

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 26

Introduced by Murante, 49.

Read first time January 05, 2017

Committee: Judiciary

1 A BILL FOR AN ACT relating to harassment protection orders; to amend
2 section 28-311.09, Reissue Revised Statutes of Nebraska; to change
3 service requirements for such orders; and to repeal the original
4 section.

5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-311.09, Reissue Revised Statutes of Nebraska,
2 is amended to read:

3 28-311.09 (1) Any victim who has been harassed as defined by section
4 28-311.02 may file a petition and affidavit for a harassment protection
5 order as provided in subsection (3) of this section. Upon the filing of
6 such a petition and affidavit in support thereof, the court may issue a
7 harassment protection order without bond enjoining the respondent from
8 (a) imposing any restraint upon the person or liberty of the petitioner,
9 (b) harassing, threatening, assaulting, molesting, attacking, or
10 otherwise disturbing the peace of the petitioner, or (c) telephoning,
11 contacting, or otherwise communicating with the petitioner.

12 (2) The petition for a harassment protection order shall state the
13 events and dates of acts constituting the alleged harassment.

14 (3) A petition for a harassment protection order shall be filed with
15 the clerk of the district court, and the proceeding may be heard by the
16 county court or the district court as provided in section 25-2740.

17 (4) A petition for a harassment protection order filed pursuant to
18 subsection (1) of this section may not be withdrawn except upon order of
19 the court. An order issued pursuant to subsection (1) of this section
20 shall specify that it is effective for a period of one year unless
21 otherwise dismissed or modified by the court. Any person who knowingly
22 violates an order issued pursuant to subsection (1) of this section after
23 service or notice as described in subdivision (8)(b) or (c) of this
24 section shall be guilty of a Class II misdemeanor.

25 (5)(a) Fees to cover costs associated with the filing of a petition
26 for a harassment protection order or the issuance or service of a
27 harassment protection order seeking only the relief provided by this
28 section shall not be charged, except that a court may assess such fees
29 and costs if the court finds, by clear and convincing evidence, that the
30 statements contained in the petition were false and that the harassment
31 protection order was sought in bad faith.

1 (b) A court may also assess costs associated with the filing of a
2 petition for a harassment protection order or the issuance or service of
3 a harassment protection order seeking only the relief provided by this
4 section against the respondent.

5 (6) The clerk of the district court shall make available standard
6 application and affidavit forms for a harassment protection order with
7 instructions for completion to be used by a petitioner. The clerk and his
8 or her employees shall not provide assistance in completing the forms.
9 The State Court Administrator shall adopt and promulgate the standard
10 application and affidavit forms provided for in this section as well as
11 the standard temporary and final harassment protection order forms and
12 provide a copy of such forms to all clerks of the district courts in this
13 state. These standard temporary and final harassment protection order
14 forms shall be the only such forms used in this state.

15 (7) Any order issued under subsection (1) of this section may be
16 issued ex parte without notice to the respondent if it reasonably appears
17 from the specific facts shown by affidavit of the petitioner that
18 irreparable harm, loss, or damage will result before the matter can be
19 heard on notice. If the specific facts included in the affidavit (a) do
20 not show that the petitioner will suffer irreparable harm, loss, or
21 damage or (b) show that, for any other compelling reason, an ex parte
22 order should not be issued, the court may forthwith cause notice of the
23 application to be given to the respondent stating that he or she may show
24 cause, not more than fourteen days after service, why such order should
25 not be entered. If such ex parte order is issued without notice to the
26 respondent, the court shall forthwith cause notice of the petition and
27 order and a form with which to request a show-cause hearing to be given
28 the respondent stating that, upon service on the respondent, the order
29 shall remain in effect for a period of one year unless the respondent
30 shows cause why the order should not remain in effect for a period of one
31 year. If the respondent wishes to appear and show cause why the order

1 should not remain in effect for a period of one year, he or she shall
2 affix his or her current address, telephone number, and signature to the
3 form and return it to the clerk of the district court within five days
4 after service upon him or her. Upon receipt of the request for a show-
5 cause hearing, the court shall immediately schedule a show-cause hearing
6 to be held within thirty days after the receipt of the request for a
7 show-cause hearing and shall notify the petitioner and respondent of the
8 hearing date.

9 (8)(a) Upon the issuance of any harassment protection order, the
10 clerk of the court shall forthwith provide the petitioner, without
11 charge, with two certified copies of such order. The clerk of the court
12 shall also forthwith provide the local police department or local law
13 enforcement agency and the local sheriff's office, without charge, with
14 one copy each of such order and one copy each of the sheriff's return
15 thereon. The clerk of the court shall also forthwith provide a copy of
16 the harassment protection order to the sheriff's office in the county
17 where the respondent may be personally served together with instructions
18 for service. Upon receipt of the order and instructions for service, such
19 sheriff's office shall forthwith serve the harassment protection order
20 upon the respondent and file its return thereon with the clerk of the
21 court which issued the harassment protection order within fourteen days
22 of the issuance of the harassment protection order. If any harassment
23 protection order is dismissed or modified by the court, the clerk of the
24 court shall forthwith provide the local police department or local law
25 enforcement agency and the local sheriff's office, without charge, with
26 one copy each of the order of dismissal or modification.

27 (b) If the respondent is present at a hearing convened pursuant to
28 this section and the harassment protection order is not dismissed, such
29 respondent shall be deemed to have notice by the court at such hearing
30 that the protection order will be granted and remain in effect and
31 further service of such notice described in this subsection shall not be

1 required for purposes of prosecution under this section. If the
2 respondent has been properly served with the ex parte order and fails to
3 appear at the hearing, the temporary order shall be deemed to be granted
4 and remain in effect and the service of the ex parte order will serve as
5 notice required under this section.

6 (c) If the respondent has actual knowledge of the harassment
7 protection order, such respondent shall be deemed to have notice and
8 further service of such notice described in this subsection shall not be
9 required for purposes of prosecution under this section.

10 (9) A peace officer may, with or without a warrant, arrest a person
11 if (a) the officer has probable cause to believe that the person has
12 committed a violation of a harassment protection order issued pursuant to
13 this section or a violation of a valid foreign harassment protection
14 order recognized pursuant to section 28-311.10 and (b) a petitioner under
15 this section provides the peace officer with a copy of a harassment
16 protection order or the peace officer determines that such an order
17 exists after communicating with the local law enforcement agency or a
18 person protected under a valid foreign harassment protection order
19 recognized pursuant to section 28-311.10 provides the peace officer with
20 a copy of such order.

21 (10) A peace officer making an arrest pursuant to subsection (9) of
22 this section shall take such person into custody and take such person
23 before the county court or the court which issued the harassment
24 protection order within a reasonable time. At such time the court shall
25 establish the conditions of such person's release from custody, including
26 the determination of bond or recognizance, as the case may be. The court
27 shall issue an order directing that such person shall have no contact
28 with the alleged victim of the harassment.

29 Sec. 2. Original section 28-311.09, Reissue Revised Statutes of
30 Nebraska, is repealed.