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CHAPTER 4.

 PROTECTION FROM DOMESTIC ABUSE

ARTICLE 1.

 PROTECTION FROM DOMESTIC ABUSE

**SECTION 20‑4‑10.** Short title.

This chapter may be cited as the “Protection from Domestic Abuse Act”.

**SECTION 20‑4‑20.** Definitions.

As used in this chapter:

(a) “Abuse” means:

(1) Physical harm, bodily injury, assault, or the threat of physical harm;

(2) Sexual criminal offenses, as otherwise defined by statute, committed against a family or household member by a family or household member;

(b) “Household member” means:

(i) a spouse;

(ii) a former spouse;

(iii) persons who have a child in common;

(iv) a male and female who are cohabiting or formerly have cohabited.

(c) “Court” means the Family Court.

(d) “Petitioner” means the person alleging abuse in a petition for an order of protection.

(e) “Respondent” in a petition for an order of protection means the person alleged to have abused another or a person alleged to have aided and abetted such abuse.

(f) “Order of protection” means an order of protection issued to protect the petitioner or minor household members from the abuse of another household member where the respondent has received notice of the proceedings and has had an opportunity to be heard.

**SECTION 20‑4‑30.** Jurisdiction.

(A) The family court has jurisdiction over all proceedings under this chapter except that, during nonbusiness hours or at other times when the court is not in session, the petition may be filed with a magistrate. The magistrate may issue an order of protection granting only the relief provided by Section 20‑4‑60(a)(1).

(B) Except as provided in subsection (C), actions for an order of protection must be filed in the county in which:

(1) the alleged act of abuse occurred;

(2) the petitioner resides or is sheltered, unless the petitioner is a nonresident of the State;

(3) the respondent resides, unless the respondent is a nonresident of the State; or

(4) the parties last resided together.

(C)(1) If the action is filed in the county in which the petitioner resides or is sheltered and the respondent is a nonresident of that county, the petitioner must request that the action be immediately transferred to another county in which venue is proper and must include a supplemental petition that designates the transfer county and that changes all specific references to the county of filing to the transfer county. The clerk of court must transfer and forward the supplemental petition to the transfer county.

(2) If the petitioner is a nonresident of the State, the action must be filed in the county specified in item (1), (3), or (4) of subsection (B).

(3) If the respondent is a nonresident of the State, the petitioner may request that the action be immediately transferred to another county in which venue is proper and must include a supplemental petition that designates the transfer county and that changes all specific references to the county of filing to the transfer county. The clerk of court must transfer and forward the supplemental petition to the transfer county.

(D) Hearings on the petition may be held in any county in the same judicial circuit as the county in which the action is filed or to which the action is transferred.

**SECTION 20‑4‑40.** Petition for order of protection.

There is created an action known as a “Petition for an Order of Protection” in cases of abuse to a household member.

(a) A petition for relief under this section may be made by any household members in need of protection or by any household members on behalf of minor household members.

(b) A petition for relief must allege the existence of abuse to a household member. It must state the specific time, place, details of the abuse, and other facts and circumstances upon which relief is sought and must be verified.

(c) The petition must inform the respondent of the right to retain counsel.

(d) In a pending action for divorce or separate support and maintenance, the petition for relief shall be brought in the form of a motion for further relief and shall be served on counsel of record, if any. Where no action is pending, the petition shall be filed and served as an independent action. A pending motion or petition for relief shall not be dismissed solely because the underlying action is dismissed.

(e) The clerk of court must provide simplified forms which will facilitate the preparation and filing of a petition under this section by any person not represented by counsel, including motions and affidavits to proceed in forma pauperis.

(f) The clerk of court may not charge a fee for filing a petition for an order for protection from domestic abuse.

**SECTION 20‑4‑50.** Hearing on petition.

(a) Within twenty‑four hours after service of a petition under this chapter upon the respondent, the court may, for good cause shown, hold an emergency hearing and issue an order of protection if the petitioner proves the allegation of abuse by a preponderance of the evidence. A prima facie showing of immediate and present danger of bodily injury, which may be verified by supporting affidavits, constitutes good cause for purposes of this section.

(b) If the court denies the motion for a twenty‑four‑hour hearing or such a hearing is not requested, the petitioner may request and the court must grant a hearing within fifteen days of the filing of a petition. The court must cause a copy of the petition to be served upon the respondent at least five days prior to the hearing, except as provided in subsection (a), in the same manner required for service in the circuit courts. Where service is not accomplished five days prior to the hearing, the respondent, upon his motion, is entitled to a continuance until such time is necessary to provide for compliance with this section.

**SECTION 20‑4‑60.** Order of protection; contents.

(A) Any order of protection granted under this chapter shall be to protect the petitioner or the abused person or persons on whose behalf the petition was filed and may include:

(1) temporarily enjoining the respondent from abusing, threatening to abuse, or molesting the petitioner or the person or persons on whose behalf the petition was filed;

(2) temporarily enjoining the respondent from communicating or attempting to communicate with the petitioner in any way which would violate the provisions of this chapter and temporarily enjoining the respondent from entering or attempting to enter the petitioner’s place of residence, employment, education, or other location as the court may order.

(B) Every order of protection issued pursuant to this chapter shall conspicuously bear the following language:

(1) “Violation of this order is a criminal offense punishable by thirty days in jail or a fine of two hundred dollars or may constitute contempt of court punishable by up to one year in jail and/or a fine not to exceed fifteen hundred dollars.”; and

(2) “Pursuant to Section 16‑25‑125 of the South Carolina Code of Laws, it is unlawful for a person who has been charged with or convicted of criminal domestic violence or criminal domestic violence of a high and aggravated nature, who is subject to an order of protection, or who is subject to a restraining order, to enter or remain upon the grounds or structure of a domestic violence shelter in which the person’s household member resides or the domestic violence shelter’s administrative offices. A person who violates this provision is guilty of a misdemeanor and, upon conviction, must be fined not more than three thousand dollars or imprisoned for not more than three years, or both. If the person is in possession of a dangerous weapon at the time of the violation, the person is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than five years, or both.”.

(C) When the court has, after a hearing for any order of protection, issued an order of protection, it may, in addition:

(1) award temporary custody and temporary visitation rights with regard to minor children living in the home over whom the parties have custody;

(2) direct the respondent to pay temporary financial support for the petitioner and minor child unless the respondent has no duty to support the petitioner or minor child;

(3) when the respondent has a legal duty to support the petitioner or minor children living in the household and the household’s residence is jointly leased or owned by the parties or the respondent is the sole owner or lessee, grant temporary possession to the petitioner of the residence to the exclusion of the respondent;

(4) prohibit the transferring, destruction, encumbering, or otherwise disposing of real or personal property mutually owned or leased by the parties or in which one party claims an equitable interest, except when in the ordinary course of business;

(5) provide for temporary possession of the personal property of the parties and order assistance from law enforcement officers in removing personal property of the petitioner if the respondent’s eviction has not been ordered;

(6) award costs and attorney’s fees to either party;

(7) award any other relief authorized by Section 63‑3‑530; provided, however, the court must have due regard for any prior family court orders issued in an action between the parties.

(D) No protective order issued pursuant to this chapter may, in any manner, affect the title to real property.

(E) No mutual order of protection may be granted unless the court sets forth findings of fact necessitating the mutual order or unless both parties consent to a mutual order.

**SECTION 20‑4‑65.** Order of protection from domestic abuse; filing fee.

A person seeking an order of protection from domestic abuse pursuant to the provisions of this chapter is not required to pay the filing fee as provided in Section 8‑21‑310(11)(a).

**SECTION 20‑4‑70.** Duration of order of protection; modification of terms.

(A) An order of protection issued under Section 20‑4‑60 must be for a fixed time not less than six months nor more than one year unless the parties have reconciled as evidenced by an order of dismissal and may be extended or terminated by order of the court upon motion by either party showing good cause with notice to the other party. A respondent has the right to a hearing on the extension of an order issued pursuant to this section within thirty days of the date upon which the order will expire. If the parties reconcile, the issuing court may grant an order of dismissal without a hearing if the petitioner receiving the order of protection to be dismissed appears personally at the offices of the issuing court, shows proper identification, and signs a written request to dismiss based on the reconciliation.

(B) Provisions included in an order of protection granting relief pursuant to Section 20‑4‑60(c) must be enforced until further order of the court following the issuance of the order unless before the expiration of the period the court has scheduled a hearing pursuant to the filing of an action for divorce or separate support and maintenance to determine the temporary rights and obligations of the parties with respect to support of a spouse or children, custody and visitation, or the distribution of personal property. If the hearing has been scheduled, relief granted under Section 20‑4‑60(c) remains in effect until an order pursuant to the hearing is issued by the court.

(C) The family court may modify the terms of any order issued under this section.

(D) An order of protection issued by a magistrate expires as provided under the terms of the order or upon the issuance of a subsequent order by the family court, whichever occurs first.

**SECTION 20‑4‑80.** Mailing or service of order.

A certified copy of an order of protection must be mailed to or served upon the petitioner, the respondent, and local law enforcement agencies having jurisdiction in the area where the petitioner resides. No charge may be made to the petitioner for such action.

**SECTION 20‑4‑90.** Sheriff’s department to assist in execution of order.

When any order is issued pursuant to this chapter, upon request of the petitioner, the court may, as part of the order, require the sheriff’s department or the police department pursuant to duties described under Section 20‑4‑100 to accompany the petitioner and assist in placing the petitioner in the possession of the dwelling or residence or otherwise assist in execution of service of the order.

**SECTION 20‑4‑100.** Responsibilities of law enforcement officer.

The primary duty of a law enforcement officer when responding to a domestic abuse incident is to enforce the laws allegedly violated and to protect the abused person if facts are found which substantiate the complaint. In such incidents, the law enforcement officer must take the following protective measures:

(a) Notify the abused person of the right to initiate criminal proceedings and to seek an order of protection under this chapter.

(b) Advise the parties of the importance of preserving evidence. To provide protection to the petitioner and any minor children, the officer may offer or arrange to provide transportation of the abused person to a hospital for treatment of injuries or to a place of shelter or safety and to accompany the abused person to his or her residence to allow for the removal of clothing, medication, and such personal property as is reasonably necessary.

**SECTION 20‑4‑110.** Immunity from civil or criminal liability.

Any person who makes a report pursuant to this chapter or who participates in judicial proceedings resulting therefrom, acting in good faith, is immune from civil and criminal liability which might otherwise result by reason of such actions. In all such civil or criminal proceedings good faith is rebuttably presumed.

**SECTION 20‑4‑120.** Actions not affecting right to relief.

The petitioner’s right to relief under this chapter is not affected by leaving the residence or household to avoid further abuse.

The petitioner’s right to relief under this chapter is not affected by the use of such physical force against the respondent as is reasonably believed by the petitioner to be necessary to defend the petitioner or others from imminent physical injury or abuse.

**SECTION 20‑4‑130.** Applicability of other remedies.

Any proceeding under this chapter is in addition to other civil and criminal remedies.

**SECTION 20‑4‑140.** Repealed by 2007 Act No. 61, Section 3, eff June 8, 2007.

**SECTION 20‑4‑160.** Domestic Violence Fund.

(A) There is established the Domestic Violence Fund, a fund separate and distinct from the general fund, in the State Treasury. The fund must be administered by the Department of Social Services and revenues of the fund must be used solely to award grants to domestic violence centers and programs in the State.

(B) In order for a domestic violence center or program to be eligible to receive funds, it must be a nonprofit corporation and must:

(1) have been in operation on the preceding July 1 and continue to be in operation; and

(2) offer the following services:

(a) a twenty‑four hour hotline;

(b) transportation services;

(c) community education programs;

(d) daytime services, including counseling; and

(e) other criteria as may be established by the department.

(C) The Domestic Violence Fund must receive its revenue from that portion of marriage license fees provided for in Section 20‑1‑375 and donations, contributions, bequests, or other gifts made to the fund. Contributions to the fund must not be used to supplant existing funds appropriated to the department for domestic violence programs and grants. Monies in the fund may be carried forward from one fiscal year to the next, and interest earned on monies in the fund must be retained by the fund.

ARTICLE 3.

 UNIFORM INTERSTATE ENFORCEMENT OF DOMESTIC VIOLENCE PROTECTION ORDERS ACT

**SECTION 20‑4‑310.** Citation of article.

This article may be cited as the “Uniform Interstate Enforcement of Domestic Violence Protection Orders Act”.

**SECTION 20‑4‑320.** Definitions.

For purposes of this article:

(1) “Foreign protection order” means a protection order issued by a tribunal of another state.

(2) “Issuing state” means the state whose tribunal issues a protection order.

(3) “Mutual foreign protection order” means a foreign protection order that includes provisions in favor of both the protected individual seeking enforcement of the order and the respondent.

(4) “Protected individual” means an individual protected by a protection order.

(5) “Protection order” means an injunction or other order, issued by a tribunal under the domestic violence, family violence, or anti‑stalking laws of the issuing state, to prevent an individual from engaging in violent or threatening acts against, harassment of, contact or communication with, or physical proximity to, another individual.

(6) “Respondent” means the individual against whom enforcement of a protection order is sought.

(7) “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 an Indian tribe or band that has jurisdiction to issue protection orders.

(8) “Tribunal” means a court, agency, or other entity authorized by law to issue or modify a protection order.

**SECTION 20‑4‑330.** Judicial enforcement of foreign protection order; determining validity of order.

(A) A person authorized by the law of this State to seek enforcement of a protection order may seek enforcement of a valid foreign protection order in a tribunal of this State. The tribunal shall enforce the terms of the order, including terms that provide relief that a tribunal of this State would lack power to provide but for this section. The tribunal shall enforce the order, whether the order was obtained by independent action or in another proceeding, if it is an order issued in response to a complaint, petition, or motion filed by or on behalf of an individual seeking protection. In a proceeding to enforce a foreign protection order, the tribunal shall follow the procedures of this State for the enforcement of protection orders.

(B) 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.

(C) A tribunal of this State shall enforce the provisions of a valid foreign protection order, which govern custody and visitation, if the order was issued in accordance with the jurisdictional requirements governing the issuance of custody and visitation orders in the issuing state.

(D) A foreign protection order is valid if it:

(1) identifies the protected individual and the respondent;

(2) is currently in effect;

(3) was issued by a tribunal that had jurisdiction over the parties and subject matter under the law of the issuing state; and

(4) was issued after the respondent was given reasonable notice and had an opportunity to be heard before the tribunal issued the order or, in the case of an order ex parte, the respondent was given notice and has had or will have an opportunity to be heard within a reasonable time after the order was issued, in a manner consistent with the rights of the respondent to due process.

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

(F) 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.

(G) A tribunal of this State may enforce provisions of a mutual foreign protection order which favor a respondent only if:

(1) the respondent filed a written pleading seeking a protection order from the tribunal of the issuing state; and

(2) the tribunal of the issuing state made specific findings in favor of the respondent.

**SECTION 20‑4‑340.** Enforcement by law enforcement officer; service of order on respondent.

(A) A law enforcement officer of this State, upon determining that there is probable cause to believe that a valid foreign protection order exists and that the order has been violated, shall enforce the order as if it were the order of a tribunal of this State. Presentation of a protection order that identifies both the protected individual and the respondent and, on its face, is currently in effect constitutes probable cause to believe that a valid foreign protection order exists. For the purposes of this section, 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.

(B) 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.

(C) 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.

(D) Registration or filing of an order in this State is not required for the enforcement of a valid foreign protection order pursuant to this article.

**SECTION 20‑4‑350.** Registration; presentation to family court; affidavit of currency; entry in state or federal registry; fee.

(A) Any individual may register a foreign protection order in this State. To register a foreign protection order, an individual shall present a certified copy of the order to the family court.

(B) Upon receipt of a foreign protection order, the family court shall register the order in accordance with this section. After the order is registered, the family court shall furnish to the individual registering the order a certified copy of the registered order.

(C) The family court shall register an order upon presentation of a copy of a protection order, which has been certified by the issuing state. A registered foreign protection order that is inaccurate or is not currently in effect must be corrected or removed from the registry in accordance with the law of this State.

(D) An individual registering a foreign protection order shall file an affidavit by the protected individual in the family court stating that, to the best of the protected individual’s knowledge, the order is currently in effect.

(E) A foreign protection 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 foreign protection order.

**SECTION 20‑4‑360.** Immunity.

This State or a local governmental agency, or a law enforcement officer, prosecuting attorney, clerk of court, or any 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 foreign protection order or the detention or arrest of an alleged violator of a foreign protection order if the act or omission was done in good faith in an effort to comply with this article.

**SECTION 20‑4‑370.** Remedies available to protected individual.

A protected individual who pursues remedies under this article is not precluded from pursuing other legal or equitable remedies against the respondent.

**SECTION 20‑4‑375.** Filing false protection order; criminal penalty; civil liability.

(A) A person who knowingly or wilfully makes, presents, files, or attempts to file a false, fictitious, or fraudulent foreign protection order is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than five years, or both, in the discretion of the court.

(B) If a family court determines that a person has knowingly or wilfully made, presented, filed, or attempted to file a false, fictitious, or fraudulent foreign protection order, the respondent is entitled to recover from the person who made, presented, filed, or attempted to file the report such relief as may be appropriate, including:

(1) actual damages;

(2) punitive damages; and

(3) a reasonable attorney’s fee and other litigation costs reasonably incurred.

**SECTION 20‑4‑380.** Construction of act.

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.

**SECTION 20‑4‑390.** Severability.

If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this article, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

**SECTION 20‑4‑395.** Applicability.

This article applies to protection orders issued before July 1, 2007, and to continuing actions for enforcement of foreign protection orders commenced before July 1, 2007. A request for enforcement of a foreign protection order made after June 30, 2007, for violations of a foreign protection order occurring before July 1, 2007, is governed by this article.