

State of Wisconsin



2015 Senate Bill 351

Date of enactment: April 11, 2016
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2015 WISCONSIN ACT 352

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

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

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

175.35 (1) (at) "Firearms restrictions record search" means a search of department of justice records to determine whether a person seeking to purchase a handgun is prohibited from possessing a firearm under s. 941.29. "Firearms restrictions record search" includes a criminal history record search, a search to determine whether a person is prohibited from possessing a firearm under s. 51.20 (13) (cv) 1., 2007 stats., a search in the national instant criminal background check system to determine whether a person has been ordered not to possess a firearm under s. 51.20 (13) (cv) 1., 51.45 (13) (i) 1., 54.10 (3) (f) 1., or 55.12 (10) (a), a search to determine whether the person is subject to an injunction under s. 813.12 or 813.122, or a tribal injunction, as defined in s. 813.12 (1) (e), issued by a court established by any federally recognized Wisconsin Indian tribe or band, except the Menominee Indian tribe of Wisconsin, that includes notice to

the respondent that he or she is subject to the requirements and penalties under s. 941.29 and that has been filed with the circuit court under s. ~~806.247(3)~~ 813.128 (3g), and a search to determine whether the person is prohibited from possessing a firearm under s. 813.123 (5m) or 813.125 (4m).

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

175.60 (9g) (a) 2. The department shall conduct a criminal history record search and shall search its records and conduct a search in the national instant criminal background check system to determine whether the applicant is prohibited from possessing a firearm under federal law; whether the applicant is prohibited from possessing a firearm under s. 941.29; whether the applicant is prohibited from possessing a firearm under s. 51.20 (13) (cv) 1., 2007 stats.; whether the applicant has been ordered not to possess a firearm under s. 51.20 (13) (cv) 1., 51.45 (13) (i) 1., 54.10 (3) (f) 1., or 55.12 (10) (a); whether the applicant is subject to an injunction under s. 813.12 or 813.122, or a tribal injunction, as defined in s. 813.12 (1) (e), issued by a court established by any feder-

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

ally recognized Wisconsin Indian tribe or band, except the Menominee Indian tribe of Wisconsin, that includes notice to the respondent that he or she is subject to the requirements and penalties under s. 941.29 and that has been filed with the circuit court under s. ~~806.247 (3)~~ 813.128 (3g); and whether the applicant is prohibited from possessing a firearm under s. 813.123 (5m) or 813.125 (4m); and to determine if the court has prohibited the applicant from possessing a dangerous weapon under s. 969.02 (3) (c) or 969.03 (1) (c) and if the applicant is prohibited from possessing a dangerous weapon as a condition of release under s. 969.01.

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

806.245 (6) A foreign protection order, as defined in s. ~~806.247 (4) (b)~~ 813.128 (1g) (c), issued by an Indian tribal court in this state shall be accorded full faith and credit under s. ~~806.247~~ 813.128.

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

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

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

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

813.128 (1g) (e) “~~Foreign protection~~ Protection order” means any temporary or permanent injunction or order of a civil or criminal court of the United States, of an Indian tribe or of any other state issued for preventing by a tribunal to prevent an individual from engaging in abuse, bodily harm, communication, contact, harassment, physical proximity, threatening acts or violence by or to ~~or to a~~ another person, other than support or custody orders. This term includes an injunction or order issued under the antistalking laws of the issuing state.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

813.128 (3g) (a) 3. The sheriff or law enforcement agency that receives a copy of a foreign protection order or of a modification of an order from the clerk under ~~par. (b) subd. 2.~~ shall enter the information received concerning the order or modification of an order into the transaction information for management of enforcement system no later than 24 hours after receiving the information. The sheriff or law enforcement agency shall make available to other law enforcement agencies, through a verification system, information on the existence and status of any order or modification of an order filed under this subsection. The information need not be maintained after the order or modification is no longer in effect.

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

813.12 (6) (am) 1. If an injunction is issued or extended under sub. (4) or if a tribal injunction is filed under s. ~~806.247 (3)~~ 813.128 (3g), the clerk of the circuit court shall notify the department of justice of the injunction and shall provide the department of justice with information concerning the period during which the injunction is in effect and information necessary to identify the respondent for purposes of responding to a

request under s. 165.63 or for purposes of a firearms restrictions record search under s. 175.35 (2g) (c) or a background check under s. 175.60 (9g) (a).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

813.128 (4) PENALTY. A person who knowingly violates a condition of a foreign protection order or modification of a foreign protection order that is entitled to full faith and credit under ~~s. 806.247~~ this section shall be

fined not more than \$1,000 or imprisoned for not more than 9 months or both. If a foreign protection order and any modification of that order that is entitled to full faith and credit under ~~s. 806.247~~ this section remains current and in effect at the time that a court convicts a person for a violation of that order or modification of that order, but that order or modification has not been filed under ~~s. 806.247~~ this section, the court shall direct the clerk of circuit court to file the order and any modification of the order.

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

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

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

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

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

813.128 (5) IMMUNITY. A law enforcement officer, law enforcement agency, prosecuting attorney, state, local, or Indian tribe or band governmental official, or clerk of circuit court is immune from civil and criminal liability for his or her acts or omissions arising out of a decision related to the filing of a foreign protection order or modification or to the detention or arrest of an alleged violator of a foreign protection order or modification if the act or omission is done in a good faith effort to comply with this section and s. 806.247, 2013 stats.

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

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

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

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

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

(e) A tribunal of this state shall enforce the provisions of a valid foreign protection order that govern custody, physical placement, and visitation, if the order was issued in accordance with the jurisdictional requirements gov-

erning the issuance of custody, physical placement, and visitation orders in the issuing state.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

968.07 (1m) Notwithstanding sub. (1), a law enforcement officer shall arrest a person when required to do so under s. 813.12 (7), 813.122 (10), 813.125 (6), 813.128 ~~(4)~~ (3g) (b), or 968.075 (2) (a) or (5) (e).

SECTION 36. 968.075 (2) (am) of the statutes is amended to read:

968.075 (2) (am) Notwithstanding s. 968.07 (1), unless the person's arrest is required under s. 813.12 (7), 813.122 (10), 813.125 (6), or 813.128 ~~(4)~~ (3g) (b) or sub. (5) (e), if a law enforcement officer identifies the predominant aggressor, it is generally not appropriate for a law enforcement officer to arrest anyone under par. (a) other than the predominant aggressor.

SECTION 37. 973.075 (1) (b) 1m. f. of the statutes is amended to read:

973.075 (1) (b) 1m. f. In the commission of a crime under s. 813.12 (8), 813.122 (11), 813.123 (10), 813.125 (7), 813.128 ~~(2)~~ (4) or 940.32.

SECTION 38. 973.075 (1) (bm) of the statutes is amended to read:

973.075 (1) (bm) Any property used in the commission of a crime under s. 813.12 (8), 813.122 (11), 813.123 (10), 813.125 (7), 813.128 ~~(2)~~ (4) or 940.32, but if the property is encumbered by a bonafide perfected security interest that was perfected before the date of the commission of the current violation and the holder of the security interest neither had knowledge of nor consented to the commission of that violation, the holder of the security interest shall be paid from the proceeds of the forfeiture.