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SENATE BILL NO. 932

Offered January 10, 2007

Prefiled January 9, 2007

A BILL to amend and reenact §§ 16.1-253, 16.1-253.1, 16.1-253.4, and 16.1-279.1 of the Code of Virginia, relating to protective orders; companion animals, and livestock.

Patrons—Ticer; Delegates: Albo, Eisenberg, Plum, Scott, J.M. and Watts

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-253, 16.1-253.1, 16.1-253.4, and 16.1-279.1 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-253. Preliminary protective order.

A. Upon the motion of any person or upon the court's own motion, the court may issue a preliminary protective order, after a hearing, if necessary to protect a child's life, health, safety or normal development pending the final determination of any matter before the court. The order may require a child's parents, guardian, legal custodian, other person standing in loco parentis or other family or household member of the child to observe reasonable conditions of behavior for a specified length of time. These conditions shall include any one or more of the following:

1. To abstain from offensive conduct against the child, a family or household member of the child or any person to whom custody of the child is awarded;

2. To cooperate in the provision of reasonable services or programs designed to protect the child's life, health or normal development;

3. To allow persons named by the court to come into the child's home at reasonable times designated by the court to visit the child or inspect the fitness of the home and to determine the physical or emotional health of the child;

4. To allow visitation with the child by persons entitled thereto, as determined by the court;

5. To refrain from acts of commission or omission which tend to endanger the child's life, health or normal development; ~~or~~

6. To refrain from such contact with the child or family or household members of the child, as the court may deem appropriate, including removal of such person from the residence of the child. However, prior to the issuance by the court of an order removing such person from the residence of the child, the petitioner must prove by a preponderance of the evidence that such person's probable future conduct would constitute a danger to the life or health of such child, and that there are no less drastic alternatives which could reasonably and adequately protect the child's life or health pending a final determination on the petition; *or*

7. *To abstain from offensive conduct against a companion animal or livestock, as these terms are defined in § 3.1-796.66, owned, possessed, leased, kept or held by the child, a family or household member of the child or any person to whom custody of the child is awarded.*

B. A preliminary protective order may be issued ex parte upon motion of any person or the court's own motion in any matter before the court, or upon petition. The motion or petition shall be supported by an affidavit or by sworn testimony in person before the judge or intake officer which establishes that the child would be subjected to an imminent threat to life or health to the extent that delay for the provision of an adversary hearing would be likely to result in serious or irreparable injury to the child's life or health. If an ex parte order is issued without an affidavit being presented, the court, in its order, shall state the basis upon which the order was entered, including a summary of the allegations made and the court's findings. Following the issuance of an ex parte order the court shall provide an adversary hearing to the affected parties within the shortest practicable time not to exceed five business days after the issuance of the order.

C. Prior to the hearing required by this section, notice of the hearing shall be given at least twenty-four hours in advance of the hearing to the guardian ad litem for the child, to the parents, guardian, legal custodian, or other person standing in loco parentis of the child, to any other family or household member of the child to whom the protective order may be directed and to the child if he or she is twelve years of age or older. The notice provided herein shall include (i) the time, date and place for the hearing and (ii) a specific statement of the factual circumstances which allegedly necessitate the issuance of a preliminary protective order.

D. All parties to the hearing shall be informed of their right to counsel pursuant to § 16.1-266.

E. At the hearing the child, his or her parents, guardian, legal custodian or other person standing in

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59 loco parentis and any other family or household member of the child to whom notice was given shall
60 have the right to confront and cross-examine all adverse witnesses and evidence and to present evidence
61 on their own behalf.

62 F. If a petition alleging abuse or neglect of a child has been filed, at the hearing pursuant to this
63 section the court shall determine whether the allegations of abuse or neglect have been proven by a
64 preponderance of the evidence. Any finding of abuse or neglect shall be stated in the court order.
65 However, if, before such a finding is made, a person responsible for the care and custody of the child,
66 the child's guardian ad litem or the local department of social services objects to a finding being made
67 at the hearing, the court shall schedule an adjudicatory hearing to be held within thirty days of the date
68 of the initial preliminary protective order hearing. The adjudicatory hearing shall be held to determine
69 whether the allegations of abuse and neglect have been proven by a preponderance of the evidence.
70 Parties who are present at the hearing shall be given notice of the date set for the adjudicatory hearing
71 and parties who are not present shall be summoned as provided in § 16.1-263. The adjudicatory hearing
72 shall be held and an order may be entered, although a party to the hearing fails to appear and is not
73 represented by counsel, provided personal or substituted service was made on the person, or the court
74 determines that such person cannot be found, after reasonable effort, or in the case of a person who is
75 without the Commonwealth, the person cannot be found or his post office address cannot be ascertained
76 after reasonable effort.

77 Any preliminary protective order issued shall remain in full force and effect pending the adjudicatory
78 hearing.

79 G. If at the preliminary protective order hearing held pursuant to this section the court makes a
80 finding of abuse or neglect and a preliminary protective order is issued, a dispositional hearing shall be
81 held pursuant to § 16.1-278.2. Upon receipt of the order by a local law-enforcement agency for service,
82 the agency shall enter the name of the person subject to the order and other appropriate information
83 required by the Department of State Police into the Virginia Criminal Information Network established
84 and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. Where practical,
85 the court may transfer information electronically to the Virginia Criminal Information Network. A copy
86 of the preliminary protective order shall be served as soon as possible on the allegedly abusing person in
87 person as provided in § 16.1-264, and upon service, the agency making service shall enter the date and
88 time of service into the Virginia Criminal Information Network. The preliminary order shall specify a
89 date for the dispositional hearing. The dispositional hearing shall be scheduled at the time of the hearing
90 pursuant to this section, and shall be held within seventy-five days of this hearing. If an adjudicatory
91 hearing is requested pursuant to subsection F, the dispositional hearing shall nonetheless be scheduled at
92 the hearing pursuant to this section. All parties present at the hearing shall be given notice of the date
93 and time scheduled for the dispositional hearing; parties who are not present shall be summoned to
94 appear as provided in § 16.1-263.

95 H. Nothing in this section enables the court to remove a child from the custody of his or her parents,
96 guardian, legal custodian or other person standing in loco parentis, except as provided in § 16.1-278.2,
97 and no order hereunder shall be entered against a person over whom the court does not have
98 jurisdiction.

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

104 J. Violation of any order issued pursuant to this section shall constitute contempt of court.

105 K. Upon receipt of the order by a local law-enforcement agency for service, the agency shall enter
106 the name of the person subject to the order and other appropriate information required by the
107 Department of State Police into the Virginia Criminal Information Network established and maintained
108 by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. Where feasible and practical, the
109 court may transfer information electronically to the Virginia Criminal Information Network. A copy of
110 the preliminary protective order shall be served as soon as possible on the allegedly abusing person as
111 provided in § 16.1-264, and upon service, the agency making service shall enter the date and time of
112 service into the Virginia Criminal Information Network. The preliminary order shall specify a date for
113 the full hearing.

114 Upon receipt of the return of service or other proof of service pursuant to subsection C of
115 § 16.1-264, the clerk shall forward forthwith an attested copy of the preliminary protective order to the
116 local police department or sheriff's office which shall, upon receipt, enter into the Virginia Criminal
117 Information Network any other information required by the State Police that was not previously entered.
118 If the order is later dissolved or modified, a copy of the dissolution or modification order shall also be
119 attested, forwarded and entered in the Virginia Criminal Information Network as described above.

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

§ 16.1-253.1. Preliminary protective orders in cases of family abuse; confidentiality.

A. Upon the filing of a petition alleging that the petitioner is or has been, within a reasonable period of time, subjected to family abuse, the court may issue a preliminary protective order against an allegedly abusing person in order to protect the health and safety of the petitioner or any family or household member of the petitioner. The order may be issued in an ex parte proceeding upon good cause shown when the petition is supported by an affidavit or sworn testimony before the judge or intake officer. Immediate and present danger of family abuse or evidence sufficient to establish probable cause that family abuse has recently occurred shall constitute good cause.

A preliminary protective order may include any one or more of the following conditions to be imposed on the allegedly abusing person:

1. Prohibiting acts of family abuse.
2. Prohibiting such other contacts between the parties as the court deems appropriate.
3. Prohibiting such other contacts with the allegedly abused family or household member as the court deems necessary to protect the safety of such persons.
4. Granting the petitioner possession of the premises occupied by the parties to the exclusion of the allegedly abusing person; however, no such grant of possession shall affect title to any real or personal property.
5. Enjoining the respondent from terminating any necessary utility service to a premises that the petitioner has been granted possession of pursuant to subdivision 4 or, where appropriate, ordering the respondent to restore utility services to such premises.
6. 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 allegedly abusing person; however, no such grant of possession or use shall affect title to the vehicle.
7. Requiring that the allegedly abusing person provide suitable alternative housing for the petitioner and 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.
8. *Prohibiting acts or offensive conduct that would serve to injure or kill a companion animal or livestock, as these terms are defined in § 3.1-796.66, owned, possessed, leased, kept or held by the petitioner and family or household members of the petitioner.*
89. Any other relief necessary for the protection of the petitioner and family or household members of the petitioner.

B. Upon receipt of the order by a local law-enforcement agency for service, the agency shall enter the name of the person subject to the order and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network system established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. Where practical, the court may transfer information electronically to the Virginia Criminal Information Network system. A copy of a preliminary protective order shall be served as soon as possible on the allegedly abusing person in person as provided in § 16.1-264, and upon service, the agency making service shall enter the date and time of service into the Virginia Criminal Information Network system. The preliminary order shall specify a date for the full hearing. The hearing shall be held within fifteen days of the issuance of the preliminary order. However, upon motion of the respondent and for good cause shown, the court may continue the hearing. The preliminary order shall remain in effect until the hearing. Upon request after the order is issued, the clerk shall provide the petitioner with a copy of the order and information regarding the date and time of service. The order shall further specify that either party may at any time file a motion with the court requesting a hearing to dissolve or modify the order. The hearing on the motion shall be given precedence on the docket of the court.

Upon receipt of the return of service or other proof of service pursuant to subsection C of § 16.1-264, the clerk shall forward forthwith an attested copy of the preliminary protective order to the local police department or sheriff's office which shall, upon receipt, enter into the Virginia Criminal Information Network system any other information required by the State Police which was not previously entered. If the order is later dissolved or modified, a copy of the dissolution or modification order shall also be attested, forwarded and entered in the Virginia Criminal Information Network system as described above.

C. The preliminary order is effective upon personal service on the allegedly abusing person. Except as otherwise provided in § 16.1-253.2, a violation of the order shall constitute contempt of court.

D. At a full hearing on the petition, the court may issue a protective order pursuant to § 16.1-279.1 if the court finds that the petitioner has proven the allegation of family abuse by a preponderance of the evidence.

E. Neither a law-enforcement agency, the attorney for the Commonwealth, a court nor the clerk's office, nor any employee of them, may disclose, except among themselves, the residential address, telephone number, or place of employment of the person protected by the order or that of the family of

such person, except to the extent that disclosure is (i) required by law or the Rules of the Supreme Court, (ii) necessary for law-enforcement purposes, or (iii) permitted by the court for good cause.

F. As used in this section, "copy" includes a facsimile copy.

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

§ 16.1-253.4. Emergency protective orders authorized in certain cases; penalty.

A. Any judge of a circuit court, general district court, juvenile and domestic relations district court or magistrate may issue a written or oral ex parte emergency protective order pursuant to this section in order to protect the health or safety of any person.

B. When a law-enforcement officer or an allegedly abused person asserts under oath to a judge or magistrate, and on that assertion or other evidence the judge or magistrate finds that (i) a warrant for a violation of § 18.2-57.2 has been issued and there is probable danger of further acts of family abuse against a family or household member by the respondent or (ii) reasonable grounds exist to believe that the respondent has committed family abuse and there is probable danger of a further such offense against a family or household member by the respondent, the judge or magistrate shall issue an ex parte emergency protective order, except if the respondent is a minor, an emergency protective order shall not be required, imposing one or more of the following conditions on the respondent:

1. Prohibiting acts of family abuse;

2. Prohibiting such contacts by the respondent with family or household members of the respondent as the judge or magistrate deems necessary to protect the safety of such persons; ~~and~~

3. Granting the family or household member possession of the premises 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; *and*

4. *Prohibiting acts or offensive conduct that would serve to injure or kill a companion animal or livestock, as these terms are defined in § 3.1-796.66, owned, possessed, leased, kept or held by the petitioner and family or household members of the petitioner.*

C. An emergency protective order issued pursuant to this section shall expire seventy-two hours after issuance. If the expiration of the seventy-two-hour period occurs at a time that the court is not in session, the emergency protective order shall be extended until 5 p.m. of the next business day that the juvenile and domestic relations district court is in session. The respondent may at any time file a motion with the court requesting a hearing to dissolve or modify the order. The hearing on the motion shall be given precedence on the docket of the court.

D. A law-enforcement officer may request an emergency protective order pursuant to this section and, if the person in need of protection is physically or mentally incapable of filing a petition pursuant to § 16.1-253.1 or § 16.1-279.1, may request the extension of an emergency protective order for an additional period of time not to exceed seventy-two hours after expiration of the original order. The request for an emergency protective order or extension of an order may be made orally, in person or by electronic means, and the judge of a circuit court, general district court, or juvenile and domestic relations district court or a magistrate may issue an oral emergency protective order. An oral emergency protective order issued pursuant to this section shall be reduced to writing, by the law-enforcement officer requesting the order or the magistrate on a preprinted form approved and provided by the Supreme Court of Virginia. The completed form shall include a statement of the grounds for the order asserted by the officer or the allegedly abused person.

E. Upon receipt of the order by a local law-enforcement agency for service, the agency shall enter the name of the person subject to the order and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network system established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. Where practical, the court or magistrate may transfer information electronically to the Virginia Criminal Information Network system. A copy of an emergency protective order issued pursuant to this section shall be served upon the respondent as soon as possible, and upon service, the agency making service shall enter the date and time of service into the Virginia Criminal Information Network system. One copy of the order shall be given to the allegedly abused person when it is issued, and one copy shall be filed with the written report required by § 19.2-81.3 C. The judge or magistrate who issues an oral order pursuant to an electronic request by a law-enforcement officer shall verify the written order to determine whether the officer who reduced it to writing accurately transcribed the contents of the oral order. The original copy shall be filed with the clerk of the juvenile and domestic relations district court within five business days of the issuance of the order. If the order is later dissolved or modified, a copy of the dissolution or modification order shall be forwarded and entered in the system as described above. Upon request, the clerk shall provide the allegedly abused person with information regarding the date and time of service.

F. The availability of an emergency protective order shall not be affected by the fact that the family or household member left the premises to avoid the danger of family abuse by the respondent.

G. The issuance of an emergency protective order shall not be considered evidence of any wrongdoing by the respondent.

H. As used in this section, a "law-enforcement officer" means any (i) full-time or part-time employee of a police department or sheriff's office which is part of or administered by the Commonwealth or any political subdivision thereof and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth and (ii) member of an auxiliary police force established pursuant to subsection B of § 15.2-1731. Part-time employees are compensated officers who are not full-time employees as defined by the employing police department or sheriff's office.

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

J. As used in this section, "copy" includes a facsimile copy.

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

§ 16.1-279.1. Protective order in cases of family abuse.

A. In cases of family abuse, 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;

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;

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; 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; and

8. *Prohibiting acts or offensive conduct that would serve to injure or kill a companion animal or livestock, as these terms are defined in § 3.1-796.66, owned, possessed, leased, kept or held by the petitioner and family or household members of the petitioner; and*

89. 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 of this section, 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; however, unless otherwise authorized by law, a protective order may not be issued under this section for a period longer than two years. A copy of the protective order shall be served on the respondent and provided to the petitioner as soon as possible. The clerk shall, upon receipt, forward forthwith an attested copy of the order to the local police department or sheriff's office which shall, upon receipt, enter the name of the person subject to the order and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network system established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. Where practical, the court may transfer information electronically to the Virginia Criminal Information Network system. If the order is later dissolved or modified, a copy of the dissolution or modification order shall also be attested, forwarded and entered in the system as described above.

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

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

E. Any judgment, order or decree, whether permanent or temporary, issued by a court of appropriate jurisdiction in another state, the United States or any of its territories, possessions or Commonwealths, the District of Columbia or by any tribal court of appropriate jurisdiction for the purpose of preventing

305 violent or threatening acts or harassment against or contact or communication with or physical proximity
306 to another person, including any of the conditions specified in subsection A, shall be accorded full faith
307 and credit and enforced in the Commonwealth as if it were an order of the Commonwealth, provided
308 reasonable notice and opportunity to be heard were given by the issuing jurisdiction to the person
309 against whom the order is sought to be enforced sufficient to protect such person's due process rights
310 and consistent with federal law. A person entitled to protection under such a foreign order may file the
311 order in any juvenile and domestic relations district court by filing with the court an attested or
312 exemplified copy of the order. Upon such a filing, the clerk shall forward forthwith an attested copy of
313 the order to the local police department or sheriff's office which shall, upon receipt, enter the name of
314 the person subject to the order and other appropriate information required by the Department of State
315 Police into the Virginia Criminal Information Network system established and maintained by the
316 Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. Where practical, the court may transfer
317 information electronically to the Virginia Criminal Information Network system.

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

323 F. Either party may at any time file a written motion with the court requesting a hearing to dissolve
324 or modify the order. Proceedings to dissolve or modify a protective order shall be given precedence on
325 the docket of the court.

326 G. As used in this section, "copy" includes a facsimile copy.

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

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