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**VERSIONS OF THIS BILL**

[12/9/2008](file:///p:\pprever\2009-10\3031_20081209.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 19 TO CHAPTER 3, TITLE 16 SO AS TO ESTABLISH A PROCEDURE FOR THE ISSUANCE OF TEMPORARY AND PERMANENT CIVIL NO‑CONTACT ORDERS UNDER CERTAIN CIRCUMSTANCES, TO PROVIDE FOR THE DURATION OF CIVIL NO‑CONTACT ORDERS, TO PROVIDE NECESSARY DEFINITIONS, AND TO PROVIDE A PENALTY FOR THE VIOLATION OF CIVIL NO‑CONTACT ORDERS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 3, Title 16 of the 1976 Code is amended by adding:

“Article 19

Civil No‑Contact Orders

Section 16‑3‑ 1910. For purposes of this article, the term:

(1) ‘Abuse’ means to physically or mentally harm, harass, intimidate, or interfere with the personal liberty of another.

(2) ‘Civil no‑contact order’ means an order granted pursuant to this article which includes a remedy authorized by Section 16‑3‑1950.

(3) ‘Nonconsensual’ means a lack of freely given consent.

(4) ‘Personal relationship’ means a relationship in which the parties involved:

(a) are current or former spouses;

(b) are persons of the opposite sex who live together or have lived together;

(c) are related as parents and children, including others acting in loco parentis to a minor child, or as grandparents and grandchildren. For purposes of this item, an aggrieved party may not obtain an order of protection against a child or grandchild under the age of sixteen;

(d) have a child in common;

(e) are current or former household members; or

(f) are persons of the opposite sex who are in a dating relationship or have been in a dating relationship. For purposes of this item, a dating relationship is one in which the parties are romantically involved over time and on a continuous basis during the course of the relationship. A casual acquaintance or ordinary fraternization between persons in a business or social context is not a dating relationship.

(5) ‘Sexual conduct’ means intentional or knowing touching, fondling, or sexual penetration by a person, either directly or through clothing, of the sexual organs, anus, or breasts of another, whether an adult or a minor, for the purpose of sexual gratification or arousal. For purposes of this subsection, the term includes the transfer or transmission of semen.

(6) ‘Stalking’ means as defined in Section 16‑3‑1700.

(7) ‘Unlawful conduct’ means the commission of one or more of the following acts by a person sixteen years of age or older upon a person, but does not include acts of self‑defense or defense of others:

(a) nonconsensual sexual conduct, including single incidences of nonconsensual sexual conduct; and

(b) stalking.

(8) ‘Victim’ means a person against whom an act of unlawful conduct has been committed by another person not involved in a personal relationship with the person as defined in this section.

Section 16‑3‑1920. (A) An action is commenced pursuant to this article by filing a verified complaint for a civil no‑contact order in circuit court or by filing a motion in an existing civil action, by one of the following, a:

(1) person who is a victim of unlawful conduct that occurs in this State; or

(2) competent adult who resides in this State on behalf of a minor child or an incompetent adult who is a victim of unlawful conduct that occurs in this State.

(B) No court costs may be assessed for the filing or service of the complaint, or the service of orders.

(C) An action commenced pursuant to this article may be filed in any county permitted by law or where the unlawful conduct took place.

(D) If the victim states that disclosure of the victim’s address would place the victim or a member of the victim’s family or household at risk for further unlawful conduct, the victim’s address may be omitted from all documents filed with the court. If the victim has not disclosed an address pursuant to this subsection, the victim shall designate an alternative address to receive notice of motions or pleadings from the opposing party.

Section 16‑3‑1930. (A) An action for a civil no‑contact order requires that a separate summons be issued and served. The summons issued pursuant to this article must require the respondent to answer within ten days of the date of service. Attachments to the summons must include the complaint for the civil no‑contact order, temporary civil no‑contact orders that were issued, and the notice of hearing on the temporary civil no‑contact order.

(B) Service of the summons and attachments must be by the sheriff by personal delivery in accordance with the South Carolina Rules of Civil Procedure. If the respondent cannot with due diligence be served by the sheriff by personal delivery, the respondent may be served by publication by the complainant in accordance with the South Carolina Rules of Civil Procedure.

(C) The court may enter a civil no‑contact order by default for the remedy sought in the complaint if the respondent was served in accordance with the provisions of this section and fails to answer as directed, or fails to appear on a subsequent appearance or hearing date agreed to by the parties or set by the court.

Section 16‑3‑1940. In proceedings for an order or prosecutions for violation of an order pursuant to this article, the prior sexual activity or the reputation of the victim is inadmissible except when it would be admissible in a criminal prosecution as provided by law.

Section 16‑3‑1950. (A) Upon a finding that the victim has suffered unlawful conduct committed by the respondent, the court may issue temporary or permanent civil no‑contact orders as authorized in this article. In determining whether or not to issue a civil no‑contact order, the court may not require physical injury to the victim.

(B) The court may grant one or more of the following forms of relief in its orders pursuant to this article, order:

(1) the respondent not to visit, assault, molest, or otherwise interfere with the victim;

(2) the respondent to cease stalking the victim, including, but not limited to, at the victim’s workplace;

(3) the respondent to cease harassment of the victim;

(4) the respondent not to abuse or injure the victim;

(5) the respondent not to contact the victim by telephone, written communication, or electronic means;

(6) the respondent to refrain from entering or remaining present at the victim’s residence, school, place of employment, or other specified places at times when the victim is present; and

(7) other relief deemed necessary and appropriate by the court.

(C) A civil no‑contact order must include the following notice, printed in conspicuous type:

‘A knowing violation of a civil no‑contact order is punishable as contempt of court which may result in a fine or imprisonment.’

Section 16‑3‑1960. (A) A temporary civil no‑contact order may be granted ex parte, without evidence of service of process or notice, only if both of the following are shown:

(1) it clearly appears from specific facts shown by a verified complaint or affidavit that immediate injury, loss, or damage will result to the victim before the respondent can be heard in opposition; and

(2) one of the following occurs, the complainant certifies to the court:

(a) in writing the efforts that have been made to give the notice and the reasons supporting the claim that notice should not be required; or

(b) that there is good cause to grant the remedy because the harm that the remedy is intended to prevent would likely occur if the respondent were given prior notice of the complainant’s efforts to obtain judicial relief.

(B) Every temporary civil no‑contact order granted without notice shall:

(1) be endorsed with the date and hour of issuance;

(2) be filed immediately in the clerk’s office and entered of record;

(3) define the injury, state why it is irreparable and why the order was granted without notice;

(4) expire by its terms within the time after entry, not to exceed ten days; and

(5) give notice of the date of hearing on the temporary order as provided in Section 16‑3‑1980(A).

(C) If the respondent appears in court for a hearing on a temporary order, the respondent may elect to file a general appearance and testify. A resulting order may be a temporary order, governed by the provisions of this section. Notwithstanding the requirements of this section, if all requirements of Section 16‑3‑1970 are met, the court may issue a permanent order.

(D) When the court is not in session, the complainant may file for a temporary order before a judge or magistrate designated to grant relief pursuant to this article. If the judge or magistrate finds that there is an immediate and present danger of harm to the victim and that the requirements of subsection (A) are met, the judge or magistrate may issue a temporary civil no‑contact order. The chief district court judge may designate for each county at least one judge or magistrate to be reasonably available to issue temporary civil no‑contact orders when the court is not in session.

Section 16‑3‑1970. Upon a finding that the victim has suffered unlawful conduct committed by the respondent, a permanent civil no‑contact order may be issued if the court additionally finds that process was properly served on the respondent, the respondent has answered the complaint and notice of hearing was given, or the respondent is in default. No permanent civil no‑contact order may be issued without notice to the respondent.

Section 16‑3‑1980. (A) A temporary civil no‑contact order is effective for not more than ten days as the court fixes, unless within the time fixed the temporary civil no‑contact order, for good cause shown, is extended for a like period or a longer period if the respondent consents. The reasons for the extension must be stated in the temporary order. If a temporary civil no‑contact order is granted without notice and a motion for a permanent civil no‑contact order is made, it must be set down for hearing at the earliest possible time and takes precedence over all matters except older matters of the same character. At the hearing, the complainant may proceed with a motion for a permanent civil no‑contact order and, if the complainant fails to do so, the judge shall dissolve the temporary civil no‑contact order. On two days’ notice to the complainant, or on shorter notice to that party as the judge may prescribe, the respondent may appear and move its dissolution or modification. In that event the judge shall proceed to hear and determine the motion as expeditiously as the ends of justice require.

(B) A permanent civil no‑contact order is effective for a fixed period of time not to exceed one year.

(C) An order may be extended one or more times, as required, provided that the requirements of Section 16‑3‑1960 or Section 16‑3‑1970, as appropriate, are satisfied. The court may renew an order, including an order that previously was renewed, upon a motion by the complainant filed before the expiration of the current order. The court may renew the order for good cause. The commission of an act of unlawful conduct by the respondent after entry of the current order is not required for an order to be renewed. If the motion for extension is uncontested and the complainant seeks no modification of the order, the order may be extended if the complainant’s motion or affidavit states that there is no material change in relevant circumstances since entry of the order and states the reason for the requested extension. Extensions may be granted only in open court and not pursuant to the provisions of Section 16‑3‑1960(D).

(D) A civil no‑contact order expiring on a day the court is not open for business shall expire at the close of the next court business day.

Section 16‑3‑1990. (A) The clerk of court shall deliver on the same day that a civil no‑contact order is issued, a certified copy of that order to the sheriff.

(B) Unless the respondent was present in court when the order was issued, the sheriff shall serve the order on the respondent and file proof of service in the manner provided for service of process in civil proceedings. If the summons has not yet been served upon the respondent, it must be served with the order.

(C) A copy of the order must be issued promptly to and retained by the police department of the municipality of the victim’s residence. If the victim’s residence is not located in a municipality, or in a municipality with no police department, copies must be issued promptly to and retained by the sheriff and the county police department of the county in which the victim’s residence is located.

(D) An order extending, modifying, or revoking a civil no‑contact order must be promptly delivered to the sheriff by the clerk and served by the sheriff in accordance with the provisions of this section.

Section 16‑3‑2000. A knowing violation of an order entered pursuant to this article is punishable as contempt of court.

Section 16‑3‑2010. The remedies provided by this article are not exclusive but are additional to other remedies provided by law.”

SECTION 2. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 3. This act takes effect upon approval by the Governor.

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