office of any clerk of court in this state. The person filing the foreign
14 order shall also file with the clerk of court an affidavit certifying the validity and status of the
15 order and attesting to the person's belief that the order has not been amended, rescinded, or
16 superseded by any orders from a court of competent jurisdiction. If a foreign order is filed under
17 this section, the clerk of court shall enter the order in the law enforcement protection order
18 database. Filing of a foreign order under this section is not a prerequisite to the order's
19 enforcement in this state. No fee may be assessed for filing the foreign order.

20 Section 3. That chapter 25-10 be amended by adding thereto a NEW SECTION to read as
21 follows:

22 A law enforcement officer may rely upon any foreign domestic violence protection order that
23 has been provided to the officer by any source. The officer may make an arrest for any violation
24 of the foreign order in the same manner as for violation of a protection order issued in this state.

1 A law enforcement officer may rely on the statement of the person protected by the foreign order
2 that the order is in effect and that the respondent was personally served with a copy of the order.

3 A law enforcement officer acting in good faith and without malice in enforcing a foreign order
4 under this section is immune from civil or criminal liability for any action arising in connection
5 with the enforcement of the foreign domestic violence protection order.

6 Section 4. That chapter 25-10 be amended by adding thereto a NEW SECTION to read as
7 follows:

8 Any person who intentionally provides a law enforcement officer with a copy of a foreign
9 domestic violence protection order known by that person to be false, invalid, or not in
10 compliance with the requirements of section 1 of this Act, or who, if served with such a
11 protection order, denies having been served with the protection order, is guilty of a Class 1
12 misdemeanor.

13 Section 5. That chapter 25-10 be amended by adding thereto a NEW SECTION to read as
14 follows:

15 Failure to provide reasonable notice and opportunity to be heard is an affirmative defense to
16 any prosecution for a violation of the foreign domestic violence protection order or any process
17 filed seeking enforcement of the order in this state. Failure to satisfy any of the requirements of
18 section 1 of this Act is an affirmative defense to any prosecution for a violation of the foreign
19 domestic violence protection order or any process filed seeking enforcement of the order in this
20 state.