

State of Wisconsin



1995 Assembly Bill 793

Date of enactment: **May 1, 1996**
Date of publication*: **May 15, 1996**

1995 WISCONSIN ACT 306

AN ACT *to repeal* 813.12 (8) (a) 1. and 2.; *to renumber and amend* 813.12 (8) (a) (intro.); *to amend* 175.35 (1) (at), 813.12 (6) (am) 1., 813.12 (6) (b), 813.12 (6) (c), 813.12 (7) (a), 813.12 (7) (b), 814.61 (1) (d), 814.70 (1), 814.70 (3) (intro.) and 941.29 (1) (f); *to repeal and recreate* 813.12 (9); and *to create* 806.245 (6), 806.247, 813.122 (12), 813.123 (12), 813.125 (8) and 813.128 of the statutes; **relating to:** giving full faith and credit to and enforcement of foreign orders providing protection to individuals and providing a penalty.

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, as created by 1995 Wisconsin Act 71, 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 restriction 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), 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. 813.12 (9) (a) 806.247 (3), and a search to determine whether the person is prohibited from possessing a firearm under s. 813.125 (4m).

SECTION 1m. 806.245 (6) of the statutes is created to read:

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

SECTION 2. 806.247 of the statutes is created to read:
806.247 Full faith and credit for foreign protection orders. (1) DEFINITIONS. In this section:

(a) "Bodily harm" has the meaning given in s. 939.22 (4).

(b) "Foreign 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 abuse, bodily harm, communication, contact, harassment, physical proximity, threatening acts or violence by or to a person, other than support or custody orders.

(2) STATUS OF A FOREIGN PROTECTION ORDER. (a) A foreign protection order shall be accorded full faith and credit by the courts in this state and shall be enforced as if the order were an order of a court 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 a reasonable notice and opportunity to be heard sufficient to protect his or her right to due process.

* Section 991.11, WISCONSIN STATUTES 1993-94: 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 as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

If the foreign protection order is an ex parte injunction or order, the person against whom the order was obtained 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 that issued the order had jurisdiction over the parties and over the subject matter.

(b) A foreign protection order issued against the person who filed a written pleading with a court 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 person.

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

(3) FILING OF A FOREIGN PROTECTION ORDER. (a) 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 shall treat any foreign protection order or modification so filed in the same manner as a judgment of the circuit court.

(b) Within one business day after a foreign protection order or a modification of a foreign protection order is filed under this subsection, the clerk of circuit court shall send a copy of the foreign protection order or modification of the order to the sheriff in that circuit or to the local law enforcement agency that is the central repository for orders and injunctions in that circuit.

(c) 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) 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 3. 813.12 (6) (am) 1. of the statutes, as created by 1995 Wisconsin Act 71, 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 sub. (9) (a) s. 806.247 (3), 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 a firearms restrictions record search under s. 175.35 (2g) (c).

SECTION 4. 813.12 (6) (b) of the statutes, as affected by 1995 Wisconsin Act 71, is amended to read:

813.12 (6) (b) Within one business day after an order or injunction is issued, extended, modified or vacated under this section ~~or after a tribal order or injunction is filed under sub. (9) (a)~~, the clerk of the circuit court shall send a copy of the order or injunction, or of the order extending, modifying or vacating an order or injunction, to the sheriff or to any other local law enforcement agency which is the central repository for orders and injunctions and which has jurisdiction over the petitioner's premises.

SECTION 5. 813.12 (6) (c) of the statutes, as affected by 1995 Wisconsin Act 71, is amended to read:

813.12 (6) (c) No later than 24 hours after receiving the information under par. (b), the sheriff or other appropriate local law enforcement agency under par. (b) shall enter the information concerning an order or injunction issued, extended, modified or vacated under this section ~~or a tribal order or injunction filed under sub. (9) (a)~~ into the transaction information for management of enforcement system. The sheriff or other appropriate local law enforcement agency shall also make available to other law enforcement agencies, through a verification system, information on the existence and status of any order or injunction issued under this section. The information need not be maintained after the order or injunction is no longer in effect.

SECTION 6. 813.12 (7) (a) of the statutes is amended to read:

813.12 (7) (a) A petitioner under sub. (5) ~~or a tribal court petitioner~~ presents the law enforcement officer with a copy of a court order issued under sub. (3) or (4) ~~or a tribal order or injunction issued against the person which has been filed with a circuit court in accordance with sub. (9) (a)~~, or the law enforcement officer determines that such an order exists through communication with appropriate authorities.

SECTION 7. 813.12 (7) (b) of the statutes is amended to read:

813.12 (7) (b) The law enforcement officer has probable cause to believe that the person has violated the court order issued under sub. (3) or (4) by any circuit court in this state ~~or a tribal order or injunction issued against the person that has been filed with any circuit court in this state in accordance with sub. (9) (a)~~.

SECTION 8. 813.12 (8) (a) (intro.) of the statutes is renumbered 813.12 (8) (a) and amended to read:

813.12 (8) (a) Whoever knowingly violates ~~any of the following~~ a temporary restraining order or injunction issued under sub. (3) or (4) shall be fined not more than \$1,000 or imprisoned for not more than 9 months or both.

SECTION 9. 813.12 (8) (a) 1. and 2. of the statutes are repealed.

SECTION 10. 813.12 (9) of the statutes, as affected by 1995 Wisconsin Act 71, is repealed and recreated to read:

813.12 (9) NOTICE OF FULL FAITH AND CREDIT. An order or injunction issued under sub. (3) or (4) shall include a statement that the order or injunction may be accorded full faith and credit in every civil or criminal court of the United States, civil or criminal courts of any other state and Indian tribal courts to the extent that such courts may have personal jurisdiction over nontribal members.

SECTION 11. 813.122 (12) of the statutes is created to read:

813.122 (12) NOTICE OF FULL FAITH AND CREDIT. An order or injunction issued under sub. (4) or (5) shall include a statement that the order or injunction may be accorded full faith and credit in every civil or criminal court of the United States, civil or criminal courts of any other state and Indian tribal courts to the extent that such courts may have personal jurisdiction over nontribal members.

SECTION 12. 813.123 (12) of the statutes is created to read:

813.123 (12) NOTICE OF FULL FAITH AND CREDIT. An order or injunction issued under sub. (4) or (5) shall include a statement that the order or injunction may be accorded full faith and credit in every civil or criminal court of the United States, civil or criminal courts of any other state and Indian tribal courts to the extent that such courts may have personal jurisdiction over nontribal members.

SECTION 13. 813.125 (8) of the statutes is created to read:

813.125 (8) NOTICE OF FULL FAITH AND CREDIT. An order or injunction issued under sub. (3) or (4) shall include a statement that the order or injunction may be accorded full faith and credit in every civil or criminal court of the United States, civil or criminal courts of any other state and Indian tribal courts to the extent that such courts may have personal jurisdiction over nontribal members.

SECTION 14. 813.128 of the statutes is created to read:

813.128 Foreign protection orders. (1) ENFORCEMENT OF FOREIGN PROTECTION ORDERS. (a) A foreign protection order or modification of the foreign protection order that meets the requirements under s. 806.247 (2) 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.

(b) A law enforcement officer shall arrest and take the subject of a foreign protection order into custody if all of the following occur:

1. A person protected under a foreign protection order presents the law enforcement officer with a copy of a foreign protection order issued against the subject, or the law enforcement officer determines that a valid foreign protection order exists against the subject through communication with appropriate authorities. If a law enforcement officer examines a copy of a foreign protection order, the order, with any modification, is presumed to be valid if the order or modification appears to be valid on

its face and circumstances suggest that the order and any modification are in effect.

2. The law enforcement officer has probable cause to believe that the person has violated the terms of the foreign protection order or modification of the order.

(2) 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 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 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, the court shall direct the clerk of circuit court to file the order and any modification of the order.

(3) IMMUNITY. A law enforcement officer, law enforcement agency, prosecuting attorney 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.

SECTION 15. 814.61 (1) (d) of the statutes is amended to read:

814.61 (1) (d) No fee charged under this subsection in any action commenced under s. 813.12 may be collected from a petitioner under s. 813.12. The fee charged under this subsection for petitions filed and granted under s. 813.12 shall be collected from the respondent under s. 813.12 if he or she is convicted of violating a temporary restraining order or injunction issued under s. 813.12 (3) or (4) ~~or a tribal order or injunction filed under s. 813.12 (9).~~

SECTION 16. 814.70 (1) of the statutes is amended to read:

814.70 (1) SERVICE OF PROCESS. For each service or attempted service of a summons or any other process for commencement of an action, a writ, an order of injunction, a subpoena or any other order, \$12 for each defendant or person. If there is more than one defendant or person to be served at a given address, \$6 for each additional defendant or person. No fee charged under this subsection in any action commenced under s. 813.12 may be collected from a petitioner under s. 813.12. The fee charged under this subsection in any action commenced under s. 813.12 shall be collected from the respondent under s. 813.12 if he or she is convicted of violating a temporary restraining order or injunction issued under s. 813.12 (3) or (4) ~~or a tribal order or injunction filed under s. 813.12 (9).~~

SECTION 17. 814.70 (3) (intro.) of the statutes is amended to read:

814.70 (3) TRAVEL; CIVIL PROCESS. (intro.) For travel in serving any summons, writ or other process, except criminal warrants, and except that a fee under this subsection in any action commenced under s. 813.12 may not be collected from a petitioner but shall be collected from the respondent if he or she is convicted of violating a temporary restraining order or injunction issued under s. 813.12 (3) or (4) ~~or a tribal order or injunction filed under s. 813.12 (9)~~:

SECTION 18. 941.29 (1) (f) of the statutes, as created by 1995 Wisconsin Act 71, 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 s. 941.29 and that has been filed under s. 813.12 (9) (a) 806.247 (3).

SECTION 19. Effective date.

(1) This act takes effect on April 1, 1996, or on the day after publication, whichever is later.