

## SB0141S01 compared with SB0141

~~deleted text~~ shows text that was in SB0141 but was deleted in SB0141S01.

inserted text shows text that was not in SB0141 but was inserted into SB0141S01.

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Senator Lyle W. Hillyard proposes the following substitute bill:

### JUDICIARY AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Lyle W. Hillyard**

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

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#### LONG TITLE

##### General Description:

This bill makes amendments related to the judiciary.

##### Highlighted Provisions:

This bill:

- ▶ requires that a petitioner attend the divorce orientation course within 30 days before filing in order to obtain the course discount fee;
- ▶ provides that a magistrate may set bail when making a probable cause determination, and that a bail commissioner may set bail in misdemeanor cases;
- ▶ requires an officer to submit a request for a court order for a criminal investigation of records concerning an electronic communication system or service or remote computing service to a magistrate rather than a district court judge;
- ▶ corrects a reference to the Utah Rules of Civil Procedure regarding depositions;

## SB0141S01 compared with SB0141

- ▶ corrects a statutory reference regarding justice court appeals;
- ▶ increases the amount of the court security surcharge;
- ▶ requires the justice court nominating commission to submit three names to the appointing authority;
- ▶ allows a justice court to follow either the established disbursement process for the local jurisdiction, or the procedure as outlined by statute, for juror and witness reimbursement; and
- ▶ makes technical corrections.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

[10-3-920, as last amended by Laws of Utah 2003, Chapter 292](#)

[17-32-1, as last amended by Laws of Utah 1993, Chapter 227](#)

30-3-11.4, as last amended by Laws of Utah 2014, Chapter 347

77-20-1, as last amended by Laws of Utah 2013, Chapter 240

77-22-2.5, as last amended by Laws of Utah 2014, Chapter 47

78A-2-301, as last amended by Laws of Utah 2014, Chapters 189 and 263

78A-2-601, as last amended by Laws of Utah 2009, Chapter 200

78A-7-118, as last amended by Laws of Utah 2012, Chapters 205 and 380

78A-7-202, as last amended by Laws of Utah 2012, Chapter 205

78B-1-122, as renumbered and amended by Laws of Utah 2008, Chapter 3

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

[Section 1. Section 10-3-920 is amended to read:](#)

**10-3-920. Bail commissioner -- Powers and duties.**

(1) With the advice and consent of the city council and the board of commissioners in other cities, the mayor of a city of the third, fourth, or fifth class may appoint from among the officers and members of the police department of the city one or more discreet persons as a bail

## SB0141S01 compared with SB0141

commissioner.

(2) A bail commissioner shall have authority to fix and receive bail for a person arrested within the corporate limits of the city in accordance with the uniform bail schedule adopted by the Judicial Council or a reasonable bail for city ordinances not contained in the schedule for:

- (a) misdemeanors under the laws of the state; or
- (b) violation of the city ordinances.

(3) A person who has been ordered by a bail commissioner to give bail may deposit with the bail commissioner the amount:

(a) in money, by cash, certified or cashier's check, personal check with check guarantee card, money order, or credit card, if the bail commissioner has chosen to establish any of those options; or

(b) by a bond issued by a licensed bail bond surety ~~[qualified under the rules of the Judicial Council]~~.

(4) Any money or bond collected by a bail commissioner shall be delivered to the appropriate court within three days of receipt of the money or bond.

(5) The court may review the amount of bail ordered by a bail commissioner and modify the amount of bail required for good cause.

### Section 2. Section 17-32-1 is amended to read:

#### **17-32-1. Powers and duties of bail commissioners.**

(1) The county executive, with the advice and consent of the county legislative body, may appoint one or more responsible and discreet members of the sheriff's department of the county as a bail commissioner.

(2) A bail commissioner ~~[shall have authority to]~~ may:

(a) receive bail for persons arrested in the county for a felony; and

(b) fix and receive bail for persons arrested in the county for ~~[misdemeanors]~~ a misdemeanor under the laws of the state, or for a violation of any of the county ordinances in accordance with the uniform bail schedule adopted by the Judicial Council or a reasonable bail for county ordinances not contained in the schedule.

(3) Any person who has been ordered by a magistrate, judge, or bail commissioner to give bail may deposit the amount with the bail commissioner:

## SB0141S01 compared with SB0141

(a) in money, by cash, certified or cashier's check, personal check with check guarantee card, money order, or credit card, if the bail commissioner has chosen to establish any of those options; or

(b) by a bond issued by a licensed bail bond surety ~~[qualified under the rules of the Judicial Council]~~.

(4) Any money or bond collected by a bail commissioner shall be delivered to the appropriate court within three days of receipt of the money or bond.

(5) The court may review the amount of bail ordered by a bail commissioner and may modify the amount of bail required for good cause.

Section ~~30-3-11.3~~. Section **30-3-11.4** is amended to read:

### **30-3-11.4. Mandatory orientation course for divorcing parties -- Purpose -- Curriculum -- Exceptions.**

(1) There is established a mandatory divorce orientation course for all parties with minor children who file a petition for temporary separation or for a divorce. A couple with no minor children are not required, but may choose to attend the course. The purpose of the course shall be to educate parties about the divorce process and reasonable alternatives.

(2) A ~~+~~petitioner shall attend a divorce orientation course no more than 60 days after filing a petition for divorce.

(3) With the exception of temporary restraining orders pursuant to Rule 65, Utah Rules of Civil Procedures, a party may file, but the court may not hear, temporary orders until the party seeking temporary orders has completed the divorce orientation course.

(4) The respondent shall attend the divorce orientation course no more than 30 days after being served with a petition for divorce.

(5) The clerk of the court shall provide notice to a petitioner of the requirement for the course, and information regarding the course shall be included with the petition or motion, when served on the respondent.

(6) The divorce orientation course shall be neutral, unbiased, at least one hour in duration, and include:

(a) options available as alternatives to divorce;

(b) resources available from courts and administrative agencies for resolving custody and support issues without filing for divorce;

## **SB0141S01 compared with SB0141**

- (c) resources available to improve or strengthen the marriage;
- (d) a discussion of the positive and negative consequences of divorce;
- (e) a discussion of the process of divorce;
- (f) options available for proceeding with a divorce, including:
  - (i) mediation;
  - (ii) collaborative law; and
  - (iii) litigation; and
- (g) a discussion of post-divorce resources.

(7) The course may be provided in conjunction with the mandatory course for divorcing parents required by Section 30-3-11.3.

(8) The Administrative Office of the Courts shall administer the course pursuant to Title 63G, Chapter 6a, Utah Procurement Code, through private or public contracts.

(9) The course may be through live instruction, video instruction, or through an online provider.

(10) Each participant shall pay the costs of the course, which may not exceed \$30, to the independent contractor providing the course at the time and place of the course. A petitioner who attends a live instruction course within 30 days ~~[of]~~ before filing may not be charged more than \$15 for the course. A respondent who attends a live instruction course within 30 days of being served with a petition for divorce may not be charged more than \$15 for the course.

(a) A fee of \$5 shall be collected, as part of the course fee paid by each participant, and deposited in the Children's Legal Defense Account described in Section 51-9-408.

(b) A participant who is unable to pay the costs of the course may attend without payment and request an Affidavit of Impecuniosity from the provider to be filed with the petition or motion. The provider shall be reimbursed for its costs by the Administrative Office of the Courts. A petitioner who is later determined not to meet the qualifications for impecuniosity may be ordered to pay the costs of the course.

(11) Appropriations from the General Fund to the Administrative Office of the Courts for the divorce orientation course shall be used to pay the costs of an indigent petitioner who is determined to be impecunious as provided in Subsection (10)(b).

(12) The Online Court Assistance Program shall include instructions with the forms for

## **SB0141S01 compared with SB0141**

divorce which inform the petitioner of the requirement of this section.

(13) Both parties shall attend a divorce orientation course before a divorce decree may be entered, unless waived by the court. A certificate of completion constitutes evidence to the court of course completion by the parties.

(14) It shall be an affirmative defense in all divorce actions that the divorce orientation requirement was not complied with, and the action may not continue until a party has complied.

(15) The Administrative Office of the Courts shall adopt a program to evaluate the effectiveness of the mandatory educational course. Progress reports shall be provided if requested by the Judiciary Interim Committee.

Section ~~(2)~~4. Section **77-20-1** is amended to read:

### **77-20-1. Right to bail -- Denial of bail -- Hearing.**

(1) A person charged with or arrested for a criminal offense shall be admitted to bail as a matter of right, except if the person is charged with a:

(a) capital felony, when the court finds there is substantial evidence to support the charge;

(b) felony committed while on probation or parole, or while free on bail awaiting trial on a previous felony charge, when the court finds there is substantial evidence to support the current felony charge;

(c) felony when there is substantial evidence to support the charge and the court finds by clear and convincing evidence that the person would constitute a substantial danger to any other person or to the community, or is likely to flee the jurisdiction of the court, if released on bail; or

(d) felony when the court finds there is substantial evidence to support the charge and it finds by clear and convincing evidence that the person violated a material condition of release while previously on bail.

(2) Any person who may be admitted to bail may be released either on the person's own recognizance or upon posting bail, on condition that the person appear in court for future court proceedings in the case, and on any other conditions imposed in the discretion of the magistrate or court that will reasonably:

(a) ensure the appearance of the accused;

## SB0141S01 compared with SB0141

(b) ensure the integrity of the court process;

(c) prevent direct or indirect contact with witnesses or victims by the accused, if appropriate; and

(d) ensure the safety of the public.

(3) (a) [~~The~~] Except as otherwise provided, the initial order denying or fixing the amount of bail shall be issued by the magistrate or court issuing the warrant of arrest ~~or by the magistrate or court presiding over the accused's first judicial appearance~~.

(b) A magistrate may set bail ~~when~~ upon determining ~~whether~~ that there was probable cause for a warrantless arrest.

(c) A bail commissioner may set bail in a misdemeanor case in accordance with Sections 10-3-920 and 17-32-1.

~~[(b)]~~ (d) A person arrested for a violation of a jail release agreement or jail release order issued pursuant to Section 77-36-2.5:

(i) may not be released before the accused's first judicial appearance; and

(ii) may be denied bail by the court under Subsection 77-36-2.5(8) or (12).

(4) The magistrate or court may rely upon information contained in:

(a) the indictment or information;

(b) any sworn probable cause statement;

(c) information provided by any pretrial services agency; or

(d) any other reliable record or source.

(5) (a) A motion to modify the initial order may be made by a party at any time upon notice to the opposing party sufficient to permit the opposing party to prepare for hearing and to permit any victim to be notified and be present.

(b) Hearing on a motion to modify may be held in conjunction with a preliminary hearing or any other pretrial hearing.

(c) The magistrate or court may rely on information as provided in Subsection (4) and may base its ruling on evidence provided at the hearing so long as each party is provided an opportunity to present additional evidence or information relevant to bail.

(6) Subsequent motions to modify bail orders may be made only upon a showing that there has been a material change in circumstances.

(7) An appeal may be taken from an order of any court denying bail to the Supreme

## SB0141S01 compared with SB0141

Court, which shall review the determination under Subsection (1).

(8) For purposes of this section, any arrest or charge for a violation of Section 76-5-202, Aggravated murder, is a capital felony unless:

(a) the prosecutor files a notice of intent to not seek the death penalty; or

(b) the time for filing a notice to seek the death penalty has expired and the prosecutor has not filed a notice to seek the death penalty.

Section ~~33~~5. Section 77-22-2.5 is amended to read:

**77-22-2.5. Court orders for criminal investigations for records concerning an electronic communications system or service or remote computing service -- Content -- Fee for providing information.**

(1) As used in this section:

(a) (i) "Electronic communication" means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photooptical system.

(ii) "Electronic communication" does not include:

(A) any wire or oral communication;

(B) any communication made through a tone-only paging device;

(C) any communication from a tracking device; or

(D) electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds.

(b) "Electronic communications service" means any service which provides for users the ability to send or receive wire or electronic communications.

(c) "Electronic communications system" means any wire, radio, electromagnetic, photooptical, or photoelectronic facilities for the transmission of wire or electronic communications, and any computer facilities or related electronic equipment for the electronic storage of the communication.

(d) "Internet service provider" has the same definition as in Section 76-10-1230.

(e) "Prosecutor" has the same definition as in Section 77-22-2.

~~[(f) "Sexual offense against a minor" means:]~~

~~[(i) sexual exploitation of a minor as defined in Section 76-5b-201 or attempted sexual exploitation of a minor;]~~



## SB0141S01 compared with SB0141

~~[(ii) a sexual offense or attempted sexual offense committed against a minor in violation of Title 76, Chapter 5, Part 4, Sexual Offenses;]~~

~~[(iii) dealing in or attempting to deal in material harmful to a minor in violation of Section 76-10-1206; or]~~

~~[(iv) enticement of a minor or attempted enticement of a minor in violation of Section 76-4-401.]~~

~~[(g) "Remote computing service" means the provision to the public of computer storage or processing services by means of an electronic communications system.]~~

(f) "Remote computing service" means the provision to the public of computer storage or processing services by means of an electronic communications system.

(g) "Sexual offense against a minor" means:

(i) sexual exploitation of a minor as defined in Section 76-5b-201 or attempted sexual exploitation of a minor;

(ii) a sexual offense or attempted sexual offense committed against a minor in violation of Title 76, Chapter 5, Part 4, Sexual Offenses;

(iii) dealing in or attempting to deal in material harmful to a minor in violation of Section 76-10-1206; or

(iv) enticement of a minor or attempted enticement of a minor in violation of Section 76-4-401.

(2) When a law enforcement agency is investigating a sexual offense against a minor, an offense of stalking under Section 76-5-106.5, or an offense of child kidnapping under Section 76-5-301.1, and has reasonable suspicion that an electronic communications system or service or remote computing service has been used in the commission of a criminal offense, a law enforcement agent shall:

(a) articulate specific facts showing reasonable grounds to believe that the records or other information sought, as designated in ~~[Subsection]~~ Subsections (1)(c)(i) through (v), are relevant and material to an ongoing investigation;

(b) present the request to a prosecutor for review and authorization to proceed; and

(c) submit the request to a ~~[district court judge]~~ magistrate for a court order, consistent with 18 U.S.C. 2703 and 18 U.S.C. 2702, to the electronic communications system or service or remote computing service provider that owns or controls the Internet protocol address,

## **SB0141S01 compared with SB0141**

websites, email address, or service to a specific telephone number, requiring the production of the following information, if available, upon providing in the court order the Internet protocol address, email address, telephone number, or other identifier, and the dates and times the address, telephone number, or other identifier was suspected of being used in the commission of the offense:

- (i) names of subscribers, service customers, and users;
- (ii) addresses of subscribers, service customers, and users;
- (iii) records of session times and durations;
- (iv) length of service, including the start date and types of service utilized; and
- (v) telephone or other instrument subscriber numbers or other subscriber identifiers,

including any temporarily assigned network address.

(3) A court order issued under this section shall state that the electronic communications system or service or remote computing service provider shall produce any records under Subsections (2)(c)(i) through (v) that are reasonably relevant to the investigation of the suspected criminal activity or offense as described in the court order.

(4) (a) An electronic communications system or service or remote computing service provider that provides information in response to a court order issued under this section may charge a fee, not to exceed the actual cost, for providing the information.

(b) The law enforcement agency conducting the investigation shall pay the fee.

(5) The electronic communications system or service or remote computing service provider served with or responding to the court order may not disclose the court order to the account holder identified pursuant to the court order for a period of 90 days.

(6) If the electronic communications system or service or remote computing service provider served with the court order does not own or control the Internet protocol address, websites, or email address, or provide service for the telephone number that is the subject of the court order, the provider shall notify the investigating law enforcement agency that it does not have the information.

(7) There is no cause of action against any provider or wire or electronic communication service, or its officers, employees, agents, or other specified persons, for providing information, facilities, or assistance in accordance with the terms of the court order issued under this section or statutory authorization.

## SB0141S01 compared with SB0141

(8) (a) A court order issued under this section is subject to the provisions of Title 77, Chapter 23b, Access to Electronic Communications.

(b) Rights and remedies for providers and subscribers under Title 77, Chapter 23b, Access to Electronic Communications, apply to providers and subscribers subject to a court order issued under this section.

(9) Every prosecutorial agency shall annually on or before February 15 report to the Commission on Criminal and Juvenile Justice:

(a) the number of requests for court orders authorized by the prosecutorial agency;

(b) the number of orders issued by the court and the criminal offense, pursuant to Subsection (2), each order was used to investigate; and

(c) if the court order led to criminal charges being filed, the type and number of offenses charged.

Section ~~44~~6. Section **78A-2-301** is amended to read:

### **78A-2-301. Civil fees of the courts of record -- Courts complex design.**

(1) (a) The fee for filing any civil complaint or petition invoking the jurisdiction of a court of record not governed by another subsection is \$360.

(b) The fee for filing a complaint or petition is:

(i) \$75 if the claim for damages or amount in interpleader exclusive of court costs, interest, and attorney fees is \$2,000 or less;

(ii) \$185 if the claim for damages or amount in interpleader exclusive of court costs, interest, and attorney fees is greater than \$2,000 and less than \$10,000;

(iii) \$360 if the claim for damages or amount in interpleader is \$10,000 or more;

(iv) \$310 if the petition is filed under Title 30, Chapter 3, Divorce, or Title 30, Chapter 4, Separate Maintenance;

(v) \$35 for a motion for temporary separation order filed under Section 30-3-4.5; and

(vi) \$125 if the petition is for removal from the Sex Offender and Kidnap Offender Registry under Section 77-41-112.

(c) The fee for filing a small claims affidavit is:

(i) \$60 if the claim for damages or amount in interpleader exclusive of court costs, interest, and attorney fees is \$2,000 or less;

(ii) \$100 if the claim for damages or amount in interpleader exclusive of court costs,

## **SB0141S01 compared with SB0141**

interest, and attorney fees is greater than \$2,000, but less than \$7,500; and

(iii) \$185 if the claim for damages or amount in interpleader exclusive of court costs, interest, and attorney fees is \$7,500 or more.

(d) The fee for filing a counter claim, cross claim, complaint in intervention, third party complaint, or other claim for relief against an existing or joined party other than the original complaint or petition is:

(i) \$55 if the claim for relief exclusive of court costs, interest, and attorney fees is \$2,000 or less;

(ii) \$150 if the claim for relief exclusive of court costs, interest, and attorney fees is greater than \$2,000 and less than \$10,000;

(iii) \$155 if the original petition is filed under Subsection (1)(a), the claim for relief is \$10,000 or more, or the party seeks relief other than monetary damages; and

(iv) \$115 if the original petition is filed under Title 30, Chapter 3, Divorce, or Title 30, Chapter 4, Separate Maintenance.

(e) The fee for filing a small claims counter affidavit is:

(i) \$50 if the claim for relief exclusive of court costs, interest, and attorney fees is \$2,000 or less;

(ii) \$70 if the claim for relief exclusive of court costs, interest, and attorney fees is greater than \$2,000, but less than \$7,500; and

(iii) \$120 if the claim for relief exclusive of court costs, interest, and attorney fees is \$7,500 or more.

(f) The fee for depositing funds under Section 57-1-29 when not associated with an action already before the court is determined under Subsection (1)(b) based on the amount deposited.

(g) The fee for filing a petition is:

(i) \$225 for trial de novo of an adjudication of the justice court or of the small claims department; and

(ii) \$65 for an appeal of a municipal administrative determination in accordance with Section 10-3-703.7.

(h) The fee for filing a notice of appeal, petition for appeal of an interlocutory order, or petition for writ of certiorari is \$225.

## **SB0141S01 compared with SB0141**

(i) The fee for filing a petition for expungement is \$135.

(j) (i) Fifteen dollars of the fees established by Subsections (1)(a) through (i) shall be allocated to and between the Judges' Contributory Retirement Trust Fund and the Judges' Noncontributory Retirement Trust Fund, as provided in Title 49, Chapter 17, Judges' Contributory Retirement Act, and Title 49, Chapter 18, Judges' Noncontributory Retirement Act.

(ii) Four dollars of the fees established by Subsections (1)(a) through (i) shall be allocated by the state treasurer to be deposited in the restricted account, Children's Legal Defense Account, as provided in Section 51-9-408.

(iii) Three dollars of the fees established under Subsections (1)(a) through (e), (1)(g), and (1)(s) shall be allocated to and deposited with the Dispute Resolution Account as provided in Section 78B-6-209.

(iv) Fifteen dollars of the fees established by Subsections (1)(a), (1)(b)(iii) and (iv), (1)(d)(iii) and (iv), (1)(g)(ii), (1)(h), and (1)(i) shall be allocated by the state treasurer to be deposited in the restricted account, Court Security Account, as provided in Section 78A-2-602.

(v) Five dollars of the fees established by Subsections (1)(b)(i) and (ii), (1)(d)(ii) and (1)(g)(i) shall be allocated by the state treasurer to be deposited in the restricted account, Court Security Account, as provided in Section 78A-2-602.

(k) The fee for filing a judgment, order, or decree of a court of another state or of the United States is \$35.

(l) The fee for filing a renewal of judgment in accordance with Section 78B-6-1801 is 50% of the fee for filing an original action seeking the same relief.

(m) The fee for filing probate or child custody documents from another state is \$35.

(n) (i) The fee for filing an abstract or transcript of judgment, order, or decree of the Utah State Tax Commission is \$30.

(ii) The fee for filing an abstract or transcript of judgment of a court of law of this state or a judgment, order, or decree of an administrative agency, commission, board, council, or hearing officer of this state or of its political subdivisions other than the Utah State Tax Commission, is \$50.

(o) The fee for filing a judgment by confession without action under Section 78B-5-205 is \$35.

## **SB0141S01 compared with SB0141**

(p) The fee for filing an award of arbitration for confirmation, modification, or vacation under Title 78B, Chapter 11, Utah Uniform Arbitration Act, that is not part of an action before the court is \$35.

(q) The fee for filing a petition or counter-petition to modify a domestic relations order other than a protective order or stalking injunction is \$100.

(r) The fee for filing any accounting required by law is:

(i) \$15 for an estate valued at \$50,000 or less;

(ii) \$30 for an estate valued at \$75,000 or less but more than \$50,000;

(iii) \$50 for an estate valued at \$112,000 or less but more than \$75,000;

(iv) \$90 for an estate valued at \$168,000 or less but more than \$112,000; and

(v) \$175 for an estate valued at more than \$168,000.

(s) The fee for filing a demand for a civil jury is \$250.

(t) The fee for filing a notice of deposition in this state concerning an action pending in another state under Utah [~~Rule~~] Rules of Civil Procedure [~~26~~], Rule 30 is \$35.

(u) The fee for filing documents that require judicial approval but are not part of an action before the court is \$35.

(v) The fee for a petition to open a sealed record is \$35.

(w) The fee for a writ of replevin, attachment, execution, or garnishment is \$50 in addition to any fee for a complaint or petition.

(x) (i) The fee for a petition for authorization for a minor to marry required by Section 30-1-9 is \$5.

(ii) The fee for a petition for emancipation of a minor provided in Title 78A, Chapter 6, Part 8, Emancipation, is \$50.

(y) The fee for a certificate issued under Section 26-2-25 is \$8.

(z) The fee for a certified copy of a document is \$4 per document plus 50 cents per page.

(aa) The fee for an exemplified copy of a document is \$6 per document plus 50 cents per page.

(bb) The Judicial Council shall by rule establish a schedule of fees for copies of documents and forms and for the search and retrieval of records under Title 63G, Chapter 2, Government Records Access and Management Act. Fees under this Subsection (1)(bb) shall

## **SB0141S01 compared with SB0141**

be credited to the court as a reimbursement of expenditures.

(cc) There is no fee for services or the filing of documents not listed in this section or otherwise provided by law.

(dd) Except as provided in this section, all fees collected under this section are paid to the General Fund. Except as provided in this section, all fees shall be paid at the time the clerk accepts the pleading for filing or performs the requested service.

(ee) The filing fees under this section may not be charged to the state, its agencies, or political subdivisions filing or defending any action. In judgments awarded in favor of the state, its agencies, or political subdivisions, except the Office of Recovery Services, the court shall order the filing fees and collection costs to be paid by the judgment debtor. The sums collected under this Subsection (1)(ee) shall be applied to the fees after credit to the judgment, order, fine, tax, lien, or other penalty and costs permitted by law.

(2) (a) (i) From March 17, 1994 until June 30, 1998, the administrator of the courts shall transfer all revenues representing the difference between the fees in effect after May 2, 1994, and the fees in effect before February 1, 1994, as dedicated credits to the Division of Facilities Construction and Management Capital Projects Fund.

(ii) (A) Except as provided in Subsection (2)(a)(ii)(B), the Division of Facilities Construction and Management shall use up to \$3,750,000 of the revenue deposited in the Capital Projects Fund under this Subsection (2)(a) to design and take other actions necessary to initiate the development of a courts complex in Salt Lake City.

(B) If the Legislature approves funding for construction of a courts complex in Salt Lake City in the 1995 Annual General Session, the Division of Facilities Construction and Management shall use the revenue deposited in the Capital Projects Fund under this Subsection (2)(a)(ii) to construct a courts complex in Salt Lake City.

(C) After the courts complex is completed and all bills connected with its construction have been paid, the Division of Facilities Construction and Management shall use any money remaining in the Capital Projects Fund under this Subsection (2)(a)(ii) to fund the Vernal District Court building.

(iii) The Division of Facilities Construction and Management may enter into agreements and make expenditures related to this project before the receipt of revenues provided for under this Subsection (2)(a)(iii).

## SB0141S01 compared with SB0141

(iv) The Division of Facilities Construction and Management shall:

(A) make those expenditures from unexpended and unencumbered building funds already appropriated to the Capital Projects Fund; and

(B) reimburse the Capital Projects Fund upon receipt of the revenues provided for under this Subsection (2).

(b) After June 30, 1998, the administrator of the courts shall ensure that all revenues representing the difference between the fees in effect after May 2, 1994, and the fees in effect before February 1, 1994, are transferred to the Division of Finance for deposit in the restricted account.

(c) The Division of Finance shall deposit all revenues received from the court administrator into the restricted account created by this section.

(d) (i) From May 1, 1995, until June 30, 1998, the administrator of the courts shall transfer \$7 of the amount of a fine or bail forfeiture paid for a violation of Title 41, Motor Vehicles, in a court of record to the Division of Facilities Construction and Management Capital Projects Fund. The division of money pursuant to Section 78A-5-110 shall be calculated on the balance of the fine or bail forfeiture paid.

(ii) After June 30, 1998, the administrator of the courts or a municipality shall transfer \$7 of the amount of a fine or bail forfeiture paid for a violation of Title 41, Motor Vehicles, in a court of record to the Division of Finance for deposit in the restricted account created by this section. The division of money pursuant to Section 78A-5-110 shall be calculated on the balance of the fine or bail forfeiture paid.

(3) (a) There is created within the General Fund a restricted account known as the State Courts Complex Account.

(b) The Legislature may appropriate money from the restricted account to the administrator of the courts for the following purposes only:

(i) to repay costs associated with the construction of the court complex that were funded from sources other than revenues provided for under this Subsection (3)(b)(i); and

(ii) to cover operations and maintenance costs on the court complex.

Section ~~57~~7. Section **78A-2-601** is amended to read:

**78A-2-601. Security surcharge -- Application and exemptions -- Deposit in restricted account.**



## SB0141S01 compared with SB0141

(1) In addition to any fine, penalty, forfeiture, or other surcharge, a security surcharge of [~~\$33~~] \$43 shall be assessed in all courts of record on all criminal convictions and juvenile delinquency judgments.

(2) The security surcharge may not be imposed upon:

(a) nonmoving traffic violations;

(b) community service; and

(c) penalties assessed by the juvenile court as part of the nonjudicial adjustment of a case under Section 78A-6-602.

(3) The security surcharge shall be collected after the surcharge under Section 51-9-401, but before any fine, and deposited with the state treasurer. A fine that would otherwise have been charged may not be reduced due to the imposition of the security surcharge.

(4) The state treasurer shall deposit the collected security surcharge in the restricted account, Court Security Account, as provided in Section 78A-2-602.

Section ~~6~~8. Section **78A-7-118** is amended to read:

**78A-7-118. Appeals from justice court -- Trial or hearing de novo in district court.**

(1) In a criminal case, a defendant is entitled to a trial de novo in the district court only if the defendant files a notice of appeal within 30 days of:

(a) sentencing, except as provided in Subsection [~~(3)~~] (4)(b); or

(b) a plea of guilty or no contest in the justice court that is held in abeyance.

(2) Upon filing a proper notice of appeal, any term of a sentence imposed by the justice court shall be stayed as provided for in Section 77-20-10 and the Rules of Criminal Procedure.

(3) If an appeal under Subsection (1) is of a plea entered pursuant to negotiation with the prosecutor, and the defendant did not reserve the right to appeal as part of the plea negotiation, the negotiation is voided by the appeal.

(4) A defendant convicted and sentenced in justice court is entitled to a hearing de novo in the district court on the following matters, if the defendant files a notice of appeal within 30 days of:

(a) an order revoking probation;

(b) an order entering a judgment of guilt pursuant to the person's failure to fulfil the

## SB0141S01 compared with SB0141

terms of a plea in abeyance agreement;

(c) a sentence entered pursuant to Subsection (4)(b); or

(d) an order denying a motion to withdraw a plea.

(5) The prosecutor is entitled to a hearing de novo in the district court on:

(a) a final judgment of dismissal;

(b) an order arresting judgment;

(c) an order terminating the prosecution because of a finding of double jeopardy or denial of a speedy trial;

(d) a judgment holding invalid any part of a statute or ordinance;

(e) a pretrial order excluding evidence, when the prosecutor certifies that exclusion of that evidence prevents continued prosecution of an infraction or class C misdemeanor;

(f) a pretrial order excluding evidence, when the prosecutor certifies that exclusion of that evidence impairs continued prosecution of a class B misdemeanor; or

(g) an order granting a motion to withdraw a plea of guilty or no contest.

(6) A notice of appeal for a hearing de novo in the district court on a pretrial order excluding evidence under Subsection (5)(e) or (f) shall be filed within 30 days of the order excluding the evidence.

(7) Upon entering a decision in a hearing de novo, the district court shall remand the case to the justice court unless:

(a) the decision results in immediate dismissal of the case;

(b) with agreement of the parties, the district court consents to retain jurisdiction; or

(c) the defendant enters a plea of guilty or no contest in the district court.

(8) The district court shall retain jurisdiction over the case on trial de novo.

(9) The decision of the district court is final and may not be appealed unless the district court rules on the constitutionality of a statute or ordinance.

Section ~~77~~9. Section **78A-7-202** is amended to read:

### **78A-7-202. Justice court judges to be appointed -- Procedure.**

(1) As used in this section:

(a) "Local government executive" means:

(i) for a county:

(A) the chair of the county commission in a county operating under the county

## **SB0141S01 compared with SB0141**

commission or expanded county commission form of county government;

(B) the county executive in a county operating under the county executive-council form of county government; and

(C) the county manager in a county operating under the council-manager form of county government; and

(ii) for a city or town:

(A) the mayor of the city or town; or

(B) the city manager, in the council-manager form of government described in Subsection 10-3b-103(6).

(b) "Local legislative body" means:

(i) for a county, the county commission or county council; and

(ii) for a city or town, the council of the city or town.

(2) There is created in each county a county justice court nominating commission to review applicants and make recommendations to the appointing authority for a justice court position. The commission shall be convened when a new justice court judge position is created or when a vacancy in an existing court occurs for a justice court located within the county.

(a) Membership of the justice court nominating commission shall be as follows:

(i) one member appointed by:

(A) the county commission if the county has a county commission form of government; or

(B) the county executive if the county has an executive-council form of government;

(ii) one member appointed by the municipalities in the counties as follows:

(A) if the county has only one municipality, appointment shall be made by the governing authority of that municipality; or

(B) if the county has more than one municipality, appointment shall be made by a municipal selection committee composed of the mayors of each municipality in the county;

(iii) one member appointed by the county bar association; and

(iv) two members appointed by the governing authority of the jurisdiction where the judicial office is located.

(b) If there is no county bar association, the member in Subsection (2)(a)(iii) shall be appointed by the regional bar association. If no regional bar association exists, the state bar

## SB0141S01 compared with SB0141

association shall make the appointment.

(c) Members appointed under Subsections (2)(a)(i) and (ii) may not be the appointing authority or an elected official of a county or municipality.

(d) The nominating commission shall submit at least [~~two~~] three names to the appointing authority of the jurisdiction expected to be served by the judge. The local government executive shall appoint a judge from the list submitted and the appointment ratified by the local legislative body.

(e) The state court administrator shall provide staff to the commission. The Judicial Council shall establish rules and procedures for the conduct of the commission.

(3) Judicial vacancies shall be advertised in a newspaper of general circulation, through the Utah State Bar, and other appropriate means.

(4) Selection of candidates shall be based on compliance with the requirements for office and competence to serve as a judge.

(5) Once selected, every prospective justice court judge shall attend an orientation seminar conducted under the direction of the Judicial Council. Upon completion of the orientation program, the Judicial Council shall certify the justice court judge as qualified to hold office.

(6) The selection of a person to fill the office of justice court judge is effective upon certification of the judge by the Judicial Council. A justice court judge may not perform judicial duties until certified by the Judicial Council.

Section ~~8~~10. Section **78B-1-122** is amended to read:

**78B-1-122. Jurors and witnesses -- Justice court judge -- Certificate of attendance -- Records and reporting.**

Every justice court shall follow the established disbursement process for juror and witness fees within the town, city, or county, or use the following procedure.

(1) [~~Every~~] A justice court judge shall [~~give~~] provide to each person who has served [~~before him~~] as a juror or as a witness in a criminal [~~cause~~] case when summoned for the prosecution by the county or city attorney, or for the defense by order of the court, a numbered certificate[~~, in which must be stated~~] that contains:

- (a) the name of the juror or witness;
- (b) the title of the proceeding;

## **SB0141S01 compared with SB0141**

(c) the number of days in attendance;

(d) the number of miles traveled if the witness has traveled more than 50 miles in going only; and

(e) the amount due.

(2) The certificate shall be presented to the county or city attorney. When certified as being correct, it shall be presented to the county or city auditor and when allowed by the county executive or town council, the auditor shall draw a warrant for it on the treasurer.

(3) Every justice court judge shall keep a record of all certificates issued. The record shall show all of the facts stated in each certificate. On the first Monday of each month a detailed statement of all certificates issued shall be filed with the treasurer.

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**Legislative Review Note**

~~as of 1-30-15 1:37 PM~~

~~Office of Legislative Research and General Counsel~~