WEST VIRGINIA CODE CHAPTER 48 ARTICLE 28B

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§48-28B-1. Short Title

This article may be cited as the Uniform Recognition and Enforcement of Canadian Domestic-Violence Protective Orders Act.

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§48-28B-2. Definitions.

"Canadian domestic violence protective 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:

(1) Being in physical proximity to a protected individual or following a protected individual;

(2) Directly or indirectly contacting or communicating with a protected individual or other individual described in the order;

(3) Being within a certain distance of a specified place or location associated with a protected individual; or

(4) Molesting, annoying, harassing, or engaging in threatening conduct directed at a protected individual.

"Domestic violence protective order" means an injunction or other order issued by a 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.

"Issuing court" means the court that issues a Canadian domestic violence protective order.

"Law-enforcement officer" means an individual authorized by law of this state to enforce a domestic protective order.

"Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

"Protected individual" means an individual protected by a Canadian domestic- violence protective order.

"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.

"Respondent" means an individual against whom a Canadian domestic-violence protective order is issued.

"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.

"Court" means a court, agency, or other entity authorized by law of this state to establish, enforce, or modify a domestic protective order.

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§48-28B-3. Enforcement of Canadian Domestic Violence Protective 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 protective order exists and the order has been violated, the officer shall enforce the terms of the Canadian domestic violence protective order as if the terms were in an order of a court. Presentation to a law-enforcement officer of a certified copy of a Canadian domestic violence protective order is not required for enforcement.

(b) Presentation to a law-enforcement officer of a record of a Canadian domestic violence protective 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 protective 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 protective order exists.

(d) If a law enforcement officer determines that an otherwise valid Canadian domestic violence protective 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.

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§48-28B-4. Enforcement of Canadian Domestic Violence Protective Order by Court

(a) A court may issue an order enforcing or refusing to enforce a Canadian domestic violence protective order on application of a:

(1) Person authorized by law of this state, other than this act, to seek enforcement of a domestic violence protective order; or

(2) 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 violence protective order as contained in the West Virginia Rules of Practice and Procedure for Domestic Violence. An order entered under this section is limited to the enforcement of the terms of the Canadian domestic violence protective order as defined in §48-28B-2 of this code.

(c) A Canadian domestic violence protective order is enforceable under this section if:

(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 on a basis for which a domestic violence protective order would be issued in this state for conduct that would constitute domestic violence under this code; and

(5) The order was issued after:

(A) The respondent was given reasonable notice and had an opportunity to be heard before the court issued the order; or

(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 protective order valid on its face is prima facie evidence of its enforceability under this article.

(e) A claim that a Canadian domestic violence protective 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 protective order is not enforceable under this section, and §48-28B-3 of this code, and may not be registered pursuant to the requirements of §48-28B-5 of this code.

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

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

(2) The court made specific findings that entitled the party to the enforcement sought.

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§48-28B-5. Registration of a Canadian Domestic Violence Protective Order.

(a) Any individual may register a Canadian domestic violence protective order in this State by presenting a certified copy of the order to the West Virginia Supreme Court of Appeals for registration in accordance with §48-27-802 of this code.

(b) An individual registering a Canadian domestic violence protective order shall file an affidavit by the protected individual stating that, to the best of the protected individual's knowledge, the order is currently in effect.

(c) Upon receipt of a Canadian domestic violence protective order for registration, the West Virginia Supreme Court of Appeals shall:

(1) Register the order in accordance with §48-27-802 of this code; and

(2) Furnish to the individual registering the order a copy of the proof of registration of the order.

(d) A registered Canadian domestic violence protective order that is shown to be inaccurate or not currently in effect shall be corrected or removed from the registry.

(e) A Canadian domestic violence protective order registered under this article may be entered in any existing state or federal registry of protection orders in accordance with applicable law.

(f) A fee may not be charged for the registration of a Canadian domestic violence protective order.

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