

REPRINT

**SUBSTITUTE FOR
SENATE BILL NO. 866**

(As Passed the Senate March 18, 1998)

(As amended by the House May 7, 1998)

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
by amending section 2950a (MCL 600.2950a), as amended by 1997 PA
115.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2950a. (1) ~~By~~ EXCEPT AS PROVIDED IN [SUBSECTIONS (25)
AND (26)]
2 BY commencing an independent action to obtain relief under this
3 section, by joining a claim to an action, or by filing a motion
4 in an action in which the petitioner and the individual to be
5 restrained or enjoined are parties, an individual may petition
6 the FAMILY DIVISION OF circuit court to enter a personal protec-
tion order to
7 restrain or enjoin an individual from engaging in conduct that is
8 prohibited under section 411h or 411i of the Michigan penal code,
9 1931 PA 328, MCL 750.411h and 750.411i. Relief may be sought and
10 granted under this section whether or not the individual to be

SB0866, As Passed House, May 12, 1998

Senate Bill No. 866

2

1 restrained or enjoined has been charged or convicted under
2 section 411h or 411i of the Michigan penal code, 1931 PA 328, MCL
3 750.411h and 750.411i for the alleged violation.

4 (2) If the respondent is a person who is issued a license to
5 carry a concealed weapon and is required to carry a weapon as a
6 condition of his or her employment, a police officer certified by
7 the Michigan law enforcement training council act of 1965, 1965
8 PA 203, MCL 28.601 to 28.616, a sheriff, a deputy sheriff or a
9 member of the Michigan department of state police, a local cor-
10 rections officer, a department of corrections employee, or a fed-
11 eral law enforcement officer who carries a firearm during the
12 normal course of his or her employment, the petitioner shall
13 notify the court of the respondent's occupation prior to the
14 issuance of the personal protection order. This subsection does
15 not apply to a petitioner who does not know the respondent's
16 occupation.

17 (3) A petitioner may omit his or her address of residence
18 from documents filed with the court pursuant to this section. If
19 a petitioner omits his or her address of residence, the peti-
20 tioner shall provide the court a mailing address.

21 (4) If the court refuses to grant a personal protection
22 order, it shall IMMEDIATELY state in writing the specific reasons
23 it refused to issue a personal protection order. If a hearing is
24 held, the court shall also immediately state on the record the
25 specific reasons it refuses to issue a personal protection
26 order.

SB0866, As Passed House, May 12, 1998

Sub. S.B. 866 (S-1) as amended May 7, 1998

3

1 (5) A personal protection order shall not be made mutual.
2 Correlative separate personal protection orders are prohibited
3 unless both parties have properly petitioned the court pursuant
4 to subsection (1).

5 (6) A personal protection order is effective AND IMMEDIATELY
6 ENFORCEABLE when signed by a judge.

7 (7) The court shall designate the law enforcement agency
8 that is responsible for entering the personal protection order
9 into the law enforcement information network as provided by the
10 L.E.I.N. policy council act of 1974, 1974 PA 163, MCL 28.211 to
11 28.216.

12 (8) A personal protection order issued under this section
13 shall include all of the following [, AND TO THE EXTENT PRACTICABLE
14 THE FOLLOWING SHALL BE CONTAINED IN A SINGLE FORM] :

15 (a) A statement that the personal protection order has been
16 entered to enjoin or restrain conduct listed in the order and
17 that violation of the personal protection order will subject the
18 individual restrained or enjoined to EITHER OF THE FOLLOWING:

19 (i) IF THE RESPONDENT IS 17 YEARS OF AGE OR MORE, immediate
20 arrest and the civil and criminal contempt powers of the court,
21 and that if he or she is found guilty of criminal contempt, he or
22 she shall be imprisoned for not more than 93 days and may be
23 fined not more than \$500.00.

24 (ii) IF THE RESPONDENT IS LESS THAN 17 YEARS OF AGE, TO
25 IMMEDIATE APPREHENSION OR BEING TAKEN INTO CUSTODY, AND SUBJECT
26 TO THE DISPOSITIONAL ALTERNATIVES LISTED IN SECTION 18 OF CHAPTER
XIIA OF 1939 PA 288, MCL 712A.18.

SB0866, As Passed House, May 12, 1998

Sub. S.B. 866 (S-1) as amended May 7, 1998

4

1 (b) A statement that the personal protection order is
2 effective ~~when signed by a judge~~ and ~~is~~ immediately
3 enforceable WHEN SIGNED BY A JUDGE.

4 (c) A statement listing the type or types of conduct
5 enjoined.

6 (d) An expiration date stated clearly on the face of the
7 order.

8 (e) A statement that the personal protection order is
9 enforceable anywhere in Michigan by any law enforcement agency.

10 (f) The law enforcement agency designated by the court to
11 enter the personal protection order into the law enforcement
12 information network.

13 (g) For ex parte orders, a statement that the individual
14 restrained or enjoined may file a motion to modify or rescind the
15 personal protection order and request a hearing within 14 days
16 after the individual restrained or enjoined has been served or
17 has received actual notice of the personal protection order and
18 that motion forms and filing instructions are available from the
19 clerk of the court.

[

20 (9) An ex parte personal protection order shall NOT be
21 issued and effective without written or oral notice to the indi-
22 vidual enjoined or his or her attorney ~~if~~ UNLESS it clearly
23 appears from specific facts shown by verified complaint, written
24 motion, or affidavit that immediate and irreparable injury, loss,
25 or damage will result from the delay required to effectuate
26 notice or that the notice will itself precipitate adverse action
27 before a personal protection order can be issued.]

SB0866, As Passed House, May 12, 1998

Senate Bill No. 866

5

1 (10) A personal protection order issued under subsection (9)
2 is valid for not less than 182 days. The individual restrained
3 or enjoined may file a motion to modify or rescind the personal
4 protection order and request a hearing pursuant to the Michigan
5 court rules. The motion to modify or rescind the personal pro-
6 tection order shall be filed within 14 days after the order is
7 served or after the individual restrained or enjoined has
8 received actual notice of the personal protection order unless
9 good cause is shown for filing the motion after the 14 days have
10 elapsed.

11 (11) Except as otherwise provided in this subsection, the
12 court shall schedule a hearing on the motion to modify or rescind
13 the ex parte personal protection order within 14 days after the
14 filing of the motion to modify or rescind. If the respondent is
15 a person described in subsection (2) and the personal protection
16 order prohibits him or her from purchasing or possessing a fire-
17 arm, the court shall schedule a hearing on the motion to modify
18 or rescind the ex parte personal protection order within 5 days
19 after the filing of the motion to modify or rescind.

20 (12) The clerk of the court that issues a personal protec-
21 tion order shall do both of the following immediately upon issu-
22 ance and without requiring a proof of service on the individual
23 restrained or enjoined:

24 (a) File a true copy of the personal protection order with
25 the law enforcement agency designated by the court in the per-
26 sonal protection order.

SB0866, As Passed House, May 12, 1998

Sub. S.B. 866 (S-1) as amended May 7, 1998

6

1 (b) Provide petitioner with not less than 2 true copies of
2 the personal protection order.

3 (13) The clerk of the court shall inform the petitioner that
4 he or she may take a true copy of the personal protection order
5 to the law enforcement agency designated by the court in subsec-
6 tion (7) to be immediately entered into the law enforcement
7 information network.

8 (14) The law enforcement agency that receives a true copy of
9 the personal protection order under subsection (12) or (13) shall
10 immediately and without requiring proof of service enter the per-
11 sonal protection order into the law enforcement information net-
12 work, as provided by the L.E.I.N. policy council act of 1974,
13 1974 PA 163, MCL 28.211 to 28.216.

14 (15) A personal protection order issued under this section
15 shall be served personally or by registered or certified mail,
16 return receipt requested, delivery restricted to the addressee at
17 the last known address or addresses of the individual restrained
18 or enjoined or by any other manner provided in the Michigan court
19 rules. IF THE RESPONDENT IS LESS THAN [18] YEARS OF AGE, THE
20 PARENT, GUARDIAN, OR CUSTODIAN OF THAT INDIVIDUAL SHALL ALSO BE
21 SERVED PERSONALLY OR BY REGISTERED OR CERTIFIED MAIL, RETURN
22 RECEIPT REQUESTED, DELIVERY RESTRICTED TO THE ADDRESSEE AT THE
23 LAST KNOWN ADDRESS OR ADDRESSES OF THE PARENT, GUARDIAN, OR CUS-
24 TODIAN OF THE INDIVIDUAL RESTRAINED OR ENJOINED. A proof of serv-
25 ice shall be filed with the clerk of the court issuing the per-
26 sonal protection order. This subsection does not prohibit the

SB0866, As Passed House, May 12, 1998

Senate Bill No. 866

7

1 immediate effectiveness of a personal protection order or its
2 immediate enforcement under subsections (18) and (19).

3 (16) The clerk of the court shall immediately notify the law
4 enforcement agency that received the personal protection order
5 under subsection (12) or (13) if either of the following occurs:

6 (a) The clerk of the court has received proof that the indi-
7 vidual restrained or enjoined has been served.

8 (b) The personal protection order is rescinded, modified, or
9 extended by court order.

10 (17) The law enforcement agency that receives information
11 under subsection (16) shall enter the information or cause the
12 information to be entered into the law enforcement information
13 network as provided by the L.E.I.N. policy council act of 1974,
14 1974 PA 163, MCL 28.211 to 28.216.

15 (18) Subject to subsection (19), a personal protection order
16 is immediately enforceable anywhere in this state by any law
17 enforcement agency that has received a true copy of the order, is
18 shown a copy of it, or has verified its existence on the law
19 enforcement information network as provided by the
20 L.E.I.N. policy council act of 1974, 1974 PA 163, MCL 28.211 to
21 28.216.

22 (19) If the individual restrained or enjoined has not been
23 served, the law enforcement agency or officer responding to a
24 ~~domestic violence~~ call alleging a violation of a personal pro-
25 tection order shall serve the individual restrained or enjoined
26 with a true copy of the order or advise the individual restrained
27 or enjoined of the existence of the personal protection order,

SB0866, As Passed House, May 12, 1998

Senate Bill No. 866

8

1 the specific conduct enjoined, the penalties for violating the
2 order, and where the individual restrained or enjoined may obtain
3 a copy of the order. The law enforcement officer shall enforce
4 the personal protection order and immediately enter or cause to
5 be entered into the law enforcement information network that the
6 individual restrained or enjoined has actual notice of the per-
7 sonal protection order. If the individual restrained or enjoined
8 has not received notice of the personal protection order, the
9 individual restrained or enjoined shall be given an opportunity
10 to comply with the personal protection order before the law
11 enforcement officer makes a custodial arrest for violation of the
12 personal protection order. The failure to immediately comply
13 with the personal protection order shall be grounds for an imme-
14 diate custodial arrest. This subsection does not preclude an
15 arrest under section 15 or 15a of chapter IV of the code of crim-
16 inal procedure, 1927 PA 175, MCL 764.15 and 764.15a, OR A PRO-
17 CEEDING UNDER SECTION 14 OF CHAPTER XIIA OF 1939 PA 288, MCL
18 712A.14.

19 (20) An individual WHO IS 17 YEARS OF AGE OR MORE AND who
20 refuses or fails to comply with a personal protection order
21 issued under this section is subject to the criminal contempt
22 powers of the court and, if found guilty of criminal contempt,
23 shall be imprisoned for not more than 93 days and may be fined
24 not more than \$500.00. AN INDIVIDUAL WHO IS LESS THAN 17 YEARS
25 OF AGE AND WHO REFUSES OR FAILS TO COMPLY WITH A PERSONAL PROTEC-
26 TION ORDER ISSUED UNDER THIS SECTION IS SUBJECT TO THE
27 DISPOSITIONAL ALTERNATIVES LISTED IN SECTION 18 OF CHAPTER XIIA

SB0866, As Passed House, May 12, 1998

Sub. S.B. 866 (S-1) as amended May 7, 1998

9

1 OF 1939 PA 288, MCL 712A.18. The criminal penalty provided for
2 under this section may be imposed in addition to any penalty that
3 may be imposed for any other criminal offense arising from the
4 same conduct.

5 (21) An individual who knowingly and intentionally makes a
6 false statement to the court in support of his or her petition
7 for a personal protection order is subject to the contempt powers
8 of the court.

9 (22) A personal protection order issued under this section
10 is also enforceable under CHAPTER XIIIA OF 1939 PA 288, MCL 712A.1
11 TO 712A.31, AND section 15b of chapter IV of the code of criminal
12 procedure, 1927 PA 175, MCL 764.15b.

13 (23) Beginning April 1, 1996, a personal protection order
14 issued under this section may enjoin or restrain an individual
15 from purchasing or possessing a firearm.

16 (24) A personal protection order issued under this section
17 is also enforceable under chapter 17.

18 (25) A COURT SHALL NOT ISSUE A PERSONAL PROTECTION ORDER
19 THAT RESTRAINS OR ENJOINS CONDUCT DESCRIBED IN SUBSECTION (1) IF
20 EITHER OF THE FOLLOWING APPLIES:

21 (A) THE [UNEMANCIPATED] RESPONDENT IS THE MINOR CHILD OF THE
PETITIONER.

22 (B) THE [UNEMANCIPATED] PETITIONER IS THE MINOR CHILD OF THE
RESPONDENT.

[(26) IF THE RESPONDENT IS LESS THAN 18 YEARS OF AGE, A COURT
SHALL NOT ISSUE A PERSONAL PROTECTION ORDER UNDER THIS SECTION; THE
COURT SHALL PROCEED UNDER SECTION 2 OF CHAPTER XIIIA OF 1939 PA 288, MCL
712A.2.]

[(27)] A PERSONAL PROTECTION ORDER THAT IS ISSUED PRIOR TO THE
EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SUBSECTION
IS NOT INVALID ON THE GROUND THAT IT DOES NOT COMPLY WITH 1 OR
MORE OF THE REQUIREMENTS ADDED BY THAT AMENDATORY ACT.

23 [(28)] ~~-(25)-~~ As used in this section:

24 (a) "Federal law enforcement officer" means an officer or
25 agent employed by a law enforcement agency of the United States
26 government whose primary responsibility is the enforcement of
27 laws of the United States.

02210'97 *** (S-1) R-1

Sub. S.B. 866 (S-1) as amended May 7, 1998 10

1 (b) "Personal protection order" means an injunctive order

SB0866, As Passed House, May 12, 1998

2 issued by [] circuit court [OR THE FAMILY
DIVISION OF CIRCUIT COURT] restraining or enjoining conduct prohib-
3 ited under section 411h or 411i of the Michigan penal code, 1931
4 PA 328, MCL 750.411h and 750.411i.

[Enacting section 1. This amendatory act takes effect September 1, 1998.]

5 Enacting section [2]. This amendatory act does not take
6 effect unless all of the following bills of the 89th Legislature
7 are enacted into law:

- 8 (a) House Bill No. 5564.
9 (b) House Bill No. 5567.
10 (c) Senate Bill No. 874.