

## SB0067S01 compared with SB0067

~~text~~ shows text that was in SB0067 but was deleted in SB0067S01.

text shows text that was not in SB0067 but was inserted into SB0067S01.

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Senator Todd D. Weiler proposes the following substitute bill:

### WORKPLACE VIOLENCE PROTECTIVE ORDERS

2021 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Todd D. Weiler**

House Sponsor: \_\_\_\_\_

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#### LONG TITLE

#### General Description:

This bill creates a workplace violence protective order.

#### Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ allows an employer to petition for a workplace violence protective order;
- ▶ requires an employer to notify certain individuals when seeking a workplace violence protective order;
- ▶ establishes relief a court may include as part of a workplace violence protective order;
- ▶ requires a court to take certain action after issuing a workplace violence protective order;

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- ▶ establishes circumstances under which a court may modify or vacate a workplace violence protective order;
- ▶ requires a court to set a date for a hearing within a certain time period;
- ▶ establishes provisions related to the expiration, modification, and extension of a workplace violence protective order;
- ▶ establishes provisions related to the service of process of a workplace violence protective order;
- ▶ makes violating a workplace violence protective order a class A misdemeanor;
- ▶ limits liability of employer under certain circumstances; and
- ▶ limits applicability of Title 78B, Chapter 7, Part 10, Workplace Violence Protective Orders.

### **Money Appropriated in this Bill:**

None

### **Other Special Clauses:**

None

### **Utah Code Sections Affected:**

AMENDS:

**78B-7-102**, as last amended by Laws of Utah 2020, Chapters 142 and 287

ENACTS:

**78B-7-1001**, Utah Code Annotated 1953

**78B-7-1002**, Utah Code Annotated 1953

**78B-7-1003**, Utah Code Annotated 1953

**78B-7-1004**, Utah Code Annotated 1953

**78B-7-1005**, Utah Code Annotated 1953

**78B-7-1006**, Utah Code Annotated 1953

**78B-7-1007**, Utah Code Annotated 1953

**78B-7-1008**, Utah Code Annotated 1953

**78B-7-1009**, Utah Code Annotated 1953

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

Section 1. Section **78B-7-102** is amended to read:

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### 78B-7-102. Definitions.

As used in this chapter:

(1) "Abuse" means, except as provided in Section 78B-7-201, intentionally or knowingly causing or attempting to cause another individual physical harm or intentionally or knowingly placing another individual in reasonable fear of imminent physical harm.

(2) "Affinity" means the same as that term is defined in Section 76-1-601.

(3) "Civil protective order" means an order issued, subsequent to a hearing on the petition, of which the petitioner and respondent have been given notice, under:

(a) Part 2, Child Protective Orders;

(b) Part 4, Dating Violence Protective Orders;

(c) Part 5, Sexual Violence Protective Orders; [~~or~~]

(d) Part 6, Cohabitant Abuse Protective Orders[~~-~~]; or

(e) Part 10, Workplace Violence Protective Orders.

(4) "Civil stalking injunction" means a stalking injunction issued under Part 7, Civil Stalking Injunctions.

(5) (a) "Cohabitant" means an emancipated individual under Section 15-2-1 or an individual who is 16 years [~~of age~~] old or older who:

(i) is or was a spouse of the other party;

(ii) is or was living as if a spouse of the other party;

(iii) is related by blood or marriage to the other party as the individual's parent, grandparent, sibling, or any other individual related to the individual by consanguinity or affinity to the second degree;

(iv) has or had one or more children in common with the other party;

(v) is the biological parent of the other party's unborn child;

(vi) resides or has resided in the same residence as the other party; or

(vii) is or was in a consensual sexual relationship with the other party.

(b) "Cohabitant" does not include:

(i) the relationship of natural parent, adoptive parent, or step-parent to a minor; or

(ii) the relationship between natural, adoptive, step, or foster siblings who are under 18 years [~~of age~~] old.

(6) "Consanguinity" means the same as that term is defined in Section 76-1-601.

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(7) "Criminal protective order" means an order issued under Part 8, Criminal Protective Orders.

(8) "Criminal stalking injunction" means a stalking injunction issued under Part 9, Criminal Stalking Injunctions.

(9) "Court clerk" means a district court clerk.

(10) (a) "Dating partner" means an individual who:

(i) (A) is an emancipated individual under Section 15-2-1 or Title 78A, Chapter 6, Part 8, Emancipation; or

(B) is 18 years [~~of age~~] old or older; and

(ii) is, or has been, in a dating relationship with the other party.

(b) "Dating partner" does not include an intimate partner.

(11) (a) "Dating relationship" means a social relationship of a romantic or intimate nature, or a relationship which has romance or intimacy as a goal by one or both parties, regardless of whether the relationship involves sexual intimacy.

(b) "Dating relationship" does not include casual fraternization in a business, educational, or social context.

(c) In determining, based on a totality of the circumstances, whether a dating relationship exists:

(i) all relevant factors shall be considered, including:

(A) whether the parties developed interpersonal bonding above a mere casual fraternization;

(B) the length of the parties' relationship;

(C) the nature and the frequency of the parties' interactions, including communications indicating that the parties intended to begin a dating relationship;

(D) the ongoing expectations of the parties, individual or jointly, with respect to the relationship;

(E) whether, by statement or conduct, the parties demonstrated an affirmation of their relationship to others; and

(F) whether other reasons exist that support or detract from a finding that a dating relationship exists; and

(ii) it is not necessary that all, or a particular number, of the factors described in

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Subsection (11)(c)(i) are found to support the existence of a dating relationship.

(12) "Domestic violence" means the same as that term is defined in Section 77-36-1.

(13) "Ex parte civil protective order" means an order issued without notice to the respondent under:

(a) Part 2, Child Protective Orders;

(b) Part 4, Dating Violence Protective Orders;

(c) Part 5, Sexual Violence Protective Orders; ~~[or]~~

(d) Part 6, Cohabitant Abuse Protective Orders~~[-]; or~~

(e) Part 10, Workplace Violence Protective Orders.

(14) "Ex parte civil stalking injunction" means a stalking injunction issued without notice to the respondent under Part 7, Civil Stalking Injunctions.

(15) "Foreign protection order" means the same as that term is defined in Section 78B-7-302.

(16) "Intimate partner" means the same as that term is defined in 18 U.S.C. Sec. 921.

(17) "Law enforcement unit" or "law enforcement agency" means any public agency having general police power and charged with making arrests in connection with enforcement of the criminal statutes and ordinances of this state or any political subdivision.

(18) "Peace officer" means those individuals specified in Title 53, Chapter 13, Peace Officer Classifications.

(19) "Qualifying domestic violence offense" means the same as that term is defined in Section 77-36-1.1.

(20) "Respondent" means the individual against whom enforcement of a protective order is sought.

(21) "Stalking" means the same as that term is defined in Section 76-5-106.5.

Section 2. Section **78B-7-1001** is enacted to read:

### **Part 10. Workplace Violence Protective Orders**

#### **78B-7-1001. Definitions.**

As used in this part:

(1) ~~{(a) "Employee" means an individual in the service of an employer for compensation.~~

~~(b) "Employee" includes an independent contractor.~~

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~~(2)~~ "Employer" means a person that:

(a) employs ~~one or more individuals~~ ~~an individual in this state~~; or

(b) contracts with an independent contractor in this state.

~~(3)~~2) "Ex parte workplace violence protective order" means an order issued without notice to the respondent under this part.

~~(4)~~3) "Protective order" means:

(a) a workplace violence protective order; or

(b) an ex parte workplace violence protective order.

(4) (a) "Worker" means an individual in the service of an employer for compensation.

(b) "Worker" includes an independent contractor who contracts with an employer.

(5) "Workplace violence" means knowingly causing or threatening to cause bodily injury to, or damage to the property of, a person, if:

(a) the person is:

(i) an employer;

(ii) ~~an employee~~ ~~a worker~~ performing the ~~employee's~~ ~~worker's~~ duties ~~of employment~~ ~~as a worker~~; or

(iii) a person present at the workplace of an employer; and

(b) (i) the action would cause a reasonable person to feel terrorized, frightened, intimidated, or harassed; or

(ii) the threat:

(A) would cause a reasonable person to fear that the threat will be carried out; and

(B) if carried out, would cause a reasonable person to feel terrorized, frightened, intimidated, or harassed.

(6) "Workplace violence protective order" means an order issued under this part after a hearing on the petition, of which the petitioner and respondent have been given notice.

Section 3. Section **78B-7-1002** is enacted to read:

**78B-7-1002. Petition for a workplace violence protective order -- Notice to known targets of workplace violence.**

(1) An employer ~~who~~ ~~may seek, or authorize an agent to seek, a protective order in accordance with this part, if the employer~~ reasonably believes workplace violence has occurred against the employer, ~~an employee~~ ~~a worker~~ of the employer, or a person while the person

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was present at the workplace of the employer, ~~may seek, or authorize an agent to seek, a protective order in accordance with this part~~.

(2) If an employer seeking a workplace violence protective order as described in Subsection (1) has knowledge that a specific individual is the target of workplace violence, the employer shall make a good faith effort to notify the individual that the employer is seeking a workplace violence protective order.

Section 4. Section **78B-7-1003** is enacted to read:

**78B-7-1003. Workplace violence protective orders -- Ex parte workplace violence protective orders -- Modification of orders.**

(1) If it appears from a petition for a protective order or a petition to modify an existing protective order that workplace violence has occurred, the court may:

(a) without notice, immediately issue an ex parte workplace violence protective order against the respondent or modify an existing workplace violence protective order ex parte, if necessary to protect the petitioner or any party named in the petition; or

(b) upon notice to the respondent, issue a workplace violence protective order or modify a workplace violence protective order after a hearing, regardless of whether the respondent appears.

(2) The court may grant the following relief with or without notice in a protective order or in a modification to a protective order:

(a) enjoin the respondent from committing workplace violence;

(b) enjoin the respondent from harassing the petitioner, ~~an employee~~ a worker of the petitioner while performing the ~~employee's~~ worker's duties ~~of employment~~ as a worker, or any person while the person is present at the workplace of the petitioner;

(c) prohibit the respondent from telephoning, contacting, or otherwise communicating with the petitioner, ~~an employee~~ a worker of the petitioner while performing the ~~employee's~~ worker's duties ~~of employment~~ as a worker, or any person while the person is present at the workplace of the petitioner; or

(d) order that the respondent is excluded and shall stay away from the petitioner's workplace.

(3) The court may grant the following relief in a protective order or in a modification to a protective order, after notice and a hearing, regardless of whether the respondent appears:

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(a) any relief described in Subsection (2); and

(b) ~~{subject to Subsection }~~the relief described in Subsections 78B-7-404(~~{4}~~3)~~};~~ (b):

(i) upon a finding that the ~~{respondent's use or possession of a weapon}~~ respondent poses a serious threat of harm to the petitioner, ~~{an employee}~~ a worker of the petitioner while performing the ~~{employee's}~~ worker's duties ~~{of employment}~~ as a worker, or any other person while the person is present at the workplace of the employer~~};~~ ~~prohibit the respondent from purchasing, using, or possessing a weapon specified by the court.~~

~~———— (4) The court may not prohibit the respondent from possessing a firearm unless:~~

~~———— (a) the respondent has been given notice of the petition for a protective order and an opportunity to be heard; and~~

~~———— (b) the petition establishes:~~

~~———— (i) by a preponderance of the evidence that the respondent has committed workplace violence}; and~~

~~(ii) {by clear and convincing evidence that the respondent's use or possession of a firearm poses a serious threat of harm to the petitioner, an employee of the petitioner while performing the employee's duties of employment, or any other person while the person is present at the workplace of the petitioner.~~

~~———— (5) subject to the conditions under Subsection 78B-7-404(5).~~

(4) After the court issues a protective order, the court shall:

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

(b) transmit electronically, by the end of the business day after the day on which the court issues the order, a copy of the protective order to the local law enforcement agency that the petitioner designates; and

(c) transmit a copy of the protective order in the same manner as described in Section 78B-7-113.

(~~{6}~~5) The court may modify or vacate a protective order after notice and hearing, if the petitioner:

(a) (i) is personally served with notice of the hearing, as provided in the Utah Rules of Civil Procedure; and

(ii) appears before the court to give specific consent to the modification or vacation of the provisions of the protective order; or



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(b) submits an affidavit agreeing to the modification or vacation of the provisions of the protective order.

Section 5. Section **78B-7-1004** is enacted to read:

### **78B-7-1004. Hearings -- Expiration.**

(1) (a) A court shall set a date for a hearing on the petition to be held within 20 days after the day on which the court issues an ex parte workplace violence protective order.

(b) If, at the hearing described in Subsection (1)(a), the court does not issue a workplace violence protective order, the ex parte workplace violence protective order expires on the day on which the hearing is held, unless the court extends the ex parte workplace violence protective order.

(c) Subject to Subsection (1)(d), a court may not extend an ex parte workplace violence protective order beyond 20 days after the day on which the court issues the ex parte workplace violence protective order, unless:

(i) a party is unable to be present at the hearing for good cause, established by the party's sworn affidavit;

(ii) the respondent has not been served; or

(iii) exigent circumstances exist.

(d) If at the hearing described in Subsection (1)(a) the court issues a workplace violence protective order, the ex parte workplace violence protective order remains in effect until service of process of the workplace violence protective order is completed.

(e) A workplace violence protective order issued after notice and a hearing remains in effect for a period the court determines, not to exceed 18 months after the day on which the court issues the order, unless the order is extended in accordance with Section 78B-7-1005.

(f) (i) If the hearing on the petition is heard by a commissioner, either the petitioner or respondent may file an objection within 10 calendar days after the day on which the commissioner enters the recommended order.

(ii) If a party files an objection as described in Subsection (1)(f)(i), the assigned judge shall hold a hearing on the objection within 20 days after the day on which the party files the objection.

(2) (a) If a court denies a petition for an ex parte workplace violence protective order or a petition to modify a workplace violence protective order ex parte, the petitioner may, within

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five days after the day on which the court denies the petition, request a hearing.

(b) If the petitioner requests a hearing as described in Subsection (2)(a), the court shall:

(i) set a hearing to be held within 20 days after the day on which the petitioner makes the request; and

(ii) notify and serve the respondent.

Section 6. Section **78B-7-1005** is enacted to read:

### **78B-7-1005. Extension.**

(1) A workplace violence protective order expires automatically, unless the petitioner:

(a) files a motion before the day on which the workplace violence protective order expires; and

(b) demonstrates that:

(i) there is a substantial likelihood that the petitioner, ~~an employee~~ a worker of the petitioner while performing the ~~employee's~~ worker's duties ~~of employment~~ as a worker, or a person while the person is present at the workplace of the petitioner will be subjected to workplace violence; or

(ii) the respondent committed or was convicted of a violation of the workplace harassment protective order that the petitioner requests be extended.

(2) (a) Subject to Subsection (2)(b), if a court grants a motion described in Subsection (1)(a), the court shall set a new date on which the workplace violence protective order expires.

(b) A court may not extend a workplace violence protective order for more than 18 months after the day on which the court issues the order for extension.

(3) After the day on which the court issues an extension of a workplace violence protective order, the court shall take the action described in Subsection 78B-7-1003(5).

(4) Nothing in this part prohibits a petitioner from seeking another protective order after the day on which the petitioner's protective order expires.

Section 7. Section **78B-7-1006** is enacted to read:

### **78B-7-1006. Service of process.**

(1) The county sheriff that receives an order from a court under Subsection 78B-7-1003(5) or 78B-7-1005(3), shall:

(a) provide expedited service for the protective order; and

(b) after the protective order is served, transmit verification of service of process to the

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statewide network described in Section 78B-7-113.

(2) This section does not prohibit another law enforcement agency from providing service of process if the law enforcement agency:

(a) has contact with the respondent; or

(b) determines that, under the circumstances, providing service of process on the respondent is in the best interest of the petitioner.

Section 8. Section **78B-7-1007** is enacted to read:

### **78B-7-1007. Penalties.**

A violation of a protective order issued under this part is a class A misdemeanor.

Section 9. Section **78B-7-1008** is enacted to read:

### **78B-7-1008. Employer liability.**

(1) An employer is immune from civil liability for:

(a) seeking a workplace violence protective order, if the employer acts in good faith in seeking the order; or

(b) failing to seek a workplace violence protective order.

(2) An employer's action or statement made under this part:

(a) is not an admission of any fact; and

(b) may be used for purposes of impeachment.

Section 10. Section **78B-7-1009** is enacted to read:

### **78B-7-1009. Limitations of part.**

Nothing in this part:

(1) modifies the duty of an employer to provide a safe workplace for the ~~employees~~ workers of the employer and persons present at the workplace of the employer;

(2) prohibits a person from engaging in constitutionally protected exercise of free speech, including speech involving labor disputes concerning organized labor; or

(3) prohibits a person from engaging in an activity that is part of a labor dispute.