AS PASSED BY THE SENATE

April 12, 2011

**S. 53**

Introduced by Senators L. Martin, Leventis and Ford

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Read the first time January 11, 2011.

**A** **BILL**

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

Amend Title To Conform

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 16‑3‑1900. For purposes of this article:

(1) ‘Complainant’ means a victim of a criminal offense that occurred in this State, a competent adult who resides in this State on behalf of a minor child who is a victim of a criminal offense that occurred in this State, or a witness who assisted the prosecuting entity in the prosecution of a criminal offense that occurred in this State.

(2) ‘Conviction’ means a conviction, adjudication of delinquency, guilty plea, nolo contendere plea, or forfeiture of bail.

(3) ‘Criminal offense’ means an offense against the person of an individual when physical or psychological harm occurs, including both common law and statutory offenses contained in Sections 16‑1‑60, 16‑3‑1700, 16‑3‑1710, 16‑3‑1720, 16‑3‑1730, 16‑25‑20, 16‑25‑30, 16‑25‑50, and 23‑3‑430; criminal sexual conduct offenses plead down to assault and battery of a high and aggravated nature; criminal domestic violence offenses plead down to assault and battery or assault and battery of a high and aggravated nature; and the common law offense of attempt, punishable pursuant to Section 16‑1‑80.

(4) ‘Family’ means a spouse, child, parent, sibling, or a person who regularly resides in the same household.

(5) ‘Respondent’ means a person who was convicted of a criminal offense for which the victim was the subject of the crime or the witness assisted the prosecuting entity in prosecuting the criminal offense.

(6) ‘Victim’ means:

(a) a person who suffers direct or threatened physical, psychological, or financial harm as the result of the commission or attempted commission of a criminal offense; or

(b) the spouse, parent, child, or lawful representative of a victim who is deceased, a minor, incompetent, or physically or psychologically incapacitated.

‘Victim’ does not include a person who is the subject of an investigation for, charged with, or has been convicted of the offense in question; a person, including a spouse, parent, child, or lawful representative, who is acting on behalf of a suspect, juvenile offender, or defendant, unless such actions are required by law; or a person who was imprisoned or engaged in an illegal act at the time of the offense.

(7) ‘Witness’ means a person who has been or is expected to be summoned to testify for the prosecution, or who by reason of having relevant information is subject to being called or likely to be called as a witness for the prosecution, whether or not any action or proceeding has been commenced.

Section 16‑3‑1910. (A) The circuit court and family court have jurisdiction over an action seeking a permanent civil no-contact order.

(B) To seek a permanent civil no-contact order, a person must:

(1) request the order in general sessions court or family court, as applicable, at the time the respondent is convicted for the criminal offense committed against the complainant; or

(2) file a complaint and motion in common pleas court in the county in which:

(a) the respondent resides when the action commences;

(b) the criminal offense occurred; or

(c) the complainant resides, if the respondent is a nonresident of the State or cannot be found.

(C) The following persons may seek a permanent civil no-contact order:

(1) a victim of a criminal offense that occurred in this State;

(2) a competent adult who resides in this State on behalf of a minor child who is a victim of a criminal offense that occurred in this State; or

(3) a witness who assisted the prosecuting entity in the prosecution of a criminal offense that occurred in this State.

(D) A complaint must:

(1) state that the respondent was a person convicted of a criminal offense for which the victim was the subject of the crime or for which the witness assisted the prosecuting entity;

(2) state when and where the conviction took place, and the name of the prosecuting entity and court;

(3) be verified; and

(4) inform the respondent of his right to retain counsel to represent the respondent at the hearing on the complaint.

(E) A complainant shall provide his address to the court and to any appropriate law enforcement agencies. The complainant’s address must be kept under seal, omitted from all documents filed with the court, and is not subject to Freedom of Information Act requests pursuant to Section 30-4-10. The complainant may designate an alternative address to receive notice of motions or pleadings from the respondent.

(F) The circuit court must provide forms to facilitate the preparation and filing of a complaint and motion for a permanent civil no-contact order by a complainant not represented by counsel. The court must not charge a fee for filing a complaint and motion for a permanent civil no-contact order.

(G) An action for a permanent civil no‑contact order requires that a separate summons be issued and served. The summons must require the respondent to answer within thirty days of the date of service. The summons must include the complaint for the permanent civil no‑contact order and the notice of hearing as attachments. The appropriate sheriff shall serve the summons and attachments by personal delivery in accordance with the South Carolina Rules of Civil Procedure. If the sheriff cannot with due diligence serve the respondent by personal delivery, the complainant my serve the respondent by publication in accordance with the South Carolina Rules of Civil Procedure.

(H) The court may enter a permanent civil no‑contact order by default 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.

(I) The hearing on a permanent civil no-contact order may be done electronically via closed circuit television or through other electronic means when possible. If the respondent is confined in a Department of Corrections facility, the complainant may come to the Department of Probation, Parole and Pardon Services in Richland County to have the hearing held electronically via closed circuit television or through other electronic means.

(J) Upon a finding that the respondent was convicted of a criminal offense for which the victim was the subject of the crime or for which the witness assisted the prosecuting entity, as applicable, the court may issue a permanent civil no‑contact order. In determining whether to issue a permanent civil no‑contact order, physical injury to the victim or witness is not required.

(K) The terms of a permanent civil no-contact order must protect the victim or witness and may include enjoining the respondent from:

(1) abusing, threatening to abuse, or molesting the victim, witness, or members of the victim or witness’ family;

(2) entering or attempting to enter the victim or witness’ place of residence, employment, education, or other location; and

(3) communicating or attempting to communicate with the victim or witness in a way that would violate the provisions of this section.

(L) A permanent civil no‑contact order conspicuously must bear the following language:

(1) ‘Violation of this order is a felony criminal offense punishable by up to five years in prison’; and

(2) ‘Pursuant to Section 16‑25‑125, 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’.

(M)(1) A permanent civil no-contact order remains in effect for the life of the complainant. If a victim or witness is a minor at the time a permanent civil no-contact order is issued on the minor’s behalf, the victim or witness, upon reaching the age of eighteen, may file a motion with the circuit court to have the permanent civil no-contact order removed.

(2) The court may modify the terms of a permanent civil no-contact order.

(N) Notwithstanding another provision of law, a permanent civil no-contact order is enforceable throughout this State.

(O) Law enforcement officers shall arrest a respondent who is acting in violation of a permanent civil no-contact order after service and notice of the order is provided. An arrest warrant is not required. A respondent who is in violation of a permanent civil no-contact order is guilty of a felony and, upon conviction, must be imprisoned up to five years.

(P) In proceedings for a permanent civil no-contact order or prosecutions for violation of a permanent civil no-contact order, the prior sexual activity and the reputation of the victim is inadmissible except when it would be admissible in a criminal prosecution as provided by law.

(Q) Permanent civil no-contact orders are protection orders for purposes of Section 20-4-320, the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act, as long as all other criteria of Section 20-4-320 are met.

(R) The remedies provided by this section are not exclusive, but are additional to other remedies provided by law.

Section 16‑3‑1920. (A) The magistrates court has jurisdiction over an action seeking an emergency civil no-contact order.

(B) An action for an emergency civil no-contact order must be filed in the county in which:

(a) the respondent resides when the action commences;

(b) the criminal offense occurred; or

(c) the complainant resides, if the respondent is a nonresident of the State or cannot be found.

(C) A complaint and motion for an emergency civil no-contact order may be filed by:

(1) a victim of a criminal offense that occurred in this State;

(2) a competent adult who resides in this State on behalf of a minor child who is a victim of a criminal offense that occurred in this State; or

(3) a witness who assisted the prosecuting entity in the prosecution of a criminal offense that occurred in this State.

(D) The complaint must:

(1) state that the respondent was convicted of a criminal offense for which the victim was the subject of the crime or for which the witness assisted the prosecuting entity;

(2) state when and where the conviction took place, and the name of the prosecuting entity and court;

(3) be verified; and

(4) inform the respondent of his right to retain counsel to represent the respondent at the hearing on the complaint.

(E) A complainant shall provide his address to the court and to any appropriate law enforcement agencies. The complainant’s address must be kept under seal, omitted from all documents filed with the court, and is not subject to Freedom of Information Act requests pursuant to Section 30-4-10. The complainant may designate an alternative address to receive notice of motions or pleadings from the respondent.

(F) The court must provide forms to facilitate the preparation and filing of a complaint and motion for an emergency civil no-contact order by a complainant not represented by counsel. The court must not charge a fee for filing a complaint and motion for an emergency civil no-contact order.

(G)(1) Except as provided in subsection (H), the court shall hold a hearing on an emergency civil no-contact order within fifteen days of the filing of a complaint and motion, but not sooner than five days after service has been perfected upon the respondent.

(2) The court shall serve a copy of the complaint and motion upon the respondent at least five days before the hearing in the same manner required for service as provided in the South Carolina Rules of Civil Procedure.

(3) The hearing may be done electronically via closed circuit television or through other electronic means when possible. If the respondent is confined in a Department of Corrections facility, the complainant may come to the Department of Probation, Parole and Pardon Services in Richland County to have the hearing held electronically via closed circuit television or through other electronic means.

(4) The court may issue an emergency civil no-contact order upon a finding that:

(1) the respondent was convicted of a criminal offense for which the victim was the subject of the crime or for which the witness assisted the prosecuting entity, as applicable; and

(2) a restraining order has expired, is set to expire, or is not available and the common pleas court is not in session for the complainant to obtain a permanent civil no-contact order .

In determining whether to issue an emergency civil no‑contact order, physical injury to the victim or witness is not required.

(H)(1) Within twenty‑four hours after the filing of a complaint and motion seeking an emergency civil no-contact order, the court may hold an emergency hearing and issue an emergency civil no-contact order without giving the respondent notice of the motion for the order if:

(a) the respondent was convicted of a criminal offense for which the victim was the subject of the crime or for which the witness assisted the prosecuting entity, as applicable;

(b) a restraining order has expired, is set to expire, or is not available and the common pleas court is not in session for the complainant to obtain a permanent civil no-contact order ;

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

(d) the complainant certifies to the court that one of the following has occurred:

(i) efforts have been made to serve the notice; or

(ii) 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.

In determining whether to issue an emergency civil no‑contact order, physical injury to the victim or witness is not required.

(2) An emergency civil no-contact order granted without notice must be endorsed with the date and hour of issuance and entered of record with the magistrates court. The order must be served upon the respondent together with a copy of the complaint, motion, and a Rule to Show Cause why the order should not be extended until the hearing for a permanent civil no-contact order.

(I) The terms of an emergency civil no-contact order must protect the victim or witness and may include temporarily enjoining the respondent from:

(1) abusing, threatening to abuse, or molesting the victim, witness, or members of the victim or witness’ family;

(2) entering or attempting to enter the victim or witness’ place of residence, employment, education, or other location; and

(3) communicating or attempting to communicate with the victim or witness in a way that would violate the provisions of this section.

(J) An emergency civil no‑contact order conspicuously must bear the following language:

(1) ‘Violation of this order is a felony criminal offense punishable by up to five years in prison’; and

(2) ‘Pursuant to Section 16‑25‑125, 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’.

(K) The court shall serve the respondent with a certified copy of the emergency civil no-contact order and provide a copy to the complainant and to the local law enforcement agencies having jurisdiction over the area where the victim or witness resides. Service must be made without charge to the complainant.

(L)(1) An emergency civil no-contact order remains in effect until a hearing on a permanent civil no-contact order. However, if a complainant does not seek a permanent civil no-contact order pursuant to Section 16-3-1910 within forty-five days of the the issuance of an emergency civil no-contact order, the emergency civil no-contact order no longer remains in effect.

(2) The court may modify the terms of an emergency civil no-contact order.

(M) Notwithstanding another provision of law, an emergency civil no-contact order is enforceable throughout this State.

(N) Law enforcement officers shall arrest a respondent who is acting in violation of an emergency civil no-contact order after service and notice of the order is provided. An arrest warrant is not required. A respondent who is in violation of an emergency civil no-contact order is guilty of a felony and, upon conviction, must be imprisoned up to five years.

(O) In proceedings for an emergency civil no-contact order or prosecutions for violation of an emergency civil no-contact order, the prior sexual activity and the reputation of the victim is inadmissible except when it would be admissible in a criminal prosecution as provided by law.

(P) Emergency civil no-contact orders are protection orders for purposes of Section 20-4-320, the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act, as long as all other criteria of Section 20-4-320 are met.

(Q) The remedies provided by this section 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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