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DOMESTIC VIOLENCE AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Allen M. Christensen

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions relating to a domestic violence protective order.

Highlighted Provisions:

This bill:

- ▶ modifies provisions relating to dismissal and expiration of a domestic violence protective order; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78B-7-115, as last amended by Laws of Utah 2018, Chapter 255

78B-7-115.5, as enacted by Laws of Utah 2018, Chapter 255

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

Section 1. Section **78B-7-115** is amended to read:

78B-7-115. Dismissal of protective order -- Expiration.

(1) (a) Except as provided in Subsections (6) and (8), a protective order that has been

S.B. 75



28 in effect for at least two years may be dismissed if the court determines that the petitioner no
29 longer has a reasonable fear of future harm ~~[or]~~, abuse, or domestic violence.

30 (b) In determining whether the petitioner no longer has a reasonable fear of future harm
31 ~~[or]~~, abuse, or domestic violence, the court shall consider the following factors:

32 ~~[(a)]~~ (i) whether the respondent ~~[has complied]~~ is compliant with treatment
33 recommendations related to domestic violence, entered at the time the protective order was
34 entered;

35 ~~[(b)]~~ (ii) whether the protective order was violated during the time ~~[it]~~ the protective
36 order was in force;

37 ~~[(c)]~~ (iii) claims of harassment, abuse, or violence by either party during the time the
38 protective order was in force;

39 ~~[(d)]~~ (iv) counseling or therapy undertaken by either party;

40 ~~[(e)]~~ (v) impact on the well-being of any minor children of the parties, if relevant; and

41 ~~[(f)]~~ (vi) any other factors the court considers relevant to the case before ~~[it]~~ the court.

42 (2) Except as provided in Subsections (6) and (8), the court may amend or dismiss a
43 protective order issued in accordance with this part that has been in effect for at least one year
44 if ~~[it]~~ the court finds that:

45 (a) the basis for the issuance of the protective order no longer exists;

46 (b) the petitioner has repeatedly acted in contravention of the protective order
47 provisions to intentionally or knowingly induce the respondent to violate the protective order;

48 (c) the petitioner's actions demonstrate that the petitioner no longer has a reasonable
49 fear of the respondent; and

50 (d) the respondent has not been convicted of a protective order violation or any crime
51 of violence subsequent to the issuance of the protective order, and there are no unresolved
52 charges involving violent conduct still on file with the court.

53 (3) The court shall enter sanctions against either party if the court determines that
54 either party acted:

55 (a) in bad faith; or

56 (b) with intent to harass or intimidate ~~[either]~~ the other party.

57 (4) Notice of a motion to dismiss a protective order shall be made by personal service
58 on the petitioner in a protective order action as provided in Rules 4 and 5, Utah Rules of Civil

59 Procedure.

60 (5) Except as provided in Subsection (8), if a divorce proceeding is pending between
61 parties to a protective order action, the protective order shall be dismissed when the court
62 issues a decree of divorce for the parties if:

63 (a) the respondent files a motion to dismiss a protective order in both the divorce
64 action and the protective order action and personally serves the petitioner; and

65 (b) (i) the parties stipulate in writing or on the record to dismiss the protective order; or

66 (ii) based on evidence at the divorce trial, the court determines that the petitioner no
67 longer has a reasonable fear of future harm ~~[or], abuse, or domestic violence~~ after considering
68 the factors listed in ~~[Subsections (1)(a) through (f)]~~ Subsection (1).

69 (6) (a) Notwithstanding Subsection (1) or (2) and subject to Subsection (8), a
70 protective order that ~~[has been]~~ is entered under this chapter concerning a petitioner and a
71 respondent who are divorced shall automatically expire, subject to Subsection (6)(b), 10 years
72 ~~[from]~~ after the day on which the protective order is entered.

73 (b) The protective order shall automatically expire, as described in Subsection (6)(a),
74 unless the petitioner files a motion before expiration of the protective order and demonstrates
75 that:

76 (i) the petitioner has a reasonable fear of future harm ~~[or], abuse, or domestic violence,~~
77 as described in Subsection (1); or

78 (ii) the respondent ~~[has been]~~ committed or was convicted of a protective order
79 violation or ~~[any crime of domestic violence]~~ a qualifying domestic violence offense, as
80 defined in Section 77-36-1.1, subsequent to the issuance of the protective order.

81 (c) (i) If the court grants the motion under Subsection (6)(b), the court shall set a new
82 date on which the protective order expires.

83 (ii) The protective order will expire on the date set by the court unless the petitioner
84 files a motion described in Subsection (6)(b) to extend the protective order.

85 (7) When the court dismisses a protective order, the court shall immediately:

86 (a) issue an order of dismissal to be filed in the protective order action; and

87 (b) transmit a copy of the order of dismissal to the statewide domestic violence
88 network as described in Section 78B-7-113.

89 (8) Notwithstanding the other provisions of this section, a continuous protective order

90 may not be modified or dismissed except as provided in Subsection [77-36-5.1\(6\)](#).

91 Section 2. Section **78B-7-115.5** is amended to read:

92 **78B-7-115.5. Expiration of protective order.**

93 (1) Subject to the other provisions of this section, a civil protective order issued under
94 this part automatically expires 10 years [~~from~~] after the day on which the protective order is
95 entered.

96 (2) The protective order automatically expires as described in Subsection (1), unless
97 the petitioner files a motion before [~~expiration of the~~] the day on which the protective order
98 expires and demonstrates that:

99 (a) the petitioner has a current reasonable fear of future harm [~~or~~], abuse, or domestic
100 violence, as described in Subsection [78B-7-115\(1\)](#); or

101 (b) the respondent [~~has been~~] committed or was convicted of a protective order
102 violation or [~~any crime of domestic violence~~] a qualifying domestic violence offense, as
103 defined in Section [77-36-1.1](#), subsequent to the issuance of the protective order.

104 (3) (a) If the court grants the motion under Subsection (2), the court shall set a new
105 date on which the protective order expires.

106 (b) The protective order will expire on the date set by the court unless the petitioner
107 files a motion described in Subsection (2) to extend the protective order.