

CHAPTER 373
FORMERLY
SENATE BILL NO. 284
AS AMENDED BY
SENATE AMENDMENT NO. 1

AN ACT TO AMEND THE DELAWARE CODE RELATING TO CANADIAN DOMESTIC-VIOLENCE PROTECTION ORDERS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend Subchapter III, Chapter 9, Title 10 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Part F. Uniform Recognition and Enforcement of Canadian Domestic-Violence Protection Orders Act.

§ 1049G. Short Title.

This part may be cited as “the Uniform Recognition and Enforcement of Canadian Domestic-Violence Protection Orders Act.”

§ 1049H. Definitions.

As used in this part:

(1) “Canadian domestic-violence protection order” means a judgment or part of a judgment or order issued in a civil proceeding by a court of Canada under law of the issuing jurisdiction which relates to domestic violence and prohibits a respondent from doing one or more of the following.

a. Being in physical proximity to a protected individual or following a protected individual.

b. Directly or indirectly contacting or communicating with a protected individual or other individual described in the order.

c. Being within a certain distance of a specified place or location associated with a protected individual.

d. Molesting, annoying, harassing, or engaging in threatening conduct directed at a protected individual.

(2) “Court” means the Family Court of this State.

(3) “Domestic protection order” means an injunction or other order issued by the Court which relates to domestic or family violence laws to prevent an individual from engaging in violent or threatening acts against, harassment of, direct or indirect contact or communication with, or being in physical proximity to another individual.

(4) “Issuing court” means the court that issues a Canadian domestic-violence protection order.

(5) “Law-enforcement officer” means an individual authorized by law of this State other than this part to enforce a domestic protection order.

(6) “Person” means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(7) “Protected individual” means an individual protected by a Canadian domestic-violence protection order.

(8) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(9) “Respondent” means an individual against whom a Canadian domestic-violence protection order is issued.

(10) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes a federally-recognized Indian tribe.

§ 1049I. Enforcement of Canadian domestic-violence protection order by law-enforcement officer.

(a) If a law-enforcement officer determines under subsection (b) or (c) of this section that there is probable cause to believe a valid Canadian domestic-violence protection order exists and the order has been violated, the

officer shall enforce the terms of the Canadian domestic-violence protection order as if the terms were in an order of the Court. Presentation to a law-enforcement officer of a certified copy of a Canadian domestic-violence protection order is not required for enforcement.

(b) Presentation to a law-enforcement officer of a record of a Canadian domestic-violence protection order that identifies both a protected individual and a respondent and on its face is in effect constitutes probable cause to believe that a valid order exists.

(c) If a record of a Canadian domestic-violence protection order is not presented as provided in subsection (b) of this section, a law-enforcement officer may consider other information in determining whether there is probable cause to believe that a valid Canadian domestic-violence protection order exists.

(d) If a law-enforcement officer determines that an otherwise valid Canadian domestic-violence protection order cannot be enforced because the respondent has not been notified of or served with the order, the officer shall notify the protected individual that the officer will make reasonable efforts to contact the respondent, consistent with the safety of the protected individual. After notice to the protected individual and consistent with the safety of the individual, the officer shall make a reasonable effort to inform the respondent of the order, notify the respondent of the terms of the order, provide a record of the order, if available, to the respondent, and allow the respondent a reasonable opportunity to comply with the order before the officer enforces the order.

(e) If a law-enforcement officer determines that an individual is a protected individual, the officer shall inform the individual of available local victim services.

§ 1049J. Enforcement of Canadian domestic-violence protection order by the Court.

(a) The Court may issue an order enforcing or refusing to enforce a Canadian domestic-violence protection order on application of one of the following:

(1) A person authorized by law of this State other than this part to seek enforcement of a domestic protection order.

(2) A respondent.

(b) In a proceeding under subsection (a) of this section, the Court shall follow the procedures of this State for enforcement of a domestic protection order. An order entered under this section is limited to the enforcement of the terms of the Canadian domestic-violence protection order as described in § 1049H of this title.

(c) A Canadian domestic-violence protection order is enforceable under this section if all of the following apply:

(1) The order identifies a protected individual and a respondent.

(2) The order is valid and in effect.

(3) The issuing court had jurisdiction over the parties and the subject matter under law applicable in the issuing court.

(4) The order was issued after one of the following:

a. The respondent was given reasonable notice and had an opportunity to be heard before the court issued the order.

b. In the case of an ex parte order, the respondent was given reasonable notice and had or will have an opportunity to be heard within a reasonable time after the order was issued, in a manner consistent with the right of the respondent to due process.

(d) A Canadian domestic-violence protection order valid on its face is prima facie evidence of its enforceability under this section.

(e) A claim that a Canadian domestic-violence protection order does not comply with subsection (c) of this section is an affirmative defense in a proceeding seeking enforcement of the order. If the Court determines that the order is not enforceable, the Court shall issue an order that the Canadian domestic-violence protection order is not enforceable under this section and § 1049I of this title and may not be registered under § 1049K of this title.

(f) This section applies to enforcement of a provision of a Canadian domestic-violence protection order against a party to the order in which each party is a protected individual and respondent only if both of the following apply:

(1) The party seeking enforcement of the order filed a pleading requesting the order from the issuing court.

(2) The issuing court made specific findings that entitled the party to the enforcement sought.
1049K. Registration of Canadian domestic-violence protection order.

(a) An individual may register a Canadian domestic-violence protection order in this State. To register the order, the individual must present a certified copy of the order to the Court.

(b) On receipt of a certified copy of a Canadian domestic-violence protection order, the Court shall register the order in accordance with this section.

(c) An individual registering a Canadian domestic-violence protection order under this section shall file an affidavit stating that, to the best of the individual's knowledge, the order is valid and in effect.

(d) After a Canadian domestic-violence protection order is registered under this section, the Court shall provide the individual registering the order a certified copy of the registered order.

(e) A Canadian domestic-violence protection order registered under this section may be entered in a state or federal registry of protection orders in accordance with law.

(f) An inaccurate, expired, or unenforceable Canadian domestic-violence protection order may be corrected or removed from the registry of protection orders maintained in this State in accordance with law of this State other than this part.

(g) A fee may not be charged for the registration of a Canadian domestic-violence protection order under this section.

(h) Registration in this State or filing under law of this State other than this part of a Canadian domestic-violence protection order is not required for its enforcement under this part.

§ 1049L. Immunity.

This State or a state agency, local governmental agency, law-enforcement officer, prosecuting attorney, clerk of court, or state or local governmental official acting in an official capacity is immune from civil and criminal liability for an act or omission arising out of the registration or enforcement of a Canadian domestic-violence protection order or the detention or arrest of an alleged violator of a Canadian domestic-violence protection order if the act or omission was a good faith effort to comply with this part.

§ 1049M. Other remedies.

An individual who seeks a remedy under this part may seek other legal or equitable remedies.

§ 1049N. Uniformity of application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§ 1049O. Relation to the Electronic Signatures in Global and National Commerce Act.

This part modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. § 7003(b).

§ 1049P. Transition.

This part applies to a Canadian domestic-violence protection order issued before, on, or after [the effective date of this part] and to a continuing action for enforcement of a Canadian domestic-violence protection order commenced before, on, or after [the effective date of this part]. A request for enforcement of a Canadian domestic-violence protection order made on or after [the effective date of this part] for a violation of the order occurring before, on, or after [the effective date of this part] is governed by this part.

Section 2. Amend § 1271A, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1271A. Criminal contempt of a domestic violence protective order; class A misdemeanor; class F felony.

(a) A person is guilty of criminal contempt of a domestic violence protective order when the person knowingly violates or fails to obey any provision of a protective order issued by the Family ~~Court~~ Court; a court of any state, ~~territory~~ territory, or Indian nation in the United States, as long as such violation or failure to obey

occurred in ~~Delaware~~ Delaware; or a court of Canada, as long as such violation or failure to obey occurred in Delaware.

Section 3. Amend § 1904, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1904. Arrest without warrant.

(a) An arrest by a peace officer without a warrant for a misdemeanor is lawful whenever the officer has reasonable ground to believe that the person to be arrested has committed a misdemeanor:

(5) Out of the officer's presence and within the State for a violation of a protective order issued by Family ~~Court~~ Court; a court of any state, territory, or Indian nation in the United ~~States~~ States; or a court of Canada; or

Section 4. Effective date. This Act takes effect on January 1, 2017.

Approved August 10, 2016