

ENGROSSED SENATE AMENDMENT
TO
ENGROSSED HOUSE BILL NO. 2374

By: Askins of the House

and

Monson of the Senate

An Act relating to criminal procedure; enacting the Workplace and Employee Protection Act; providing short title; providing for construction of the Act; stating purpose; defining terms; providing for certain protective orders; providing a petition form; prohibiting the charging of certain filing fee; authorizing assessment of certain court costs and filing fees; authorizing the clerk of the court to assist the plaintiff under certain conditions; providing for emergency ex parte orders, hearings and procedures related thereto; specifying period of relief; requiring copies of certain orders to be sent to certain law enforcement agencies; providing penalties for violation of certain orders; specifying violations and penalties; providing that the violation and penalty section will not affect certain laws; directing the court concerning suspended and deferred sentences and probation; requiring certain orders to include notice of penalties; providing for the statewide validity of certain orders; providing for affirmative defense; providing for codification; and providing an effective date.

AUTHORS: Add the following Senate Coauthors: Muegge and Shurden

AMENDMENT NO. 1. Page 1, strike the title, enacting clause and entire bill and insert

"[Workplace and Employee Protection Act - providing for
certain protective
orders -
codification -
effective date]

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 70 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. This act shall be known and may be cited as the "Workplace and Employee Protection Act".

B. No provision of the Workplace and Employee Protection Act shall diminish the exercise of any right allowed by the Constitution of the United States, the Constitution of the State of Oklahoma, or any other law including, but not limited to, the National Labor Relations Act.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 70.1 of Title 22, unless there is created a duplication in numbering, reads as follows:

The general purpose of the Workplace and Employee Protection Act is to provide for safety in the workplace in this state through prohibition of threats of or actual physical harm, harassment, stalking, harassing or obscene telephone calls, or violent acts against an employing entity or its employees, agents, contractors, or business invitees. The Workplace and Employee Protection Act is

intended to provide optional remedies against workplace violence which shall supplement rather than replace existing remedies against workplace violence, and shall not obligate an employer to seek those optional remedies.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 70.2 of Title 22, unless there is created a duplication in numbering, reads as follows:

As used in the Workplace and Employee Protection Act:

1. "Employing entity" means any individual, proprietor, partnership, contractor, or corporation employing one or more individuals and the employing entity's agents;

2. "Stalking" means the willful, malicious, and repeated following of a person by an adult, emancipated minor, or minor sixteen (16) years of age or older, with the intent of placing the person in reasonable fear of death or great bodily injury;

3. "Harassment" means a knowing and willful course or pattern of conduct by an adult, emancipated minor, or minor sixteen (16) years of age or older, directed at an employing entity or one or more employees, agents, contractors, or invitees of an employing entity which serves no legitimate purpose and the course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the person or such that would create a reasonable fear on the part of the agents of an employing entity of harm to the employing entity's employees, agents, contractors, or business invitees. "Harassment" shall include, but not be limited to, harassing or obscene telephone calls in violation of Section 1172 of Title 21 of the Oklahoma Statutes; and

4. "Victim" means any employing entity, or an employing entity's employees, agents, contractors, or business invitees.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 70.3 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. An employing entity on behalf of itself or its employees, agents, contractors, or business invitees receiving threats of physical harm, harassment, stalking, or harassing or obscene phone calls may seek relief under the provisions of the Workplace and Employee Protection Act by filing a petition for a protective order with the district court in either the county in which the employing entity does business or the county in which the offense occurred. No petition for relief under this act may be filed in which an employee of the employing entity is named as a defendant who is a member of a collective bargaining unit which is on strike or which has scheduled a vote on a strike.

B. The petition form shall be provided by the clerk of the court and shall be substantially in the following form:

IN THE DISTRICT COURT IN AND FOR _____ COUNTY

STATE OF OKLAHOMA

_____)
Plaintiff)
)
vs.) Case No. _____
)
_____)
Defendants)

PETITION FOR PROTECTIVE ORDER

Plaintiff, or its agent, being duly sworn, states:

1. (Check one or more)

- [] The defendant stalked, harassed, or made harassing or obscene phone calls to one or more employees, agents, contractors or business invitees.

The defendant threatened imminent serious physical harm to one or more employees, agents, contractors or business invitees.

2. The incident(s) causing the filing of this petition occurred on or about _____.

(date(s))

(Describe the incident(s) and witnesses)

3. The employing entity and defendant are related as follows:

(check one)

- current employer/employee relationship.
- former employer/employee relationship.
- current or past customer/client relationship.
- defendant has, or has had, a close personal relationship with a current or former employee, agent, contractor or business invitee.
- no known relationship.

Explanation:

4. (Check A or B)

A. One or more employees, agents, contractors, or business invitees are in immediate and present danger of harm or abuse from the defendant and an emergency ex parte order is necessary to protect the victim(s) from serious harm. The plaintiff requests the

following relief in an emergency ex parte order granting the following relief while on business premises or performing business duties:

(Check one or more)

order the defendant not to abuse or injure the victim(s) or property.

order the defendant not to telephone the victim(s).

order the defendant not to visit, assault, molest, or otherwise interfere with the victim(s).

order the defendant to cease stalking the victim(s).

order the defendant to cease harassment of the victim(s).

other relief _____

B. The plaintiff does not request an emergency ex parte order.

5. Plaintiff requests the following order to be made by the court following notice to the defendant and a hearing:

(Check, if appropriate)

Employees, agents, contractors, or business invitees are in immediate and present danger of harm or abuse from the defendant and an emergency ex parte order is necessary to protect the victim(s) from serious harm. The plaintiff requests the following relief in an emergency ex parte order granting the following relief while on business premises or performing business duties:

(Check one or more)

order the defendant not to abuse or injure the victim(s).

order the defendant not to telephone the victim(s).

order the defendant not to visit, assault, molest or otherwise interfere with the victim(s).

order the defendant to cease stalking the victim(s).

order the defendant to cease harassment of the victim(s).

[] other relief _____.

6. [] The business is located in the county wherein this petition is filed.

[] Defendant is a resident of the county wherein this petition is filed.

7. Plaintiff has stated the truth, the whole truth and nothing but the truth in this petition.

Plaintiff

Witness my hand and seal,

affixed on the ___ day of _____, 19__.

Court Clerk, Deputy Court Clerk,
or Notary Public

C. A filing fee shall be charged to the plaintiff at the time the petition is filed. The court may assess court costs and filing fees to either party at the hearing on the petition.

D. The plaintiff shall prepare the petition as set forth in this section or, at the request of the plaintiff, the clerk of the court shall prepare or assist the plaintiff in preparing the same.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 70.4 of Title 22, unless there is created a duplication in numbering, reads as follows:

If plaintiff requests an emergency ex parte order pursuant to Section 4 of this act, the court shall hold an ex parte hearing on the same day the petition is filed. The court may, for good cause shown at the hearing, issue an emergency ex parte order that it finds necessary to protect the victim(s) from immediate and present danger or threats, abuse, stalking, or harassment. The emergency ex parte order shall be in effect until after the full hearing is conducted. An emergency ex parte order authorized by this section

may include the following relief while on business premises or performing business duties:

(Check one or more)

order the defendant not to abuse or injure the victim(s).

order the defendant not to telephone the victim(s).

order the defendant not to visit, assault, molest or otherwise interfere with the victim(s).

order the defendant to cease stalking the victim(s).

order the defendant to cease harassment of the victim(s).

other relief _____

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 70.5 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. A copy of the petition, notice of hearing and a copy of any ex parte order issued by the court shall be served upon the defendant in the same manner as a summons. Ex parte orders shall be given priority for service by the sheriff's office and can be served twenty-four (24) hours a day.

B. Within ten (10) days of the filing of the petition the court shall schedule a full hearing on the petition, regardless of whether an emergency ex parte order has been previously issued, requested or denied.

C. At the hearing, the court may grant any protective order to bring about the cessation of threats or abuse against the victim(s), or stalking or harassment of the victim(s).

D. Protective orders authorized by this section may include the following relief while on business premises or performing business duties:

1. Order the defendant not to abuse or injure the victim(s);
2. Order the defendant not to telephone the victim(s);

3. Order the defendant not to visit, assault, molest or otherwise interfere with the victim(s);

4. Order the defendant to cease stalking the victim(s);

5. Order the defendant to cease harassment of the victim(s).

E. When necessary to protect the victim(s) and when authorized by the court, protective orders granted pursuant to the provisions of this section may be served upon the defendant by a peace officer, sheriff, or police officer or other officer whose duty it is to preserve the peace, as defined by Section 99 of Title 21 of the Oklahoma Statutes.

F. Any protective order issued pursuant to subsection C of this section shall not be for a fixed period but shall be continuous until modified or rescinded upon motion by either party or if the court approves any consent agreement entered into by the plaintiff and defendant.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 70.6 of Title 22, unless there is created a duplication in numbering, reads as follows:

Within twenty-four (24) hours of the return of service of any ex parte or final protective order, the clerk of the issuing court shall send certified copies thereof to all appropriate law enforcement agencies designated by the plaintiff.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 70.7 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. Except as otherwise provided by this section, any person who has been served with an ex parte or final protective order and is in violation of such protective order, upon conviction, shall be guilty of a misdemeanor and shall be punished by a fine of not more than One Thousand Dollars (\$1,000.00) or by a term of imprisonment in the county jail of not more than one (1) year, or by both such fine and imprisonment.

B. Any person who after a previous conviction of a violation of a protective order provided for in the Workplace and Employee Protection Act is convicted of a second or subsequent offense pursuant to the provisions of this section shall be deemed guilty of a misdemeanor and shall be punished by a term of imprisonment in the county jail of not less than ten (10) days and not more than one (1) year. In addition to the term of imprisonment, the person may be punished by a fine of not less than Five Hundred Dollars (\$500.00) and not more than One Thousand Dollars (\$1,000.00).

C. 1. Any person who has been served with an ex parte or final protective order who violates the protective order and without justifiable excuse causes physical injury or physical impairment to the plaintiff or to any other person named in the protective order shall upon conviction be guilty of a misdemeanor and shall be punished by a term of imprisonment in the county jail for not less than ten (10) days nor more than one (1) year. In addition to the term of imprisonment, the person may be punished by a fine not to exceed Five Thousand Dollars (\$5,000.00).

2. In determining the term of imprisonment required by this section, the jury or sentencing judge shall consider the degree of physical and/or emotional injury, or physical and/or emotional impairment to the victim.

3. The provisions of this subsection shall not affect the applicability of Sections 644, 645, 647 and 652 of Title 21 of the Oklahoma Statutes.

D. The minimum sentence of imprisonment issued pursuant to the provisions of subsections B and C of this section shall not be subject to statutory provisions for suspended sentences, deferred sentences, or probation, provided the court may subject any remaining penalty under the jurisdiction of the court to the statutory provisions for suspended sentences, deferred sentences, or probation.

E. Ex parte and final protective orders shall include notice of these penalties.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 70.8 of Title 22, unless there is created a duplication in numbering, reads as follows:

All orders issued pursuant to the provisions of the Workplace and Employee Protection Act shall have statewide validity, unless specifically modified or terminated by a judge of the district courts.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 70.9 of Title 22, unless there is created a duplication in numbering, reads as follows:

Actions taken in good faith by an employing entity pursuant to the Workplace and Employee Protection Act shall establish an affirmative defense for the employing entity in a civil action.

SECTION 11. This act shall become effective November 1, 1996."

Passed the Senate the 11th day of April, 1996.

President of the Senate

Passed the House of Representatives the ____ day of

_____, 1996.

Speaker of the House of Representatives