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HOUSE BILL NO. 711

Offered January 13, 2016

Prefiled January 11, 2016

A BILL to amend and reenact § 16.1-279.1 of the Code of Virginia, relating to protective orders in cases of family abuse; possession of premises.

Patrons—Watts, McClellan and Peace

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 16.1-279.1 of the Code of Virginia is amended and reenacted as follows:****§ 16.1-279.1. Protective order in cases of family abuse.**

A. In cases of family abuse, including any case involving an incarcerated or recently incarcerated respondent against whom a preliminary protective order has been issued pursuant to § 16.1-253.1, the court may issue a protective order to protect the health and safety of the petitioner and family or household members of the petitioner. A protective order issued under this section may include any one or more of the following conditions to be imposed on the respondent:

1. Prohibiting acts of family abuse or criminal offenses that result in injury to person or property;
2. Prohibiting such contacts by the respondent with the petitioner or family or household members of the petitioner as the court deems necessary for the health or safety of such persons;

3. Granting the petitioner possession of the residence occupied by the parties to the exclusion of the respondent; however, no such grant of possession shall affect title to any real or personal property. *Additionally, no such grant of possession for more than 30 days shall be ordered to any person who is not a tenant, as defined in § 55-225.8 or 55-248.4, as applicable, of such residence. If the respondent is the sole remaining tenant obligated on the rental agreement, the order shall direct the respondent to continue paying rent in accordance with the terms and conditions of the lease;*

4. Enjoining the respondent from terminating any necessary utility service to the residence to which the petitioner was granted possession pursuant to subdivision 3 or, where appropriate, ordering the respondent to restore utility services to that residence;

5. Granting the petitioner temporary possession or use of a motor vehicle owned by the petitioner alone or jointly owned by the parties to the exclusion of the respondent and enjoining the respondent from terminating any insurance, registration, or taxes on the motor vehicle and directing the respondent to maintain the insurance, registration, and taxes, as appropriate; however, no such grant of possession or use shall affect title to the vehicle;

6. Requiring that the respondent provide suitable alternative housing for the petitioner and, if appropriate, any other family or household member and where appropriate, requiring the respondent to pay deposits to connect or restore necessary utility services in the alternative housing provided;

7. Ordering the respondent to participate in treatment, counseling or other programs as the court deems appropriate;

8. Granting the petitioner the possession of any companion animal as defined in § 3.2-6500 if such petitioner meets the definition of owner in § 3.2-6500; and

9. Any other relief necessary for the protection of the petitioner and family or household members of the petitioner, including a provision for temporary custody or visitation of a minor child.

A1. If a protective order is issued pursuant to subsection A, the court may also issue a temporary child support order for the support of any children of the petitioner whom the respondent has a legal obligation to support. Such order shall terminate upon the determination of support pursuant to § 20-108.1.

B. The protective order may be issued for a specified period of time up to a maximum of two years. The protective order shall expire at 11:59 p.m. on the last day specified or at 11:59 p.m. on the last day of the two-year period if no date is specified. Prior to the expiration of the protective order, a petitioner may file a written motion requesting a hearing to extend the order. Proceedings to extend a protective order shall be given precedence on the docket of the court. If the petitioner was a member of the respondent's family or household at the time the initial protective order was issued, the court may extend the protective order for a period not longer than two years to protect the health and safety of the petitioner or persons who are family or household members of the petitioner at the time the request for an extension is made. The extension of the protective order shall expire at 11:59 p.m. on the last day specified or at 11:59 p.m. on the last day of the two-year period if no date is specified. Nothing herein shall limit the number of extensions that may be requested or issued.

59 C. A copy of the protective order shall be served on the respondent and provided to the petitioner as
60 soon as possible. The court, including a circuit court if the circuit court issued the order, shall forthwith,
61 but in all cases no later than the end of the business day on which the order was issued, enter and
62 transfer electronically to the Virginia Criminal Information Network the respondent's identifying
63 information and the name, date of birth, sex, and race of each protected person provided to the court
64 and shall forthwith forward the attested copy of the protective order containing any such identifying
65 information to the primary law-enforcement agency responsible for service and entry of protective
66 orders. Upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith
67 verify and enter any modification as necessary to the identifying information and other appropriate
68 information required by the Department of State Police into the Virginia Criminal Information Network
69 established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and
70 the order shall be served forthwith upon the respondent and due return made to the court. Upon service,
71 the agency making service shall enter the date and time of service and other appropriate information
72 required by the Department of State Police into the Virginia Criminal Information Network and make
73 due return to the court. If the order is later dissolved or modified, a copy of the dissolution or
74 modification order shall also be attested, forwarded forthwith to the primary law-enforcement agency
75 responsible for service and entry of protective orders, and upon receipt of the order by the primary
76 law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the
77 identifying information and other appropriate information required by the Department of State Police
78 into the Virginia Criminal Information Network as described above and the order shall be served
79 forthwith and due return made to the court.

80 D. Except as otherwise provided in § 16.1-253.2, a violation of a protective order issued under this
81 section shall constitute contempt of court.

82 E. The court may assess costs and attorneys' fees against either party regardless of whether an order
83 of protection has been issued as a result of a full hearing.

84 F. Any judgment, order or decree, whether permanent or temporary, issued by a court of appropriate
85 jurisdiction in another state, the United States or any of its territories, possessions or Commonwealths,
86 the District of Columbia or by any tribal court of appropriate jurisdiction for the purpose of preventing
87 violent or threatening acts or harassment against or contact or communication with or physical proximity
88 to another person, including any of the conditions specified in subsection A, shall be accorded full faith
89 and credit and enforced in the Commonwealth as if it were an order of the Commonwealth, provided
90 reasonable notice and opportunity to be heard were given by the issuing jurisdiction to the person
91 against whom the order is sought to be enforced sufficient to protect such person's due process rights
92 and consistent with federal law. A person entitled to protection under such a foreign order may file the
93 order in any juvenile and domestic relations district court by filing with the court an attested or
94 exemplified copy of the order. Upon such a filing, the clerk shall forthwith forward an attested copy of
95 the order to the primary law-enforcement agency responsible for service and entry of protective orders
96 which shall, upon receipt, enter the name of the person subject to the order and other appropriate
97 information required by the Department of State Police into the Virginia Criminal Information Network
98 established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. Where
99 practical, the court may transfer information electronically to the Virginia Criminal Information Network.

100 Upon inquiry by any law-enforcement agency of the Commonwealth, the clerk shall make a copy
101 available of any foreign order filed with that court. A law-enforcement officer may, in the performance
102 of his duties, rely upon a copy of a foreign protective order or other suitable evidence which has been
103 provided to him by any source and may also rely upon the statement of any person protected by the
104 order that the order remains in effect.

105 G. Either party may at any time file a written motion with the court requesting a hearing to dissolve
106 or modify the order. Proceedings to dissolve or modify a protective order shall be given precedence on
107 the docket of the court.

108 H. As used in this section:

109 "Copy" includes a facsimile copy; and

110 "Protective order" includes an initial, modified or extended protective order.

111 I. Neither a law-enforcement agency, the attorney for the Commonwealth, a court nor the clerk's
112 office, nor any employee of them, may disclose, except among themselves, the residential address,
113 telephone number, or place of employment of the person protected by the order or that of the family of
114 such person, except to the extent that disclosure is (i) required by law or the Rules of the Supreme
115 Court, (ii) necessary for law-enforcement purposes, or (iii) permitted by the court for good cause.

116 J. No fee shall be charged for filing or serving any petition or order pursuant to this section.