

SB0085S05 compared with SB0085S04

~~{deleted text}~~ shows text that was in SB0085S04 but was deleted in SB0085S05.

inserted text shows text that was not in SB0085S04 but was inserted into SB0085S05.

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~~{Senator Todd D. Weiler}~~Representative Stephanie Pitcher proposes the following substitute bill:

PROTECTIVE ORDER AND STALKING INJUNCTION

EXPUNGEMENT

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd D. Weiler

House Sponsor: Stephanie Pitcher

LONG TITLE

General Description:

This bill addresses the expungement of protective orders and stalking injunctions.

Highlighted Provisions:

This bill:

- ▶ defines terms relating to the expungement of protective orders and stalking injunctions;
- ▶ makes statutory provisions for the expungement of protective orders and stalking injunctions retroactive;
- ▶ allows for the expungement of certain protective orders and stalking injunctions;

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- ▶ provides the requirements for expunging certain protective orders and stalking injunctions;
- ▶ addresses the distribution and effect of an order for expungement of certain protective orders and stalking injunctions; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

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

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

Section 1. Section **78B-7-1001** is enacted to read:

Part 10. Expungement of Protective Orders and Stalking Injunctions

78B-7-1001. Definitions.

As used in this part:

(1) (a) Except as provided in Subsection (1)(b), "agency" means a state, county, or local government entity that generates or maintains records relating to a civil order for which expungement may be ordered.

(b) "Agency" does not include the Division of Child and Family Services created in Section 62A-4a-103.

(2) "Civil order" means:

(a) an ex parte civil protective order;

(b) an ex parte civil stalking injunction;

(c) a civil protective order; or

(d) a civil stalking injunction.

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(3) "Expunge" means to seal or otherwise restrict access to an individual's record held by an agency when the record includes a civil order.

(4) "Petitioner" means an individual petitioning for expungement of a civil order under this part.

Section 2. Section **78B-7-1002** is enacted to read:

78B-7-1002. Retroactive application.

The provisions of this part apply retroactively to all civil orders issued before, on, or after May 4, 2022.

Section 3. Section **78B-7-1003** is enacted to read:

78B-7-1003. Requirements for expungement of protective order or stalking injunction.

(1) (a) An individual against whom a civil order is sought may petition the court to expunge records of the civil order.

(b) A petition under Subsection (1) shall be filed in accordance with the Utah Rules of Civil Procedure.

(2) (a) The petitioner shall ~~{mail a copy of the petition, by first-class mail within 10 days after the day on which the petition is filed,}~~ **provide notice** to the individual whom filed the civil order against the petitioner **in accordance with Rule 4 of the Utah Rules of Civil Procedure.**

(b) The individual who filed the civil order against the petitioner:

(i) may file a written objection with the court within 30 days after the day on which the petition is received by the individual; and

(ii) if the individual files a written objection, provide a copy of the written objection to the petitioner.

(c) If the court receives a written objection to the petition for expungement of a civil order, the court shall:

(i) set a date for a hearing on the petition;

(ii) provide notice at least 30 days before the day on which the hearing is held to:

(A) all parties of the civil order; and

(B) any other person or agency that the court has reason to believe may have relevant information related to the expungement of the civil order.

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(d) The petitioner may respond, in writing, to any written objection within 14 days after the day on which the written objection is received by the court.

(3) If no written objection is received within 60 days from the day on which the petition for expungement is filed under Subsection (1), the court may grant the expungement in accordance with Subsection (4) without a hearing.

(4) A court may expunge an ex parte civil protective order or an ex parte civil stalking injunction if:

(a) the ex parte civil protective order or the ex parte civil stalking injunction was issued but:

(i) the ex parte civil protective order or the ex parte civil stalking injunction is dismissed, dissolved, or expired upon a hearing by the court;

(ii) the court did not issue a civil protective order or a civil stalking injunction on the same circumstances for which the ex parte civil protective order or the ex parte civil stalking injunction was issued;

(iii) at least 30 days have passed from the day on which the ex parte civil protective order or the ex parte civil stalking injunction was issued;

(iv) the petitioner has not been arrested, charged, or convicted for violating the ex parte civil protective order or ex parte civil stalking injunction; and

(v) there are no criminal proceedings pending against the petitioner in the state; or

(b) (i) the individual who filed the ex parte civil protective order or the ex parte civil stalking injunction failed to appear for the hearing on the ex parte civil protective order or ex parte civil stalking injunction;

(ii) at least 30 days have passed from the day on which the hearing on the ex parte civil protective order or the ex parte civil stalking injunction was set to occur, including any continuance, postponement, or rescheduling of the hearing;

(iii) the petitioner has not been arrested, charged, or convicted for violating the ex parte civil protective order or ex parte civil stalking injunction; and

(iv) there are no criminal proceedings pending against the petitioner in the state.

(5) A court may expunge a civil protective order or a civil stalking injunction if:

(a) the civil protective order or the civil stalking injunction has been dismissed, dissolved, ~~for~~ vacated, or expired;

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(b) three years have passed from the day on which the civil protective order or the civil stalking injunction is dismissed, dissolved, ~~for~~ vacated, or expired;

(c) the petitioner has not been arrested, charged, or convicted for violating the civil protective order or the civil stalking injunction; and

(d) there are no criminal proceedings pending against the petitioner in the state.

Section 4. Section **78B-7-1004** is enacted to read:

78B-7-1004. Distribution and effect of order of expungement - Penalty.

(1) An individual who receives an order of expungement under Section 78B-7-1003 shall be responsible for delivering a copy of the order of expungement to any affected agency.

(2) Upon receipt of an order of expungement as described in Subsection (1), an agency shall expunge all records described in the expungement order that are under the control of the agency.

(3) Upon entry of an expungement order by a court under Section 78B-7-1004:

(a) the civil order is considered to never have occurred; and

(b) the petitioner may reply to an inquiry on the matter as though there was never a civil order.

(4) (a) Unless ordered by a court to do so, an agency or official may not divulge information or records that have been expunged under this part.

(b) An expungement order may not restrict an agency's use or dissemination of records in the agency's ordinary course of business until the agency has received a copy of the expungement order.

(c) Any action taken by an agency after issuance of the expungement order but before the agency's receipt of a copy of the expungement order may not be invalidated by the order.

(5) An expungement order under this part may not:

(a) terminate or invalidate any pending administrative proceedings or actions of which the individual had notice according to the records of the administrative body before issuance of the expungement order;

(b) affect the enforcement of any order or findings issued by an administrative body pursuant to the administrative body's lawful authority prior to issuance of the expungement order; or

(c) prevent an agency from maintaining, sharing, or distributing any record required by

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law.

(6) An employee or agent of an agency that is prohibited from disseminating information from an expunged record under this section who knowingly or intentionally discloses identifying information from the expunged record, unless allowed by law, is guilty of a class A misdemeanor.

(7) Records expunged under this part may be released to, or viewed by, the following individuals:

(a) the petitioner; or

(b) parties to a civil action arising out of the expunged civil order, providing the information is kept confidential and utilized only in the action.

(8) This part does not preclude a court from considering the same circumstances or evidence for which an expunged civil order was issued in any proceeding that occurs after the civil order is expunged.

Section 5. **Effective date.**

This bill takes effect on July 1, 2022.