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SENATE BILL 916*
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Short Title: Prevent Workplace Violence.

(Public)

Sponsors:

Referred to:

April 3, 2003

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH CIVIL NO-CONTACT ORDERS FOR THE
3 PROTECTION OF EMPLOYEES FROM WORKPLACE VIOLENCE.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Chapter 95 of the General Statutes is amended by adding a
6 new Article to read:

7 "Article 23.

8 "Workplace Violence Prevention.

9 "**§ 95-260. Definitions.**

10 The following definitions apply in this Article:

- 11 (1) Civil no-contact order. – An order granted under this Article, which
12 includes a remedy authorized by G.S. 95-264.
13 (2) Employer. – Any person or entity that employs one or more
14 employees. Employer also includes the State of North Carolina and its
15 political subdivisions.
16 (3) Unlawful conduct. – Unlawful conduct means the commission of one
17 or more of the following acts upon an employee, but does not include
18 acts of self-defense or defense of others:
19 a. Attempting to cause bodily injury or intentionally causing
20 bodily injury.
21 b. Willfully, and on more than one occasion, following, being in
22 the presence of, or otherwise harassing, as defined in
23 G.S. 14-277.3, without legal purpose and with the intent to
24 place the employee in reasonable fear for the employee's safety.
25 c. Willfully threatening, orally, in writing, or by any other means,
26 to physically injure the employee in a manner and under

1 circumstances that would cause a reasonable person to believe
2 that the threat is likely to be carried out and that actually causes
3 the employee to believe that the threat will be carried out.

4 **"§ 95-261. Civil no-contact orders; persons protected.**

5 An action for a civil no-contact order may be filed as a civil action in district court
6 by an employer on behalf of an employee who has suffered unlawful conduct from any
7 individual that can reasonably be construed to be carried out, or to have been carried
8 out, at the employee's workplace. The employee that is the subject of unlawful conduct
9 shall be consulted prior to seeking an injunction under this Article in order to determine
10 whether any safety concerns exist in relation to the employee's participation in the
11 process. Employees who are targets of unlawful conduct who are unwilling to
12 participate in the process under this Article shall not face disciplinary action based on
13 their level of participation or cooperation.

14 **"§ 95-262. Commencement of action; venue.**

15 (a) An action for a civil no-contact order is commenced by filing a verified
16 complaint for a civil no-contact order in any civil district court or by filing a motion in
17 any existing civil action.

18 (b) A complaint or motion for a civil no-contact order shall be filed in the county
19 where the unlawful conduct took place.

20 **"§ 95-263. Process for action for no-contact order.**

21 (a) Any action for a civil no-contact order requires that a separate summons be
22 issued and served. The summons issued pursuant to this Article shall require the
23 respondent to answer within 10 days of the date of service. Attachments to the summons
24 shall include the verified complaint for the civil no-contact order and any temporary
25 civil no-contact order that has been issued and the notice of hearing on the temporary
26 civil no-contact order.

27 (b) Service of the summons and attachments shall be by the sheriff by personal
28 delivery in accordance with Rule 4 of the Rules of Civil Procedure, and if the
29 respondent cannot with due diligence be served by the sheriff by personal delivery, the
30 respondent may be served by publication by the complainant in accordance with Rule
31 4(j1) of the Rules of Civil Procedure.

32 (c) The court may enter a civil no-contact order by default for the remedy sought
33 in the complaint if the respondent has been served in accordance with this section and
34 fails to answer as directed, or fails to appear on any subsequent appearance or hearing
35 date agreed to by the parties or set by the court.

36 **"§ 95-264. Civil no-contact order; remedy.**

37 (a) Upon a finding that the employee has suffered unlawful conduct committed
38 by the respondent, the court may issue a temporary or permanent civil no-contact order.
39 In determining whether or not to issue a civil no-contact order, the court shall not
40 require physical injury to the employee or injury to the employer's property.

41 (b) The court may grant one or more of the following forms of relief in its orders
42 under this Article:

- 1 (1) Order the respondent not to visit, assault, molest, or otherwise interfere
2 with the employer or the employer's employee at the employer's
3 workplace, or otherwise interfere with the employer's operations.
- 4 (2) Order the respondent to cease stalking the employer's employee at the
5 employer's workplace.
- 6 (3) Order the respondent to cease harassment of the employer or the
7 employer's employee at the employer's workplace.
- 8 (4) Order the respondent not to abuse or injure the employer, including the
9 employer's property, or the employer's employee at the employer's
10 workplace.
- 11 (5) Order the respondent not to contact by telephone, written
12 communication, or electronic means the employer or the employer's
13 employee at the employer's workplace.
- 14 (6) Order other relief deemed necessary and appropriate by the court.
- 15 (c) A civil no-contact order shall include the following notice, printed in
16 conspicuous type: 'A knowing violation of a civil no-contact order shall be punishable
17 as contempt of court which may result in a fine or imprisonment.'
- 18 **"§ 95-265. Temporary civil no-contact order; court holidays and evenings.**
- 19 (a) A temporary civil no-contact order may be granted ex parte, without written
20 or oral notice to the respondent, only if both of the following are shown:
- 21 (1) It clearly appears from specific facts shown by a verified complaint or
22 affidavit that immediate injury, loss, or damage will result to the
23 complainant, or the complainant's employee before the respondent can
24 be heard in opposition.
- 25 (2) Either one of the following:
- 26 a. The complainant certifies to the court in writing the efforts, if
27 any, that have been made to give the notice and the reasons
28 supporting the claim that notice should not be required.
- 29 b. The complainant certified to the court that there is good cause
30 to grant the remedy because the harm that the remedy is
31 intended to prevent would like occur if the respondent were
32 given any prior notice of the complainant's efforts to obtain
33 judicial relief.
- 34 (b) Every temporary civil no-contact order granted without notice shall:
- 35 (1) Be endorsed with the date and hour of issuance.
- 36 (2) Be filed immediately in the clerk's office and entered of record.
- 37 (3) Define the injury, state why it is irreparable and why the order was
38 granted without notice.
- 39 (4) Expire by its terms within such time after entry, not to exceed 10 days.
- 40 (5) Give notice of the date of hearing on the temporary order as provided
41 in G.S. 95-267(a).
- 42 (c) If the respondent appears in court for the hearing for a temporary order, the
43 respondent may elect to file a general appearance and testify. Any resulting order may
44 be a temporary order, governed by this section. Notwithstanding the requirements of

1 this section, if all requirements of G.S. 95-266 have been met, the court may issue a
2 permanent order.

3 (d) When the court is not in session, the complainant may file a complaint for a
4 temporary order before any judge or magistrate designated to grant relief under this
5 Article. If the judge or magistrate finds that there is an immediate and present danger of
6 abuse against the complainant or employee of the complainant and that the complainant
7 has satisfied the prerequisites set forth in subsection (a) of this section, the judge or
8 magistrate may issue a temporary civil no-contact order. The chief district court judge
9 may designate for each county at least one judge or magistrate to be reasonably
10 available to issue temporary civil no-contact orders when the court is not in session.

11 **§ 95-266. Permanent civil no-contact order.**

12 Upon a finding that the employee has suffered unlawful conduct committed by the
13 respondent, a permanent civil no-contact order may issue if the court additionally finds
14 that process was properly served on the respondent, the respondent has answered the
15 complaint and notice of hearing was given, or the respondent is in default. No
16 permanent civil no-contact order shall be issued without notice to the respondent.

17 **§ 95-267. Duration; extension of orders.**

18 (a) A temporary civil no-contact order shall be effective for not more than 10
19 days as the court fixes, unless within the time so fixed the temporary civil no-contact
20 order, for good cause shown, is extended for a like period or a longer period if the
21 respondent consents. The reasons for the extension shall be stated in the temporary
22 order. In case a temporary civil no-contact order is granted without notice and a motion
23 for a permanent civil no-contact order is made, it shall be set down for hearing at the
24 earliest possible time and takes precedence over all matters except older matters of the
25 same character. When the motion for a permanent civil no-contact order comes on for
26 hearing, the complainant may proceed with a motion for a permanent civil no-contact
27 order, and, if the complainant fails to do so, the judge shall dissolve the temporary civil
28 no-contact order. On two days' notice to the complainant or on such shorter notice to
29 that party as the judge may prescribe, the respondent may appear and move its
30 dissolution or modification. In that event the judge shall proceed to hear and determine
31 such motion as expeditiously as the ends of justice require.

32 (b) A permanent civil no-contact order shall be effective for a fixed period of
33 time not to exceed one year.

34 (c) Any temporary or permanent order may be extended one or more times, as
35 required, provided that the requirements of G.S. 95-265 or G.S. 95-266, as appropriate,
36 are satisfied. The court may renew a temporary or permanent order, including an order
37 that previously has been renewed, upon a motion by the complainant filed before the
38 expiration of the current order. The court may renew the order for good cause. The
39 commission of an act of unlawful conduct by the respondent after entry of the current
40 order is not required for an order to be renewed. If the motion for extension is
41 uncontested and the complainant seeks no modification of the order, the order may be
42 extended if the complainant's motion or affidavit states that there has been no material
43 change in relevant circumstances since entry of the order and states the reason for the

1 requested extension. Extensions may be granted only in open court and not under the
2 provisions of G.S. 95-265(d).

3 (d) Any civil no-contact order expiring on a court holiday shall expire at the
4 close of the next court business day.

5 **"§ 95-268. Notice of orders.**

6 (a) The clerk of court shall deliver on the same day that a civil no-contact order
7 is issued a certified copy of that order to the sheriff.

8 (b) Unless the respondent was present in court when the order was issued, the
9 sheriff shall serve that order upon the respondent and file proof of service in the manner
10 provided for service of process in civil proceedings. If process has not yet been served
11 upon the respondent, it shall be served with the order.

12 (c) A copy of the order shall be issued promptly to and retained by the police
13 department of the municipality of the employer's workplace. If the employer's
14 workplace is not located in a municipality or in a municipality with no police
15 department, copies shall be issued promptly to and retained by the sheriff and the
16 county police department, if any, of the county in which the employer's workplace is
17 located.

18 (d) Any order extending, modifying, or revoking any civil no-contact order shall
19 be recorded, issued, and served in accordance with the provisions of this Article.

20 **"§ 95-269. Violation of valid order.**

21 A violation of an order entered pursuant to this Article is punishable as contempt of
22 court.

23 **"§ 95-270. Employment discrimination unlawful.**

24 (a) No employer shall discharge, demote, deny a promotion, or discipline an
25 employee because the employee took reasonable time off from work to obtain or
26 attempt to obtain relief under Chapter 50B or Chapter 50C. An employee who is absent
27 from the workplace shall follow the employer's usual time-off policy or procedure,
28 including advance notice to the employer, when required by the employer's usual
29 procedures, unless an emergency prevents the employee from doing so. An employer
30 may require documentation of any emergency that prevented the employee from
31 complying in advance with the employer's usual time-off policy or procedure, or any
32 other information available to the employee which supports the employee's reason for
33 being absent from the workplace.

34 (b) The Commissioner of Labor shall enforce the provisions of this section
35 according to Article 21 of Chapter 95 of the General Statutes, including the rules and
36 regulations issued pursuant to the Article.

37 **"§ 95-271. Scope of Article; other remedies available.**

38 This Article does not expand, diminish, alter, or modify the duty of any employer to
39 provide a safe workplace for employees and other persons. This Article does not limit
40 the ability of an employer, employee, or victim to pursue any other civil or criminal
41 remedy provided by law. This Article does not apply in circumstances where an
42 employee or representative of employees is engaged in union organizing, union activity,
43 a labor dispute, or any activity or action protected by the National Labor Relations Act,
44 29 U.S.C. § 151, et seq. Nothing in this Article is intended to change the National Labor

1 Relations Act's preemptive regulation of legally protected activities, nor to change the
2 right of the State and its courts to regulate activities not protected by the National Labor
3 Relations Act."

4 **SECTION 2.** This act becomes effective December 1, 2004, and applies to
5 actions that give rise to civil no-contact orders issued under this act on or after that date.