

## BILL ANALYSIS

Senate Research Center

S.B. 1726  
By: West  
Jurisprudence  
4-9-97  
As Filed

### **DIGEST**

Currently, federal law requires all states to enact, at the earliest opportunity, a state full faith and credit provision for the enforcement of foreign protective orders. The Violence Against Women Act specifies that in order to qualify to receive federal funding, states must provide for the enforcement of a protective order which has been issued by another state, a military court, a tribal court, or a territorial court; and must provide for registration of such a protective order on the existing statewide computer registry. This bill would enact provisions to comply with the Violence Against Women Act.

### **PURPOSE**

As proposed, S.B. 1726 sets forth provisions complying with federal law, the Violence Against Women Act. This bill provides for the enforcement of a protective order which has been issued by another state, a military court, a tribal court, or a territorial court; and provides for registration of such an order with the statewide data system operated by the Department of Public Safety.

### **RULEMAKING AUTHORITY**

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 25.07, Penal Code, to provide that a person commits an offense if, in violation of an order issued by a military court, court of another state, tribe or territory as provided in Section 25.071, Penal Code, among other orders, the person knowingly or intentionally performs certain actions. Provides that an offense under this section is a Class A misdemeanor unless it is shown on the trial of the offense that the defendant has been previously convicted under this section two or more times, violated the protective order by committing an assault, or violated the protective order by committing the offense of stalking, in which even the offense is a third degree, rather than a state jail, felony.

SECTION 2. Amends Chapter 25, Penal Code, by adding Section 25.071, as follows:

Sec. 25.071. FULL FAITH AND CREDIT OF VALID FOREIGN PROTECTIVE ORDERS. (a) Requires any valid protective order related to domestic or family violence issued by a military court, court of another state, tribe or territorial court to be accorded full faith and credit by the courts of the state and enforced as if it were issued in this state.

(b) Requires a protective order issued by a military court, court of another state, tribunal or territorial court related to domestic or family violence to be deemed valid if the issuing court had jurisdiction over the parties and matter under the law of the military, state, tribe or territory. Requires there to be a presumption in favor of validity where an order appears authentic on its face.

(c) Requires a respondent to be given reasonable notice and the opportunity to be heard before the order of the military court, court of another state, tribe or territory was issued, provided, in the case of ex parte order, notice and opportunity to be heard was given as soon as possible after the order was issued, consistent with due process.

- (d) Requires failure to prove reasonable notice and opportunity to be heard to be an affirmative defense to any charge or process filed seeking enforcement of a foreign protective order.
- (e) Prohibits a protective order against both the applicant and respondent from being enforceable against the applicant in a foreign jurisdiction unless certain conditions exist.
- (f) Authorizes the person protected by a valid protective order obtained in a military court, court of another state, tribe or territory to file that order by presenting a certified copy of the foreign order to a clerk of the court in the judicial district where the applicant believes enforcement may be necessary.
- (g) Requires filing to be without fee or cost.
- (h) Requires a clerk of the court to forward a copy of the foreign protective order to the local law enforcement office and the Department of Public Safety (DPS) upon application of an applicant seeking enforcement.
- (i) Requires the clerk to provide the plaintiff with a copy bearing proof of filing with the court and entry into the criminal history record system maintained by DPS.
- (j) Prohibits the filing and entry of the foreign order in the statewide data system from being prerequisites for enforcement of the foreign protective order.
- (k) Authorizes a peace officer to rely upon a copy of a foreign protective order which has been provided to the officer by any source and to rely upon the statement of any person protected by a foreign order that the order remains in effect. Requires a peace officer acting in good faith to be immune from civil and criminal liability in any action arising in connection with a court's finding that the foreign order was not enforceable.

SECTION 3. Amends Section 71.18, Family Code, to make a conforming change.

SECTION 4. Amends Article 5.04, Code of Criminal Procedure, to provide that the primary duties of a peace officer who investigates a family violence allegation or who responds to a disturbance call that may involve family violence are to protect any potential victim of family violence, enforce the law of this state or any valid protective order related to domestic or family violence, issued by a military court, court of another state, tribe, or territory as provided in Section 25.071, Penal Code, and make lawful arrests of violators.

SECTION 5. Effective date: September 1, 1997.

SECTION 6. Emergency clause.