

PROTECTIVE ORDER REVISIONS

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Scott L Wyatt

Senate Sponsor: Peter C. Knudson

LONG TITLE

General Description:

This bill modifies the Cohabitant Abuse Act by providing for the inclusion of pets in protective orders.

Highlighted Provisions:

This bill:

▶ authorizes a court issuing a protective order to enjoin the respondent from harming any pet animal owned, possessed, or kept by the petitioner or other named parties, or the respondent in certain circumstances; and

▶ authorizes the court to direct that a law enforcement officer ensure the safety of a petitioner while gaining possession of a pet animal.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

30-6-4.2, as last amended by Chapter 156, Laws of Utah 2005

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **30-6-4.2** is amended to read:



28 **30-6-4.2. Protective orders -- Ex parte protective orders -- Modification of orders**
29 **-- Service of process -- Duties of the court.**

30 (1) If it appears from a petition for an order for protection or a petition to modify an
31 order for protection that domestic violence or abuse has occurred or a modification of an order
32 for protection is required, a court may:

33 (a) without notice, immediately issue an order for protection ex parte or modify an
34 order for protection ex parte as it considers necessary to protect the petitioner and all parties
35 named to be protected in the petition; or

36 (b) upon notice, issue an order for protection or modify an order after a hearing,
37 whether or not the respondent appears.

38 (2) A court may grant the following relief without notice in an order for protection or a
39 modification issued ex parte:

40 (a) enjoin the respondent from threatening to commit or committing:

41 (i) domestic violence or abuse against the petitioner and any designated family or
42 household member; or

43 (ii) any harm or harassment, including any violation of Section 76-9-301, against any
44 pet animal owned, possessed, kept, or held by:

45 (A) the petitioner;

46 (B) any family or household member designated in the order; or

47 (C) the respondent, if the petitioner has a demonstrated interest in the pet animal;

48 (b) prohibit the respondent from harassing, telephoning, contacting, or otherwise
49 communicating with the petitioner, directly or indirectly;

50 (c) order that the respondent is excluded from the petitioner's residence and its
51 premises, and order the respondent to stay away from the residence, school, or place of
52 employment of the petitioner, and the premises of any of these, or any specified place
53 frequented by the petitioner and any designated family or household member;

54 (d) upon finding that the respondent's use or possession of a weapon may pose a
55 serious threat of harm to the petitioner, prohibit the respondent from purchasing, using, or
56 possessing a firearm or other weapon specified by the court;

57 (e) order possession and use of an automobile and other essential personal effects, and
58 direct the appropriate law enforcement officer to accompany the petitioner to the residence of

59 the parties to ensure that the petitioner is safely restored to possession of the residence,
60 automobile, and other essential personal effects, or to supervise the petitioner's or respondent's
61 removal of personal belongings;

62 (f) (i) order that the petitioner may obtain the physical custody or control, or authority
63 to care for, any pet animal owned, possessed, kept, or held by:

64 (A) the petitioner;

65 (B) any family or household member designated in the order; or

66 (C) the respondent, if the petitioner has a demonstrated interest in the pet animal; and

67 (ii) direct the appropriate law enforcement officer to accompany the petitioner to the
68 residence of the parties to ensure that the petitioner is able to safely remove pet animals as
69 authorized by the order;

70 [~~f~~] (g) grant to the petitioner temporary custody of any minor children of the parties;

71 [~~g~~] (h) order any further relief that the court considers necessary to provide for the
72 safety and welfare of the petitioner and any designated family or household member; and

73 [~~h~~] (i) if the petition requests child support or spousal support, at the hearing on the
74 petition order both parties to provide verification of current income, including year-to-date pay
75 stubs or employer statements of year-to-date or other period of earnings, as specified by the
76 court, and complete copies of tax returns from at least the most recent year.

77 (3) A court may grant the following relief in an order for protection or a modification
78 of an order after notice and hearing, whether or not the respondent appears:

79 (a) grant the relief described in Subsection (2); and

80 (b) specify arrangements for parent-time of any minor child by the respondent and
81 require supervision of that parent-time by a third party or deny parent-time if necessary to
82 protect the safety of the petitioner or child.

83 (4) Following the protective order hearing, the court shall:

84 (a) as soon as possible, deliver the order to the county sheriff for service of process;

85 (b) make reasonable efforts to ensure that the order for protection is understood by the
86 petitioner, and the respondent, if present;

87 (c) transmit, by the end of the next business day after the order is issued, a copy of the
88 order for protection to the local law enforcement agency or agencies designated by the
89 petitioner; and

90 (d) transmit a copy of the order to the statewide domestic violence network described
91 in Section 30-6-8.

92 (5) (a) Each protective order shall include two separate portions, one for provisions, the
93 violation of which are criminal offenses, and one for provisions, the violation of which are civil
94 violations, as follows:

95 (i) criminal offenses are those under Subsections (2)(a) through (e), and under
96 Subsection (3)(a) as it refers to Subsections (2)(a) through (e); and

97 (ii) civil offenses are those under Subsections (2)(f) through ~~(h)~~ (i), and Subsection
98 (3)(a) as it refers to Subsections (2)(f) through ~~(h)~~ (i).

99 (b) The criminal provision portion shall include a statement that violation of any
100 criminal provision is a class A misdemeanor.

101 (c) The civil provision portion shall include a notice that violation of or failure to
102 comply with a civil provision is subject to contempt proceedings.

103 (6) The protective order shall include:

104 (a) a designation of a specific date, determined by the court, when the civil portion of
105 the protective order either expires or is scheduled for review by the court, which date may not
106 exceed 150 days after the date the order is issued, unless the court indicates on the record the
107 reason for setting a date beyond 150 days;

108 (b) information the petitioner is able to provide to facilitate identification of the
109 respondent, such as Social Security number, driver license number, date of birth, address,
110 telephone number, and physical description; and

111 (c) a statement advising the petitioner that:

112 (i) after two years from the date of issuance of the protective order, a hearing may be
113 held to dismiss the criminal portion of the protective order;

114 (ii) the petitioner should, within the 30 days prior to the end of the two-year period,
115 advise the court of the petitioner's current address for notice of any hearing; and

116 (iii) the address provided by the petitioner will not be made available to the respondent.

117 (7) Child support and spouse support orders issued as part of a protective order are
118 subject to mandatory income withholding under Title 62A, Chapter 11, Part 4, Income
119 Withholding in IV-D Cases, and Title 62A, Chapter 11, Part 5, Income Withholding in Non
120 IV-D Cases, except when the protective order is issued ex parte.

121 (8) (a) The county sheriff that receives the order from the court, pursuant to Subsection
122 (5)(a), shall provide expedited service for orders for protection issued in accordance with this
123 chapter, and shall transmit verification of service of process, when the order has been served, to
124 the statewide domestic violence network described in Section 30-6-8.

125 (b) This section does not prohibit any law enforcement agency from providing service
126 of process if that law enforcement agency:

127 (i) has contact with the respondent and service by that law enforcement agency is
128 possible; or

129 (ii) determines that under the circumstances, providing service of process on the
130 respondent is in the best interests of the petitioner.

131 (9) (a) When an order is served on a respondent in a jail or other holding facility, the
132 law enforcement agency managing the facility shall make a reasonable effort to provide notice
133 to the petitioner at the time the respondent is released from incarceration.

134 (b) Notification of the petitioner shall consist of a good faith reasonable effort to
135 provide notification, including mailing a copy of the notification to the last-known address of
136 the victim.

137 (10) A court may modify or vacate an order of protection or any provisions in the order
138 after notice and hearing, except that the criminal provisions of a protective order may not be
139 vacated within two years of issuance unless the petitioner:

140 (a) is personally served with notice of the hearing as provided in Rules 4 and 5, Utah
141 Rules of Civil Procedure, and the petitioner personally appears before the court and gives
142 specific consent to the vacation of the criminal provisions of the protective order; or

143 (b) submits a verified affidavit, stating agreement to the vacation of the criminal
144 provisions of the protective order.

145 (11) A protective order may be modified without a showing of substantial and material
146 change in circumstances.

147 (12) Insofar as the provisions of this chapter are more specific than the Utah Rules of
148 Civil Procedure, regarding protective orders, the provisions of this chapter govern.

Legislative Review Note
as of 1-22-07 4:53 PM

Office of Legislative Research and General Counsel

H.B. 342 - Protective Order Revisions

Fiscal Note

2007 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

1/29/2007, 8:33:05 AM, Lead Analyst: Byrne, D.

Office of the Legislative Fiscal Analyst