

Renumbered 9/1/2025

**Chapter 6
Particular Proceedings**

Renumbered 9/1/2025

**Part 1
Utah Adoption Act**

Repealed 9/1/2025

78B-6-101 Title.

This part is known as the "Utah Adoption Act."

Repealed by Chapter 426, 2025 General Session

Enacted by Chapter 3, 2008 General Session

Renumbered 9/1/2025

78B-6-102 Legislative findings -- Best interest of child -- Interests of each party.

- (1) In every adoption, the best interest of the child should govern and be of foremost concern in a court's determination.
- (2) The court shall make a specific finding regarding the best interest of the child, taking into consideration information provided to the court pursuant to the requirements of this chapter relating to the health, safety, and welfare of the child and the moral climate of the potential adoptive placement.
- (3) The Legislature finds that the rights and interests of all parties affected by an adoption proceeding must be considered and balanced in determining what constitutional protections and processes are necessary and appropriate.
- (4) The Legislature specifically finds that it is not in a child's best interest to be adopted by a person or persons who are cohabiting in a relationship that is not a legally valid and binding marriage under the laws of this state. Nothing in this section limits or prohibits the court's placement of a child with a single adult who is not cohabiting or a person who is a relative of the child or a recognized placement under the Indian Child Welfare Act, 25 U.S.C. Sec. 1901 et seq.
- (5) The Legislature also finds that:
 - (a) the state has a compelling interest in providing stable and permanent homes for adoptive children in a prompt manner, in preventing the disruption of adoptive placements, and in holding parents accountable for meeting the needs of children;
 - (b) an unmarried mother, faced with the responsibility of making crucial decisions about the future of a newborn child, is entitled to privacy, and has the right to make timely and appropriate decisions regarding her future and the future of the child, and is entitled to assurance regarding the permanence of an adoptive placement;
 - (c) adoptive children have a right to permanence and stability in adoptive placements;
 - (d) adoptive parents have a constitutionally protected liberty and privacy interest in retaining custody of an adopted child;
 - (e) an unmarried biological father has an inchoate interest that acquires constitutional protection only when he demonstrates a timely and full commitment to the responsibilities of parenthood, both during pregnancy and upon the child's birth; and

- (f) the state has a compelling interest in requiring unmarried biological fathers to demonstrate commitment by providing appropriate medical care and financial support and by establishing legal paternity, in accordance with the requirements of this chapter.
- (6)
 - (a) In enacting this chapter, the Legislature has prescribed the conditions for determining whether an unmarried biological father's action is sufficiently prompt and substantial to require constitutional protection.
 - (b) If an unmarried biological father fails to grasp the opportunities to establish a relationship with his child that are available to him, his biological parental interest may be lost entirely, or greatly diminished in constitutional significance by his failure to timely exercise it, or by his failure to strictly comply with the available legal steps to substantiate it.
 - (c) A certain degree of finality is necessary in order to facilitate the state's compelling interest. The Legislature finds that the interests of the state, the mother, the child, and the adoptive parents described in this section outweigh the interest of an unmarried biological father who does not timely grasp the opportunity to establish and demonstrate a relationship with his child in accordance with the requirements of this chapter.
 - (d) The Legislature finds no practical way to remove all risk of fraud or misrepresentation in adoption proceedings, and has provided a method for absolute protection of an unmarried biological father's rights by compliance with the provisions of this chapter. In balancing the rights and interests of the state, and of all parties affected by fraud, specifically the child, the adoptive parents, and the unmarried biological father, the Legislature has determined that the unmarried biological father is in the best position to prevent or ameliorate the effects of fraud and that, therefore, the burden of fraud shall be borne by him.
 - (e) An unmarried biological father has the primary responsibility to protect his rights.
 - (f) An unmarried biological father is presumed to know that the child may be adopted without his consent unless he strictly complies with the provisions of this chapter, manifests a prompt and full commitment to his parental responsibilities, and establishes paternity.
- (7) The Legislature finds that an unmarried mother has a right of privacy with regard to her pregnancy and adoption plan, and therefore has no legal obligation to disclose the identity of an unmarried biological father prior to or during an adoption proceeding, and has no obligation to volunteer information to the court with respect to the father.

Amended by Chapter 261, 2025 General Session

Renumbered 9/1/2025

78B-6-103 Definitions.

As used in this part:

- (1) "Adoptee" means a person who:
 - (a) is the subject of an adoption proceeding; or
 - (b) has been legally adopted.
- (2) "Adoption" means the judicial act that:
 - (a) creates the relationship of parent and child where it did not previously exist; and
 - (b) except as provided in Subsections 78B-6-138(2) and (4), terminates the parental rights of any other person with respect to the child.
- (3) "Adoption document" means an adoption-related document filed with the office, a petition for adoption, a decree of adoption, an original birth certificate, or evidence submitted in support of a supplementary birth certificate.
- (4) "Adoption proceeding" means any proceeding under this part.

- (5) "Adoption service provider" means:
 - (a) a child-placing agency;
 - (b) a licensed counselor who has at least one year of experience providing professional social work services to:
 - (i) adoptive parents;
 - (ii) prospective adoptive parents; or
 - (iii) birth parents; or
 - (c) the Office of Licensing within the Department of Health and Human Services.
- (6) "Adoptive parent" means an individual who has legally adopted an adoptee.
- (7) "Adult" means an individual who is 18 years old or older.
- (8) "Adult adoptee" means an adoptee who is 18 years old or older and was adopted as a minor.
- (9) "Adult sibling" means an adoptee's brother or sister, who is 18 years old or older and whose birth mother or father is the same as that of the adoptee.
- (10) "Birth mother" means the biological mother of a child.
- (11) "Birth parent" means:
 - (a) a birth mother;
 - (b) a man whose paternity of a child is established;
 - (c) a man who:
 - (i) has been identified as the father of a child by the child's birth mother; and
 - (ii) has not denied paternity; or
 - (d) an unmarried biological father.
- (12) "Child-placing agency" means an agency licensed to place children for adoption under Title 26B, Chapter 2, Part 1, Human Services Programs and Facilities.
- (13) "Cohabiting" means residing with another person and being involved in a sexual relationship with that person.
- (14) "Division" means the Division of Child and Family Services, within the Department of Health and Human Services, created in Section 80-2-201.
- (15) "Extra-jurisdictional child-placing agency" means an agency licensed to place children for adoption by a district, territory, or state of the United States, other than Utah.
- (16) "Genetic and social history" means a comprehensive report, when obtainable, that contains the following information on an adoptee's birth parents, aunts, uncles, and grandparents:
 - (a) medical history;
 - (b) health status;
 - (c) cause of and age at death;
 - (d) height, weight, and eye and hair color;
 - (e) ethnic origins;
 - (f) where appropriate, levels of education and professional achievement; and
 - (g) religion, if any.
- (17) "Health history" means a comprehensive report of the adoptee's health status at the time of placement for adoption, and medical history, including neonatal, psychological, physiological, and medical care history.
- (18) "Identifying information" means information that is in the possession of the office and that contains the name and address of a pre-existing parent or an adult adoptee, or other specific information that by itself or in reasonable conjunction with other information may be used to identify a pre-existing parent or an adult adoptee, including information on a birth certificate or in an adoption document.
- (19) "Licensed counselor" means an individual who is licensed by the state, or another state, district, or territory of the United States as a:

- (a) certified social worker;
 - (b) clinical social worker;
 - (c) psychologist;
 - (d) marriage and family therapist;
 - (e) clinical mental health counselor; or
 - (f) an equivalent licensed professional of another state, district, or territory of the United States.
- (20) "Man" means a male individual, regardless of age.
- (21) "Mature adoptee" means an adoptee who is adopted when the adoptee is an adult.
- (22) "Office" means the Office of Vital Records and Statistics within the Department of Health and Human Services operating under Title 26B, Chapter 8, Part 1, Vital Statistics.
- (23) "Parent," for purposes of Subsection 78B-6-112(6) and Section 78B-6-119, means any person described in Subsections 78B-6-120(1)(b) through (f) from whom consent for adoption or relinquishment for adoption is required under Sections 78B-6-120 through 78B-6-122.
- (24) "Potential birth father" means a man who:
- (a) is identified by a birth mother as a potential biological father of the birth mother's child, but whose genetic paternity has not been established; and
 - (b) was not married to the biological mother of the child described in Subsection (24)(a) at the time of the child's conception or birth.
- (25) "Pre-existing parent" means:
- (a) a birth parent; or
 - (b) an individual who, before an adoption decree is entered, is, due to an earlier adoption decree, legally the parent of the child being adopted.
- (26) "Prospective adoptive parent" means an individual who seeks to adopt an adoptee.
- (27) "Relative" means:
- (a) an adult who is a grandparent, great grandparent, aunt, great aunt, uncle, great uncle, brother-in-law, sister-in-law, stepparent, first cousin, stepsibling, sibling of a child, or first cousin of a child's parent; and
 - (b) in the case of a child defined as an "Indian child" under the Indian Child Welfare Act, 25 U.S.C. Sec. 1903, an "extended family member" as defined by that statute.
- (28) "Unmarried biological father" means a man who:
- (a) is the biological father of a child; and
 - (b) was not married to the biological mother of the child described in Subsection (28)(a) at the time of the child's conception or birth.

Amended by Chapter 261, 2024 General Session

Renumbered 9/1/2025

78B-6-104 Limitations.

- (1) Sections 78B-6-143 through 78B-6-145 do not apply to adoptions by a stepparent whose spouse is the adoptee's parent.
- (2) Sections 78B-6-143 through 78B-6-145 apply only to adoptions of adoptees born in this state.

Amended by Chapter 237, 2010 General Session

Renumbered 9/1/2025

78B-6-105 District court venue -- Jurisdiction of juvenile court -- Jurisdiction over nonresidents -- Time for filing.

- (1) Notwithstanding Title 78B, Chapter 3a, Venue for Civil Actions, a person shall bring an adoption proceeding in a court with jurisdiction under Title 78A, Judiciary and Judicial Administration:
 - (a) in the county where the prospective adoptive parent resides;
 - (b) if the prospective adoptive parent is not a resident of this state, in the county where:
 - (i) the adoptee was born;
 - (ii) the adoptee resides on the day on which the petition is filed; or
 - (iii) a parent of the proposed adoptee resides on the day on which the petition is filed; or
 - (c) if the adoption proceeding is brought in the juvenile court as described in Subsection 78A-6-103(2)(a)(xiv), in accordance with Section 78A-6-350.
- (2) All orders, decrees, agreements, and notices in an adoption proceeding shall be filed with the clerk of the court where the adoption proceeding is commenced under Subsection (1).
- (3) A petition for adoption:
 - (a) may be filed before the birth of a child;
 - (b) may be filed before or after the adoptee is placed in the home of the petitioner for the purpose of adoption; and
 - (c) shall be filed no later than 30 days after the day on which the adoptee is placed in the home of the petitioners for the purpose of adoption, unless:
 - (i) the time for filing has been extended by the court; or
 - (ii) the adoption is arranged by a child-placing agency in which case the agency may extend the filing time.
- (4)
 - (a) If a person whose consent for the adoption is required under Section 78B-6-120 or 78B-6-121 cannot be found within the state, the fact of the minor's presence within the state shall confer jurisdiction on the court in proceedings under this chapter as to such absent person, provided that due notice has been given in accordance with the Utah Rules of Civil Procedure.
 - (b) The notice may not include the name of:
 - (i) a prospective adoptive parent; or
 - (ii) an unmarried mother without her consent.
- (5) Service of notice described in Subsection (6) shall vest the court with jurisdiction over the person served in the same manner and to the same extent as if the person served was served personally within the state.
- (6) In the case of service outside the state, service completed not less than five days before the time set in the notice for appearance of the person served is sufficient to confer jurisdiction.
- (7) Computation of periods of time not otherwise set forth in this section shall be made in accordance with the Utah Rules of Civil Procedure.

Amended by Chapter 158, 2024 General Session

Renumbered 9/1/2025

78B-6-106 Responsibility for own actions -- Fraud or misrepresentation.

- (1) Each parent of a child conceived or born outside of marriage is responsible for his or her own actions and is not excused from strict compliance with the provisions of this chapter based upon any action, statement, or omission of the other parent or third parties.
- (2) Any person injured by fraudulent representations or actions in connection with an adoption is entitled to pursue civil or criminal penalties in accordance with existing law. A fraudulent representation is not a defense to strict compliance with the requirements of this chapter and is not a basis for dismissal of a petition for adoption, vacation of an adoption decree, or an

automatic grant of custody to the offended party. Custody determinations shall be based on the best interests of the child, in accordance with the provisions of Section 78B-6-133.

- (3) A child-placing agency and the employees of a child-placing agency may not:
- (a) employ any device, scheme, or artifice to defraud;
 - (b) engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person;
 - (c) materially and intentionally misrepresent facts or information; or
 - (d) request or require a prospective adoptive parent to grant, as a condition of or in connection with entering into an agreement with a child-placing agency, a release of either the prospective adoptive parent's claims or the adoptive child's claims against the child-placing agency regarding any of the following:
 - (i) criminal misconduct;
 - (ii) ethical violations, as established by the Office of Licensing's administrative rules;
 - (iii) bad faith;
 - (iv) intentional torts;
 - (v) fraud;
 - (vi) gross negligence associated with care of the child, as described in Subsection 78B-6-134(3);
 - (vii) future misconduct that may arise before the adoption is finalized;
 - (viii) breach of contract; or
 - (ix) gross negligence.
- (4) Subsection (3) does not prohibit a release of claims against a child-placing agency or a child-placing agency's employees for liability arising from the acts or the failure to act of a third party.

Amended by Chapter 148, 2017 General Session

Repealed 9/1/2025

78B-6-107 Compliance with the Interstate Compact on Placement of Children -- Compliance with the Indian Child Welfare Act.

- (1)
- (a) Subject to Subsection (1)(b), in any adoption proceeding the petition for adoption shall state whether the child was born in another state and, if so, both the petition and the court's final decree of adoption shall state that the requirements of Title 80, Chapter 2, Part 9, Interstate Compact on Placement of Children, have been complied with.
 - (b) Subsection (1)(a) does not apply if the prospective adoptive parent is not required to complete a preplacement adoptive evaluation under Section 78B-6-128.
- (2) In any adoption proceeding involving an "Indian child," as defined in 25 U.S.C. Sec. 1903, a child-placing agency and the petitioners shall comply with the Indian Child Welfare Act, Title 25, Chapter 21, of the United States Code.

Repealed by Chapter 426, 2025 General Session

Amended by Chapter 335, 2022 General Session

Repealed 9/1/2025

78B-6-108 Alien child -- Evidence of lawful admission to United States required.

- (1) As used in this section, "alien child" means a child under 16 years of age who is not considered a citizen or national of the United States by the United States Immigration and Naturalization Service.

- (2) Any person adopting an alien child shall file with the petition for adoption written evidence from the United States Immigration and Naturalization Service that the child was inspected and:
 - (a) admitted into the United States for permanent residence;
 - (b) admitted into the United States temporarily in one of the lawful nonimmigrant categories specified in 8 U.S.C. Section 1101(a)(15); or
 - (c) paroled into the United States pursuant to 8 U.S.C. Section 1182(d)(5).
- (3) The 1992 amendments to this section are retroactive to September 1, 1984. Any adoption decree entered after September 1, 1984, is considered valid if the requirements of Subsection (2), as amended, were met.

Repealed by Chapter 426, 2025 General Session
Renumbered and Amended by Chapter 3, 2008 General Session

Renumbered 9/1/2025

78B-6-109 Determination of rights prior to adoption petition.

- (1)
 - (a) Any interested person may petition a court having jurisdiction over adoption proceedings for a determination of the rights and interests of any person who may claim an interest in a child under this part.
 - (b) The petition described in Subsection (1) may be filed at any time before the finalization of the adoption, including before:
 - (i) the child's birth;
 - (ii) a petition for adoption is filed; or
 - (iii) a petition to terminate parental rights is filed.
- (2) If a petition for adoption or a petition to terminate parental rights has been filed in district court, the petitioner or any interested person may, without filing a separate petition, move the court for a determination of the rights and interests of any person who may claim an interest in a child under this part.

Amended by Chapter 237, 2010 General Session

Renumbered 9/1/2025

78B-6-110 Notice of adoption proceedings.

- (1)
 - (a) An unmarried biological father, by virtue of the fact that he has engaged in a sexual relationship with a woman:
 - (i) is considered to be on notice that a pregnancy and an adoption proceeding regarding the child may occur; and
 - (ii) has a duty to protect his own rights and interests.
 - (b) An unmarried biological father is entitled to actual notice of a birth or an adoption proceeding with regard to his child only as provided in this section or Section 78B-6-110.5.
- (2) Notice of an adoption proceeding shall be served on each of the following persons:
 - (a) any person or agency whose consent or relinquishment is required under Section 78B-6-120 or 78B-6-121, unless that right has been terminated by:
 - (i) waiver;
 - (ii) relinquishment;
 - (iii) actual or implied consent; or
 - (iv) judicial action;

- (b) any person who has initiated a paternity proceeding and filed notice of that action with the state registrar of vital statistics within the Department of Health and Human Services, in accordance with Subsection (3);
 - (c) any legally appointed custodian or guardian of the adoptee;
 - (d) the petitioner's spouse, if any, only if the petitioner's spouse has not joined in the petition;
 - (e) the adoptee's spouse, if any;
 - (f) any person who, prior to the time the mother executes her consent for adoption or relinquishes the child for adoption, is recorded on the birth certificate as the child's father, with the knowledge and consent of the mother;
 - (g) a person who is:
 - (i) openly living in the same household with the child at the time the consent is executed or relinquishment made; and
 - (ii) holding himself out to be the child's father; and
 - (h) any person who is married to the child's mother at the time she executes her consent to the adoption or relinquishes the child for adoption, unless the court finds that the mother's spouse is not the child's father under Section 78B-15-607.
- (3)
- (a) In order to preserve any right to notice, an unmarried biological father shall, consistent with Subsection (3)(d):
 - (i) initiate proceedings in a district court of Utah to establish paternity under Title 78B, Chapter 15, Utah Uniform Parentage Act; and
 - (ii) file a notice of commencement of the proceedings described in Subsection (3)(a)(i) with the office of vital statistics within the Department of Health and Human Services.
 - (b) If the unmarried, biological father does not know the county in which the birth mother resides, he may initiate his action in any county, subject to a change in trial pursuant to Section 78B-3a-201.
 - (c) The Department of Health and Human Services shall provide forms for the purpose of filing the notice described in Subsection (3)(a)(ii), and make those forms available in the office of the county health department in each county.
 - (d) When the state registrar of vital statistics receives a completed form, the registrar shall:
 - (i) record the date and time the form was received; and
 - (ii) immediately enter the information provided by the unmarried biological father in the confidential registry established by Subsection 78B-6-121(3)(c).
 - (e) The action and notice described in Subsection (3)(a):
 - (i) may be filed before or after the child's birth; and
 - (ii) shall be filed prior to the mother's:
 - (A) execution of consent to adoption of the child; or
 - (B) relinquishment of the child for adoption.
- (4) Notice provided in accordance with this section need not disclose the name of the mother of the child who is the subject of an adoption proceeding.
- (5) The notice required by this section:
- (a) may be served at any time after the petition for adoption is filed, but may not be served on a birth mother before she has given birth to the child who is the subject of the petition for adoption;
 - (b) shall be served at least 30 days prior to the final dispositional hearing;
 - (c) shall specifically state that the person served shall fulfill the requirements of Subsection (6)
 - (a) within 30 days after the day on which the person receives service if the person intends to intervene in or contest the adoption;

- (d) shall state the consequences, described in Subsection (6)(b), for failure of a person to file a motion for relief within 30 days after the day on which the person is served with notice of an adoption proceeding;
 - (e) is not required to include, nor be accompanied by, a summons or a copy of the petition for adoption;
 - (f) shall state where the person may obtain a copy of the petition for adoption; and
 - (g) shall indicate the right to the appointment of counsel for a party whom the court determines is indigent and at risk of losing the party's parental rights.
- (6)
- (a) A person who has been served with notice of an adoption proceeding and who wishes to contest the adoption shall file a motion to intervene in the adoption proceeding:
 - (i) within 30 days after the day on which the person was served with notice of the adoption proceeding;
 - (ii) setting forth specific relief sought; and
 - (iii) accompanied by a memorandum specifying the factual and legal grounds upon which the motion is based.
 - (b) A person who fails to fully and strictly comply with all of the requirements described in Subsection (6)(a) within 30 days after the day on which the person was served with notice of the adoption proceeding:
 - (i) waives any right to further notice in connection with the adoption;
 - (ii) forfeits all rights in relation to the adoptee; and
 - (iii) is barred from thereafter bringing or maintaining any action to assert any interest in the adoptee.
- (7) Service of notice under this section shall be made as follows:
- (a)
 - (i) Subject to Subsection (5)(e), service on a person whose consent is necessary under Section 78B-6-120 or 78B-6-121 shall be in accordance with the provisions of the Utah Rules of Civil Procedure.
 - (ii) If service of a person described in Subsection (7)(a)(i) is by publication, the court shall designate the content of the notice regarding the identity of the parties.
 - (iii) The notice described in this Subsection (7)(a) may not include the name of a person seeking to adopt the adoptee.
 - (b)
 - (i) Except as provided in Subsection (7)(b)(ii) to any other person for whom notice is required under this section, service by certified mail, return receipt requested, is sufficient.
 - (ii) If the service described in Subsection (7)(b)(i) cannot be completed after two attempts, the court may issue an order providing for service by publication, posting, or by any other manner of service.
 - (c) Notice to a person who has initiated a paternity proceeding and filed notice of that action with the state registrar of vital statistics in the Department of Health and Human Services in accordance with the requirements of Subsection (3), shall be served by certified mail, return receipt requested, at the last address filed with the registrar.
- (8) The notice required by this section may be waived in writing by the person entitled to receive notice.
- (9) Proof of service of notice on all persons for whom notice is required by this section shall be filed with the court before the final dispositional hearing on the adoption.

- (10) Notwithstanding any other provision of law, neither the notice of an adoption proceeding nor any process in that proceeding is required to contain the name of the person or persons seeking to adopt the adoptee.
- (11) Except as to those persons whose consent to an adoption is required under Section 78B-6-120 or 78B-6-121, the sole purpose of notice under this section is to enable the person served to:
 - (a) intervene in the adoption; and
 - (b) present evidence to the court relevant to the best interest of the child.

Amended by Chapter 401, 2023 General Session

Renumbered 9/1/2025

78B-6-110.1 Prebirth notice to presumed father of intent to place a child for adoption.

- (1) As used in this section, "birth father" means:
 - (a) a potential biological father; or
 - (b) an unmarried biological father.
- (2) Before the birth of a child, the following individuals may notify a birth father of the child that the mother of the child is considering an adoptive placement for the child:
 - (a) the child's mother;
 - (b) a licensed child-placing agency;
 - (c) an attorney representing a prospective adoptive parent of the child; or
 - (d) an attorney representing the mother of the child.
- (3) Providing a birth father with notice under Subsection (2) does not obligate the mother of the child to proceed with an adoptive placement of the child.
- (4) The notice described in Subsection (2) shall include the name, address, and telephone number of the person providing the notice, and shall include the following information:
 - (a) the mother's intent to place the child for adoption;
 - (b) that the mother has named the person receiving this notice as a potential birth father of her child;
 - (c) the requirements to contest the adoption, including taking the following steps within 30 days after the day on which the notice is served:
 - (i) initiating proceedings to establish or assert paternity in a district court of Utah within 30 days after the day on which notice is served, including filing an affidavit stating:
 - (A) that the birth father is fully able and willing to have full custody of the child;
 - (B) the birth father's plans to care for the child; and
 - (C) that the birth father agrees to pay for child support and expenses incurred in connection with the pregnancy and birth; and
 - (ii) filing a notice of commencement of paternity proceedings with the state registrar of vital statistics within the Utah Department of Health;
 - (d) the consequences for failure to comply with Subsection (4)(c), including that:
 - (i) the birth father's ability to assert the right, if any, to consent or refuse to consent to the adoption is irrevocably lost;
 - (ii) the birth father will lose the ability to assert the right to contest any future adoption of the child; and
 - (iii) the birth father will lose the right, if any, to notice of any adoption proceedings related to the child;
 - (e) that the birth father may consent to the adoption, if any, within 30 days after the day on which the notice is received, and that his consent is irrevocable; and

- (f) that no communication between the mother of the child and the birth father changes the rights and responsibilities of the birth father described in the notice.
- (5) If the recipient of the notice described in Subsection (2) does not fully and strictly comply with the requirements of Subsection (4)(c) within 30 days after the day on which he receives the notice, he will lose:
 - (a) the ability to assert the right to consent or refuse to consent to an adoption of the child described in the notice;
 - (b) the ability to assert the right to contest any future adoption of the child described in the notice; and
 - (c) the right to notice of any adoption proceedings relating to the child described in the notice.
- (6) If an individual described in Subsection (2) chooses to notify a birth father under this section, the notice shall be served on a birth father in a manner consistent with the Utah Rules of Civil Procedure or by certified mail.

Amended by Chapter 148, 2017 General Session

Renumbered 9/1/2025

78B-6-110.5 Out-of-state birth mothers and adoptive parents -- Declaration regarding potential birth fathers.

The procedural and substantive requirements of this section shall be required only to the extent that they do not exceed the requirements of the state of conception or the birth mother's state of residence.

- (1)
 - (a) For a child who is six months of age or less at the time the child is placed with prospective adoptive parents, the birth mother shall sign, and the adoptive parents shall file with the court, a declaration regarding each potential birth father, in accordance with this section, before or at the time a petition for adoption is filed with the court, if, at any point during the time period beginning at the conception of the child and ending at the time the mother executes consent to adoption or relinquishment of the child for adoption, neither the birth mother nor at least one of the adoptive parents has resided in the state for 90 total days or more, as described in Subsection (1)(c).
 - (b) The child-placing agency or prospective adoptive parents shall search the putative father registry of each state where the birth mother believes the child may have been conceived and each state where the birth mother lived during her pregnancy, if the state has a putative father registry, to determine whether a potential birth father registered with the state's putative father registry.
 - (c) In determining whether the 90-day requirement is satisfied, the following apply:
 - (i) the 90 days are not required to be consecutive;
 - (ii) no absence from the state may be for more than seven consecutive days;
 - (iii) any day on which the individual is absent from the state does not count toward the total 90-day period; and
 - (iv) the 90-day period begins and ends during a period that is no more than 120 consecutive days.
- (2) The declaration filed under Subsection (1) regarding a potential birth father shall include, for each potential birth father, the following information:
 - (a) if known, the potential birth father's name, date of birth, social security number, and address;
 - (b) with regard to a state's putative father registry in each state described in Subsection (1)(b):
 - (i) whether the state has a putative father registry; and

- (ii) for each state that has a putative father registry, with the declaration, a certificate or written statement from the state's putative father registry that a search of the state's putative father registry was made and disclosing the results of the search;
 - (c) whether the potential birth father was notified of:
 - (i) the birth mother's pregnancy;
 - (ii) the fact that he is a potential birth father; or
 - (iii) the fact that the birth mother intends to consent to adoption or relinquishment of the child for adoption, in Utah;
 - (d) each state where the birth mother lived during the pregnancy;
 - (e) if known, the state in which the child was conceived;
 - (f) whether the birth mother informed the potential birth father that she was traveling to or planning to reside in Utah;
 - (g) whether the birth mother has contacted the potential birth father while she was located in Utah;
 - (h) whether, and for how long, the potential birth father has ever lived with the child;
 - (i) whether the potential birth father has given the birth mother money or offered to pay for any of her expenses during pregnancy or the child's birth;
 - (j) whether the potential birth father has offered to pay child support;
 - (k) if known, whether the potential birth father has taken any legal action to establish paternity of the child, either in Utah or in any other state, and, if known, what action he has taken; and
 - (l) whether the birth mother has ever been involved in a domestic violence matter with the potential birth father.
- (3) Except as provided in Subsection (5), based on the declaration regarding the potential birth father, the court shall order the birth mother to serve a potential birth father notice that she intends to consent or has consented to adoption or relinquishment of the child for adoption, if the court finds that the potential birth father:
- (a) has taken sufficient action to demonstrate an interest in the child;
 - (b) has taken sufficient action to attempt to preserve his legal rights as a birth father, including by filing a legal action to establish paternity or filing with a state's putative father registry; or
 - (c) does not know, and does not have a reason to know, that:
 - (i) the mother or child are present in Utah;
 - (ii) the mother intended to give birth to the child in Utah;
 - (iii) the child was born in Utah; or
 - (iv) the mother intends to consent to adoption or relinquishment of the child for adoption in Utah.
- (4) Notice under this section shall be made in accordance with Subsections 78B-6-110(7) through (11).
- (5) A court may only order the notice requirements in Subsection (3) to the extent that they do not exceed the notice requirements of:
- (a) the state of conception; or
 - (b) the birth mother's state of residence.

Amended by Chapter 491, 2019 General Session

Repealed 9/1/2025

78B-6-111 Criminal sexual offenses.

- (1) As used in this section:
- (a) "Sexual offense" means:

- (i) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses; or
 - (ii) an offense under the laws of the state where the child was conceived that is substantially similar to an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses.
- (b) "Sexual offense" does not include:
- (i) an offense described in Section 76-5-417, 76-5-418, 76-5-419, or 76-5-420; or
 - (ii) an offense under the laws of the state where the child was conceived that is substantially similar to an offense described in Section 76-5-417, 76-5-418, 76-5-419, or 76-5-420.
- (2) An unmarried biological father is not entitled to notice of an adoption proceeding, nor is the consent of an unmarried biological father required in connection with an adoption proceeding, in cases where it is shown that the child who is the subject of the proceeding was conceived as a result of conduct that constitutes a sexual offense, regardless of whether the unmarried biological father is formally charged with or convicted of the sexual offense.

Amended by Chapter 173, 2025 General Session

Renumbered 9/1/2025

78B-6-112 District court jurisdiction over termination of parental rights proceedings.

- (1) A party may bring a petition seeking to terminate parental rights in the child for the purpose of facilitating the adoption of the child in a court with jurisdiction under Title 78A, Judiciary and Judicial Administration.
- (2) A petition to terminate parental rights under this section may be:
- (a) joined with a proceeding on an adoption petition; or
 - (b) filed as a separate proceeding before or after a petition to adopt the child is filed.
- (3) A court may enter a final order terminating parental rights before a final decree of adoption is entered.
- (4)
- (a) Nothing in this section limits the jurisdiction of a juvenile court relating to proceedings to terminate parental rights as described in Section 78A-6-103.
 - (b) A court may not terminate parental rights in a child if the child is under the jurisdiction of the juvenile court in a pending abuse, neglect, dependency, or termination of parental rights proceeding.
- (5) The court may terminate an individual's parental rights in a child if:
- (a) the individual executes a voluntary consent to adoption, or relinquishment for adoption, of the child, in accordance with:
 - (i) the requirements of this chapter; or
 - (ii) the laws of another state or country, if the consent is valid and irrevocable;
 - (b) the individual is an unmarried biological father who is not entitled to consent to adoption, or relinquishment for adoption, under Section 78B-6-120 or 78B-6-121;
 - (c) the individual:
 - (i) received notice of the adoption proceeding relating to the child under Section 78B-6-110; and
 - (ii) failed to file a motion for relief, under Subsection 78B-6-110(6), within 30 days after the day on which the individual was served with notice of the adoption proceeding;
 - (d) the court finds, under Section 78B-15-607, that the individual is not a parent of the child; or
 - (e) the individual's parental rights are terminated on grounds described in Title 80, Chapter 4, Termination and Restoration of Parental Rights, and termination is in the best interests of the child.
- (6) The court shall appoint an indigent defense service provider in accordance with Title 78B, Chapter 22, Indigent Defense Act, to represent a parent who faces any action initiated by a

private party under Title 80, Chapter 4, Termination and Restoration of Parental Rights, or whose parental rights are subject to termination under this section.

- (7) If a county incurs expenses in providing indigent defense services to an indigent individual facing any action initiated by a private party under Title 80, Chapter 4, Termination and Restoration of Parental Rights, or termination of parental rights under this section, the county may apply for reimbursement from the Utah Indigent Defense Commission in accordance with Section 78B-22-406.
- (8) A petition filed under this section is subject to the procedural requirements of this chapter.

Amended by Chapter 158, 2024 General Session

Repealed 9/1/2025

78B-6-113 Prospective adoptive parent not a resident -- Preplacement requirements.

- (1) When an adoption petition is to be finalized in this state with regard to any prospective adoptive parent who is not a resident of this state at the time a child is placed in that person's home, the prospective adoptive parent shall comply with the provisions of Sections 78B-6-128 and 78B-6-130.
- (2) Except as provided in Subsection 78B-6-131(2), in addition to the other requirements of this section, before a child in state custody is placed with a prospective foster parent or a prospective adoptive parent, the Department of Health and Human Services shall comply with Section 78B-6-131.

Repealed by Chapter 426, 2025 General Session

Amended by Chapter 330, 2023 General Session

Repealed 9/1/2025

78B-6-114 Adoption by married persons -- Consent.

- (1) A married man who is not lawfully separated from his wife may not adopt a child without the consent of his wife, if his wife is capable of giving consent.
- (2) A married woman who is not lawfully separated from her husband may not adopt a child without his consent, if he is capable of giving his consent.

Repealed by Chapter 426, 2025 General Session

Renumbered and Amended by Chapter 3, 2008 General Session

Renumbered 9/1/2025

78B-6-115 Who may adopt -- Adoption of adult.

- (1) As used in this section, "vulnerable adult" means:
 - (a) an individual who is 65 years old or older; or
 - (b) an adult who is 18 years old or older, and who has a mental or physical impairment that substantially affects that adult's ability to:
 - (i) provide personal protection;
 - (ii) provide necessities such as food, shelter, clothing, or medical or other health care;
 - (iii) obtain services necessary for health, safety, or welfare;
 - (iv) carry out the activities of daily living;
 - (v) manage the adult's own resources; or
 - (vi) comprehend the nature and consequences of remaining in a situation of abuse, neglect, or exploitation.

- (2) Subject to this section and Section 78B-6-117, any adult may be adopted by another adult.
- (3) The following provisions of this part apply to the adoption of an adult just as though the individual being adopted were a minor:
 - (a)
 - (i) Section 78B-6-108;
 - (ii) Section 78B-6-114;
 - (iii) Section 78B-6-116;
 - (iv) Section 78B-6-118;
 - (v) Section 78B-6-124;
 - (vi) Section 78B-6-136;
 - (vii) Section 78B-6-137;
 - (viii) Section 78B-6-138;
 - (ix) Section 78B-6-139;
 - (x) Section 78B-6-141; and
 - (xi) Section 78B-6-142;
 - (b) Subsections 78B-6-105(1)(a), (1)(b)(i), (1)(b)(ii), (2), and (7), except that the juvenile court does not have jurisdiction over a proceeding for adoption of an adult, unless the adoption arises from a case where the juvenile court has continuing jurisdiction over the mature adoptee; and
 - (c) if the mature adoptee is a vulnerable adult, Sections 78B-6-128 through 78B-6-131, regardless of whether the mature adoptee resides, or will reside, with the adopters, unless the court, based on a finding of good cause, waives the requirements of those sections.
- (4) Before a court enters a final decree of adoption of a mature adoptee, the mature adoptee and the prospective adoptive parent or parents shall appear before the court presiding over the adoption proceeding and execute consent to the adoption.
- (5) No provision of this part, other than those listed or described in this section or Section 78B-6-117, apply to the adoption of an adult.

Amended by Chapter 65, 2021 General Session

Renumbered 9/1/2025

78B-6-116 Notice and consent for adoption of an adult.

- (1)
 - (a) Consent to the adoption of an adult is required from:
 - (i) the mature adoptee;
 - (ii) any person who is adopting the adult;
 - (iii) the spouse of a person adopting the adult; and
 - (iv) any legally appointed guardian or custodian of the adult adoptee.
 - (b) No person, other than a person described in Subsection (1)(a), may consent, or withhold consent, to the adoption of an adult.
- (2)
 - (a) Except as provided in Subsection (2)(b), notice of a proceeding for the adoption of an adult shall be served on each person described in Subsection (1)(a) and the spouse of the mature adoptee.
 - (b) The notice described in Subsection (2)(a) may be waived, in writing, by the person entitled to receive notice.
- (3) The notice described in Subsection (2):
 - (a) shall be served at least 30 days before the day on which the adoption is finalized;

- (b) shall specifically state that the person served must respond to the petition within 30 days of service if the person intends to intervene in the adoption proceeding;
- (c) shall state the name of the person to be adopted;
- (d) may not state the name of a person adopting the mature adoptee, unless the person consents, in writing, to disclosure of the person's name;
- (e) with regard to a person described in Subsection (1)(a):
 - (i) except as provided in Subsection (2)(b), shall be in accordance with the provisions of the Utah Rules of Civil Procedure; and
 - (ii) may not be made by publication; and
- (f) with regard to the spouse of the mature adoptee, may be made:
 - (i) in accordance with the provisions of the Utah Rules of Civil Procedure;
 - (ii) by certified mail, return receipt requested; or
 - (iii) by publication, posting, or other means if:
 - (A) the service described in Subsection (3)(f)(ii) cannot be completed after two attempts; and
 - (B) the court issues an order providing for service by publication, posting, or other means.
- (4) Proof of service of the notice on each person to whom notice is required by this section shall be filed with the court before the adoption is finalized.
- (5)
 - (a) Any person who is served with notice of a proceeding for the adoption of an adult and who wishes to intervene in the adoption shall file a motion in the adoption proceeding:
 - (i) within 30 days after the day on which the person is served with notice of the adoption proceeding;
 - (ii) that sets forth the specific relief sought; and
 - (iii) that is accompanied by a memorandum specifying the factual and legal grounds upon which the motion is made.
 - (b) A person who fails to file the motion described in Subsection (5)(a) within the time described in Subsection (5)(a)(i):
 - (i) waives any right to further notice of the adoption proceeding; and
 - (ii) is barred from intervening in, or bringing or maintaining any action challenging, the adoption proceeding.
- (6) Except as provided in Subsection (7), after a court enters a final decree of adoption of an adult, the mature adoptee shall:
 - (a) serve notice of the finalization of the adoption, pursuant to the Utah Rules of Civil Procedure, on each person who was a legal parent of the adult adoptee before the final decree of adoption described in this Subsection (6) was entered; and
 - (b) file with the court proof of service of the notice described in Subsection (6)(a).
- (7) A court may, based on a finding of good cause, waive the notification requirement described in Subsection (6).

Amended by Chapter 137, 2015 General Session

Renumbered 9/1/2025

78B-6-117 Who may adopt -- Adoption of minor.

- (1) A minor child may be adopted by an adult individual, in accordance with this section and this part.
- (2) A child may be adopted by:
 - (a) adults who are legally married to each other in accordance with the laws of this state, including adoption by a stepparent; or

- (b) subject to Subsections (3) and (4), a single adult.
- (3) A child may not be adopted by an individual who is cohabiting in a relationship that is not a legally valid and binding marriage under the laws of this state unless the individual is a relative of the child or a recognized placement under the Indian Child Welfare Act, 25 U.S.C. Sec. 1901 et seq.
- (4) To provide a child who is in the custody of the division with the most beneficial family structure, when a child in the custody of the division is placed for adoption, the division or child-placing agency shall place the child with a married couple, unless:
 - (a) there are no qualified married couples who:
 - (i) have applied to adopt a child;
 - (ii) are willing to adopt the child; and
 - (iii) are an appropriate placement for the child;
 - (b) the child is placed with a relative of the child;
 - (c) the child is placed with an individual who has already developed a substantial relationship with the child;
 - (d) the child is placed with an individual who:
 - (i) is selected by a parent or former parent of the child, if the parent or former parent consented to the adoption of the child; and
 - (ii) the parent or former parent described in Subsection (4)(d)(i):
 - (A) knew the individual with whom the child is placed before the parent consented to the adoption; or
 - (B) became aware of the individual with whom the child is placed through a source other than the division or the child-placing agency that assists with the adoption of the child; or
 - (e) it is in the best interests of the child to place the child with a single adult.
- (5) Except as provided in Subsection (6), an adult may not adopt a child if, before adoption is finalized, the adult has been convicted of, pleaded guilty to, or pleaded no contest to a felony or attempted felony involving conduct that constitutes any of the following:
 - (a) child abuse, as described in Section 76-5-109;
 - (b) aggravated child abuse, as described in Section 76-5-109.2;
 - (c) child abandonment, as described in Section 76-5-109.3;
 - (d) child torture, as described in Section 76-5-109.4;
 - (e) commission of domestic violence in the presence of a child, as described in Section 76-5-114;
 - (f) child abuse homicide, as described in Section 76-5-208;
 - (g) child kidnapping, as described in Section 76-5-301.1;
 - (h) human trafficking of a child, as described in Section 76-5-308.5;
 - (i) sexual abuse of a minor, as described in Section 76-5-401.1;
 - (j) rape of a child, as described in Section 76-5-402.1;
 - (k) object rape of a child, as described in Section 76-5-402.3;
 - (l) sodomy on a child, as described in Section 76-5-403.1;
 - (m) sexual abuse of a child, as described in Section 76-5-404.1, or aggravated sexual abuse of a child, as described in Section 76-5-404.3;
 - (n) sexual exploitation of a minor, as described in Section 76-5b-201;
 - (o) aggravated sexual exploitation of a minor, as described in Section 76-5b-201.1; or
 - (p) an offense in another state that, if committed in this state, would constitute an offense described in this Subsection (5).
- (6)

- (a) For purpose of this Subsection (6), "disqualifying offense" means an offense listed in Subsection (5) that prevents a court from considering an individual for adoption of a child except as provided in this Subsection (6).
- (b) An individual described in Subsection (5) may only be considered for adoption of a child if the following criteria are met by clear and convincing evidence:
 - (i) at least 10 years have elapsed from the day on which the individual is successfully released from prison, jail, parole, or probation related to a disqualifying offense;
 - (ii) during the 10 years before the day on which the individual files a petition with the court seeking adoption, the individual has not been convicted, pleaded guilty, or pleaded no contest to an offense greater than an infraction or traffic violation that would likely impact the health, safety, or well-being of the child;
 - (iii) the individual can provide evidence of successful treatment or rehabilitation directly related to the disqualifying offense;
 - (iv) the court determines that the risk related to the disqualifying offense is unlikely to cause harm, as defined in Section 80-1-102, or potential harm to the child currently or at any time in the future when considering all of the following:
 - (A) the child's age;
 - (B) the child's gender;
 - (C) the child's development;
 - (D) the nature and seriousness of the disqualifying offense;
 - (E) the preferences of a child 12 years old or older;
 - (F) any available assessments, including custody evaluations, home studies, pre-placement adoptive evaluations, parenting assessments, psychological or mental health assessments, and bonding assessments; and
 - (G) any other relevant information;
 - (v) the individual can provide evidence of all of the following:
 - (A) the relationship with the child is of long duration;
 - (B) that an emotional bond exists with the child; and
 - (C) that adoption by the individual who has committed the disqualifying offense ensures the best interests of the child are met; and
 - (vi) the adoption is by:
 - (A) a stepparent whose spouse is the adoptee's parent and consents to the adoption; or
 - (B) subject to Subsection (6)(d), a relative of the child as defined in Section 80-3-102 and there is not another relative without a disqualifying offense filing an adoption petition.
- (c) The individual with the disqualifying offense bears the burden of proof regarding why adoption with that individual is in the best interest of the child over another responsible relative or equally situated individual who does not have a disqualifying offense.
- (d) If there is an alternative responsible relative who does not have a disqualifying offense filing an adoption petition, the following applies:
 - (i) preference for adoption shall be given to a relative who does not have a disqualifying offense; and
 - (ii) before the court may grant adoption to the individual who has the disqualifying offense over another responsible, willing, and able relative:
 - (A) an impartial custody evaluation shall be completed; and
 - (B) a guardian ad litem shall be assigned.
- (7) Subsections (5) and (6) apply to a case pending on March 25, 2017, for which a final decision on adoption has not been made and to a case filed on or after March 25, 2017.

Amended by Chapter 284, 2025 General Session

Repealed 9/1/2025

78B-6-118 Relative ages.

A person adopting a child must be at least 10 years older than the child adopted, unless the petitioners for adoption are a married couple, one of which is at least 10 years older than the child.

Repealed by Chapter 426, 2025 General Session

Renumbered and Amended by Chapter 3, 2008 General Session

Renumbered 9/1/2025

78B-6-119 Counseling for parents.

- (1) Subject to Subsection (2)(a), before relinquishing a child to a child-placing agency, or consenting to the adoption of a child, a parent of the child has the right to participate in, or elect to participate in, counseling:
 - (a) by a licensed counselor or an adoption service provider selected by the parent participating in the counseling;
 - (b) for up to three sessions of at least 50 minutes per session completed prior to relinquishing a child or within three months following the relinquishment of a child; and
 - (c) subject to Subsection (2)(b), at the expense of the:
 - (i) child-placing agency; or
 - (ii) prospective adoptive parents.
- (2)
 - (a) Notwithstanding Subsection (1), a parent who has the right to participate in the counseling described in this section may waive that right.
 - (b) Notwithstanding Subsection (1)(c), the total amount required to be paid by a child-placing agency or the prospective adoptive parents for the counseling described in Subsection (1) may not exceed \$400, unless an agreement for a greater amount is signed by:
 - (i) the parent who receives the counseling; and
 - (ii) the child-placing agency or prospective adoptive parents.
- (3) Before a parent relinquishes a child to a child-placing agency, or consents to the adoption of a child, the parent shall be informed of the right described in Subsection (1) by the:
 - (a) child-placing agency;
 - (b) prospective adoptive parents; or
 - (c) representative of a person described in Subsection (3)(a) or (b).
- (4) If the parent who is entitled to the counseling as described in Subsection (1) elects to attend one or more counseling sessions following the relinquishment of a child:
 - (a) the parent of the child shall inform the child-placing agency or prospective adoptive parents of this election prior to relinquishing the child to a child-placing agency or consenting to the adoption of the child; and
 - (b) the parent of the child and the child-placing agency or attorney representing a prospective adoptive parent of the child shall enter into an agreement to pay for the counseling in accordance with this section.
- (5)
 - (a) Subject to Subsections (3)(b) and (c), before the day on which a final decree of adoption is entered, a statement shall be filed with the court that:
 - (i) is signed by each parent who:
 - (A) relinquishes the parent's parental rights; or

- (B) consents to the adoption; and
- (ii) states that, before the parent took the action described in Subsection (5)(a)(i)(A) or (B), the parent was advised of the parent's right to participate in the counseling described in this section at the expense of the:
 - (A) child-placing agency; or
 - (B) prospective adoptive parents.
- (b) The statement described in Subsection (5)(a) may be included in the document that:
 - (i) relinquishes the parent's parental rights; or
 - (ii) consents to the adoption.
- (c) Failure by a person to give the notice described in Subsection (3), or pay for the counseling described in this section:
 - (i) shall not constitute grounds for invalidating a:
 - (A) relinquishment of parental rights; or
 - (B) consent to adoption; and
 - (ii) shall give rise to a cause of action for the recovery of damages suffered, if any, by the parent or guardian who took the action described in Subsection (5)(c)(i)(A) or (B) against the person required to:
 - (A) give the notice described in Subsection (3); or
 - (B) pay for the counseling described in this section.

Amended by Chapter 261, 2024 General Session

Renumbered 9/1/2025

78B-6-120 Necessary consent to adoption or relinquishment for adoption.

- (1) Except as provided in Subsection (2), consent to adoption of a child, or relinquishment of a child for adoption, is required from:
 - (a) the adoptee, if the adoptee is more than 12 years old, unless the adoptee does not have the mental capacity to consent;
 - (b) a man or woman who:
 - (i) by operation of law under Section 78B-15-204, is recognized as the father or mother of the proposed adoptee, unless:
 - (A) the presumption is rebutted under Section 78B-15-607;
 - (B) at the time of the marriage, the man or woman knew or reasonably should have known that the marriage to the mother of the proposed adoptee was or could be declared invalid; or
 - (C) the man or woman was not married to the mother of the proposed adoptee until after the mother consented to adoption, or relinquishment for adoption, of the proposed adoptee; or
 - (ii) is the father of the adoptee by a previous legal adoption;
 - (c) the mother of the adoptee;
 - (d) a biological parent who has been adjudicated to be the child's biological father by a court of competent jurisdiction prior to the mother's execution of consent to adoption or her relinquishment of the child for adoption;
 - (e) consistent with Subsection (3), a biological parent who has executed and filed a voluntary declaration of paternity with the state registrar of vital statistics within the Department of Health in accordance with Title 78B, Chapter 15, Utah Uniform Parentage Act, prior to the mother's execution of consent to adoption or her relinquishment of the child for adoption;

- (f) an unmarried biological father, of an adoptee, whose consent is not required under Subsection (1)(d) or (1)(e), only if he fully and strictly complies with the requirements of Sections 78B-6-121 and 78B-6-122; and
 - (g) the person or agency to whom an adoptee has been relinquished and that is placing the child for adoption.
- (2)
- (a) The consent of a person described in Subsections (1)(b) through (g) is not required if the adoptee is 18 years old or older.
 - (b) The consent of a person described in Subsections (1)(b) through (f) is not required if the person's parental rights relating to the adoptee have been terminated.
- (3) For purposes of Subsection (1)(e), a voluntary declaration of paternity is considered filed when it is entered into a database that:
- (a) can be accessed by the Department of Health and Human Services; and
 - (b) is designated by the state registrar of vital statistics as the official database for voluntary declarations of paternity.

Amended by Chapter 261, 2024 General Session

Repealed 9/1/2025

78B-6-120.1 Implied consent.

- (1) As used in this section:
- (a) "Abandonment" means failure of a father, with reasonable knowledge of the pregnancy, to offer and provide financial and emotional support to the birth mother for a period of six months before the day on which the adoptee is born.
 - (b) "Emotional support" means a pattern of statements or actions that indicate to a reasonable person that a father intends to provide for the physical and emotional well-being of an unborn child.
- (2)
- (a) A court may not determine that a father abandoned the birth mother if the father failed to provide financial or emotional support because the birth mother refused to accept support.
 - (b) A court may not find that a father failed to provide emotional support if the father's failure was due to impossibility of performance.
- (3) Consent or relinquishment, as required by Subsection 78B-6-120(1), may be implied by any of the following acts:
- (a) abandonment;
 - (b) leaving the adoptee with a third party, without providing the third party with the parent's identification, for 30 consecutive days;
 - (c) knowingly leaving the adoptee with another person, without providing for support, communicating, or otherwise maintaining a substantial relationship with the adoptee, for six consecutive months; or
 - (d) receiving notification of a pending adoption proceeding under Subsection 78B-6-110(6) or of a termination proceeding under Section 78B-6-112 and failing to respond as required.
- (4) Implied consent under Subsection (3) may not be withdrawn.
- (5) Nothing in this section negates the requirements of Section 78B-6-121 or 78B-6-122 for an unmarried biological father.

Repealed by Chapter 426, 2025 General Session

Amended by Chapter 65, 2021 General Session

Renumbered 9/1/2025

78B-6-121 Consent of unmarried biological father.

- (1) Except as provided in Subsections (2)(a) and 78B-6-122(1), and subject to Subsections (5) and (6), with regard to a child who is placed with prospective adoptive parents more than six months after birth, consent of an unmarried biological father is not required unless the unmarried biological father:
 - (a)
 - (i) developed a substantial relationship with the child by:
 - (A) visiting the child monthly, unless the unmarried biological father was physically or financially unable to visit the child on a monthly basis; or
 - (B) engaging in regular communication with the child or with the person or authorized agency that has lawful custody of the child;
 - (ii) took some measure of responsibility for the child and the child's future; and
 - (iii) demonstrated a full commitment to the responsibilities of parenthood by financial support of the child of a fair and reasonable sum in accordance with the father's ability; or
 - (b)
 - (i) openly lived with the child:
 - (A)
 - (I) if the child is one year old or older, for a period of at least six months during the one-year period immediately preceding the day on which the child is placed with prospective adoptive parents; or
 - (II) if the child is less than one year old, for a period of at least six months during the period of time beginning on the day on which the child is born and ending on the day on which the child is placed with prospective adoptive parents; and
 - (B) immediately preceding placement of the child with prospective adoptive parents; and
 - (ii) openly held himself out to be the father of the child during the six-month period described in Subsection (1)(b)(i)(A).
- (2)
 - (a) If an unmarried biological father was prevented from complying with a requirement of Subsection (1) by the person or authorized agency having lawful custody of the child, the unmarried biological father is not required to comply with that requirement.
 - (b) The subjective intent of an unmarried biological father, whether expressed or otherwise, that is unsupported by evidence that the requirements in Subsection (1) have been met, shall not preclude a determination that the father failed to meet the requirements of Subsection (1).
- (3) Except as provided in Subsections (6) and 78B-6-122(1), and subject to Subsection (5), with regard to a child who is six months old or less at the time the child is placed with prospective adoptive parents, consent of an unmarried biological father is not required unless, prior to the time the mother executes her consent for adoption or relinquishes the child for adoption, the unmarried biological father:
 - (a) initiates proceedings in a district court of Utah to establish paternity under Title 78B, Chapter 15, Utah Uniform Parentage Act;
 - (b) files with the court that is presiding over the paternity proceeding a sworn affidavit:
 - (i) stating that he is fully able and willing to have full custody of the child;
 - (ii) setting forth his plans for care of the child; and
 - (iii) agreeing to a court order of child support and the payment of expenses incurred in connection with the mother's pregnancy and the child's birth;

- (c) consistent with Subsection (4), files notice of the commencement of paternity proceedings, described in Subsection (3)(a), with the state registrar of vital statistics within the Department of Health and Human Services, in a confidential registry established by the department for that purpose; and
 - (d) offered to pay and paid, during the pregnancy and after the child's birth, a fair and reasonable amount of the expenses incurred in connection with the mother's pregnancy and the child's birth, in accordance with his financial ability, unless:
 - (i) he did not have actual knowledge of the pregnancy;
 - (ii) he was prevented from paying the expenses by the person or authorized agency having lawful custody of the child; or
 - (iii) the mother refused to accept the unmarried biological father's offer to pay the expenses described in this Subsection (3)(d).
- (4)
- (a) The notice described in Subsection (3)(c) is considered filed when received by the state registrar of vital statistics.
 - (b) If the unmarried biological father fully complies with the requirements of Subsection (3), and an adoption of the child is not completed, the unmarried biological father shall, without any order of the court, be legally obligated for a reasonable amount of child support, pregnancy expenses, and child birth expenses, in accordance with his financial ability.
- (5) Unless his ability to assert the right to consent has been lost for failure to comply with Section 78B-6-110.1, or lost under another provision of Utah law, an unmarried biological father shall have at least one business day after the child's birth to fully and strictly comply with the requirements of Subsection (3).
- (6) Consent of an unmarried biological father is not required under this section if:
- (a) the court determines, in accordance with the requirements and procedures of Title 80, Chapter 4, Termination and Restoration of Parental Rights, that the unmarried biological father's rights should be terminated, based on the petition of any interested party;
 - (b)
 - (i) a declaration of paternity declaring the unmarried biological father to be the father of the child is rescinded under Section 78B-15-306; and
 - (ii) the unmarried biological father fails to comply with Subsection (3) within 10 business days after the day that notice of the rescission described in Subsection (6)(b)(i) is mailed by the Office of Vital Records within the Department of Health and Human Services as provided in Section 78B-15-306; or
 - (c) the unmarried biological father is notified under Section 78B-6-110.1 and fails to preserve his rights in accordance with the requirements of that section.
- (7) Unless the adoptee is conceived or born within a marriage, the petitioner in an adoption proceeding shall, prior to entrance of a final decree of adoption, file with the court a certificate from the state registrar of vital statistics within the Department of Health and Human Services, stating:
- (a) that a diligent search has been made of the registry of notices from unmarried biological fathers described in Subsection (3)(d); and
 - (b)
 - (i) that no filing has been found pertaining to the father of the child in question; or
 - (ii) if a filing is found, the name of the putative father and the time and date of filing.

Amended by Chapter 261, 2024 General Session

Renumbered 9/1/2025

78B-6-121.5 Compact for Interstate Sharing of Putative Father Registry Information -- Severability clause.

COMPACT FOR INTERSTATE SHARING
OF PUTATIVE FATHER REGISTRY INFORMATION

ARTICLE I

PURPOSE

This compact enables the sharing of putative father registry information collected by a state that is a party to the compact with all other states that are parties to the compact.

ARTICLE II

DEFINITIONS

(1) "Putative father" means a man who may be the biological father of a child because the man had a sexual relationship with a woman to whom he is not married.

(2) "Putative father registry" mean a registry of putative fathers maintained and used by a state as part of its legal process for protecting a putative father's rights.

(3) "State" includes a state, district, or territory of the United States.

ARTICLE III

ENTRY, WITHDRAWAL, AND AMENDMENTS

(1) A state is a party to this compact upon enactment of this compact by the state into state law.

(2) Upon providing at least 60 days' notice of withdrawal from this compact to each party to the compact and repealing the compact from state law, a state is no longer party to this compact.

(3) This compact is amended upon enactment of the amendment into state law by each party to the compact.

ARTICLE IV

INTERSTATE SHARING OF PUTATIVE FATHER REGISTRY INFORMATION

(1) A party to this compact shall communicate information in its putative father registry about a specific putative father to any other party to this compact in a timely manner upon request by the other party.

(2) A party to this compact is not required to have a putative father registry in order to request putative father registry information from another party to the compact.

(3) Putative father registry information requested by a party to this compact from another party to this compact is subject to the laws of the requesting party governing the privacy, retention, and authorized uses of putative father information or, if the requesting party does not have a putative father registry, the laws of the party supplying the information governing the privacy, retention, and authorized uses of putative father information.

(4) Notwithstanding Article IV, Subsection (3) of this compact, the request for or receipt of putative father registry information by a party to this compact from another party to this compact does not affect the application of the requesting party's laws, including laws regarding adoption or the protection of a putative father's rights, except as explicitly provided by the requesting party's laws.

(5) Failure by a party to this compact to provide accurate putative father registry information in a timely manner to another party to this compact upon request does not affect application of the requesting party's laws, including laws governing adoption and the protection of a putative father's rights, except as explicitly provided by the requesting party's laws.

(6) Each party to this compact shall work with every other party to this compact to facilitate the timely communication of putative father registry information between compact parties upon request.

ARTICLE V
SEVERABILITY

The provisions of this compact are severable. If any provision of this compact or the application of any provision of this compact to any person or circumstance is held invalid by a final decision of a court of competent jurisdiction for a state that is a member of this compact, the remainder of this compact shall be given effect within that state without the invalid provision or application. If a provision of this compact is severed in one or more states as a result of one or more court decisions, the provision shall remain in force in all other states that are parties to this compact.

Enacted by Chapter 183, 2015 General Session

Repealed 9/1/2025

78B-6-122 Qualifying circumstance.

- (1)
- (a) For purposes of this section, "qualifying circumstance" means that, at any point during the time period beginning at the conception of the child and ending at the time the mother executed a consent to adoption or relinquishment of the child for adoption:
 - (i) the child or the child's mother resided on a permanent basis, or a temporary basis of no less than 30 consecutive days, in the state;
 - (ii) the mother intended to give birth to the child in the state;
 - (iii) the child was born in the state; or
 - (iv) the mother intended to execute a consent to adoption or relinquishment of the child for adoption:
 - (A) in the state; or
 - (B) under the laws of the state.
 - (b) For purposes of Subsection (1)(c)(i)(C) only, when determining whether an unmarried biological father has demonstrated a full commitment to his parental responsibilities, a court shall consider the totality of the circumstances, including, if applicable:
 - (i) efforts he has taken to discover the location of the child or the child's mother;
 - (ii) whether he has expressed and demonstrated an interest in taking responsibility for the child;
 - (iii) whether, and to what extent, he has developed, or attempted to develop, a relationship with the child;
 - (iv) whether he offered to provide and, unless the offer was rejected, did provide, financial support for the child or the child's mother;
 - (v) whether, and to what extent, he has communicated, or attempted to communicate, with the child or the child's mother;
 - (vi) whether he has timely filed legal proceedings to establish his paternity of, and take responsibility for, the child;
 - (vii) whether he has timely filed a notice with a public official or agency relating to:
 - (A) his paternity of the child; or
 - (B) legal proceedings to establish his paternity of the child; or
 - (viii) other evidence that shows whether he has demonstrated a full commitment to his parental responsibilities.
 - (c) Notwithstanding the provisions of Section 78B-6-121, the consent of an unmarried biological father is required with respect to an adoptee who is under the age of 18 if:
 - (i)

- (A) the unmarried biological father did not know, and through the exercise of reasonable diligence could not have known, before the time the mother executed a consent to adoption or relinquishment of the child for adoption, that a qualifying circumstance existed;
 - (B) before the mother executed a consent to adoption or relinquishment of the child for adoption, the unmarried biological father fully complied with the requirements to establish parental rights and duties in the child, and to preserve the right to notice of a proceeding in connection with the adoption of the child, imposed by:
 - (I) the last state where the unmarried biological father knew, or through the exercise of reasonable diligence should have known, that the mother resided in before the mother executed the consent to adoption or relinquishment of the child for adoption; or
 - (II) the state where the child was conceived; and
 - (C) the unmarried biological father has demonstrated, based on the totality of the circumstances, a full commitment to his parental responsibilities, as described in Subsection (1)(b); or
- (ii)
- (A) the unmarried biological father knew, or through the exercise of reasonable diligence should have known, before the time the mother executed a consent to adoption or relinquishment of the child for adoption, that a qualifying circumstance existed; and
 - (B) the unmarried biological father complied with the requirements of Section 78B-6-121 before the later of:
 - (I) 20 days after the day that the unmarried biological father knew, or through the exercise of reasonable diligence should have known, that a qualifying circumstance existed; or
 - (II) the time that the mother executed a consent to adoption or relinquishment of the child for adoption.
- (2) An unmarried biological father who does not fully and strictly comply with the requirements of Section 78B-6-121 and this section is considered to have waived and surrendered any right in relation to the child, including the right to:
- (a) notice of any judicial proceeding in connection with the adoption of the child; and
 - (b) consent, or refuse to consent, to the adoption of the child.

Repealed by Chapter 426, 2025 General Session
Amended by Chapter 261, 2024 General Session

Repealed 9/1/2025

78B-6-122.5 Effect of out-of-state paternity adjudication, declaration, or acknowledgment.

Unless a person who is an unmarried biological father has fully and strictly complied with the requirements of Sections 78B-6-120 through 78B-6-122, an out-of-state order that adjudicates paternity, or an out-of-state declaration or acknowledgment of paternity:

- (1) only has the effect of establishing that the person is an unmarried biological father of the child to whom the order, declaration, or acknowledgment relates; and
- (2) does not entitle the person to:
 - (a) notice of any judicial proceeding related to the adoption of the child;
 - (b) the right to consent, or refuse to consent, to the adoption of the child; or
 - (c) the right to custody of, control over, or visitation with the child.

Repealed by Chapter 426, 2025 General Session
Enacted by Chapter 237, 2010 General Session

Repealed 9/1/2025

78B-6-123 Power of a minor to consent or relinquish.

- (1) A minor parent has the power to:
 - (a) consent to the adoption of the minor's child; and
 - (b) relinquish the minor's control or custody of the child for adoption.
- (2) The consent or relinquishment described in Subsection (1) is valid and has the same force and effect as a consent or relinquishment executed by an adult parent.
- (3) A minor parent, having executed a consent or relinquishment, cannot revoke that consent upon reaching the age of majority or otherwise becoming emancipated.

Repealed by Chapter 426, 2025 General Session

Renumbered and Amended by Chapter 3, 2008 General Session

Renumbered 9/1/2025

78B-6-124 Persons who may take consents and relinquishments.

- (1) A consent or relinquishment by a birth mother or an adoptee shall be signed before:
 - (a) a judge of any court that has jurisdiction over adoption proceedings;
 - (b) subject to Subsection (6), a person appointed by the judge described in Subsection (1)(a) to take consents or relinquishments; or
 - (c) subject to Subsection (6), a person who is authorized by a child-placing agency to take consents or relinquishments, if the consent or relinquishment grants legal custody of the child to a child-placing agency or an extra-jurisdictional child-placing agency.
- (2) If the consent or relinquishment of a birth mother or adoptee is taken out of state it shall be signed before:
 - (a) subject to Subsection (6), a person who is authorized by a child-placing agency to take consents or relinquishments, if the consent or relinquishment grants legal custody of the child to a child-placing agency or an extra-jurisdictional child-placing agency;
 - (b) subject to Subsection (6), a person authorized or appointed to take consents or relinquishments by a court of this state that has jurisdiction over adoption proceedings;
 - (c) a court that has jurisdiction over adoption proceedings in the state where the consent or relinquishment is taken; or
 - (d) a person authorized, under the laws of the state where the consent or relinquishment is taken, to take consents or relinquishments of a birth mother or adoptee.
- (3) The consent or relinquishment of any other person or agency as required by Section 78B-6-120 may be signed before a Notary Public or any person authorized to take a consent or relinquishment under Subsection (1) or (2).
- (4) A person, authorized by Subsection (1) or (2) to take consents or relinquishments, shall certify to the best of his information and belief that the person executing the consent or relinquishment has read and understands the consent or relinquishment and has signed it freely and voluntarily.
- (5) A person executing a consent or relinquishment is entitled to receive a copy of the consent or relinquishment.
- (6) A signature described in Subsection (1)(b), (1)(c), (2)(a), or (2)(b), shall be:
 - (a) notarized; or
 - (b) witnessed by two individuals who are not members of the birth mother's or the adoptee's immediate family.
- (7) Except as provided in Subsection 26B-2-127(2), a transfer of relinquishment from one child-placing agency to another child-placing agency shall be signed before a Notary Public.

Amended by Chapter 330, 2023 General Session

Repealed 9/1/2025

78B-6-125 Time period prior to birth mother's consent.

- (1) A birth mother may not consent to the adoption of her child or relinquish control or custody of her child until at least 24 hours after the birth of her child.
- (2) The consent or relinquishment of any other person as required by Sections 78B-6-120 and 78B-6-121 may be executed at any time, including prior to the birth of the child.

Repealed by Chapter 426, 2025 General Session

Renumbered and Amended by Chapter 3, 2008 General Session

Repealed 9/1/2025

78B-6-126 When consent or relinquishment effective.

A consent or relinquishment is effective when it is signed and may not be revoked.

Repealed by Chapter 426, 2025 General Session

Renumbered and Amended by Chapter 3, 2008 General Session

Repealed 9/1/2025

78B-6-127 Parents whose rights have been terminated.

Neither notice nor consent to adoption or relinquishment for adoption is required from a parent whose rights with regard to an adoptee have been terminated by a court.

Repealed by Chapter 426, 2025 General Session

Renumbered and Amended by Chapter 3, 2008 General Session

Renumbered 9/1/2025

78B-6-128 Preplacement adoptive evaluations -- Exceptions.

- (1)
 - (a) Except as otherwise provided in this section, a child may not be placed in an adoptive home until a preplacement adoptive evaluation, assessing the prospective adoptive parent and the prospective adoptive home, has been conducted in accordance with the requirements of this section.
 - (b) Except as provided in Section 78B-6-131, the court may, at any time, authorize temporary placement of a child in a prospective adoptive home pending completion of a preplacement adoptive evaluation described in this section.
 - (c)
 - (i) Unless the court otherwise requests the preplacement adoption evaluation, Subsection (1)(a) does not apply if:
 - (A) a pre-existing parent has legal custody of the child to be adopted and the prospective adoptive parent is related to the child or the pre-existing parent as a stepparent, sibling by half or whole blood or by adoption, grandparent, aunt, uncle, or first cousin;
 - (B) a pre-existing parent has or had legal custody of the child to be adopted, the prospective adoptive parent was previously married to the pre-existing parent, and the prospective adoptive parent has lived with the child for at least 180 days before the day on which the petition for adoption was filed; or

- (C) the child to be adopted has lived in the adoptive home with the prospective adoptive parent for at least one year before the day on which the petition for adoption was filed and the court finds that the adoption is in the best interests of the child.
- (ii) The prospective adoptive parent described in this Subsection (1)(c) shall obtain the information described in Subsections (2)(a) and (b), and file that documentation with the court prior to finalization of the adoption.
- (d)
 - (i) The preplacement adoptive evaluation shall be completed or updated within the 12-month period immediately preceding the placement of a child with the prospective adoptive parent.
 - (ii) If the prospective adoptive parent has previously received custody of a child for the purpose of adoption, the preplacement adoptive evaluation shall be completed or updated within the 12-month period immediately preceding the placement of a child with the prospective adoptive parent and after the placement of the previous child with the prospective adoptive parent.
- (2) The preplacement adoptive evaluation shall include:
 - (a) a criminal history background check regarding each prospective adoptive parent and any other adult living in the prospective home, prepared no earlier than 18 months immediately preceding placement of the child in accordance with the following:
 - (i) if the child is in state custody, each prospective adoptive parent and any other adult living in the prospective home shall submit fingerprints to the Department of Health and Human Services, which shall perform a criminal history background check in accordance with Section 26B-2-120; or
 - (ii) subject to Subsection (3), if the child is not in state custody, an adoption service provider or an attorney representing a prospective adoptive parent shall submit fingerprints from the prospective adoptive parent and any other adult living in the prospective home to the Criminal and Technical Services Division of Public Safety for a regional and nationwide background check, to the Office of Background Processing within the Department of Health and Human Services for a background check in accordance with Section 26B-2-120, or to the Federal Bureau of Investigation;
 - (b) a report containing all information regarding reports and investigations of child abuse, neglect, and dependency, with respect to each prospective adoptive parent and any other adult living in the prospective home, obtained no earlier than 18 months immediately preceding the day on which the child is placed in the prospective home, pursuant to waivers executed by each prospective adoptive parent and any other adult living in the prospective home, that:
 - (i) if the prospective adoptive parent or the adult living in the prospective adoptive parent's home is a resident of Utah, is prepared by the Department of Health and Human Services from the records of the Department of Health and Human Services; or
 - (ii) if the prospective adoptive parent or the adult living in the prospective adoptive parent's home is not a resident of Utah, prepared by the Department of Health and Human Services, or a similar agency in another state, district, or territory of the United States, where each prospective adoptive parent and any other adult living in the prospective home resided in the five years immediately preceding the day on which the child is placed in the prospective adoptive home;
 - (c) in accordance with Subsection (6), a home study conducted by an adoption service provider that is:
 - (i) an expert in family relations approved by the court;
 - (ii) a certified social worker;
 - (iii) a clinical social worker;

- (iv) a marriage and family therapist;
 - (v) a psychologist;
 - (vi) a social service worker, if supervised by a certified or clinical social worker;
 - (vii) a clinical mental health counselor; or
 - (viii) an Office of Licensing employee within the Department of Health and Human Services who is trained to perform a home study; and
- (d) in accordance with Subsection (7), if the child to be adopted is a child who is in the custody of any public child welfare agency, and is a child who has a special need as defined in Section 80-2-801, the preplacement adoptive evaluation shall be conducted by the Department of Health and Human Services or a child-placing agency that has entered into a contract with the department to conduct the preplacement adoptive evaluations for children with special needs.
- (3) For purposes of Subsection (2)(a)(ii), subject to Subsection (4), the criminal history background check described in Subsection (2)(a)(ii) shall be submitted in a manner acceptable to the court that will:
- (a) preserve the chain of custody of the results; and
 - (b) not permit tampering with the results by a prospective adoptive parent or other interested party.
- (4) In order to comply with Subsection (3), the manner in which the criminal history background check is submitted shall be approved by the court.
- (5) Except as provided in Subsection 78B-6-131(2), in addition to the other requirements of this section, before a child in state custody is placed with a prospective foster parent or a prospective adoptive parent, the Department of Health and Human Services shall comply with Section 78B-6-131.
- (6)
- (a) An individual described in Subsections (2)(c)(i) through (vii) shall be licensed to practice under the laws of:
 - (i) this state; or
 - (ii) the state, district, or territory of the United States where the prospective adoptive parent or other person living in the prospective adoptive home resides.
 - (b) Neither the Department of Health and Human Services nor any of the department's divisions may proscribe who qualifies as an expert in family relations or who may conduct a home study under Subsection (2)(c).
 - (c) The home study described in Subsection (2)(c) shall be a written document that contains the following:
 - (i) a recommendation to the court regarding the suitability of the prospective adoptive parent for placement of a child;
 - (ii) a description of in-person interviews with the prospective adoptive parent, the prospective adoptive parent's children, and other individuals living in the home;
 - (iii) a description of character and suitability references from at least two individuals who are not related to the prospective adoptive parent and with at least one individual who is related to the prospective adoptive parent;
 - (iv) a medical history and a doctor's report, based upon a doctor's physical examination of the prospective adoptive parent, made within two years before the date of the application; and
 - (v) a description of an inspection of the home to determine whether sufficient space and facilities exist to meet the needs of the child and whether basic health and safety standards are maintained.

- (7) Any fee assessed by the evaluating agency described in Subsection (2)(d) is the responsibility of the adopting parent.
- (8) The person conducting the preplacement adoptive evaluation shall, in connection with the preplacement adoptive evaluation, provide the prospective adoptive parent with literature approved by the Division of Child and Family Services relating to adoption, including information relating to:
 - (a) the adoption process;
 - (b) developmental issues that may require early intervention; and
 - (c) community resources that are available to the prospective adoptive parent.
- (9) A copy of the preplacement adoptive evaluation shall be filed with the court.
- (10) A home study completed for the purposes of foster care licensing in accordance with Title 80, Chapter 2, Part 3, Division Responsibilities, shall be accepted by the court for a proceeding under this part.

Amended by Chapter 134, 2025 General Session

Renumbered 9/1/2025

78B-6-129 Postplacement adoptive evaluations.

- (1) Except as provided in Subsections (2) and (3), a postplacement evaluation shall be conducted and submitted to the court prior to the final hearing in an adoption proceeding. The postplacement evaluation shall include:
 - (a) verification of the allegations of fact contained in the petition for adoption;
 - (b) an evaluation of the progress of the child's placement in the adoptive home; and
 - (c) a recommendation regarding whether the adoption is in the best interest of the child.
- (2) The exemptions from and requirements for evaluations, described in Subsections 78B-6-128(1)(c), (2)(c), (6), and (8), also apply to postplacement adoptive evaluations.
- (3) Upon the request of the petitioner, the court may waive the postplacement adoptive evaluation, unless it determines that it is in the best interest of the child to require the postplacement evaluation.

Amended by Chapter 340, 2012 General Session

Renumbered 9/1/2025

78B-6-130 Preplacement and postplacement adoptive evaluations -- Review by court.

- (1)
 - (a) If the person conducting the preplacement adoptive evaluation or postplacement adoptive evaluation disapproves the adoptive placement, the court may dismiss the petition for adoption.
 - (b) Upon request by a prospective adoptive parent, the court shall order that an additional preplacement adoptive evaluation or postplacement adoptive evaluation be conducted, and shall hold a hearing on the suitability of the adoption, including testimony of interested parties.
- (2) Before finalization of a petition for adoption the court shall review and consider the information and recommendations contained in the preplacement adoptive evaluation and postplacement adoptive evaluation described in Sections 78B-6-128 and 78B-6-129.
- (3) With respect to the home study required as part of the preplacement adoptive evaluation described in Subsection 78B-6-128(2)(c), a court may review and consider information other than the information contained in the home study described in Subsection 78B-6-128(6)(c).

Amended by Chapter 280, 2017 General Session

Renumbered 9/1/2025

78B-6-131 Child in custody of state -- Placement.

- (1) Notwithstanding Sections 78B-6-128 through 78B-6-130, and except as provided in Subsection (2), a child who is in the legal custody of the state may not be placed with a prospective foster parent or a prospective adoptive parent, unless, before the child is placed with the prospective foster parent or the prospective adoptive parent:
 - (a) a fingerprint based FBI national criminal history records check is conducted on the prospective foster parent, prospective adoptive parent, and any other adult residing in the household;
 - (b) the Department of Health and Human Services conducts a check of the child abuse and neglect registry in each state where the prospective foster parent or prospective adoptive parent resided in the five years immediately preceding the day on which the prospective foster parent or prospective adoptive parent applied to be a foster parent or adoptive parent, to determine whether the prospective foster parent or prospective adoptive parent is listed in the registry as having a substantiated or supported finding of child abuse or neglect;
 - (c) the Department of Health and Human Services conducts a check of the child abuse and neglect registry of each state where each adult living in the home of the prospective foster parent or prospective adoptive parent described in Subsection (1)(b) resided in the five years immediately preceding the day on which the prospective foster parent or prospective adoptive parent applied to be a foster parent or adoptive parent, to determine whether the adult is listed in the registry as having a substantiated or supported finding of child abuse or neglect; and
 - (d) each person required to undergo a background check described in this section passes the background check, pursuant to the provisions of Section 26B-2-120.
- (2) The requirements under Subsection (1) do not apply to the extent that:
 - (a) federal law or rule permits otherwise; or
 - (b) the requirements would prohibit the division or a court from placing a child with:
 - (i) a noncustodial parent, under Section 80-2a-301, 80-3-302, or 80-3-303; or
 - (ii) a relative, under Section 80-2a-301, 80-3-302, or 80-3-303, pending completion of the background check described in Subsection (1).

Amended by Chapter 330, 2023 General Session

Renumbered 9/1/2025

78B-6-133 Contested adoptions -- Rights of parties -- Determination of custody.

- (1) If a person whose consent for an adoption is required pursuant to Subsection 78B-6-120(1)(b), (c), (d), (e), or (f) refused to consent, the court shall determine whether proper grounds exist for the termination of that person's rights pursuant to the provisions of this chapter or Title 80, Chapter 4, Termination and Restoration of Parental Rights.
- (2)
 - (a) If there are proper grounds to terminate the person's parental rights, the court shall order that the person's rights be terminated.
 - (b) If there are not proper grounds to terminate the person's parental rights, the court shall:
 - (i) dismiss the adoption petition;
 - (ii) conduct an evidentiary hearing to determine who should have custody of the child; and
 - (iii) award custody of the child in accordance with the child's best interest.

- (c) Termination of a person's parental rights does not terminate the right of a relative of the parent to seek adoption of the child.
- (3) Evidence considered at the custody hearing may include:
 - (a) evidence of psychological or emotional bonds that the child has formed with a third person, including the prospective adoptive parent; and
 - (b) any detriment that a change in custody may cause the child.
- (4) If the court dismisses the adoption petition, the fact that a person relinquished a child for adoption or consented to the adoption may not be considered as evidence in a custody proceeding described in this section, or in any subsequent custody proceeding, that it is not in the child's best interest for custody to be awarded to such person or that:
 - (a) the person is unfit or incompetent to be a parent;
 - (b) the person has neglected or abandoned the child;
 - (c) the person is not interested in having custody of the child; or
 - (d) the person has forfeited the person's parental presumption.
- (5) Any custody order entered pursuant to this section may also:
 - (a) include provisions for:
 - (i) parent-time; or
 - (ii) visitation by an interested third party; and
 - (b) provide for the financial support of the child.
- (6)
 - (a) If a person or entity whose consent is required for an adoption under Subsection 78B-6-120(1)(a) or (g) refuses to consent, the court shall proceed with an evidentiary hearing and award custody as set forth in Subsection (2).
 - (b) The court may also finalize the adoption if doing so is in the best interest of the child.
- (7)
 - (a) A person may not contest an adoption after the final decree of adoption is entered, if that person:
 - (i) was a party to the adoption proceeding;
 - (ii) was served with notice of the adoption proceeding; or
 - (iii) executed a consent to the adoption or relinquishment for adoption.
 - (b) No person may contest an adoption after one year from the day on which the final decree of adoption is entered.
 - (c) The limitations on contesting an adoption action, described in this Subsection (7), apply to all attempts to contest an adoption:
 - (i) regardless of whether the adoption is contested directly or collaterally; and
 - (ii) regardless of the basis for contesting the adoption, including claims of fraud, duress, undue influence, lack of capacity or competency, mistake of law or fact, or lack of jurisdiction.
 - (d) The limitations on contesting an adoption action, described in this Subsection (7), do not prohibit a timely appeal of:
 - (i) a final decree of adoption; or
 - (ii) a decision in an action challenging an adoption, if the action was brought within the time limitations described in Subsections (7)(a) and (b).
- (8) A court that has jurisdiction over a child for whom more than one petition for adoption is filed shall grant a hearing only under the following circumstances:
 - (a) to a petitioner:
 - (i) with whom the child is placed;
 - (ii) who has custody or guardianship of the child;

- (iii) who has filed a written statement with the court within eight months after the day on which the shelter hearing is held:
 - (A) requesting immediate placement of the child with the petitioner; and
 - (B) expressing the petitioner's intention of adopting the child;
- (iv) who is a relative with whom the child has a significant and substantial relationship and who was unaware, within the first eight months after the day on which the shelter hearing is held, of the child's removal from the child's parent; or
- (v) who is a relative with whom the child has a significant and substantial relationship and, in a case where the child is not placed with a relative or is placed with a relative that is unable or unwilling to adopt the child:
 - (A) was actively involved in the child's child welfare case with the division or the juvenile court while the child's parent engaged in reunification services; and
 - (B) filed a written statement with the court that includes the information described in Subsections (8)(a)(iii)(A) and (B) within 30 days after the day on which the court terminated reunification services; or
- (b) if the child:
 - (i) has been in the current placement for less than 180 days before the day on which the petitioner files the petition for adoption; or
 - (ii) is placed with, or is in the custody or guardianship of, an individual who previously informed the division or the court that the individual is unwilling or unable to adopt the child.
- (9)
 - (a) If the court grants a hearing on more than one petition for adoption, there is a rebuttable presumption that it is in the best interest of a child to be placed for adoption with a petitioner:
 - (i) who has fulfilled the requirements described in Title 78B, Chapter 6, Part 1, Utah Adoption Act; and
 - (ii)
 - (A) with whom the child has continuously resided for six months;
 - (B) who has filed a written statement with the court within eight months after the day on which the shelter hearing is held, as described in Subsection (8)(a)(iii); or
 - (C) who is a relative described in Subsection (8)(a)(iv).
 - (b) The court may consider other factors relevant to the best interest of the child to determine whether the presumption is rebutted.
 - (c) The court shall weigh the best interest of the child uniformly between petitioners if more than one petitioner satisfies a rebuttable presumption condition described in Subsection (9)(a).
- (10) Nothing in this section shall be construed to prevent the division or the child's guardian ad litem from appearing or participating in any proceeding for a petition for adoption.
- (11) The division shall use best efforts to provide a known relative with timely information relating to the relative's rights or duties under this section.

Amended by Chapter 260, 2024 General Session

Renumbered 9/1/2025

78B-6-134 Custody pending final decree.

- (1)
 - (a) A licensed child-placing agency, or a petitioner if the petition for adoption is filed before a child's birth, may seek an order establishing that the agency or petitioner shall have temporary custody of the child from the time of birth.

- (b) The court shall grant an order for temporary custody under Subsection (1)(a) upon determining that:
 - (i) the birth mother or both birth parents consent to the order;
 - (ii) the agency or petitioner is willing and able to take custody of the child; and
 - (iii) an order will be in the best interest of the child.
 - (c) The court shall vacate an order if, prior to the child's birth, the birth mother or birth parents withdraw their consent.
- (2) Except as otherwise provided by the court, once a petitioner has received the adoptee into his home and a petition for adoption has been filed, the petitioner is entitled to the custody and control of the adoptee and is responsible for the care, maintenance, and support of the adoptee, including any necessary medical or surgical treatment, pending further order of the court.
- (3) Once a child has been placed with, relinquished to, or ordered into the custody of a child-placing agency for purposes of adoption, the agency shall have custody and control of the child and is responsible for his care, maintenance, and support. The agency may delegate the responsibility for care, maintenance, and support, including any necessary medical or surgical treatment, to the petitioner once the petitioner has received the child into his home. However, until the final decree of adoption is entered by the court, the agency has the right to the custody and control of the child.

Amended by Chapter 148, 2017 General Session

Renumbered 9/1/2025

78B-6-136 Final decree of adoption -- Agreement by adoptive parent or parents.

- (1) Except as provided in Subsection (2), before the court enters a final decree of adoption:
- (a) the prospective adoptive parent or parents and the child being adopted shall appear before the appropriate court; and
 - (b) the prospective adoptive parent or parents shall execute an agreement stating that the child shall be adopted and treated in all respects as the adoptive parent's or parents' own lawful child.
- (2) Except as provided in Subsection 78B-6-115(4), a court may waive the requirement described in Subsection (1)(a) if:
- (a) the adoption is not contested;
 - (b) the prospective adoptive parent or parents:
 - (i) execute an agreement stating that the child shall be adopted and treated in all respects as the parent's or parents' own lawful child;
 - (ii) have the agreement described in Subsection (2)(b)(i) notarized; and
 - (iii) file the agreement described in Subsection (2)(b)(i) with the court; and
 - (c) all requirements of this chapter to obtain a final decree of adoption are otherwise complied with.

Amended by Chapter 340, 2012 General Session

Renumbered 9/1/2025

78B-6-136.5 Timing of entry of final decree of adoption -- Posthumous adoption.

- (1) Except as provided in Subsection (2), a final decree of adoption may not be entered until the earlier of:
- (a) when the child has lived in the home of the prospective adoptive parent for three months; or

- (b) when the child has been placed for adoption with the prospective adoptive parent for three months.
- (2)
 - (a) If the prospective adoptive parent is the spouse of the preexisting parent, a final decree of adoption may not be entered until the child has lived in the home of that prospective adoptive parent for six months, unless, based on a finding of good cause, the court orders that the final decree of adoption may be entered at an earlier time.
 - (b) The court may, based on a finding of good cause, order that the final decree of adoption be entered at a later time than described in Subsection (1).
- (3) The court has authority to enter a final decree of adoption after a child's death upon the request of the prospective adoptive parent or parents of the child if:
 - (a) the child dies during the time that the child is placed in the home of a prospective adoptive parent or parents for the purpose of adoption; or
 - (b) the prospective adoptive parent is the spouse of a preexisting parent of the child and the child lived with the prospective adoptive parent before the child's death.
- (4) The court may enter a final decree of adoption declaring that a child is adopted by:
 - (a) both a deceased and a surviving adoptive parent if after the child is placed in the home of the child's prospective adoptive parents:
 - (i) one of the prospective adoptive parents dies;
 - (ii) the surviving prospective adoptive parent requests that the court enter the decree; and
 - (iii) the decree is entered after the child has lived in the home of the surviving prospective adoptive parent for at least three months; or
 - (b) a spouse of a preexisting parent if after the child has lived with the spouse of the preexisting parent:
 - (i) the preexisting parent, or the spouse of the preexisting parent, dies;
 - (ii) the preexisting parent, or the spouse of the preexisting parent, requests that the court enter the decree; and
 - (iii) the child has lived in the same home as the spouse of the preexisting parent for at least six months.
- (5) Upon request of a surviving preexisting parent, or a surviving parent for whom adoption of a child has been finalized, the court may enter a final decree of adoption declaring that a child is adopted by a deceased adoptive parent who was the spouse of the surviving parent at the time of the prospective adoptive parent's death.
- (6) The court may enter a final decree of adoption declaring that a child is adopted by both deceased prospective adoptive parents if:
 - (a) both of the prospective adoptive parents die after the child is placed in the prospective adoptive parents' home; and
 - (b) it is in the best interests of the child to enter the decree.
- (7) Nothing in this section shall be construed to grant any rights to the preexisting parents of a child to assert any interest in the child during the three-month or six-month periods described in this section.

Amended by Chapter 261, 2024 General Session

Repealed 9/1/2025

78B-6-137 Decree of adoption -- Best interest of child -- Legislative findings.

The court shall examine each person appearing before it in accordance with this chapter, separately, and, if satisfied that the interests of the child will be promoted by the adoption, it

shall enter a final decree of adoption declaring that the child is adopted by the adoptive parent or parents and shall be regarded and treated in all respects as the child of the adoptive parent or parents.

Repealed by Chapter 426, 2025 General Session
Renumbered and Amended by Chapter 3, 2008 General Session

Renumbered 9/1/2025

78B-6-138 Pre-existing parent's rights and duties dissolved.

- (1) A pre-existing parent of an adopted child is released from all parental rights and duties toward and all responsibilities for the adopted child, including residual parental rights and duties, as defined in Section 80-1-102, and has no further parental rights or duties with regard to that adopted child at the earlier of:
 - (a) the time the pre-existing parent's parental rights are terminated; or
 - (b) except as provided in Subsection (2), and subject to Subsections (3) and (4), the time the final decree of adoption is entered.
- (2) The parental rights and duties of a pre-existing parent who, at the time the child is adopted, is lawfully married to the person adopting the child are not released under Subsection (1)(b).
- (3) The parental rights and duties of a pre-existing parent who, at the time the child is adopted, is not lawfully married to the person adopting the child are released under Subsection (1)(b).
- (4)
 - (a) Notwithstanding the provisions of this section, the court may allow a prospective adoptive parent to adopt a child without releasing the pre-existing parent from parental rights and duties under Subsection (1)(b), if:
 - (i) the pre-existing parent and the prospective adoptive parent were lawfully married at some time during the child's life;
 - (ii) the pre-existing parent consents to the prospective adoptive parent's adoption of the child, or is unable to consent because the pre-existing parent is deceased or incapacitated;
 - (iii) notice of the adoption proceeding is provided in accordance with Section 78B-6-110;
 - (iv) consent to the adoption is provided in accordance with Section 78B-6-120; and
 - (v) the court finds that it is in the best interest of the child to grant the adoption without releasing the pre-existing parent from parental rights and duties.
 - (b) This Subsection (4) does not permit a child to have more than two natural parents, as that term is defined in Section 80-1-102.
- (5) This section may not be construed as terminating any child support obligation of a parent incurred before the adoption.

Amended by Chapter 262, 2021 General Session

Repealed 9/1/2025

78B-6-139 Name and status of adopted child.

When a final decree of adoption is entered under Section 78B-6-137, a child may take the family name of the adoptive parent or parents. After that decree of adoption is entered, the adoptive parent or parents and the child shall sustain the legal relationship of parent and child, and have all the rights and be subject to all the duties of that relationship.

Repealed by Chapter 426, 2025 General Session
Renumbered and Amended by Chapter 3, 2008 General Session

Renumbered 9/1/2025

78B-6-140 Itemization of fees and expenses -- Reporting.

- (1)
 - (a) Except as provided in Subsection (5), before the date that a final decree of adoption is entered, a prospective adoptive parent or, if the child was placed by a child-placing agency, the person or agency placing the child shall file with the court an affidavit regarding fees and expenses on a form prescribed by the Judicial Council in accordance with Subsection (2).
 - (b) An affidavit filed pursuant to Subsection (1)(a) shall be signed by each prospective adoptive parent and, if the child was placed by a child-placing agency, the person or agency placing the child.
 - (c) The court shall review an affidavit filed under this section for completeness and compliance with the requirements of this section.
 - (d) The results of the court's review under Subsection (1)(c) shall be noted in the court's record.
- (2)
 - (a) The Judicial Council shall prescribe a uniform form for the affidavit described in Subsection (1).
 - (b) The uniform affidavit form shall require itemization of the following items in connection with the adoption:
 - (i) all legal expenses that have been or will be paid to or on behalf of the preexisting parents of the child, including the source of payment;
 - (ii) all maternity expenses that have been or will be paid to or on behalf of the preexisting parents of the child, including the source of payment;
 - (iii) all medical or hospital expenses that have been or will be paid to or on behalf of the preexisting parents of the child, including the source of payment;
 - (iv) all living expenses that have been or will be paid to or on behalf of the preexisting parents of the child, including the source of payment;
 - (v) fees paid by the prospective adoptive parent or parents in connection with the adoption;
 - (vi) all gifts, property, or other items that have been or will be provided to the preexisting parents, including the source and approximate value of the gifts, property, or other items;
 - (vii) all public funds used for any medical or hospital costs in connection with the:
 - (A) pregnancy;
 - (B) delivery of the child; or
 - (C) care of the child; and
 - (viii) if a child-placing agency placed the child:
 - (A) a description of services provided to the prospective adoptive parents or preexisting parents in connection with the adoption;
 - (B) all expenses associated with matching the prospective adoptive parent or parents and the birth mother;
 - (C) all expenses associated with advertising; and
 - (D) any other agency fees or expenses paid by an adoptive parent that are not itemized under one of the other categories described in this Subsection (2)(b), including a description of the reason for the fee or expense.
 - (c) The uniform affidavit form shall require:
 - (i) a statement of the state of residence of the:
 - (A) birth mother or the preexisting parents; and
 - (B) prospective adoptive parent or parents;
 - (ii) a declaration that Section 76-7-203 has not been violated; and

- (iii) if the affidavit includes an itemized amount for both of the categories described in Subsections (2)(b)(iii) and (vii), a statement explaining why certain medical or hospital expenses were paid by a source other than public funds.
 - (d) To satisfy the requirement of Subsection (1)(a), the court shall accept an affidavit that is submitted in a form accepted by the Office of Licensing within the Department of Health and Human Services if the affidavit contains the same information and is in a reasonably equivalent format as the uniform affidavit form prescribed by the Judicial Council.
- (3)
- (a) If a child-placing agency, that is licensed by this state, placed the child, the child-placing agency shall provide a copy of the affidavit described in Subsection (1) to the Office of Licensing within the Department of Health and Human Services.
 - (b) Before August 30 of each even-numbered year, the Office of Licensing within the Department of Health and Human Services shall provide a written report to the Health and Human Services Interim Committee and to the Judicial Council regarding the cost of adoptions in the state that includes:
 - (i) the total number of affidavits provided to the Office of Licensing during the previous year;
 - (ii) for each of the categories described in Subsection (2)(b):
 - (A) the average amount disclosed on affidavits submitted during the previous year; and
 - (B) the range of amounts disclosed on affidavits submitted during the previous year;
 - (iii) the average total amount disclosed on affidavits submitted during the previous year;
 - (iv) the range of total amounts disclosed on affidavits submitted during the previous year; and
 - (v) any recommended legislation that may help reduce the cost of adoptions.
 - (c) The Health and Human Services Interim Committee shall, based on information in reports provided under Subsection (3)(b) and in consultation with a consortium described in Subsection 26B-2-127(8), consider:
 - (i) what constitutes reasonable fees and expenses related to adoption; and
 - (ii) the standards that may be used to determine whether fees and expenses related to adoption are reasonable in a specific case.
- (4) The Judicial Council shall make a copy of each report provided by the Office of Licensing under Subsection (3)(b) available to each court that may be required to review an affidavit under Subsection (1)(c).
- (5) This section does not apply if the prospective adoptive parent is the legal spouse of a preexisting parent.

Amended by Chapter 250, 2024 General Session

Amended by Chapter 261, 2024 General Session

Renumbered 9/1/2025

78B-6-141 Court hearings may be closed -- Petition and documents sealed -- Exceptions.

- (1)
- (a) Notwithstanding Section 80-4-106, court hearings in adoption cases may be closed to the public upon request of a party to the adoption petition and upon court approval.
 - (b) In a closed hearing, only the following individuals may be admitted:
 - (i) a party to the proceeding;
 - (ii) the adoptee;
 - (iii) a representative of an agency having custody of the adoptee;
 - (iv) in a hearing to relinquish parental rights, the individual whose rights are to be relinquished and invitees of that individual to provide emotional support;

- (v) in a hearing on the termination of parental rights, the individual whose rights may be terminated;
 - (vi) in a hearing on a petition to intervene, the proposed intervenor;
 - (vii) in a hearing to finalize an adoption, invitees of the petitioner; and
 - (viii) other individuals for good cause, upon order of the court.
- (2) An adoption document and any other documents filed in connection with a petition for adoption are sealed.
- (3) The documents described in Subsection (2) may only be open to inspection and copying:
- (a) in accordance with Subsection (5)(a), by a party to the adoption proceeding:
 - (i) while the proceeding is pending; or
 - (ii) within six months after the day on which the adoption decree is entered;
 - (b) subject to Subsection (5)(b), if a court enters an order permitting access to the documents by an individual who has appealed the denial of that individual's motion to intervene;
 - (c) upon order of the court expressly permitting inspection or copying, after good cause has been shown;
 - (d) as provided under Section 78B-6-144;
 - (e) when the adoption document becomes public on the one hundredth anniversary of the date the final decree of adoption was entered;
 - (f) when the birth certificate becomes public on the one hundredth anniversary of the date of birth;
 - (g) to a mature adoptee or a parent who adopted the mature adoptee, without a court order, unless the final decree of adoption is entered by the juvenile court under Subsection 78B-6-115(3)(b); or
 - (h) to an adult adoptee, to the extent permitted under Subsection (4).
- (4)
- (a) An adult adoptee that was born in the state may access an adoption document associated with the adult adoptee's adoption without a court order:
 - (i) to the extent that a birth parent consents under Subsection (4)(b); or
 - (ii) if the birth parents listed on the original birth certificate are deceased.
 - (b) A birth parent may:
 - (i) provide consent to allow the access described in Subsection (4)(a) by electing, electronically or on a written form provided by the office, allowing the birth parent to elect to:
 - (A) allow the office to provide the adult adoptee with the contact information of the birth parent that the birth parent indicates;
 - (B) allow the office to provide the adult adoptee with the contact information of an intermediary that the birth parent indicates;
 - (C) prohibit the office from providing any contact information to the adult adoptee;
 - (D) allow the office to provide the adult adoptee with a noncertified copy of the original birth certificate; and
 - (ii) at any time, file, electronically or on a written document with the office, to:
 - (A) change the election described in Subsection (4)(b); or
 - (B) elect to make other information about the birth parent, including an updated medical history, available for inspection by an adult adoptee.
 - (c) A birth parent may not access any identifying information or an adoption document under this Subsection (4).
 - (d) If two birth parents are listed on the original birth certificate and only one birth parent consents under Subsection (4)(b) or is deceased, the office may redact the name of the other birth parent.

- (5)
- (a) An individual who files a motion to intervene in an adoption proceeding:
 - (i) is not a party to the adoption proceeding, unless the motion to intervene is granted; and
 - (ii) may not be granted access to the documents described in Subsection (2), unless the motion to intervene is granted.
 - (b) An order described in Subsection (3)(b) shall:
 - (i) prohibit the individual described in Subsection (3)(b) from inspecting a document described in Subsection (2) that contains identifying information of the adoptive or prospective adoptive parent; and
 - (ii) permit the individual described in Subsection (5)(b)(i) to review a copy of a document described in Subsection (5)(b)(i) after the identifying information described in Subsection (5)(b)(i) is redacted from the document.

Amended by Chapter 262, 2021 General Session

Renumbered 9/1/2025

78B-6-142 Adoption order from foreign country.

- (1) Except as otherwise provided by federal law, an adoption order rendered to a resident of this state that is made by a foreign country shall be recognized by the courts of this state and enforced as if the order were rendered by a court in this state.
- (2) A person who adopts a child in a foreign country may register the order in this state. A petition for registration of a foreign adoption order may be combined with a petition for a name change. If the court finds that the foreign adoption order meets the requirements of Subsection (1), the court shall order the state registrar to:
 - (a) file the order pursuant to Section 78B-6-137; and
 - (b) file a certificate of birth for the child pursuant to Section 26B-8-131.
- (3) If a clerk of the court is unable to establish the fact, time, and place of birth from the documentation provided, a person holding a direct, tangible, and legitimate interest as described in Subsection 26B-8-125(3)(a) or (b) may petition for a court order establishing the fact, time, and place of a birth pursuant to Subsection 26B-8-119(1).

Amended by Chapter 330, 2023 General Session

Renumbered 9/1/2025

78B-6-143 Nonidentifying health history of adoptee filed with office -- Limited availability.

- (1)
 - (a) Upon finalization of an adoption in this state, the person who proceeded on behalf of the petitioner for adoption, or a child-placing agency if an agency is involved in the adoption, shall file a report with the office, in the form established by the office.
 - (b) The report described in Subsection (1)(a) shall include a detailed health history, and a genetic and social history of the adoptee.
- (2) The report described in Subsection (1)(a) may not contain identifying information or any information that identifies the adoptee's birth parents or members of their families.
- (3) When the report described in Subsection (1)(a) is filed, a duplicate report shall be provided to the adoptive parents.
- (4) The report described in Subsection (1)(a) shall only be available upon request, and upon presentation of positive identification, to the following persons:
 - (a) the adoptive parents;

- (b) in the event of the death of the adoptive parents, the adoptee's legal guardian;
 - (c) the adoptee;
 - (d) in the event of the death of the adoptee, the adoptee's spouse, if the spouse is the parent or guardian of the adoptee's child;
 - (e) the adoptee's child or descendant;
 - (f) the adoptee's birth parent; and
 - (g) the adoptee's adult sibling.
- (5) No identifying information or information that identifies a birth parent or the birth parent's family may be disclosed under this section.
- (6) The actual cost of providing information under this section shall be paid by the person requesting the information.
- (7) A child-placing agency may provide a copy of the report described in Subsection (1)(a) and information in the child-placing agency's files, except identifying information, to an adult adoptee, a birth parent, or an adoptive parent.
- (8) Notwithstanding Subsection (7), identifying information may be released to the extent that the individual who is the subject of the information provides written authorization of the information's release.

Amended by Chapter 417, 2017 General Session

Renumbered 9/1/2025

78B-6-144 Mutual-consent, voluntary adoption registry -- Procedures -- Fees.

- (1) The office shall establish a mutual-consent, voluntary adoption registry.
- (a) An adult adoptee or a birth parent of an adult adoptee, upon presentation of positive identification, may request identifying information from the office, in the form established by the office. A court of competent jurisdiction or a child-placing agency may accept that request from the adult adoptee or birth parent, in the form provided by the office, and transfer that request to the office. The adult adoptee or birth parent is responsible for notifying the office of any change in information contained in the request.
 - (b) Except as otherwise provided in this part, the office may only release identifying information to an adult adoptee or birth parent when it receives requests from both the adoptee and the adoptee's birth parent.
 - (c) After matching the request of an adult adoptee with that of at least one of the adoptee's birth parents, the office shall notify both the adult adoptee and the birth parent that the requests have been matched, and disclose the identifying information to those parties. However, if that adult adoptee has a sibling of the same birth parent who is under the age of 18 years, and who was raised in the same family setting as the adult adoptee, the office may not disclose the requested identifying information to that adult adoptee or the adoptee's birth parent.
- (2)
- (a) Adult adoptees and adult siblings of adult adoptees, upon presentation of positive identification, may request identifying information from the office, in the form established by the office. A court of competent jurisdiction or a child-placing agency may accept that request from the adult adoptee or adult sibling, in the form provided by the office, and transfer that request to the office. The adult adoptee or adult sibling is responsible for notifying the office of any change in information contained in the request.
 - (b) The office may only release identifying information to an adult adoptee or adult sibling when it receives requests from both the adult adoptee and the adult adoptee's adult sibling.

- (c) After matching the request of an adult adoptee with that of the adoptee's adult sibling, if the office determines that the office has sufficient information to make that match, the office shall notify both the adult adoptee and the adult sibling that the requests have been matched, and disclose the identifying information to those parties.
- (d) After receiving a request for information from an adult adoptee and a birth parent under this section, the office shall:
 - (i) search the office's vital records for the adult adoptee's birth parent; and
 - (ii) if the search described in Subsection (2)(d)(i) reveals that the birth parent who had requested information under this section is dead, inform the adult adoptee that the birth parent is dead and disclose the identity of the birth parent.
- (e) The office shall attempt to notify an individual who requests information under this section:
 - (i) of the results of the initial search for a match; and
 - (ii) if the initial search does not produce a match, that the office will keep the request on file and will attempt to notify the individual in the event of a match.
- (3) Information registered with the office under this section is available only to a registered adult adoptee and the adoptee's registered birth parent or registered adult sibling, under the terms of this section.
- (4) Except as provided in Section 78B-6-141, the office may not disclose information regarding a birth parent who has not registered a request with the office.
- (5) Nothing in this section limits the disclosure of information in accordance with Section 78B-6-141.

Amended by Chapter 137, 2015 General Session

Renumbered 9/1/2025

78B-6-144.5 Adoption records fees.

- (1)
 - (a) The office shall, in accordance with Section 63J-1-504, establish a fee to be paid by an individual who requests information or other services under Section 78B-6-141 or Section 78B-6-144, and to cover the costs related to providing the information, services, and improvements described in Subsection (2).
 - (b) The office may accept donations or grants from public or private entities to cover the costs related to providing the information, services, and improvements described in Subsection (2).
- (2) The office shall deposit fees and donations collected under Subsection (1) into the General Fund as dedicated credits and may be used only to:
 - (a) fund, automate, and improve the provision of services described in Sections 78B-6-141 and 78B-6-144; or
 - (b) implement means of maximizing potential matches for the services described in Sections 78B-6-141 and 78B-6-144, including the use of broad search terms and methods.

Enacted by Chapter 137, 2015 General Session

Repealed 9/1/2025

78B-6-145 Restrictions on disclosure of information -- Violations -- Penalty.

- (1) Information maintained or filed with the office under this chapter may not be disclosed except as provided by this chapter, or pursuant to a court order.

- (2) Any person who discloses information obtained from the office's voluntary adoption registry in violation of this part, or knowingly allows that information to be disclosed in violation of this chapter is guilty of a class A misdemeanor.

Repealed by Chapter 426, 2025 General Session

Amended by Chapter 340, 2012 General Session

Renumbered 9/1/2025

78B-6-146 Postadoption contact agreements.

- (1) As used in this section:
- (a) "Postadoption contact agreement" means a document, agreed upon prior to the finalization of an adoption of a child in the custody of the division, that outlines the relationship between an adoptive parent, birth parent, or other birth relative, and an adopted child after the finalization of adoption.
 - (b) "Other birth relative" means a grandparent, stepparent, sibling, stepsibling, aunt, or uncle of the prospective adoptive child.
- (2)
- (a) Notwithstanding any other provision in this chapter, if a child in the custody of the division is placed for adoption, the prospective adoptive parent and birth parent, or other birth relative, may enter into a postadoption contact agreement as provided in this section.
 - (b) A birth parent is not required to be a party to a postadoption contact agreement in order to permit an open adoption agreement between a prospective adoptive parent and another birth relative of the child.
- (3) In order to be legally enforceable, a postadoption contact agreement shall be:
- (a) approved by the court before the finalization of the adoption, with the court making a specific finding that the agreement is in the best interest of the child;
 - (b) signed by each party claiming a right or obligation in the agreement; and
 - (c) if the adopted child is 12 years old or older, approved by the child.
- (4) A postadoption contact agreement shall:
- (a) describe:
 - (i) visits, if any, that shall take place between the birth parent, other birth relative, adoptive parent, and adopted child;
 - (ii) the degree of supervision, if any, that shall be required during a visit between a birth parent, other birth relative, and adopted child;
 - (iii) the information, if any, that shall be provided to a birth parent, or other birth relative, about the adopted child and how often that information shall be provided;
 - (iv) the grounds, if any, on which the adoptive parent may:
 - (A) decline to permit visits, described in Subsection (4)(a)(i), between the birth parent, or other birth relative, and adopted child; or
 - (B) cease providing the information described in Subsection (4)(a)(iii) to the birth parent or other birth relative; and
 - (b) state that following the adoption, the court shall presume that the adoptive parent's judgment about the best interest of the child is correct in any action seeking to enforce, modify, or terminate the agreement.
- (5) A postadoption contact agreement may not limit the adoptive parent's ability to move out of state.
- (6) A postadoption contact agreement may only be modified with the consent of the adoptive parent.

- (7) In an action seeking enforcement of a postadoption contact agreement:
 - (a) an adoptive parent's judgment about the best interest of the child is entitled to a presumption of correctness;
 - (b) if the party seeking to enforce the postadoption contact agreement successfully rebuts the presumption described in Subsection (7)(a), the court shall consider whether:
 - (i) the parties performed the duties outlined in the open adoption agreement in good faith;
 - (ii) there is a reasonable alternative that fulfills the spirit of the open adoption agreement without ordering mandatory compliance with the open adoption agreement; and
 - (iii) enforcement of the open adoption agreement is in the best interest of the adopted child; and
 - (c) the court shall order the parties to attend mediation, if the presumption in Subsection (7)(a) is successfully rebutted and mediation is in the child's best interest.
- (8) An open adoption agreement that has been found not to be in the best interest of the adopted child shall not be enforced.
- (9) Violation of an open adoption agreement is not grounds:
 - (a) to set aside an adoption; or
 - (b) for an award of money damages.
- (10) Nothing in this section shall be construed to mean that an open adoption agreement is required before an adoption may be finalized.
- (11) Refusal or failure to agree to a postadoption contact agreement is not admissible in any adoption proceeding.
- (12) The court that approves a postadoption contact agreement retains jurisdiction over modification, termination, and enforcement of an approved postadoption contact agreement.

Enacted by Chapter 438, 2013 General Session

Part 2

Alternative Dispute Resolution Act

78B-6-201 Title.

This part is known as the "Alternative Dispute Resolution Act."

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-202 Definitions.

As used in this part:

- (1) "ADR" means alternative dispute resolution and includes arbitration, mediation, and other means of dispute resolution, other than court trial, authorized by the Judicial Council under this part.
- (2) "ADR organization" means an organization which provides training for ADR providers or offers other ADR services.
- (3) "ADR provider" means a neutral person who conducts an ADR procedure. An arbitrator, mediator, and early neutral evaluator are ADR providers. An ADR provider may be an employee of the court or an independent contractor.

- (4) "Arbitration" means a private hearing before a neutral or panel of neutrals who hear the evidence, consider the contentions of the parties, and enter a written award to resolve the issues presented pursuant to Section 78B-6-206.
- (5) "Award" as used in connection with arbitration includes monetary or equitable relief and may include damages, interest, costs, and attorney fees.
- (6) "Civil action" means an action in which a party seeks monetary or equitable relief at common law or pursuant to statute.
- (7) "Early neutral evaluation" means a confidential meeting with a neutral expert to identify the issues in a dispute, explore settlement, and assess the merits of the claims.
- (8) "Mediation" means a private forum in which one or more impartial persons facilitate communication between parties to a civil action to promote a mutually acceptable resolution or settlement.
- (9) "Summary jury trial" means a summary presentation of a case to a jury which results in a nonbinding verdict.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-203 Purpose and findings.

- (1) The purpose of this part is to offer an alternative or supplement to the formal processes associated with a court trial and to promote the efficient and effective operation of the courts of this state by authorizing and encouraging the use of alternative methods of dispute resolution to secure the just, speedy, and inexpensive determination of civil actions filed in the courts of this state.
- (2) The Legislature finds that:
 - (a) the use of alternative methods of dispute resolution authorized by this part will secure the purposes of Article I, Section 11, Utah Constitution, by providing supplemental or complementary means for the just, speedy, and inexpensive resolution of disputes;
 - (b) preservation of the confidentiality of ADR procedures will significantly aid the successful resolution of civil actions in a just, speedy, and inexpensive manner;
 - (c) ADR procedures will reduce the need for judicial resources and the time and expense of the parties;
 - (d) mediation has, in pilot programs, resulted in the just and equitable settlement of petitions for the protection of children under Section 80-3-201 and petitions for the terminations of parental rights under Section 80-4-201; and
 - (e) the purpose of this part will be promoted by authorizing the Judicial Council to establish rules to promote the use of ADR procedures by the courts of this state as an alternative or supplement to court trial.

Amended by Chapter 262, 2021 General Session

78B-6-204 Dispute Resolution Programs -- Director -- Duties -- Report.

- (1) Within the Administrative Office of the Courts, there shall be a director of Dispute Resolution Programs, appointed by the state court administrator.
- (2) The director shall be an employee of the Administrative Office of the Courts and shall be responsible for the administration of all court-annexed Dispute Resolution Programs. The director shall have duties, powers, and responsibilities as the Judicial Council may determine. The qualifications for employment of the director shall be based on training and experience in the management, principles, and purposes of alternative dispute resolution procedures.

- (3) In order to implement the purposes of this part, the Administrative Office of the Courts may employ or contract with ADR providers or ADR organizations on a case-by-case basis, on a service basis, or on a program basis.
- (4) The Administrative Office of the Courts shall:
 - (a) establish programs for training ADR providers and orienting attorneys and their clients to ADR programs and procedures; and
 - (b) ensure that any training described in Subsection (4)(a) complies with Title 63G, Chapter 22, State Training and Certification Requirements.
- (5) ADR providers and organizations are subject to the rules and fees set by the Judicial Council.
- (6) An ADR provider is immune from all liability when conducting proceedings under the rules of the Judicial Council and the provisions of this part, except for wrongful disclosure of confidential information, to the same extent as a judge of the courts in this state.
- (7)
 - (a) The director shall report annually to the Supreme Court, the Judicial Council, the governor, and the Utah State Bar on the operation of the Dispute Resolution Programs.
 - (b) The director shall provide the report to the Judiciary Interim Committee, if requested by the committee.
 - (c) Copies of the report shall be available to the public at the Administrative Office of the Courts.
 - (d) The report shall include:
 - (i) identification of participating judicial districts and the methods of alternative dispute resolution that are available in those districts;
 - (ii) the number and types of disputes received;
 - (iii) the methods of alternative dispute resolution to which the disputes were referred;
 - (iv) the course of the referral;
 - (v) the status of cases referred to alternative dispute resolution or the disposition of these disputes; and
 - (vi) any problems encountered in the administration of the program and the recommendations of the director as to the continuation or modification of any program.
 - (e) Nothing may be included in a report which would impair the privacy or confidentiality of any specific ADR proceeding.

Amended by Chapter 200, 2018 General Session

78B-6-205 Judicial Council rules for ADR procedures.

- (1) To promote the use of ADR procedures, the Judicial Council may by rule establish experimental and permanent ADR programs administered by the Administrative Office of the Courts under the supervision of the director of Dispute Resolution Programs.
- (2) The rules of the Judicial Council shall be based upon the purposes and provisions of this part. Any procedural and evidentiary rules adopted by the Supreme Court may not impinge on the constitutional rights of any parties.
- (3) The rules of the Judicial Council shall include provisions:
 - (a) to orient parties and their counsel to the ADR program, ADR procedures, and the rules of the Judicial Council;
 - (b) to identify types of civil actions that qualify for ADR procedures;
 - (c) to refer to ADR procedures all or particular issues within a civil action;
 - (d) to protect persons not parties to the civil action whose rights may be affected in the resolution of the dispute;

- (e) to ensure that no party or its attorney is prejudiced for electing, in good faith, not to participate in an optional ADR procedure;
 - (f) to exempt any case from the ADR program in which the objectives of ADR would not be realized;
 - (g) to create timetables to ensure that the ADR procedure is instituted and completed without undue delay or expense;
 - (h) to establish the qualifications of ADR providers for each form of ADR procedure including that formal education in any particular field may not, by itself, be either a prerequisite or sufficient qualification to serve as an ADR provider under the program authorized by this part;
 - (i) to govern the conduct of each type of ADR procedure, including the site at which the procedure is conducted;
 - (j) to establish the means for the selection of an ADR provider for each form of ADR procedure;
 - (k) to determine the powers, duties, and responsibilities of the ADR provider for each form of ADR procedure;
 - (l) to establish a code of ethics applicable to ADR providers with means for its enforcement;
 - (m) to protect and preserve the privacy and confidentiality of ADR procedures;
 - (n) to protect and preserve the privacy rights of the persons attending the ADR procedures;
 - (o) to permit waiver of all or part of fees assessed for referral of a case to the ADR program on a showing of indigency or other compelling reason;
 - (p) to authorize imposition of sanctions for failure of counsel or parties to participate in good faith in the ADR procedure assigned;
 - (q) to assess the fees to cover the cost of compensation for the services of the ADR provider and reimbursement for the provider's allowable, out-of-pocket expenses and disbursements; and
 - (r) to allow vacation of an award by a court as provided in Section 78B-11-124.
- (4) The Judicial Council may, from time to time, limit the application of its ADR rules to particular judicial districts.

Amended by Chapter 272, 2022 General Session

78B-6-206 Minimum procedures for arbitration.

- (1) An award in an arbitration proceeding shall be in writing and, at the discretion of the arbitrator or panel of arbitrators, may state the reasons or otherwise explain the nature or amount of the award.
- (2) The award shall be final and enforceable as any other judgment in a civil action, unless:
 - (a) within 30 days after the filing of the award with the clerk of the court any party files with the clerk of court a demand for a trial de novo upon which the case shall be returned to the trial calendar; or
 - (b) any party files with the arbitrator or panel of arbitrators and serves a copy on all other parties a written request to modify the award on the grounds:
 - (i) there is an evident miscalculation of figures or description of persons or property referred to in the award;
 - (ii) the award does not dispose of all the issues presented to the arbitrator or panel of arbitrators for resolution; or
 - (iii) the award purports to resolve issues not submitted for resolution in the arbitration process.
 - (c) The period for filing a demand for trial de novo is tolled until the arbitrator or panel of arbitrators have acted on the request to modify the award, which must be completed within 30 days of the filing.
- (3) The parties to an arbitration procedure may stipulate that:

- (a) an award need not be filed with the court, except in those cases where the rights of third parties may be affected by the provisions of the award; and
 - (b) the case is dismissed in which the award was made.
- (4)
- (a) At any time the parties may enter into a written agreement for referral of the case or of issues in the case to arbitration pursuant to Title 78B, Chapter 11, Utah Uniform Arbitration Act, or the Federal Arbitration Act, 9 U.S.C. Sec. 1 et seq., as the parties shall specify.
 - (b) The court may dismiss the case, or if less than all the issues are referred to arbitration, stay the case for a reasonable period for the parties to complete a private arbitration proceeding.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-207 Minimum procedures for mediation.

- (1) A judge or court commissioner may refer to mediation any case for which the Judicial Council and Supreme Court have established a program or procedures. A party may file with the court an objection to the referral which may be granted for good cause.
- (2)
- (a) Unless all parties and the neutral or neutrals agree only parties, their representatives, and the neutral may attend the mediation sessions.
 - (b) If the mediation session is in accordance with a referral under Section 80-3-206 or 80-4-206, the ADR provider or ADR organization shall notify all parties to the proceeding and any person designated by a party. The ADR provider may notify any person whose rights may be affected by the mediated agreement or who may be able to contribute to the agreement. A party may request notice be provided to a person who is not a party.
- (3)
- (a) Except as provided in Subsection (3)(b), any settlement agreement between the parties as a result of mediation may be executed in writing, filed with the clerk of the court, and enforceable as a judgment of the court. If the parties stipulate to dismiss the action, any agreement to dismiss shall not be filed with the court.
 - (b) With regard to mediation affecting any petition filed under Section 80-3-201 or 80-4-201:
 - (i) all settlement agreements and stipulations of the parties shall be filed with the court;
 - (ii) all timelines, requirements, and procedures described in Title 80, Chapter 2, Child Welfare Services, Title 80, Chapter 2a, Removal and Protective Custody of a Child, Title 80, Chapter 3, Abuse, Neglect, and Dependency Proceedings, and Title 80, Chapter 4, Termination and Restoration of Parental Rights, shall be complied with; and
 - (iii) the parties to the mediation may not agree to a result that could not have been ordered by the court in accordance with the procedures and requirements of Title 80, Chapter 2, Child Welfare Services, Title 80, Chapter 2a, Removal and Protective Custody of a Child, Title 80, Chapter 3, Abuse, Neglect, and Dependency Proceedings, and Title 80, Chapter 4, Termination and Restoration of Parental Rights.

Amended by Chapter 335, 2022 General Session

78B-6-208 Confidentiality.

- (1) ADR proceedings shall be conducted in a manner that encourages informal and confidential exchange among the persons present to facilitate resolution of the dispute or a part of the dispute. ADR proceedings shall be closed unless the parties agree that the proceedings be open. ADR proceedings may not be recorded.

- (2) No evidence concerning the fact, conduct, or result of an ADR proceeding may be subject to discovery or admissible at any subsequent trial of the same case or same issues between the same parties.
- (3) No party to the case may introduce as evidence information obtained during an ADR proceeding unless the information was discovered from a source independent of the ADR proceeding.
- (4) Unless all parties and the neutral agree, no person attending an ADR proceeding, including the ADR provider or ADR organization, may disclose or be required to disclose any information obtained in the course of an ADR proceeding, including any memoranda, notes, records, or work product.
- (5) Except as provided, an ADR provider or ADR organization may not disclose or discuss any information about any ADR proceeding to anyone outside the proceeding, including the judge or judges to whom the case may be assigned. An ADR provider or an ADR organization may communicate information about an ADR proceeding with the director for the purposes of training, program management, or program evaluation and when consulting with a peer. In making those communications, the ADR provider or ADR organization shall render anonymous all identifying information.
- (6) Nothing in this section limits or affects the responsibility to report child abuse or neglect in accordance with Section 80-2-602.
- (7) Records of ADR proceedings under this chapter or under Title 78B, Chapter 11, Utah Uniform Arbitration Act, may not be subject to Title 63G, Chapter 2, Government Records Access and Management Act, except settlement agreements filed with the court after conclusion of an ADR proceeding or awards filed with the court after the period for filing a demand for trial de novo has expired.

Amended by Chapter 335, 2022 General Session

78B-6-209 Dispute Resolution Account -- Appropriation.

There is created a restricted account within the General Fund known as the "Dispute Resolution Account." Five dollars of the fees established in Subsections 78A-2-301(1)(a) through (e), (1)(g), and (1)(s) shall be allocated to and deposited into the Dispute Resolution Account. The Legislature shall annually appropriate money from the Dispute Resolution Account to the Administrative Office of the Courts to implement the purposes of Title 78B, Chapter 6, Part 2, Alternative Dispute Resolution Act.

Amended by Chapter 74, 2015 General Session

**Part 3
Contempt**

78B-6-301 Acts and omissions constituting contempt.

The following acts or omissions in respect to a court or its proceedings are contempts of the authority of the court:

- (1) disorderly, contemptuous, or insolent behavior toward the judge while holding the court, tending to interrupt the course of a trial or other judicial proceeding;

- (2) breach of the peace, boisterous conduct or violent disturbance, tending to interrupt the due course of a trial or other judicial proceeding;
- (3) misbehavior in office, or other willful neglect or violation of duty by an attorney, counsel, clerk, sheriff, or other person appointed or elected to perform a judicial or ministerial service;
- (4) deceit, or abuse of the process or proceedings of the court, by a party to an action or special proceeding;
- (5) disobedience of any lawful judgment, order or process of the court;
- (6) acting as an officer, attorney or counselor, of a court without authority;
- (7) rescuing any person or property that is in the custody of an officer by virtue of an order or process of the court;
- (8) unlawfully detaining a witness or party to an action while going to, remaining at, or returning from, the court where the action is on the calendar for trial;
- (9) any other unlawful interference with the process or proceedings of a court;
- (10) disobedience of a subpoena duly served, or refusing to be sworn or to answer as a witness;
- (11) when summoned as a juror in a court, neglecting to attend or serve, or improperly conversing with a party to an action to be tried at the court, or with any other person, concerning the merits of an action, or receiving a communication from a party or other person in respect to it, without immediately disclosing the communication to the court; and
- (12) disobedience by an inferior tribunal, magistrate or officer of the lawful judgment, order or process of a superior court, or proceeding in an action or special proceeding contrary to law, after the action or special proceeding is removed from the jurisdiction of the inferior tribunal, magistrate or officer. Disobedience of the lawful orders or process of a judicial officer is also a contempt of the authority of the officer.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-302 Contempt in immediate presence of court -- Summary action -- Outside presence of court -- procedure.

- (1) When a contempt is committed in the immediate view and presence of the court, or judge at chambers, it may be punished summarily. An order shall be made, reciting the facts occurring in the immediate view and presence of the court. The order shall state that the person proceeded against is guilty of a contempt and shall be punished as prescribed in Section 78B-6-310.
- (2) When the contempt is not committed in the immediate view and presence of the court or judge, an affidavit or statement of the facts by a judicial officer shall be presented to the court or judge of the facts constituting the contempt.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-303 Warrant of attachment or commitment order to show cause.

If the contempt is not committed in the immediate view and presence of the court or judge, a warrant of attachment may be issued to bring the person charged to answer. If there is no previous arrest, a warrant of commitment may, upon notice, or upon an order to show cause, be granted. A warrant of commitment may not be issued without a previous attachment to answer, or a notice or order to show cause.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-304 Bail.

Whenever a warrant of attachment is issued pursuant to this chapter, the court or judge must direct, by an indorsement on the warrant, that the person charged may be allowed to post bail for the person's appearance, in an amount to be prescribed in the indorsement.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-305 Duty of sheriff -- Excuse for nonappearance -- Unnecessary restraint forbidden.

- (1) Upon executing the warrant of attachment, the sheriff shall keep the person in custody and bring the person before the court or judge until an order is made in the premises, unless the person arrested posts bail as provided in Section 78B-6-306.
- (2) Whenever by the provisions of this chapter an officer is required to keep in custody a person arrested on a warrant of attachment and to bring the person before a court or judge, the inability from illness or otherwise of the person to attend is a sufficient excuse for not bringing the person up; and the officer must not confine a person arrested upon the warrant in a prison or otherwise restrain the person of personal liberty, except so far as may be necessary to secure the person's personal attendance.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-306 Bail bond -- Form.

When a direction to allow the person arrested to post bail is contained in the warrant of attachment, the person shall be released if bond is posted and the person executes a written promise to appear on the return of the warrant, and abide by the order of the court or judge.

Amended by Chapter 121, 2020 General Session

78B-6-307 Officer's return.

The officer shall return the warrant of arrest, and the undertaking, if any, received from the person arrested, by the return day specified therein.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-308 Procedure when party charged fails to appear.

When the warrant of arrest has been served, if the person arrested does not appear on the specified day, the court or judge may issue another warrant of arrest, or may order the undertaking to be prosecuted or both. If the undertaking is prosecuted, the measure of damages in the action is the extent of the loss or injury sustained by the aggrieved party by reason of the misconduct for which the warrant was issued, and the costs of the proceeding.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-309 Hearing.

When the person arrested has been brought up or has appeared, the court shall proceed to investigate the charge, and hear any answer which the person arrested may make. The court may examine witnesses for or against the person arrested, for which an adjournment may be had from time to time, if necessary.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-310 Contempt -- Action by court.

- (1) The court shall determine whether the person proceeded against is guilty of the contempt charged. If the court finds the person is guilty of the contempt, the court may impose a fine not exceeding \$1,000, order the person incarcerated in the county jail not exceeding 30 days, or both. However, a justice court judge or court commissioner may punish for contempt by a fine not to exceed \$500 or by incarceration for five days or both.
- (2) A fine imposed under this section is subject to the limitations of Subsection 76-3-301(2).

Amended by Chapter 234, 2018 General Session

78B-6-311 Damages to party aggrieved.

- (1) If an actual loss or injury to a party in an action or special proceeding is caused by the contempt, the court:
 - (a) in lieu of or in addition to the fine or imprisonment imposed for the contempt, may order the person proceeded against to pay the party aggrieved a sum of money sufficient to indemnify and satisfy the aggrieved party's costs and expenses; and
 - (b) may order that any bail posted by the person proceeded against be used to satisfy all or part of the money ordered to be paid to the aggrieved party.
- (2) The order described in Subsection (1)(b), and the acceptance of money under the order, is a bar to an action by the aggrieved party for the loss and injury.

Amended by Chapter 121, 2020 General Session

78B-6-312 Imprisonment to compel performance.

When the contempt consists of the omission to perform an act enjoined by law, which is yet in the power of the person to perform, the person may be imprisoned until the act is performed, or until released by the court. The act shall be specified in the warrant of commitment.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-313 Contempt of process of nonjudicial officer -- Procedure.

- (1) If a person, officer, referee, arbitrator, board, or committee with the authority to compel the attendance of witnesses or the production of documents issues a subpoena and the person to whom the subpoena is issued refuses to appear or produce the documents ordered, the person shall be considered in contempt.
- (2)
 - (a) The person, officer, referee, arbitrator, board, or committee may report the person to whom the subpoena is issued to the court.
 - (b) The court may then issue a warrant of attachment or order to show cause to compel the person's appearance.
- (3) When a person charged has been brought up or has appeared, the person's contempt may be purged in the same manner as other contempts mentioned in this part.

Amended by Chapter 401, 2023 General Session

78B-6-314 Re-entry after eviction from real property.

- (1) A person who is ordered to vacate real property by a court of competent jurisdiction, who, not having a right so to do, refuses to vacate, re-enters, or takes possession of, the real property, is guilty of a contempt of the court issuing the judgment.
- (2) Upon a conviction for the contempt, the court shall immediately issue an alias process, directed to the proper officer, requiring the person to restore possession of the property to the party entitled to possession under the original judgment or process.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-315 Noncompliance with child support order.

- (1) When a court of competent jurisdiction, or the Office of Recovery Services pursuant to an action under Title 63G, Chapter 4, Administrative Procedures Act, makes an order requiring a parent to furnish support or necessary food, clothing, shelter, medical care, or other remedial care for his child, and the parent fails to do so, proof of noncompliance shall be prima facie evidence of contempt of court.
- (2) Proof of noncompliance may be demonstrated by showing that:
 - (a) the order was made, and filed with the district court; and
 - (b) the parent knew of the order because:
 - (i) the order was mailed to the parent at his last-known address as shown on the court records;
 - (ii) the parent was present in court at the time the order was pronounced;
 - (iii) the parent entered into a written stipulation and the parent or counsel for the parent was sent a copy of the order;
 - (iv) counsel was present in court and entered into a stipulation which was accepted and the order based upon the stipulation was then sent to counsel for the parent; or
 - (v) the parent was properly served and failed to answer.
- (3) Upon establishment of a prima facie case of contempt under Subsection (2), the obligor under the child support order has the burden of proving inability to comply with the child support order.
- (4) A court may, in addition to other available sanctions, withhold, suspend, or restrict the use of driver's licenses, professional and occupational licenses, and recreational licenses and impose conditions for reinstatement upon a finding that:
 - (a) an obligor has:
 - (i) made no payment for 60 days on a current obligation of support as set forth in an administrative or court order and, thereafter, has failed to make a good faith effort under the circumstances to make payment on the support obligation in accordance with the order; or
 - (ii) made no payment for 60 days on an arrearage obligation of support as set forth in a payment schedule, written agreement with the Office of Recovery Services, or an administrative or judicial order and, thereafter, has failed to make a good faith effort under the circumstances to make payment on the arrearage obligation in accordance with the payment schedule, agreement, or order; and
 - (iii) not obtained a judicial order staying enforcement of the support or arrearage obligation for which the obligor would be otherwise delinquent;
 - (b) a custodial parent has:
 - (i) violated a parent-time order by denying contact for 60 days between a noncustodial parent and a child and, thereafter, has failed to make a good faith effort under the circumstances to comply with a parent-time order; and
 - (ii) not obtained a judicial order staying enforcement of the parent-time order; or
 - (c) an obligor or obligee, after receiving appropriate notice, has failed to comply with a subpoena or order relating to a paternity or child support proceeding.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-316 Compensatory service for violation of parent-time order or failure to pay child support.

- (1) As used in this section, "obligor" means the same as that term is defined in Section 81-6-101.
- (2) If a court finds by a preponderance of the evidence that a parent has refused to comply with the minimum amount of parent-time ordered in a decree of divorce, the court shall order the parent to:
 - (a) perform a minimum of 10 hours of compensatory service; and
 - (b) participate in workshops, classes, or individual counseling to educate the parent about the importance of complying with the court order and providing a child a continuing relationship with both parents.
- (3) If a custodial parent is ordered to perform compensatory service or undergo court-ordered education, there is a rebuttable presumption that the noncustodial parent be granted parent-time by the court to provide child care during the time the custodial parent is complying with compensatory service or education in order to recompense him for parent-time wrongfully denied by the custodial parent under the divorce decree.
- (4) If a noncustodial parent is ordered to perform compensatory service or undergo court-ordered education, the court shall attempt to schedule the compensatory service or education at times that will not interfere with the noncustodial parent's parent-time with the child.
- (5) The person ordered to participate in court-ordered education is responsible for expenses of workshops, classes, and individual counseling.
- (6) If a court finds by a preponderance of the evidence that an obligor has refused to pay child support as ordered by a court in accordance with Title 81, Chapter 6, Child Support, the court shall order the obligor to:
 - (a) perform a minimum of 10 hours of compensatory service; and
 - (b) participate in workshops, classes, or individual counseling to educate the obligor about the importance of complying with the court order and providing the children with a regular and stable source of support.
- (7) The obligor is responsible for the expenses of workshops, classes, and individual counseling ordered by the court.
- (8) If a court orders an obligor to perform compensatory service or undergo court-ordered education, the court shall attempt to schedule the compensatory service or education at times that will not interfere with the obligor's parent-time with the child.
- (9) The sanctions that the court shall impose under this section do not prevent the court from imposing other sanctions or prevent any person from bringing a cause of action allowed under state or federal law.
- (10) The Legislature shall allocate the money from the Children's Legal Defense Account to the judiciary to defray the cost of enforcing and administering this section.

Amended by Chapter 366, 2024 General Session

78B-6-317 Willful failure to pay a civil accounts receivable or a civil judgment of restitution.

- (1) As used in this section:
 - (a) "Civil accounts receivable" means the same as that term is defined in Section 77-32b-102.
 - (b) "Civil judgment of restitution" means the same as that term is defined in Section 77-32b-102.
 - (c) "Default" means the same as that term is defined in Section 77-32b-102.

- (d) "Delinquent" means the same as that term is defined in Section 77-32b-102.
- (2) If a civil accounts receivable or a civil judgment of restitution is delinquent or in default, the court, by motion of the prosecuting attorney, a judgment creditor, or on the court's own motion, may order the defendant to appear and show cause why the delinquency or default should not be treated as contempt of court under this section.
- (3)
 - (a) The moving party or a clerk of the court shall provide a declaration outlining:
 - (i) the nature of the debt;
 - (ii) the way in which the civil accounts receivable or civil judgment of restitution is delinquent or in default;
 - (iii) if the moving party is the Office of State Debt Collection, the attempts that have been made to collect the civil accounts receivable or the civil judgment of restitution before moving for an order to show cause; and
 - (iv) if the moving party is not the Office of State Debt Collection, that the defendant has failed to comply with any payment agreement that the defendant has with the Office of State Debt Collection.
 - (b) Upon receipt of a declaration under Subsection (3)(a), the court shall:
 - (i) set the matter for a hearing; and
 - (ii) provide notice of the hearing to the defendant by mailing notice of the hearing to the defendant's last known address and by any other means the court finds likely to provide defendant notice of the hearing.
 - (c) If it appears to the court that the defendant is not likely to appear at the hearing, the court may issue an arrest warrant with a bail amount reasonably likely to guarantee the defendant's appearance.
 - (d) If the defendant is a corporation or an unincorporated association, the court shall cite the person authorized to make disbursement from the assets of the corporation or association to appear to answer for the alleged contempt.
- (4) At the hearing, the defendant is entitled to be:
 - (a) represented by counsel; and
 - (b) if the court is considering a period of incarceration as a potential sanction, appointed counsel if the court determines that the defendant is indigent in accordance with Title 78B, Chapter 22, Indigent Defense Act.
- (5) To find the defendant in contempt, the court shall find beyond a reasonable doubt that the defendant:
 - (a) was aware of the obligation to pay the civil accounts receivable or the civil judgment of restitution;
 - (b) had the capacity to make a payment towards the civil accounts receivable or the civil judgment of restitution; and
 - (c) failed to make a payment towards the civil accounts receivable or the civil judgment of restitution.
- (6) Subject to the limitations in Subsections (7) through (9), if the court finds the defendant in contempt for nonpayment, the court may impose the sanctions for contempt under Section 78B-6-310.
- (7) If the court imposes a jail sanction for the contempt, the number of jail days may not exceed one day for each \$100 of the amount the court finds was contemptuously unpaid with a maximum of:
 - (a) five days for contempt arising from a class B misdemeanor or lesser offense; and
 - (b) 30 days for a class A misdemeanor or felony offense.

- (8)
 - (a) Any jail sanction imposed for contempt under this section shall serve to satisfy the civil accounts receivable at \$100 for each day served.
 - (b) Subsection (8)(a) does not apply to a civil judgment of restitution.
- (9) A financial penalty ordered by the court under Section 78B-6-310 may only become due after the satisfaction of the civil accounts receivable or the civil judgment of restitution.
- (10) The order of the court finding the defendant in contempt and ordering sanctions is a final appealable order.

Amended by Chapter 260, 2021 General Session

Part 4 Declaratory Judgments

78B-6-401 Power to issue declaratory judgment -- Form -- Effect.

- (1)
 - (a) A court with jurisdiction under Title 78A, Judiciary and Judicial Administration, has the power to issue declaratory judgments determining rights, status, and other legal relations within its respective jurisdiction.
 - (b) An action or proceeding may not be open to objection on the ground that a declaratory judgment or decree is prayed for.
- (2) The declaration may be either affirmative or negative in form and effect and shall have the force and effect of a final judgment or decree.

Amended by Chapter 158, 2024 General Session

78B-6-402 Court's general powers.

The provisions of Sections 78B-6-408, 78B-6-409, and 78B-6-410 do not limit or restrict the exercise of the general powers conferred in Section 78B-6-401 in any proceeding where declaratory relief is sought, in which a judgment or decree will terminate the controversy or remove an uncertainty.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-403 Parties.

- (1) When declaratory relief is sought all persons shall be made parties who have or claim any interest which would be affected by the declaration, and a declaration may not prejudice the rights of persons not parties to the proceeding.
- (2) In any proceeding which involves the validity of a municipal or county ordinance or franchise, the municipality or county shall be made a party, and shall be entitled to be heard.
- (3) If a statute or state franchise or permit is alleged to be invalid, the attorney general shall be served with a copy of the proceeding and be entitled to be heard.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-404 Discretion to deny declaratory relief.

The court may refuse to render or enter a declaratory judgment or decree where a judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-405 Appeals and reviews.

All orders, judgments, and decrees under this part may be reviewed in the same manner as other orders, judgments, and decrees.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-406 Supplemental relief.

Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application for further relief shall be by petition to a court having jurisdiction to grant the relief. If the application is considered sufficient, the court shall, on reasonable notice, require any adverse party, whose rights have been adjudicated by the declaratory judgment or decree, to show cause why further relief should not be immediately granted.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-407 Trial of issues of fact.

When a proceeding under this chapter involves the determination of an issue of fact, the issue may be tried in the court in which the proceeding is pending and determined in the same manner as issues of fact are tried and determined in other civil actions in the court.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-408 Rights, status, legal relations under instruments, or statutes may be determined.

A person with an interest in a deed, will, or written contract, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise, may request the court to determine any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations.

Amended by Chapter 158, 2024 General Session

78B-6-409 Contracts.

A contract may be construed before or after there has been a breach.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-410 Suit by fiduciary or representative.

Any person interested as or through an executor, administrator, trustee, guardian, or other fiduciary, creditor, devisee, legatee, heir, next of kin, or cestui que trust, in the administration of a trust, or of the estate of a decedent, an infant, lunatic, or insolvent, may petition the court for a declaratory judgment:

(1) to ascertain any class of creditors, devisees, legatees, heirs, next of kin, or others;

- (2) to direct the executors, administrators, or trustees to do or abstain from doing any particular act in their fiduciary capacity; or
- (3) to determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-411 Costs.

In any proceeding under this part the court may make an award of costs it considers equitable and just.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-412 Chapter to be liberally construed.

This chapter is to be remedial. Its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations; and is to be liberally construed and administered.

Renumbered and Amended by Chapter 3, 2008 General Session

Part 5 Eminent Domain

78B-6-501 Eminent domain -- Uses for which right may be exercised -- Limitations on eminent domain.

(1) As used in this section:

(a) "Century farm" means real property that is:

- (i) assessed under Title 59, Chapter 2, Part 5, Farmland Assessment Act; and
- (ii) owned or held by the same family for a continuous period of 100 years or more.

(b) "Mineral or element" means the same as that term is defined in Section 65A-17-101.

(c)

(i) "Mining use" means:

- (A) the full range of permitted or active activities, from prospecting and exploration to reclamation and closure, associated with the exploitation of a mineral deposit; and
- (B) the use of the surface, subsurface, groundwater, and surface water of an area in connection with the activities described in Subsection (1)(c)(i)(A) that have been, are being, or will be conducted.

(ii) "Mining use" includes, whether conducted on-site or off-site:

- (A) sampling, staking, surveying, exploration, or development activity;
- (B) drilling, blasting, excavating, or tunneling;
- (C) the removal, transport, treatment, deposition, and reclamation of overburden, development rock, tailings, and other waste material;
- (D) the recovery of sand and gravel;
- (E) removal, transportation, extraction, beneficiation, or processing of ore;
- (F) use of solar evaporation ponds and other facilities for the recovery of minerals in solution;
- (G) smelting, refining, autoclaving, or other primary or secondary processing operation;

- (H) the recovery of any mineral left in residue from a previous extraction or processing operation;
 - (I) a mining activity that is identified in a work plan or permitting document;
 - (J) the use, operation, maintenance, repair, replacement, construction, or alteration of a building, structure, facility, equipment, machine, tool, or other material or property that results from or is used in a surface or subsurface mining operation or activity;
 - (K) an accessory, incidental, or ancillary activity or use, both active and passive, including a utility, private way or road, pipeline, land excavation, working, embankment, pond, gravel excavation, mining waste, conveyor, power line, trackage, storage, reserve, passive use area, buffer zone, and power production facility;
 - (L) the construction of a storage, factory, processing, or maintenance facility; and
 - (M) an activity described in Subsection 40-8-4(19)(a).
- (2) Except as provided in Subsections (3), (4), and (5) and subject to the provisions of this part, the right of eminent domain may be exercised on behalf of the following public uses:
- (a) all public uses authorized by the federal government;
 - (b) public buildings and grounds for the use of the state, and all other public uses authorized by the Legislature;
 - (c)
 - (i) public buildings and grounds for the use of any county, city, town, or board of education;
 - (ii) reservoirs, canals, aqueducts, flumes, ditches, or pipes for conducting water or sewage, including to or from a development, for the use of the inhabitants of any county, city, or town, or for the draining of any county, city, or town;
 - (iii) the raising of the banks of streams, removing obstructions from streams, and widening, deepening, or straightening their channels;
 - (iv) bicycle paths and sidewalks adjacent to paved roads;
 - (v) roads, byroads, streets, and alleys for public vehicular use, including for access to a development; and
 - (vi) all other public uses for the benefit of any county, city, or town, or its inhabitants;
 - (d) wharves, docks, piers, chutes, booms, ferries, bridges, toll roads, byroads, plank and turnpike roads, roads for transportation by traction engines or road locomotives, roads for logging or lumbering purposes, and railroads and street railways for public transportation;
 - (e) reservoirs, dams, watergates, canals, ditches, flumes, tunnels, aqueducts and pipes for the supplying of persons, mines, mills, smelters or other works for the reduction of ores, with water for domestic or other uses, or for irrigation purposes, or for the draining and reclaiming of lands, or for solar evaporation ponds and other facilities for the recovery of minerals or elements in solution;
 - (f)
 - (i) roads, railroads, tramways, tunnels, ditches, flumes, pipes, and dumping places to access or facilitate the milling, smelting, or other reduction of ores, or the working of mines, quarries, coal mines, or mineral deposits including oil, gas, and minerals or elements in solution;
 - (ii) outlets, natural or otherwise, for the deposit or conduct of tailings, refuse or water from mills, smelters or other works for the reduction of ores, or from mines, quarries, coal mines or mineral deposits including minerals or elements in solution;
 - (iii) mill dams;
 - (iv) gas, oil or coal pipelines, tanks or reservoirs, including any subsurface stratum or formation in any land for the underground storage of natural gas, and in connection with that, any other interests in property which may be required to adequately examine, prepare, maintain, and operate underground natural gas storage facilities;

- (v) subject to Subsection (6), solar evaporation ponds and other facilities for the recovery of minerals in solution; and
- (vi) any occupancy in common by the owners or possessors of different mines, quarries, coal mines, mineral deposits, mills, smelters, or other places for the reduction of ores, or any place for the flow, deposit or conduct of tailings or refuse matter;
- (g) byroads leading from a highway to:
 - (i) a residence; or
 - (ii) a farm;
- (h) telecommunications, electric light and electric power lines, sites for electric light and power plants, or sites for the transmission of broadcast signals from a station licensed by the Federal Communications Commission in accordance with 47 C.F.R. Part 73 and that provides emergency broadcast services;
- (i) sewage service for:
 - (i) a city, a town, or any settlement of not fewer than 10 families;
 - (ii) a public building belonging to the state; or
 - (iii) a college or university;
- (j) canals, reservoirs, dams, ditches, flumes, aqueducts, and pipes for supplying and storing water for the operation of machinery for the purpose of generating and transmitting electricity for power, light or heat;
- (k) cemeteries and public parks; and
- (l) sites for mills, smelters or other works for the reduction of ores and necessary to their successful operation, including the right to take lands for the discharge and natural distribution of smoke, fumes, and dust, produced by the operation of works, provided that the powers granted by this section may not be exercised in any county where the population exceeds 20,000, or within one mile of the limits of any city or incorporated town nor unless the proposed condemner has the right to operate by purchase, option to purchase or easement, at least 75% in value of land acreage owned by persons or corporations situated within a radius of four miles from the mill, smelter or other works for the reduction of ores; nor beyond the limits of the four-mile radius; nor as to lands covered by contracts, easements, or agreements existing between the condemner and the owner of land within the limit and providing for the operation of such mill, smelter, or other works for the reduction of ores; nor until an action shall have been commenced to restrain the operation of such mill, smelter, or other works for the reduction of ores.
- (3) The right of eminent domain may not be exercised on behalf of the following uses:
 - (a) except as provided in Subsection (2)(c)(iv), trails, paths, or other ways for walking, hiking, bicycling, equestrian use, or other recreational uses, or whose primary purpose is as a foot path, equestrian trail, bicycle path, or walkway;
 - (b)
 - (i) a public park whose primary purpose is:
 - (A) as a trail, path, or other way for walking, hiking, bicycling, or equestrian use; or
 - (B) to connect other trails, paths, or other ways for walking, hiking, bicycling, or equestrian use; or
 - (ii) a public park established on real property that is:
 - (A) a century farm; and
 - (B) located in a county of the first class.
- (4)

- (a) The right of eminent domain may not be exercised within a migratory bird production area created on or before December 31, 2020, under Title 23A, Chapter 13, Migratory Bird Production Area, except as follows:
 - (i) subject to Subsection (4)(b), an electric utility may condemn land within a migratory bird production area located in a county of the first class only for the purpose of installing buried power lines;
 - (ii) an electric utility may condemn land within a migratory bird production area in a county other than a county of the first class to install:
 - (A) buried power lines; or
 - (B) a new overhead transmission line that is parallel to and abutting an existing overhead transmission line or collocated within an existing overhead transmission line right of way; or
 - (iii) the Department of Transportation may exercise eminent domain for the purpose of the construction of the West Davis Highway.
- (b) Before exercising the right of eminent domain under Subsection (4)(a)(i), the electric utility shall demonstrate that:
 - (i) the proposed condemnation would not have an unreasonable adverse effect on the preservation, use, and enhancement of the migratory bird production area; and
 - (ii) there is no reasonable alternative to constructing the power line within the boundaries of a migratory bird production area.
- (5) If the intended public purpose is for a mining use, a private person may not exercise the power of eminent domain over property, or an interest in property, that is already used for a mining use within the boundary of:
 - (a) a permit area, as defined in Section 40-8-4;
 - (b) an area for which a permit has been issued by the Division of Water Quality, as part of the underground injection control program, under rules made by the Water Quality Board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
 - (c) private property; or
 - (d) an area under a state or federal lease.
- (6)
 - (a) For the purpose of solar evaporation ponds and other facilities for the recovery of minerals or elements in solution on or from the Great Salt Lake, a public use includes removal or extinguishment, by a state entity, in whole or in part, on Great Salt Lake Sovereign lands of:
 - (i) a solar evaporation pond;
 - (ii) improvements, property, easements, or rights-of-way appurtenant to a solar evaporation pond, including a lease hold; or
 - (iii) other facilities for the recovery of minerals or elements in solution.
 - (b) The public use under this Subsection (6) is in the furtherance of the benefits to public trust assets attributable to the Great Salt Lake under Section 65A-1-1.

Amended by Chapter 277, 2025 General Session

78B-6-502 Estates and rights that may be taken.

Except as provided in Subsection 78B-6-501(3), (4), or (5), the following estates and rights in lands are subject to being taken for public use:

- (1) a fee simple, when taken for:
 - (a) public buildings or grounds;
 - (b) permanent buildings;

- (c) reservoirs and dams, and permanent flooding occasioned by them;
 - (d) any permanent flood control structure affixed to the land;
 - (e) an outlet for a flow, a place for the deposit of debris or tailings of a mine, mill, smelter, or other place for the reduction of ores; and
 - (f) subject to Subsection 78B-6-501(6), solar evaporation ponds and other facilities for the recovery of minerals in solution, except when the surface ground is underlaid with minerals, coal, or other deposits sufficiently valuable to justify extraction, only a perpetual easement may be taken over the surface ground over the deposits;
- (2) an easement, when taken for any other use; and
 - (3) the right of entry upon and occupation of lands, with the right to take from those lands earth, gravel, stones, trees, and timber as necessary for a public use.

Amended by Chapter 25, 2024 General Session

Amended by Chapter 350, 2024 General Session

78B-6-503 Private property which may be taken.

Except as provided in Subsection 78B-6-501(3), (4), or (5), private property that may be taken under this part includes:

- (1) all real property belonging to any person;
- (2) lands belonging to the state, or to any county, city or incorporated town, not appropriated to some public use;
- (3) property appropriated to public use, except that the property may not be taken unless for a more necessary public use than that to which the property has already been appropriated;
- (4) franchises for toll roads, toll bridges, ferries, and all other franchises, except that the franchises may not be taken unless for free highways, railroads, or other more necessary public use;
- (5) all rights of way for any and all purposes mentioned in Section 78B-6-501, and any and all structures and improvements on the property, and the lands held or used in connection with the property, except that:
 - (a) the property is subject to be connected with, crossed, or intersected by any other right of way or improvement or structure;
 - (b) the property is subject to a limited use in common with the owners, when necessary; and
 - (c) uses of crossings, intersections, and connections shall be made in the manner most compatible with the greatest public benefit and the least private injury; and
- (6) all classes of private property not enumerated if the taking is authorized by law.

Amended by Chapter 350, 2024 General Session

78B-6-503.5 Other property which may be taken -- State as plaintiff.

- (1) Subject to Subsections (2) and (3), property which may be taken under this part includes property possessed by the federal government unless the property was acquired by the federal government with the consent of the Legislature and in accordance with the United States Constitution Article I, Section 8, Clause 17.
- (2) The state shall be the plaintiff described in Section 78B-6-507 in an action to condemn property described in Subsection (1).
- (3) The following do not apply to an action authorized under Subsection (1):
 - (a) Section 78B-6-505;
 - (b) Section 78B-6-520;
 - (c) Section 78B-6-521; and

(d) Title 57, Chapter 12, Utah Relocation Assistance Act.

Enacted by Chapter 250, 2010 General Session

78B-6-504 Conditions precedent to taking.

(1) As used in this section:

(a) "Feasible" means reasonably practicable after consideration of factors including:

- (i) cost;
- (ii) delay;
- (iii) terrain;
- (iv) safety; and
- (v) the size and complexity of the infrastructure route.

(b) "Governing body" means:

- (i) for a county, city, or town, the legislative body of the county, city, or town; and
- (ii) for any other political subdivision of the state, the person or body with authority to govern the affairs of the political subdivision.

(c) "High voltage power line" means the same as that term is defined in Section 54-18-102.

(d) "Infrastructure siting analysis" means a comprehensive evaluation that:

- (i) identifies and assesses all reasonable route alternatives for the proposed infrastructure;
- (ii) prioritizes the use of existing utility corridors in accordance with federal standards;
- (iii) considers first the use of federal public lands when feasible; and
- (iv) documents why alternatives using federal public lands are not feasible, if applicable.

(e) "Standard Form 299" means the federal form titled "Application for Transportation, Utility Systems, Telecommunications and Facilities on Federal Lands and Property" used to request authorization for use of federal lands.

(2) Before property can be taken it must appear that:

- (a) the use to which it is to be applied is a use authorized by law;
- (b) the taking is necessary for the use;
- (c) construction and use of all property sought to be condemned will commence within a reasonable time as determined by the court, after the initiation of proceedings under this part; and
- (d) if already appropriated to some public use, the public use to which it is to be applied is a more necessary public use.

(3) Property may not be taken by a political subdivision of the state unless the governing body of the political subdivision approves the taking.

(4)

(a) Before taking a final vote to approve the filing of an eminent domain action, the governing body of each political subdivision intending to take property shall provide written notice to each owner of property to be taken of each public meeting of the political subdivision's governing body at which a vote on the proposed taking is expected to occur and allow the property owner the opportunity to be heard on the proposed taking.

(b) The requirement under Subsection (4)(a) to provide notice to a property owner is satisfied by the governing body mailing the written notice to the property owner:

- (i) at the owner's address as shown on the records of the county assessor's office; and
- (ii) at least 10 business days before the public meeting.

(5) In addition to the requirements of Subsection (2), a person filing an eminent domain action for a high voltage power line shall:

(a) complete an infrastructure siting analysis;

- (b) demonstrate that use of federal public lands is not authorized, feasible, or would result in greater public harm than the proposed condemnation; and
- (c) submit the analysis to the court as part of the condemnation proceedings.

Amended by Chapter 297, 2025 General Session

78B-6-505 Negotiation and disclosure required before filing an eminent domain action.

(1) As used in this section:

(a)

(i) "Claimant" means a person who is a record interest holder of real property sought to be condemned.

(ii) "Claimant" does not include:

(A) a fee simple owner; or

(B) a utility subject to Section 72-6-116.

(b) "Fee simple owner" means the same as that term is defined in Section 57-12-13.

(2) A political subdivision of the state that seeks to acquire property by eminent domain or that intends to use eminent domain to acquire property if the property cannot be acquired in a voluntary transaction shall:

(a) before the governing body, as defined in Subsection 78B-6-504(2)(a), of the political subdivision takes a final vote to approve the filing of an eminent domain action, make a reasonable effort to negotiate with the fee simple owner for the purchase of the property; and

(b) except as provided in Subsection (5), as early in the negotiation process described in Subsection (2)(a) as practicable, but no later than 14 days before the day on which a final vote is taken to approve the filing of an eminent domain action:

(i) provide the fee simple owner and each claimant a complete printed copy of the materials provided on the Office of the Property Rights Ombudsman website in accordance with Section 13-43-203 regarding the acquisition of property for a public purpose and a property owner's right to just compensation;

(ii) provide the fee simple owner a written statement in substantially the following form:

"Although this letter is provided as part of an attempt to negotiate with you for the sale of your property or an interest in your property without using the power of eminent domain, [name of political subdivision] may use that power if it is not able to acquire the property by negotiation. Because of that potential, the person negotiating on behalf of the entity is required to provide the following disclosures to you.

1. You are entitled to receive just compensation for your property.

2. You are entitled to an opportunity to negotiate with [name of political subdivision] over the amount of just compensation before any legal action will be filed.

a. You are entitled to an explanation of how the compensation offered for your property was calculated.

b. If an appraiser is asked to value your property, you are entitled to accompany the appraiser during an inspection of the property.

3. You are entitled to discuss this case with the attorneys at the Office of the Property Rights Ombudsman. The office may be reached at [provide the current contact information for the Office of the Property Rights Ombudsman].

4. The Office of the Property Rights Ombudsman is a neutral state office staffed by attorneys experienced in eminent domain. Their purpose is to assist citizens in understanding and protecting their property rights. You are entitled to ask questions and request an explanation of your legal options.

5. If you have a dispute with [name of political subdivision] over the amount of just compensation due to you, you are entitled to request free mediation or arbitration of the dispute from the Office of the Property Rights Ombudsman. As part of mediation or arbitration, you are entitled to request a free independent valuation of the property.

6. Oral representations or promises made during the negotiation process are not binding upon the entity seeking to acquire the property by eminent domain."; and

(iii) provide each claimant a written statement in substantially the following form:

"1. Your interest in property may be impacted by a public improvement project and you may be entitled to receive just compensation.

2. You are entitled to discuss this case with the attorneys at the Office of the Property Rights Ombudsman. The office may be reached at [provide the current contact information for the Office of the Property Rights Ombudsman].

3. The Office of the Property Rights Ombudsman is a neutral state office staffed by attorneys experienced in eminent domain. Their purpose is to assist citizens in understanding and protecting their property rights. You are entitled to ask questions and request an explanation of your legal options.

4. If you have a dispute with [name of entity] over the amount of just compensation due to you, you are entitled to request free mediation or arbitration of the dispute from the Office of the Property Rights Ombudsman. As part of mediation or arbitration, you are entitled to request a free independent valuation of the property.

5. Oral representations or promises made during any negotiation are not binding upon the entity seeking to acquire the property by eminent domain."

(3) Except as provided in Subsection (5), the entity involved in the acquisition of property may not bring a legal action to acquire the property under this chapter until 30 days after the day on which the disclosure and materials required in Subsections (2)(b)(ii) and (iii) are provided to the fee simple owner and each claimant.

(4) A person, other than a political subdivision of the state, that seeks to acquire property by eminent domain or that intends to use eminent domain to acquire property if the property cannot be acquired in a voluntary transaction shall:

(a) before filing an eminent domain action, make a reasonable effort to negotiate with the fee simple owner for the purchase of the property interest being condemned; and

(b) except as provided in Subsection (5), as early in the negotiation process described in Subsection (4)(a) as practicable, but no later than 30 days before the day on which the person files an eminent domain action:

(i) provide the fee simple owner and each claimant a complete printed copy of the materials provided on the Office of the Property Rights Ombudsman website in accordance with Section 13-43-203 regarding the acquisition of property for a public purpose and a property owner's right to just compensation;

(ii) provide the fee simple owner a written statement in substantially the following form:

"Although this letter is provided as part of an attempt to negotiate with you for the sale of your property or an interest in your property without using the power of eminent domain, [name of entity] may use that power if it is not able to acquire the property by negotiation. Because of that potential, the person negotiating on behalf of the entity is required to provide the following disclosures to you.

1. You are entitled to receive just compensation for your property.

2. You are entitled to an opportunity to negotiate with [name of entity] over the amount of just compensation before any legal action will be filed.

a. You are entitled to an explanation of how the compensation offered for your property was calculated.

b. If an appraiser is asked to value your property, you are entitled to accompany the appraiser during an inspection of the property.

3. You are entitled to discuss this case with the attorneys at the Office of the Property Rights Ombudsman. The office may be reached at [provide the current contact information for the Office of the Property Rights Ombudsman].

4. The Office of the Property Rights Ombudsman is a neutral state office staffed by attorneys experienced in eminent domain. Their purpose is to assist citizens in understanding and protecting their property rights. You are entitled to ask questions and request an explanation of your legal options.

5. If you have a dispute with [name of entity] over the amount of just compensation due to you, you are entitled to request free mediation or arbitration of the dispute from the Office of the Property Rights Ombudsman. As part of mediation or arbitration, you are entitled to request a free independent valuation of the property.

6. Oral representations or promises made during the negotiation process are not binding upon the entity seeking to acquire the property by eminent domain."; and

(iii) provide each claimant a written statement in substantially the following form:

"1. Your interest in property may be impacted by a public improvement project and you may be entitled to receive just compensation.

2. You are entitled to discuss this case with the attorneys at the Office of the Property Rights Ombudsman. The office may be reached at [provide the current contact information for the Office of the Property Rights Ombudsman].

3. The Office of the Property Rights Ombudsman is a neutral state office staffed by attorneys experienced in eminent domain. Their purpose is to assist citizens in understanding and protecting their property rights. You are entitled to ask questions and request an explanation of your legal options.

4. If you have a dispute with [name of entity] over the amount of just compensation due to you, you are entitled to request free mediation or arbitration of the dispute from the Office of the Property Rights Ombudsman. As part of mediation or arbitration, you are entitled to request a free independent valuation of the property.

5. Oral representations or promises made during any negotiation are not binding upon the entity seeking to acquire the property by eminent domain."

(5) The court may, upon a showing of exigent circumstances and for good cause, shorten the 14-day period described in Subsection (2)(b) or the 30-day period described in Subsection (3) or (4)(b).

Amended by Chapter 297, 2025 General Session

78B-6-505.5 Coordination with federal land management agencies.

(1) Before filing an eminent domain action to condemn private land for a high voltage power line, a person shall:

(a) if federal public land exists within one quarter mile of the proposed high voltage power line, submit a Standard Form 299, or equivalent form, to each relevant federal land management agency to identify potentially suitable federal public land for the proposed use;

(b) document all efforts to coordinate with federal agencies; and

(c) include the documentation described in Subsection (1)(b) in any subsequent eminent domain filing.

- (2) A person may file an eminent domain action to condemn private land if each relevant federal land management agency fails to respond within 60 days after the person files a Standard Form 299, or equivalent form, with the agency.

Enacted by Chapter 297, 2025 General Session

78B-6-506 Right of entry for survey and location.

- (1) If land is required for public use, the person or the person's agent in charge of the use may survey and locate the property. It must be located in the manner which will be most compatible with the greatest public good and the least private injury, and subject to the provisions of this chapter.
- (2)
 - (a) The person or the person's agent in charge of the public use may, at reasonable times and upon reasonable notice, enter upon the land and make examinations, surveys, and maps of the land.
 - (b) Entry upon land as authorized under Subsection (2)(a) does not constitute a cause of action in favor of the owners of the lands, except for actual damage to the land and improvements on the land caused by the entry and which is not repaired on or before the date the examinations and surveys are completed.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-507 Complaint -- Contents.

- (1) The complaint shall contain:
 - (a) the name of the corporation, association, commission or person in charge of the public use for which the property is sought, who must be styled plaintiff;
 - (b) the names of all owners and claimants of the property, if known, or a statement that they are unknown, who must be styled defendants;
 - (c) a statement of the right of the plaintiff;
 - (d) if a right of way is sought, its location, general route, beginning and ending, and be accompanied by a map of the proposed right of way, as it is involved in the action or proceeding;
 - (e) if any interest in land is sought for a right of way or associated facilities for a subject activity as defined in Section 19-3-318:
 - (i) the permission of the governor with the concurrence of the Legislature authorizing:
 - (A) use of the site for the subject activity; and
 - (B) use of the proposed route for the subject activity; and
 - (ii) the proposed route as required by Subsection (1)(d);
 - (f) a description of each piece of land sought to be taken, and whether it includes the whole or only part of an entire parcel or tract; and
 - (g) for actions filed for a high voltage power line, the infrastructure siting analysis and federal agency coordination documentation required by Sections 78B-6-504 and 78B-6-505.5.
- (2) All parcels lying in the county and required for the same public use may be included in the same or separate proceedings, at the option of the plaintiff, but the court may consolidate or separate them to suit the convenience of parties.

Amended by Chapter 297, 2025 General Session

78B-6-508 Who may appear and defend.

All persons in occupation of, or having or claiming an interest in, any of the property described in the complaint, or in the damages for the taking, though not named, including shareholders in a mutual stock water company in a proceeding involving the taking of the company or property belonging to the company, may appear, plead and defend, each in respect to his own property or interest, or that claimed by him, in the same manner as if named in the complaint.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-509 Powers of court or judge -- Settlement offer -- Litigation expenses.

- (1) As used in this section, "litigation expenses" means costs necessary to prepare for and conduct a trial, including:
- (a) court costs;
 - (b) expert witness fees;
 - (c) appraisal fees, except plaintiff's fees related to the additional appraisal described in Subsection (3)(b); and
 - (d) reasonable attorney fees.
- (2) The court shall have the power to:
- (a) hear and determine all adverse or conflicting claims to the property sought to be condemned, and the damages; and
 - (b) determine the respective rights of different parties seeking condemnation of the same property.
- (3)
- (a) A plaintiff described in Subsection 78B-6-507(1)(a) may make a settlement offer for purposes of this Subsection (3) at any time:
 - (i) following the close of discovery as ordered by the court, but no later than 60 days before the first day of trial; or
 - (ii) if no order setting the close of discovery exists:
 - (A) more than nine months from the day that the complaint is filed; and
 - (B) no later than 60 days before the first day of trial.
 - (b) If more than 90 days has passed after an appraisal of the property sought to be condemned as described in Subsection 78B-6-510(3) and no additional appraisal has been obtained related to a mediation or arbitration under Section 78B-6-522, or if an appraisal has been obtained related to a mediation or arbitration under Section 78B-6-522 and more than 90 days has passed since that appraisal, before making a settlement offer described in Subsection (3) (a), the plaintiff shall unless waived in writing by the defendant:
 - (i) obtain an additional appraisal of the property sought to be condemned:
 - (A) at the plaintiff's expense; and
 - (B) that uses a valuation date no more than 120 days before the trial date; and
 - (ii) use the appraisal with the higher value as part of determining just compensation for the settlement offer.
 - (c) Subject to Subsection (3)(d), an offer under Subsection (3)(a) shall:
 - (i) be in writing;
 - (ii) be served in accordance with Rule 5, Utah Rules of Civil Procedure, on each defendant to whom the offer is addressed;
 - (iii) be an offer made:
 - (A) to the defendant; or

- (B) if more than one defendant, jointly to all defendants who have appeared in the case and have not been dismissed;
 - (iv) state that the offer is being made under Subsection (3)(a); and
 - (v) specify the amount, less interest and litigation expenses, that the plaintiff is willing to agree is the total just compensation to which the defendant is or defendants jointly are entitled to receive for the property identified in the pending action.
 - (d) An offer described in Subsection (3)(a) may not be filed with the court unless accepted or in connection with a motion for the award of litigation expenses following trial.
 - (e)
 - (i) Unless an offer provides a time for the offer to expire, an offer under Subsection (3)(a) shall expire and be deemed rejected 45 days after service.
 - (ii) An offer that expires or is rejected under Subsection (3)(e)(i):
 - (A) is not admissible in evidence; and
 - (B) may not be referred to at trial.
 - (f) Each appraisal described in Subsection (3)(b), including the contents of each appraisal:
 - (i) are not admissible in evidence; and
 - (ii) may not be referred to at trial.
- (4)
- (a) A defendant who receives an offer under Subsection (3)(a) may accept the offer by serving an acceptance of the offer, prior to its expiration, in accordance with Rule 5, Utah Rules of Civil Procedure.
 - (b) If there is more than one defendant, defendants may accept the offer by serving a joint acceptance of the offer, prior to its expiration, in accordance with Rule 5, Utah Rules of Civil Procedure.
 - (c) Any party may file with the court an offer made under Subsection (3)(a) together with its acceptance made under Subsection (4)(b).
 - (d) A plaintiff is entitled to a final judgment of condemnation as prayed for in the complaint upon paying to the defendant or defendants, or depositing with the court clerk for the benefit of the defendants:
 - (i) the amount of total just compensation agreed to in the offer accepted as described in Subsection (4)(a); and
 - (ii) any interest due as provided by law.
 - (e) If there are multiple defendants, the court shall, upon application filed by a defendant, determine each defendant's respective share of the settlement amount.
- (5)
- (a) A defendant described in Subsection 78B-6-507(1)(b), or if there is more than one defendant that has appeared in the case and has not been dismissed, then all defendants jointly, may make an offer under this Subsection (5):
 - (i) within 30 days after they receive an offer from the plaintiff under Subsection (3)(a); or
 - (ii) if the plaintiff does not make an offer under Subsection (3)(a), any time following close of discovery as ordered by the court, but not later than 45 days before the first day of trial.
 - (b) An offer described in Subsection (5)(a) shall:
 - (i) be in writing;
 - (ii) be served in accordance with Rule 5, Utah Rules of Civil Procedure;
 - (iii)
 - (A) be made on behalf of the defendant; or
 - (B) if there are multiple defendants, the offer shall be made by and on behalf of all defendants jointly who have appeared in the action and have not been dismissed;

- (iv) state that the offer is being made under Subsection (5)(a); and
- (v) specify the amount, less interest and litigation expenses, that the defendant or defendants jointly are willing to agree is the total just compensation to which the defendant is or defendants jointly are entitled to receive for the property identified in the pending action.
- (c) An offer described in Subsection (5)(a) may not be filed with the court unless accepted or in connection with a motion for the award of litigation expenses following trial.
- (d) An offer of settlement made by less than all defendants that have appeared in the case and have not been dismissed:
 - (i) is not an offer under Subsection (5)(a); and
 - (ii) may not be a basis for awarding litigation expenses under Subsection (7).
- (e)
 - (i) Unless an offer provides a time for the offer to expire, an offer under Subsection (5)(a) shall expire and be deemed rejected 21 days after service.
 - (ii) An offer that expires or is rejected under Subsection (5)(e)(i) is not admissible in evidence and may not be referred to at trial.
- (6)
 - (a) A plaintiff who receives an offer under Subsection (5)(a) may accept the offer by serving an acceptance of the offer, prior to its expiration, in accordance with Rule 5, Utah Rules of Civil Procedure.
 - (b) Any party may file with the court an offer made under Subsection (5)(a) together with its acceptance made under Subsection (6)(a).
 - (c) A plaintiff is entitled to a final judgment of condemnation as prayed for in the complaint upon paying to the defendant or defendants, or depositing with the court clerk for the benefit of the defendants:
 - (i) the amount of total just compensation agreed to in the offer accepted as described in Subsection (6)(a); and
 - (ii) any interest due as provided by law.
 - (d) If there are multiple defendants, the court shall, upon application filed by a defendant, determine each defendant's respective share of the settlement amount.
- (7)
 - (a) Subject to Subsection (7)(b), if the total just compensation awarded to a defendant or defendants, less interest and litigation expenses, is greater than the amount of total just compensation specified in the last settlement offer made by a defendant or defendants under Subsection (5)(a), the court shall award the defendant or defendants litigation expenses not to exceed 1/3 of the amount by which the award of just compensation exceeds the amount offered in the last settlement offer under Subsection (5)(a).
 - (b) An award under Subsection (7)(a) may not exceed:
 - (i) if there is one defendant in the case, \$50,000; or
 - (ii) if there are multiple defendants in the case, \$100,000 total.
 - (c) The court shall include any amounts awarded under Subsection (7)(a) in the judgment awarding compensation.
- (8)
 - (a) Subject to Subsection (8)(b), if the total just compensation awarded to a defendant or defendants, less interest and litigation expenses, is less than the amount of total just compensation specified in the last settlement offer made by a plaintiff under Subsection (3)(a), the court shall award the plaintiff litigation expenses not to exceed 1/3 of the amount by which the last offer of settlement made under Subsection (3)(a) exceeds the total just compensation awarded.

- (b) An award under Subsection (8)(a) may not exceed \$50,000.
- (c) The court shall reduce the judgment awarding just compensation by the amount of litigation expenses awarded to the plaintiff under Subsection (8)(a).
- (9) If the total just compensation awarded to a defendant, less interest or litigation expenses, is between an offer made by a plaintiff under Subsection (3)(a) and an offer made by the defendant under Subsection (5)(a), the court may not award litigation expenses to either plaintiff or a defendant.
- (10)
 - (a) If a plaintiff does not make an offer under Subsection (3)(a), the court may not award:
 - (i) the plaintiff litigation expenses; or
 - (ii) the defendant litigation expenses more than the defendant's last offer under Subsection (5)(a), if the defendant made an offer under Subsection (5)(a).
 - (b) If a defendant does not make an offer under Subsection (5)(a), the court may not award:
 - (i) the defendant litigation expenses; or
 - (ii) the plaintiff litigation expenses more than the plaintiff's last offer under Subsection (3)(a), if the plaintiff made an offer under Subsection (3)(a).
- (11) A claim for attorney fees under this section must be supported by an hourly billing statement.
- (12) Subsections (3) through (10) do not apply to an action filed before July 1, 2010.

Amended by Chapter 371, 2022 General Session

78B-6-510 Occupancy of premises pending action -- Deposit paid into court -- Procedure for payment of compensation.

- (1)
 - (a) At any time after the commencement of suit, and after giving notice to the defendant as provided in the Utah Rules of Civil Procedure, the plaintiff may file a motion with the court requesting an order permitting the plaintiff to:
 - (i) occupy the premises sought to be condemned pending the action, including appeal; and
 - (ii) to do whatever work on the premises that is required.
 - (b) Except as ordered by the court for good cause shown, a defendant may not be required to reply to a motion for immediate occupancy before expiration of the time to answer the complaint.
- (2) The court shall:
 - (a) take proof by affidavit or otherwise of:
 - (i) the value of the premises sought to be condemned, measured by an undivided interest in the premises sought to be condemned;
 - (ii) any severance damages that will accrue from the condemnation to the undivided interest in any remaining property not sought to be condemned; and
 - (iii) the reasons for requiring a speedy occupation; and
 - (b) grant or refuse the motion according to the equity of the case and the relative damages that may accrue to the parties.
- (3)
 - (a) If the motion is granted, the court shall enter its order requiring that the plaintiff, as a condition precedent to occupancy, file with the clerk of the court a sum equal to the condemning authority's appraised valuation of the property sought to be condemned as described in Subsection (2)(a)(i).
 - (b) That amount shall be for the purposes of the motion only and is not admissible in evidence on final hearing.

- (4)
 - (a) Upon the filing of the petition for immediate occupancy, the court shall fix the time within which, and the terms upon which, the parties in possession are required to surrender possession to the plaintiff.
 - (b) The court may issue orders governing encumbrances, liens, rents, assessments, insurance, and other charges, if any, as required.
- (5)
 - (a) The rights of just compensation for the land taken as authorized by this section or damaged as a result of that taking vests in the parties entitled to it.
 - (b) That compensation shall be ascertained and awarded as provided in Section 78B-6-511.
 - (c)
 - (i) Except as provided in Subsection (5)(c)(ii), judgment shall include, as part of the just compensation awarded, interest at the rate of 8% per annum on the amount finally awarded as the value of the property and damages, from the date of taking actual possession of the property by the plaintiff or from the date of the order of occupancy, whichever is earlier, to the date of judgment.
 - (ii) The court may not award interest on the amount of the judgment that was paid into court.
- (6)
 - (a) Upon the application of the parties in interest, the court shall order that the money deposited in the court be paid before judgment as an advance on the just compensation to be awarded in the proceeding.
 - (b) This advance payment to a defendant shall be considered to be an abandonment by the defendant of all defenses except a claim for greater compensation.
 - (c) If the compensation finally awarded exceeds the advance, the court shall enter judgment against the plaintiff for the amount of the deficiency.
 - (d) If the advance received by the defendant is greater than the amount finally awarded, the court shall enter judgment against the defendant for the amount of the excess.
- (7) Arbitration of a dispute under Section 13-43-204 or 78B-6-522 is not a bar or cause to stay the action for occupancy of premises authorized by this section.

Amended by Chapter 290, 2020 General Session

78B-6-511 Compensation and damages -- How assessed.

- (1) The court, jury, or referee shall hear any legal evidence offered by any of the parties to the proceedings, and determine and assess:
 - (a)
 - (i) the value of the property sought to be condemned as a whole, including all improvements pertaining to the property; and
 - (ii) the value of each separate interest in the property;
 - (b) if the property sought to be condemned constitutes only a part of a larger parcel, the damages which will accrue to the portion not sought to be condemned by reason of its severance from the portion sought to be condemned and the construction of the improvement in the manner proposed by the plaintiff;
 - (c) if the property, though no part of it is taken, will be damaged by the construction of the proposed improvement, and the amount of the damages;
 - (d) separately, how much the portion not sought to be condemned, and each estate or interest in it, will be benefitted, if at all, by the construction of the improvement proposed by the plaintiff, provided that if the benefit is equal to the damages assessed under Subsection (1)(b), the

owner of the parcel shall be allowed no compensation except the value of the portion taken; but if the benefit is less than the damages assessed, the former shall be deducted from the latter, and the remainder shall be the only damages allowed in addition to the value of the portion taken;

- (e) if the property sought to be condemned consists of water rights or part of a water delivery system or both, and the taking will cause present or future damage to or impairment of the water delivery system not being taken, including impairment of the system's carrying capacity, an amount to compensate for the damage or impairment; and
 - (f) if land on which crops are growing at the time of service of summons is sought to be condemned, the value that those crops would have had after being harvested, taking into account the expenses that would have been incurred cultivating and harvesting the crops.
- (2) In determining the market value of the property before the taking and the market value of the property after the taking to assess damages in partial takings cases as described in Subsection (1)(b), the court, jury, or referee:
- (a) may consider everything a willing buyer and a willing seller would consider in determining the market value of the property after the taking; and
 - (b) may not consider the assessed value on the property tax assessment for the property unless the court determines that the assessed value on the property tax assessment constitutes an admission by a party opponent.

Amended by Chapter 290, 2020 General Session

78B-6-512 Damages -- When right has accrued -- Mitigation or reduction -- Improvements.

- (1) For the purpose of assessing compensation and damages, the right to compensation and damages shall be considered to have accrued at the date of the service of summons, and its actual value at that date shall be the measure of compensation for all property to be actually taken, and the basis of damages to property not actually taken, but injuriously affected, in all cases where damages are allowed, as provided in Section 78B-6-511.
- (2) The court or the jury shall consider mitigation or reduction of damages in its assessment of compensation and damages if, after the date of the service of summons, the plaintiff:
 - (a) mitigates the damages to the property; or
 - (b) reduces the amount of property actually taken.
- (3) Improvements put upon the property by the property owner subsequent to the date of service of summons may not be included in the assessment of compensation or damages.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-513 When title sought found defective -- Another action allowed.

If the title attempted to be acquired is found to be defective from any cause, the plaintiff may again institute proceedings to acquire the property as prescribed in this part.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-514 Payment of award -- Bond from railroad to secure fencing.

The plaintiff shall, within 30 days after final judgment, pay the sum of money assessed; and, if the plaintiff is a railroad company, it shall also execute to the defendant a bond, with sureties, to be determined and approved by the court or judge, conditioned that the plaintiff will build proper

fences within six months from the time the railroad is built on or over the land taken. In an action on the bond all damages sustained and the cost of the construction of fences may be recovered.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-515 Distribution of award -- Execution -- Annulment of proceedings on failure to pay.

Payment may be made to the defendants entitled to payment, or the money may be deposited in court for the defendants and distributed to those entitled to payment. If the money is not paid or deposited, the defendants may have execution as in civil cases; and if the money cannot be made on execution, the court upon a showing to that effect shall set aside and annul the entire proceedings, and restore possession of the property to the defendants, if possession has been taken by the plaintiff.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-516 Judgment of condemnation -- Recordation -- Effect.

When payments have been made and the bond given, if the plaintiff elects to give one, as required by Sections 78B-6-514 and 78B-6-515, the court shall make a final judgment of condemnation, which shall describe the property condemned and the purpose of the condemnation. A copy of the judgment shall be filed in the office of the county recorder and the property described in it shall vest in the plaintiff for the purpose specified.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-517 Substitution of bond for deposit paid into court -- Abandonment of action by condemner -- Conditions of dismissal.

In the event that no order is entered by the court permitting payment of the deposit on account of the just compensation to be awarded in the proceeding within 30 days following its deposit, the court may, on application of the condemning authority, permit the substitution of a bond in an amount and with sureties as determined and approved by the court. Condemner, whether a public or private body, may, at any time prior to final payment of compensation and damages awarded the defendant by the court or jury, abandon the proceedings and cause the action to be dismissed without prejudice, provided, however, that as a condition of dismissal condemner first compensate condemnee for all damages he has sustained and also reimburse him in full for all reasonable and necessary expenses actually incurred by condemnee because of the filing of the action by condemner, including attorney fees.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-518 Rights of cities and towns not affected.

Nothing in this part may be construed to abrogate or repeal any statute providing for the taking of property in any city or town for street purposes.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-519 When right of way acquired -- Duty of party acquiring.

A party obtaining a right of way shall without delay construct crossings as required by the court or judge, and keep them and the way itself in good repair.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-520 Action to set aside condemnation for failure to commence or complete construction within reasonable time.

- (1) In an action to condemn property, if the court makes a finding of what is a reasonable time for commencement of construction and use of all the property sought to be condemned and the construction and use is not accomplished within the time specified, the condemnee may file an action against the condemnor to set aside the condemnation of the entire parcel or any portion upon which construction and use was to have taken place.
- (2) In the action, if the court finds that the condemnor, without reasonable justification, did not commence or complete construction and use within the time specified, it shall enter judgment fixing the amount the condemnor has paid the condemnee, as a result of condemnation and all amounts due the condemnee as damages sustained by reason of condemnation, including damages resulting from partial completion of the contemplated use, plus all reasonable and necessary expenses actually incurred by the condemnee including attorney fees.
- (3) If amounts due the condemnee under Subsection (2) exceed amounts paid by the condemnor, or these amounts are equal, judgment shall be entered in favor of the condemnee, which judgment shall describe the property condemned and award judgment for any amounts due condemnee. A copy of the judgment shall be filed in the office of the county recorder of the county, and the property described in the judgment shall vest in the condemnee.
- (4) If amounts paid by the condemnor under Subsection (2) exceed amounts due the condemnee, judgment shall be entered describing the property condemned and giving the condemnee 60 days from the date of the judgment to pay the difference between the amounts to the condemnor. If payment is made, the court shall amend the judgment to reflect the payment and order the amended judgment filed with the office of the county recorder of the county, and the property described in the judgment shall vest in the condemnee. If payment is not made, the court shall amend the judgment to reflect nonpayment and order the amended judgment filed with the county recorder.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-520.3 Property sold under threat of eminent domain -- Right to repurchase property if property not used for purpose for which acquired.

- (1) As used in this section:
 - (a) "Acquired property" means property that a condemnor purchases after May 11, 2009 from a condemnee under threat of condemnation.
 - (b) "Acquisition price" means the price which a condemnor pays a condemnee for property that the condemnor acquires under threat of condemnation.
 - (c) "Condemnee" means an owner of property who sells the property to a condemnor under threat of condemnation.
 - (d) "Condemnor" means a person who acquires property by purchase from a condemnee under threat of condemnation.
 - (e) "Under threat of condemnation" means the circumstances under which a condemnor, with the right to acquire the property by eminent domain, acquires property from a condemnee in a transaction that occurs:
 - (i) without a judgment having been entered in an eminent domain action; and

- (ii) after the condemnor has sent the condemnee a written notice indicating an intent to pursue an eminent domain action to a judgment compelling the transaction.
- (2) At the time of or within a reasonable time after an acquisition of property under threat of condemnation, a condemnor shall provide the condemnee a written statement identifying the public use for which the property is being acquired.
- (3) Subject to Subsection (6), before the acquired property may be put to a use other than the public use for which the property was acquired, the condemnor shall send a written offer by certified mail to the condemnee at the condemnee's last known address, offering to sell the acquired property to the condemnee at the acquisition price.
- (4)
 - (a) A condemnee may accept an offer under Subsection (3) if the offer is accepted within 90 days after the offer is sent to the condemnee.
 - (b) A condemnee's purchase of acquired property under this section shall be concluded within a reasonable time after the condemnee accepts the condemnor's offer to sell the acquired property.
- (5) If the condemnee does not accept an offer under Subsection (3) within the time specified in Subsection (4), the condemnor has no further obligation under this section to the condemnee with respect to the acquired property.
- (6) If a condemnor puts acquired property to the public use for which the property was acquired, the condemnor's obligation under Subsection (3) to offer to sell the acquired property to the condemnee terminates, even if the acquired property is subsequently put to a use other than the public use for which the property was acquired.
- (7) A sale or transfer of acquired property none of which has been put to the public use for which the property was acquired is:
 - (a) considered to be a use other than the public use for which the property was acquired; and
 - (b) governed by this section and not Section 78B-6-521.
- (8) Nothing in this section may be construed to affect any right or obligation under Section 78B-6-521.
- (9) A condemnee may waive the condemnee's right to purchase acquired property as provided in this section by executing a written waiver.

Enacted by Chapter 322, 2009 General Session

78B-6-521 Sale of property acquired by eminent domain.

- (1) As used in this section:
 - (a) "Condemnation" or "threat of condemnation" means:
 - (i) acquisition through an eminent domain proceeding; or
 - (ii) an official body of the state or a subdivision of the state, having the power of eminent domain, has specifically authorized the use of eminent domain to acquire the real property.
 - (b)
 - (i) "Highest offer" means all material terms of the best bona fide offer received by the state or one of the state's subdivisions, including:
 - (A) purchase price;
 - (B) conditions; and
 - (C) terms of performance.
 - (ii) "Highest offer" does not mean the terms and conditions of an agreement to exchange real property or an interest in real property for other real property or an interest in real property.

- (2) If the state or one of the state's subdivisions, at the state's or the state subdivision's sole discretion, declares real property or an easement the state or state subdivision acquires through condemnation or threat of condemnation to be surplus real property, the state or state subdivision may not sell the real property or easement at a private or public sale unless:
 - (a)
 - (i) for real property, the state or state subdivision gives the right of first refusal to the original grantor for the highest offer if, since the date of the original transfer to the state or state subdivision, the original grantor has owned real property adjacent to the transferred real property; or
 - (ii) for an easement, the state or state subdivision gives the right of first refusal to:
 - (A) if the original grantor owns the servient estate subject to the easement, the original grantor for the highest offer; or
 - (B) if a subsequent bona fide purchaser owns the servient estate subject to the easement, the subsequent bona fide purchaser for the highest offer;
 - (b) the original grantor or subsequent bona fide purchaser described in Subsection (2)(a):
 - (i) expressly waives in writing the right of first refusal on the offer; or
 - (ii) fails to accept the offer within 90 days after the day on which the original grantor or subsequent bona fide purchaser receives notification by registered mail to the original grantor's or subsequent bona fide purchaser's last-known address; and
 - (c) neither the state nor the state subdivision selling the property is involved in the rezoning of the property or the acquisition of additional property to enhance the value of the real property to be sold.
- (3)
 - (a) If the original grantor or subsequent bona fide purchaser has not waived the right of first refusal as described in Subsection (2)(b), an original grantor or subsequent bona fide purchaser may assign the right of first refusal.
 - (b) The assignment of a right of first refusal in accordance with Subsection (3)(a) does not extend the time for acceptance of an offer as described in Subsection (2)(b).
- (4)
 - (a) Real property acquired through condemnation or the threat of condemnation is not considered surplus if the real property is approved for use in an exchange for other real property.
 - (b) An exchange of real property for other real property is not a private or public sale.
 - (c) The right of first refusal described in Subsection (2)(a) shall terminate upon an exchange of the acquired real property.
- (5) This section shall only apply to property acquired after July 1, 1983.

Amended by Chapter 101, 2022 General Session

78B-6-522 Dispute resolution.

- (1) In any dispute between a condemner and a private property owner arising out of this chapter, or a dispute over the taking of private property for a public use without the prior use of eminent domain, the private property owner may submit the dispute for mediation or arbitration to the Office of the Property Rights Ombudsman under Section 13-43-204.
- (2) An action submitted to the Office of the Property Rights Ombudsman under authority of this section does not bar or stay any action for occupancy of premises authorized by Section 78B-6-510.
- (3)
 - (a)

- (i) A mediator or arbitrator, acting at the request of the property owner under Section 13-43-204, has standing in an action brought in district court under this chapter to file with the court a motion to stay the action during the pendency of the mediation or arbitration.
- (ii) A mediator or arbitrator may not file a motion to stay under Subsection (3)(a)(i) unless the mediator or arbitrator certifies at the time of filing the motion that a stay is reasonably necessary to reach a resolution of the case through mediation or arbitration.
- (b) If a stay is granted pursuant to a motion under Subsection (3)(a) and the order granting the stay does not specify when the stay terminates, the mediator or arbitrator shall file with the district court a motion to terminate the stay within 30 days after:
 - (i) the resolution of the dispute through mediation;
 - (ii) the issuance of a final arbitration award; or
 - (iii) a determination by the mediator or arbitrator that mediation or arbitration is not appropriate.
- (4)
 - (a) The private property owner or displaced person may request that the mediator or arbitrator authorize an additional appraisal.
 - (b) If the mediator or arbitrator determines that an additional appraisal is reasonably necessary to reach a resolution of the case, the mediator or arbitrator may:
 - (i) have an additional appraisal of the property prepared by an independent appraiser; and
 - (ii) require the condemnor to pay the costs of the first additional appraisal.

Amended by Chapter 59, 2014 General Session

78B-6-523 Reporting on consideration of federal public lands.

- (1) As used in this section, "public utility" means the same as that term is defined in Section 54-2-1.
- (2) A public utility that files any eminent domain action for a high voltage power line in a calendar year shall submit, on or before July 1 of each year, a report to the Public Utilities, Energy, and Technology Interim Committee detailing:
 - (a) the number of condemnation actions filed in the previous calendar year;
 - (b) infrastructure siting analyses completed to identify and evaluate alternatives using federal public lands prior to initiating a condemnation action;
 - (c) reasons for not utilizing federal public lands, if applicable; and
 - (d) any coordination efforts with federal land management agencies.

Enacted by Chapter 297, 2025 General Session

Part 6
Extraordinary Writs

78B-6-601 Penalty for wrongful refusal to allow writ of habeas corpus.

Any judge, whether acting individually or as a member of a court, who wrongfully and willfully refuses to allow a writ of habeas corpus whenever proper application has been made shall forfeit and pay a sum not exceeding \$5,000 to the aggrieved party.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-602 Recommitment.

- (1) In all cases where it is claimed that a person is illegally or wrongfully restrained or deprived of his liberty, where restraint or imprisonment is for a criminal offense and there is not sufficient cause for release, even though the commitment may have been informally made or without due authority, or the process may have been executed by a person not duly authorized, the court or judge may make a new commitment, or allow the party to post bail, if the case is bailable.
- (2) All material witnesses shall be required to appear at the same time and place and not depart without leave. All documents shall be filed in the clerk's office.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-603 Recommitment after discharge forbidden -- Exceptions.

A person who has been discharged by order of the court or judge upon habeas corpus may not be imprisoned again, restrained, or kept in custody for the same cause, except in the following cases:

- (1) if the person has been discharged from custody on a criminal charge and is afterward committed for the same offense by legal order or process; or
- (2) if, after discharge for defect of proof or for any defect of the process, warrant or commitment in a criminal case, the prisoner is again arrested on sufficient proof and committed by legal process for the same offense.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-604 Refusing to exhibit authority for detention -- Penalty.

A person who refuses to deliver a copy of the legal process by which the person detains the plaintiff in custody to anyone who demands a copy for the purpose of filing a writ of habeas corpus is liable to the plaintiff in an amount not to exceed \$200.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-605 Penalties for wrongful acts of defendant.

- (1) A defendant, officer, or other person is guilty of a class B misdemeanor and liable to the injured party in an amount not to exceed \$5,000 if:
 - (a) the defendant attempts to evade the service of the writ of habeas corpus; or
 - (b) an officer or other person willfully fails to comply with the legal duties imposed upon him or disobeys an order to release a person in custody.
- (2) Any person knowingly aiding in or abetting invalidation of this section is subject to the same punishment and forfeiture.

Enacted by Chapter 3, 2008 General Session

78B-6-606 Judgment of removal -- Costs -- Penalty by fine where state is party.

If a defendant is found guilty of usurping, intruding into or unlawfully holding or exercising an office, franchise, or privilege, the court shall order the defendant removed from the office, and that the relator recover the costs of pursuing the action. The court may also, in its discretion, in actions to which the state is a party impose upon the defendant a fine not exceeding \$5,000, to be paid to the state treasury.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-607 Judgment against director of corporation -- Of induction in favor of person entitled.

When the action is against a director of a corporation, and the court finds that, at the election, either illegal votes were received or legal votes were rejected, or both, sufficient to change the result, the court may order the defendant removed, and judgment of induction entered in favor of the person who was entitled to be declared elected at the election.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-608 Action for damages because of usurpation -- Limitation of action.

A person may, at any time within one year after the date of an order for removal, bring an action against the party removed under the provisions of Section 78B-6-606 or 78B-6-607 and recover the damages sustained by the usurpation.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-609 Mandamus and prohibition -- Judgment.

In any proceeding to obtain a writ of mandate or prohibition, if judgment is given for the applicant, he may recover the damages which were sustained, as found by the jury, or determined by the court, or referees upon a reference, ordered together with costs. For damages and costs an execution may issue, and a peremptory mandate shall be awarded without delay.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-610 Disobedience of writ -- Punishment.

When a peremptory writ of mandate or writ of prohibition has been issued and directed to an inferior tribunal, corporation, board, or person, and the court determines that any member of the tribunal, corporation, board, or person upon whom the writ was personally served has, without just excuse, refused or neglected to obey the writ, the court may, upon motion, impose a fine not exceeding \$500. In cases of persistence in a refusal of obedience, the court may order the party to be imprisoned until the writ is obeyed, and may make any orders necessary and proper for enforcement of the writ.

Renumbered and Amended by Chapter 3, 2008 General Session

**Part 7
Utah Product Liability Act**

78B-6-701 Title.

This part is known and may be cited as the "Utah Product Liability Act."

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-702 Definition -- Unreasonably dangerous.

As used in this part, "unreasonably dangerous" means that the product was dangerous to an extent beyond which would be contemplated by the ordinary and prudent buyer, consumer, or user of that product in that community considering the product's characteristics, propensities, risks, dangers, and uses together with any actual knowledge, training, or experience possessed by that particular buyer, user, or consumer.

Enacted by Chapter 3, 2008 General Session

78B-6-703 Defect or defective condition making product unreasonably dangerous -- Rebuttable presumption.

- (1) In any action for damages for personal injury, death, or property damage allegedly caused by a defect in a product, a product may not be considered to have a defect or to be in a defective condition, unless at the time the product was sold by the manufacturer or other initial seller, there was a defect or defective condition in the product which made the product unreasonably dangerous to the user or consumer.
- (2) There is a rebuttable presumption that a product is free from any defect or defective condition where the alleged defect in the plans or designs for the product or the methods and techniques of manufacturing, inspecting and testing the product were in conformity with government standards established for that industry which were in existence at the time the plans or designs for the product or the methods and techniques of manufacturing, inspecting and testing the product were adopted.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-704 Prayer for damages.

No dollar amount shall be specified in the prayer of a complaint filed in a product liability action against a product manufacturer, wholesaler or retailer. The complaint shall merely pray for such damages as are reasonable in the premises.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-705 Alteration or modification of product after sale as substantial contributing cause -- Manufacturer or seller not liable.

For purposes of Section 78B-5-818, fault shall include an alteration or modification of the product, which occurred subsequent to the sale by the manufacturer or seller to the initial user or consumer, and which changed the purpose, use, function, design, or intended use or manner of use of the product from that for which the product was originally designed, tested, or intended.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-706 Statute of limitations.

A civil action under this part shall be brought within two years from the time the individual who would be the claimant in the action discovered, or in the exercise of due diligence should have discovered, both the harm and its cause.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-707 Indemnification provisions void and unenforceable.

Any clause in a sales contract or collateral document that requires a purchaser or end user of a product to indemnify, hold harmless, or defend a manufacturer of a product is contrary to public policy and void and unenforceable if a defect in the design or manufacturing of the product causes an injury or death.

Renumbered and Amended by Chapter 3, 2008 General Session

Part 8 Forcible Entry and Detainer

78B-6-801 Definitions.

- (1) "Commercial tenant" means any tenant who may be a body politic and corporate, partnership, association, or company.
- (2) "Forcible detainer" means:
 - (a) holding and keeping by force, or by menaces and threats of violence, the possession of any real property, whether acquired peaceably or otherwise; or
 - (b) unlawfully entering real property during the absence of the occupants or at night, and, after demand is made for the surrender of the property, refusing for a period of three days to surrender the property to the former occupant.
- (3) "Forcible entry" means:
 - (a) entering any real property by:
 - (i) breaking open doors, windows, or other parts of a house;
 - (ii) fraud, intimidation, or stealth; or
 - (iii) any kind of violence or circumstances of terror; or
 - (b) after entering peaceably upon real property, turning out by force, threats, or menacing conduct the party in actual possession.
- (4) "Occupant of real property" means one who within five days preceding an unlawful entry was in the peaceable and undisturbed possession of the property.
- (5) "Owner":
 - (a) means the actual owner of the premises;
 - (b) has the same meaning as landlord under common law and the statutes of this state; and
 - (c) includes the owner's designated agent or successor to the estate.
- (6)
 - (a) "Peaceable possession" means having a legal right to possession.
 - (b) "Peaceable possession" does not include:
 - (i) the occupation of premises by a trespasser; or
 - (ii) continuing to occupy real property after being served with an order of restitution issued by a court of competent jurisdiction .
- (7)
 - (a) "Tenant" means any natural person and any individual, including a commercial tenant.
 - (b) "Tenant" does not include a person or entity that has no legal right to the premises.
- (8) "Trespasser" means a person or entity that occupies real property but never had possessory rights in the premises.
- (9) "Unlawful detainer" means unlawfully remaining in possession of property after receiving a notice to quit, served as required by this chapter, and failing to comply with that notice.

- (10) "Willful exclusion" means preventing the tenant from entering into the premises with intent to deprive the tenant of entry.

Amended by Chapter 264, 2016 General Session

78B-6-802 Unlawful detainer by tenant for a term less than life.

- (1) A tenant holding real property for a term less than life is guilty of an unlawful detainer if the tenant:
- (a) continues in possession, in person or by subtenant, of the property or any part of the property, after the expiration of the specified term or period for which it is let to the tenant, which specified term or period, whether established by express or implied contract, or whether written or parol, shall be terminated without notice at the expiration of the specified term or period;
 - (b) having leased real property for an indefinite time with monthly or other periodic rent reserved:
 - (i) continues in possession of the property in person or by subtenant after the end of any month or period, in cases where the owner, the owner's designated agent, or any successor in estate of the owner, 15 calendar days or more before the end of that month or period, has served notice requiring the tenant to quit the premises at the expiration of that month or period; or
 - (ii) in cases of tenancies at will, remains in possession of the premises after the expiration of a notice of not less than five calendar days;
 - (c) continues in possession, in person or by subtenant, after default in the payment of any rent or other amounts due and after a notice in writing requiring in the alternative the payment of the rent and other amounts due or the surrender of the detained premises, has remained uncomplied with for a period of three business days after service, which notice may be served at any time after the rent becomes due;
 - (d) assigns or sublets the leased premises contrary to the covenants of the lease, or commits or permits waste on the premises after service of a three calendar days' notice to quit;
 - (e) sets up or carries on any unlawful business on or in the premises after service of a three calendar days' notice to quit;
 - (f) suffers, permits, or maintains on or about the premises any nuisance, including nuisance as defined in Section 78B-6-1107 after service of a three calendar days' notice to quit;
 - (g) commits a criminal act on the premises and remains in possession after service of a three calendar days' notice to quit;
 - (h) continues in possession, in person or by subtenant, after a neglect or failure to perform any condition or covenant of the lease or agreement under which the property is held, other than those previously mentioned, and after notice in writing requiring in the alternative the performance of the conditions or covenant or the surrender of the property, served upon the tenant and upon any subtenant in actual occupation of the premises remains uncomplied with for three calendar days after service; or
 - (i)
 - (i) is a tenant under a bona fide tenancy as described in Section 702 of the Protecting Tenants at Foreclosure Act; and
 - (ii) continues in possession after the effective date of a notice to vacate given in accordance with Section 702 of the Protecting Tenants at Foreclosure Act.
- (2) After service of the notice and the time period required for the notice, the tenant, any subtenant in actual occupation of the premises, any mortgagee of the term, or other person interested in the lease's continuance may perform the condition or covenant and save the lease from

forfeiture, except that if the covenants and conditions of the lease violated by the lessee cannot afterwards be performed, or the violation cannot be brought into compliance, a notice provided for in Subsections (1)(d) through (g) may be given.

- (3) Unlawful detainer by an owner resident of a mobile home is determined under Title 57, Chapter 16, Mobile Home Park Residency Act.
- (4) The notice provisions for nuisance in Subsections (1)(d) through (g) do not apply to nuisance actions provided in Sections 78B-6-1107 through 78B-6-1114.
- (5) The notice to vacate requirement under 15 U.S.C. 9058(c), which is part of the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116-136:
 - (a) applies only to a notice provided to a tenant of a covered dwelling in a covered property as that term is defined in 15 U.S.C. 9058(a);
 - (b) applies only to the amount of time before a tenant may be required to vacate a covered property through an order of restitution as provided by Section 78B-6-812;
 - (c) for a notice provided under Subsection (1)(c), applies only when delinquent rent or other amounts have accrued during the 120-day moratorium described in 15 U.S.C. 9058(b);
 - (d) does not require that a tenant be given more than three business days after service to pay rent and other amounts due under a notice provided under Subsection (1)(c);
 - (e) does not apply to a notice provided under Subsections (1)(d) through (h);
 - (f) does not prohibit or nullify the service of any notice described in this section; and
 - (g) does not limit the accrual of damages under Section 78B-6-811.
- (6) Service of a notice as provided by 15 U.S.C. 9058(c) or under Subsection (5) does not nullify the service or validity of any other notice provided in accordance with this section.

Amended by Chapter 19, 2020 Special Session 6

78B-6-802.5 Unlawful detainer after foreclosure or forced sale.

A previous owner, trustor, or mortgagor of a property is guilty of unlawful detainer if the person:

- (1) defaulted on his or her obligations resulting in disposition of the property by a trustee's sale or sheriff's sale; and
- (2) continues to occupy the property after the trustee's sale or sheriff's sale after being served with a notice to quit by the purchaser.

Enacted by Chapter 184, 2009 General Session

78B-6-803 Right of tenant of agricultural lands to hold over.

In all cases of tenancy upon agricultural lands, where the tenant has held over and retained possession for more than 60 days after the expiration of the term without any demand of possession or notice to quit by the owner, the tenant shall be considered to be in possession by permission of the owner. The tenant shall be entitled to hold under the terms of the lease for another full year and may not be guilty of an unlawful detainer during that year. The holding over for the 60-day period shall be taken and construed as a consent on the part of the tenant to hold for another year.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-804 Remedies available to tenant against undertenant.

A tenant may take proceedings similar to those prescribed in this part to obtain possession of premises let to an undertenant in case of the undertenant's unlawful detention of the premises.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-805 Notice -- How served.

- (1) A notice required by this part may be served:
 - (a) by delivering a copy to the tenant personally or, if the tenant is a commercial tenant, by delivering a copy to the commercial tenant's usual place of business by leaving a copy of the notice with a person of suitable age and discretion;
 - (b) by sending a copy through registered mail, certified mail, or an equivalent means, addressed to the tenant at the tenant's residence, leased property, or usual place of business;
 - (c) if the tenant is absent from the residence, leased property, or usual place of business, by leaving a copy with a person of suitable age and discretion at the tenant's residence, leased property, or usual place of business;
 - (d) if a person of suitable age or discretion cannot be found at the place of residence, leased property, or usual place of business, then by affixing a copy in a conspicuous place on the leased property; or
 - (e) if an order of abatement by eviction of the nuisance is issued by the court as provided in Section 78B-6-1109, when issued, the parties present shall be on notice that the abatement by eviction order is issued and immediately effective or as to any absent party, notice shall be given as provided in Subsections (1)(a) through (e).
- (2) Service upon a subtenant may be made in the same manner as provided in Subsection (1).

Amended by Chapter 291, 2018 General Session

78B-6-806 Necessary parties defendant.

- (1) No person other than the tenant of the premises, a lease signer, and subtenant if there is one in the actual occupation of the premises when the action is commenced, may be made a party defendant in the proceeding, except as provided in Section 78B-6-1111. A proceeding may not abate, nor the plaintiff be nonsuited, for the nonjoinder of any person who might have been made a party defendant. If it appears that any of the parties served with process or appearing in the proceedings are guilty, judgment shall be rendered against those parties.
- (2) If a person has become a subtenant of the premises in controversy after the service of any notice as provided in this part, the fact that the notice was not served on the subtenant is not a defense to the action. All persons who enter under the tenant after the commencement of the action shall be bound by the judgment the same as if they had been made parties to the action.
- (3) A landlord, owner, or designated agent is a necessary party defendant only in an abatement by eviction action for an unlawful drug house as provided in Section 78B-6-1111.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-807 Allegations permitted in complaint -- Time for appearance -- Service.

- (1) The plaintiff, in the plaintiff's complaint:
 - (a) shall set forth the facts on which the plaintiff seeks to recover;
 - (b) may set forth any circumstances of fraud, force, or violence that may have accompanied the alleged forcible entry, or forcible or unlawful detainer; and
 - (c) may claim damages or compensation for the occupation of the premises, or both.
- (2) If the unlawful detainer charged is after default in the payment of rent or other amounts due, the complaint shall state the amount of rent due or other amounts due.

- (3)
 - (a) The summons shall include the number of days within which the defendant is required to appear and defend the action, which shall be three business days from the date of service, unless the defendant objects to the number of days, and the court determines that the facts of the case should allow more time.
 - (b) A claim for unlawful detainer brought by counterclaim shall be served to any opposing party in accordance with Utah Rules of Civil Procedure, and any response required shall be due within the timelines stated under Subsection (3)(a).
- (4) The court may authorize alternative service pursuant to the Utah Rules of Civil Procedure.

Amended by Chapter 30, 2018 General Session
Amended by Chapter 291, 2018 General Session

78B-6-808 Possession bond of plaintiff -- Alternative remedies.

- (1) At any time between the filing of the complaint and the entry of final judgment, the plaintiff may execute and file a possession bond. The bond may be in the form of a corporate bond, a cash bond, certified funds, or a property bond executed by two persons who own real property in the state and who are not parties to the action.
- (2) The court shall approve the bond in an amount which is the probable amount of costs of suit and damages which may result to the defendant if the suit has been improperly instituted. The bond shall be payable to the clerk of the court for the benefit of the defendant for all costs and damages actually adjudged against the plaintiff.
- (3) The plaintiff shall notify the defendant of the possession bond. This notice shall be served in the same manner as service of summons and shall inform the defendant of all of the alternative remedies and procedures under Subsection (4).
- (4) The following are alternative remedies and procedures applicable to an action if the plaintiff files a possession bond under Subsections (1) through (3):
 - (a) With respect to an unlawful detainer action based solely upon nonpayment of rent or other amounts due, the existing contract shall remain in force and the complaint shall be dismissed if the defendant, within three calendar days of the service of the notice of the possession bond, pays accrued rent, all other amounts due, and other costs, including attorney fees, as provided in the rental agreement.
 - (b)
 - (i) The defendant may remain in possession if he executes and files a counter bond in the form of a corporate bond, a cash bond, certified funds, or a property bond executed by two persons who own real property in the state and who are not parties to the action.
 - (ii) The form of the bond is at the defendant's option.
 - (iii) The bond shall be payable to the clerk of the court.
 - (iv) The defendant shall file the bond prior to the later of the expiration of three business days from the date he is served with notice of the filing of plaintiff's possession bond or within 24 hours after the court sets the bond amount.
 - (v) Notwithstanding Subsection (4)(b)(iv), the court may allow a period of up to 72 hours for the posting of the counter bond.
 - (vi) The court shall approve the bond in an amount which is the probable amount of costs of suit, including attorney fees and actual damages which may result to the plaintiff if the defendant has improperly withheld possession.
 - (vii) The court shall consider prepaid rent to the owner as a portion of the defendant's total bond.

- (c) If the defendant demands, within three days of being served with notice of the filing of plaintiff's possession bond, the defendant shall be granted a hearing within three days of the defendant's demand.
- (5) If the defendant does not elect and comply with a remedy under Subsection (4) within the required time, the plaintiff, upon ex parte motion, shall be granted an order of restitution. A constable or the sheriff of the county where the property is situated shall return possession of the property to the plaintiff promptly.
- (6) If the defendant demands a hearing under Subsection (4)(c), and if the court rules after the hearing that the plaintiff is entitled to possession of the property, the constable or sheriff shall promptly return possession of the property to the plaintiff. If at the hearing the court allows the defendant to remain in possession and further issues remain to be adjudicated between the parties, the court shall require the defendant to post a bond as required in Subsection (4)(b) and shall expedite all further proceedings, including beginning the trial no later than 30 days from the posting of the plaintiff's bond, unless the parties otherwise agree.
- (7) If at the hearing the court rules that all issues between the parties can be adjudicated without further court proceedings, the court shall, upon adjudicating those issues, enter judgment on the merits.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-809 Proof required of plaintiff -- Defense.

- (1) On the trial of any proceeding for any forcible entry or forcible detainer the plaintiff shall only be required to show, in addition to the forcible entry or forcible detainer complained of, that the plaintiff was in actual peaceable possession at the time of the forcible entry, or was entitled to the possession at the time of the forcible detainer.
- (2) In defense, the defendant may show that the defendant or the defendant's ancestors, or those whose interest in the premises is claimed, had been in the quiet possession of the property for the space of one entire year continuously before the commencement of the proceedings, and that his interest is not ended or determined, and that this showing is a bar to the proceedings.
- (3) An action for unlawful detainer may also be brought in the form of a counterclaim .

Amended by Chapter 264, 2016 General Session

78B-6-810 Court procedures.

- (1) In an action under this chapter in which the tenant remains in possession of the property:
 - (a) the court shall expedite the proceedings, including the resolution of motions and trial;
 - (b) the court shall begin the trial within 60 days after the day on which the complaint is served, unless the parties agree otherwise;
 - (c) if this chapter requires a hearing to be held within a specified time and a judge is not available, the time may be extended to the first date after expiration of the specified time on which a judge is available to hear the case;
 - (d) if this chapter requires a hearing to be held within a specified time, this section does not require a hearing to be held before the assigned judge, and the court may, out of convenience, schedule a hearing before another judge within the jurisdiction; and
 - (e) if a court denies an order of restitution submitted by a party, and upon a party's request, the court shall give notice to the parties of the reason for denial and set a hearing within 10 business days after the day on which a party submitted the order to the court.
- (2)

- (a) In an action for unlawful detainer, the court shall hold an evidentiary hearing, upon request of either party, within 10 business days after the day on which the defendant files an answer or response.
 - (b) At the evidentiary hearing held in accordance with Subsection (2)(a):
 - (i) the court shall determine who has the right of occupancy during the litigation's pendency; and
 - (ii) if the court determines that all issues between the parties can be adjudicated without further proceedings, the court shall adjudicate all issues and enter judgment on the merits.
- (3)
- (a)
 - (i) As used in this Subsection (3)(a), "an act that would be considered criminal under the laws of this state" means:
 - (A) an act that would constitute a felony under the laws of this state;
 - (B) an act that would be considered criminal affecting the health or safety of a tenant, the landlord, the landlord's agent, or other individual on the landlord's property;
 - (C) an act that would be considered criminal that causes damage or loss to any tenant's property or the landlord's property;
 - (D) a drug- or gang-related act that would be considered criminal;
 - (E) an act or threat of violence against any tenant or other individual on the premises, or against the landlord or the landlord's agent; and
 - (F) any other act that would be considered criminal that the court determines directly impacts the safety or peaceful enjoyment of the premises by any tenant.
 - (ii) In an action for unlawful detainer in which the claim is for nuisance and alleges an act that would be considered criminal under the laws of this state, the court shall hold an evidentiary hearing upon request within 10 days after the day on which the complaint is filed to determine whether the alleged act occurred.
 - (b) The hearing required by Subsection (3)(a)(ii) shall be set at the time the complaint is filed and notice of the hearing shall be served upon the defendant with the summons at least three calendar days before the scheduled time of the hearing.
 - (c) If the court, at an evidentiary hearing held in accordance with Subsection (3)(a), determines that it is more likely than not that the alleged act occurred, the court shall issue an order of restitution.
 - (d) If a court issues an order of restitution in accordance with Subsection (3)(c), a constable or the sheriff of the county where the property is located shall return possession of the property to the plaintiff immediately.
 - (e) The court may allow a period of up to 72 hours before a constable or the sheriff of the county where the property is located makes restitution if the court determines the time is appropriate under the circumstances.
 - (f) At the evidentiary hearing held in accordance with Subsection (3)(a)(ii), if the court determines that all issues between the parties can be adjudicated without further proceedings, the court shall adjudicate those issues and enter judgment on the merits.
- (4)
- (a) At any hearing held in accordance with this chapter in which the defendant after receiving notice fails to appear, the court shall issue an order of restitution and enter a judgment of default against the defendant, unless the court makes a finding for why the order of restitution or judgment of default should not be issued.

- (b) If an order of restitution is issued in accordance with Subsection (4)(a), a constable or the sheriff of the county where the property is situated shall return possession of the property to the plaintiff immediately.

Amended by Chapter 275, 2025 General Session

78B-6-811 Judgment for restitution, damages, and rent -- Immediate enforcement -- Remedies.

- (1)
 - (a) A court may:
 - (i) enter a judgment upon the merits or upon default; and
 - (ii) issue an order of restitution regardless of whether a judgment is entered.
 - (b) A judgment entered in favor of the plaintiff shall include an order for the restitution of the premises as provided in Section 78B-6-812.
 - (c) If the proceeding is for unlawful detainer after neglect or failure to perform any condition or covenant of the lease or agreement under which the property is held, or after default in the payment of rent, the judgment shall also declare the forfeiture of the lease or agreement.
 - (d)
 - (i) A forfeiture under Subsection (1)(c) does not release a defendant from any obligation for payments on a lease for the remainder of the lease's term.
 - (ii) Subsection (1)(d)(i) does not change any obligation on either party to mitigate damages.
- (2) The jury or the court, if the proceeding is tried without a jury or upon the defendant's default, shall also assess the damages resulting to the plaintiff from any of the following:
 - (a) forcible entry;
 - (b) forcible or unlawful detainer;
 - (c) waste of the premises during the defendant's tenancy, if waste is alleged in the complaint and proved at trial;
 - (d) the amounts due under the contract; and
 - (e) the abatement of the nuisance by eviction as provided in Sections 78B-6-1107 through 78B-6-1114.
- (3) The court shall enter the judgment against the defendant for the rent and for three times the amount of the damages assessed under Subsections (2)(a) through (2)(e).
- (4)
 - (a) If the proceeding is for unlawful detainer, the court shall issue execution upon the judgment immediately after the entry of the judgment.
 - (b) In all cases, the judgment may be issued and enforced immediately.
- (5) In an action under this chapter, the court:
 - (a) shall award costs and reasonable attorney fees to the prevailing party;
 - (b) may modify a judgment for additional amounts owed if a motion is submitted within 180 days on the earlier of the day on which:
 - (i) the order of restitution is enforced; or
 - (ii) the defendant vacates the premises; and
 - (c) may grant a party additional time for a motion under Subsection (5)(b).
- (6)
 - (a) If the court issues an order of restitution, the defendant shall provide a current address to the court and the plaintiff within 30 days of the day on which the court issues the order of restitution.

- (b) Failure of a defendant to provide an address under Subsection (6)(a) does not require the plaintiff or the court to bear the burden of seeking out the defendant to provide notice for any subsequent proceeding.

Amended by Chapter 275, 2025 General Session

78B-6-812 Order of restitution -- Service -- Enforcement -- Disposition of personal property -- Hearing.

(1) As used in this section:

- (a) "Personal animal" means a domestic dog, cat, rabbit, bird, or other animal that is kept solely as a pet and is not a production animal.

(b)

- (i) "Production animal" means a live, nonhuman vertebrate member of the biological kingdom Animalia used for the purpose of producing, or being sold to another for the purpose of producing, food, fiber, or another commercial product.

(ii) "Production animal" includes:

- (A) cattle;
- (B) sheep;
- (C) goats;
- (D) swine;
- (E) poultry;
- (F) ratites;
- (G) equines;
- (H) domestic cervidae;
- (I) cameliadae;
- (J) a guard dog;
- (K) a stock dog;
- (L) a livestock guardian dog; and
- (M) a fur bearing animal kept for the purpose of commercial fur production.

(2) An order of restitution shall:

- (a) direct the defendant to vacate the premises, remove the defendant's personal property, and restore possession of the premises to the plaintiff, or be forcibly removed by a sheriff or constable;
- (b) advise the defendant that the defendant has three calendar days after service of the order to vacate the premises, unless:
 - (i) a constable or sheriff of the county where the premises are located immediately returns possession of the property to the plaintiff as described in Subsection 78B-6-810(3)(d);
 - (ii) the plaintiff and defendant agree otherwise; or
 - (iii) the court issues an order in accordance with Subsection 78B-6-810(4); and
- (c) advise the defendant of the defendant's right to a hearing to contest the manner of the order of restitution's enforcement.

(3)

- (a) A person authorized to serve process under Subsection 78B-8-302(2) shall serve, in accordance with Section 78B-6-805, a copy of the order of restitution and a form for the defendant to request a hearing as listed on the form.
- (b) A defendant's request for hearing or other pleading may not stay enforcement of the restitution order unless:

- (i) the defendant furnishes a corporate bond, cash bond, certified funds, or a property bond to the clerk of the court in an amount approved by the court according to Subsection 78B-6-808(4)(b); and
 - (ii) the court orders that the restitution order be stayed.
 - (c) The person serving the order and the form shall legibly write the date of service and the person's name, title, signature, and telephone number on the copy of the order and the form served on the defendant.
 - (d) The person serving the order and the form shall file proof of service in accordance with Rule 4(e), Utah Rules of Civil Procedure.
- (4)
- (a) If the defendant fails to comply with the order within the time prescribed by the court, a sheriff or constable at the plaintiff's direction may enter the premises by force using the least destructive means possible to remove the defendant.
 - (b)
 - (i) The sheriff or constable may remove personal property remaining in the leased property from the premises and transport the personal property to a suitable location for safe storage.
 - (ii)
 - (A) The sheriff or constable may delegate responsibility for inventory, moving, and storage to the plaintiff.
 - (B) If the sheriff or constable delegates responsibility as described in this Subsection (4)(b)(ii), the plaintiff shall store the personal property in a suitable place and in a reasonable manner.
 - (c) A tenant may not access the property until the tenant pays the removal and storage costs in full, except that the landlord, sheriff, or constable shall provide the tenant reasonable access to the property within five business days after the day on which the sheriff or constable removes the tenant to retrieve:
 - (i) clothing;
 - (ii) identification;
 - (iii) financial documents, including all those related to the tenant's immigration status or employment status;
 - (iv) documents pertaining to receipt of public services; and
 - (v) medical information, prescription medications, and any medical equipment required for maintenance of medical needs.
 - (d) The personal property removed and stored is considered abandoned property and subject to Section 78B-6-816.
 - (e) If a personal animal is on the premises, the sheriff or constable executing the order of restitution shall give the personal animal to the tenant, if the tenant is present.
 - (f) If the tenant is not present when the order of restitution is enforced:
 - (i) the sheriff, constable, or landlord shall notify the local animal control authority to take custody of the personal animal;
 - (ii) the animal control authority shall respond to take custody of the personal animal within one business day after the day on which the sheriff, constable, or landlord provides the notice described in Subsection (4)(f)(i);
 - (iii) the animal control authority or organization where the personal animal is taken shall apply the same standards described in Section 11-46-103;
 - (iv) the landlord shall provide the animal control authority with the name and last known contact information of the tenant; and

- (v) the animal control authority shall post a notice at the premises in a visible place with the name and contact information of the animal control authority or organization where the personal animal is taken.
- (5)
 - (a) In the event of a dispute concerning the manner of enforcement of the restitution order, either party may file a request for a hearing.
 - (b) The court shall:
 - (i) set the matter for hearing:
 - (A) within 10 calendar days after the day on which the defendant files the request for a hearing; or
 - (B) as soon as practicable, if the court is unable to set the matter within the time described in Subsection (5)(b)(i)(A); and
 - (ii) provide notice of the hearing to the parties.
- (6) The Judicial Council shall draft the forms necessary to implement this section.

Amended by Chapter 275, 2025 General Session

78B-6-813 Time for appeal.

- (1) Except as provided in Subsection (2), either party may, within 10 days, appeal from the judgment rendered.
- (2) In a nuisance action under Sections 78B-6-1107 through 78B-6-1114, any party may appeal from the judgment rendered within three days.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-814 Exclusion of tenant without judicial process prohibited -- Abandoned premises excepted.

It is unlawful for an owner to willfully exclude a tenant from the tenant's premises in any manner except by judicial process, provided, an owner or his agent shall not be prevented from removing the contents of the leased premises under Subsection 78B-6-816(2) and retaking the premises and attempting to rent them at a fair rental value when the tenant has abandoned the premises.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-815 Abandonment.

- (1) Abandonment is presumed in either of the following situations:
 - (a) The tenant has not notified the owner that the tenant will be absent from the premises, and the tenant fails to pay rent within 15 days after the due date, and there is no reasonable evidence other than the presence of the tenant's personal property that the tenant is occupying the premises.
 - (b) The tenant has not notified the owner that the tenant will be absent from the premises, and the tenant fails to pay rent when due and the tenant's personal property has been removed from the dwelling unit and there is no reasonable evidence that the tenant is occupying the premises.
- (2) Abandonment is established as a matter of law if the owner has reason to believe that the presumption of abandonment under Subsection (1) has been met, the owner serves the tenant with a declaration of abandonment, and the tenant fails to dispute or rebut the declaration of abandonment in accordance with this Subsection (2).

- (a) The tenant may be served with a declaration of abandonment that includes at least a contact address for the owner, contains a brief factual basis supporting the owner's reasonable belief that the presumption of abandonment under Subsection (1) has been met, and states the date and time of service and includes the following language, or language that is substantially similar: "It is believed that these premises are abandoned and the owner is seeking to regain possession of the premises. If a tenant in legal possession of the premises has not abandoned the premises, the tenant must dispute abandonment in writing within 24 hours of service of this declaration of abandonment by providing a copy to the owner at the contact address included with this declaration of abandonment. If written notice is not served on the owner within 24 hours, the owner may retake possession of the premises." The 24-hour period stated in this Subsection (2)(a) does not include a Saturday, a Sunday, or a holiday during which the Utah state courts are closed.
- (b) Service of the declaration of abandonment by the owner and any dispute or rebuttal by the tenant shall be made pursuant to Section 78B-6-805.
- (c) If the tenant fails to dispute the declaration of abandonment in writing by serving notice to the owner within 24 hours of being served a declaration of abandonment, excluding a Saturday, a Sunday, or a holiday during which the Utah state courts are closed, the declaration of abandonment serves as prima facie evidence that the tenant has vacated and abandoned the premises.
- (d) The tenant bears the burden to rebut an abandonment that is established by a declaration of abandonment by clear and convincing evidence.

Amended by Chapter 291, 2018 General Session

78B-6-816 Abandoned premises -- Retaking and rerenting by owner -- Liability of tenant -- Personal property of tenant left on premises.

- (1) In the event of abandonment, the owner may retake the premises and attempt to rent them at a fair rental value and the tenant who abandoned the premises shall be liable:
 - (a) for the entire rent due for the remainder of the term; or
 - (b) for rent accrued during the period necessary to rerent the premises at a fair rental value, plus the difference between the fair rental value and the rent agreed to in the prior rental agreement, plus a reasonable commission for the renting of the premises and the costs, if any, necessary to restore the rental unit to its condition when rented by the tenant less normal wear and tear. This Subsection (1) applies, if less than Subsection (1)(a), notwithstanding that the owner did not rerent the premises.
- (2)
 - (a) If the tenant has abandoned the premises and has left personal property on the premises, the owner is entitled to remove the property from the dwelling, store it for the tenant, and recover actual moving and storage costs from the tenant.
 - (b)
 - (i) The owner shall post a copy of the notice in a conspicuous place and send by first class mail to the last known address for the tenant a notice that the property is considered abandoned.
 - (ii) The tenant may retrieve the property within 15 calendar days from the date of the notice if the tenant tenders payment of all costs of inventory, moving, and storage to the owner.
 - (iii) Except as provided in Subsection (5), if the property has been in storage for at least 15 calendar days and the tenant has made no reasonable effort to recover the property after notice was sent, pay reasonable costs associated with the inventory, removal, and storage, and no court hearing on the property is pending, the owner may:

- (A) sell the property at a public sale and apply the proceeds toward any amount the tenant owes; or
- (B) donate the property to charity if the donation is a commercially reasonable alternative.
- (c) Any money left over from the public sale of the property shall be handled as specified in Title 67, Chapter 4a, Part 2, Presumption of Abandonment.
- (d) Nothing contained in this act shall be in derogation of or alter the owner's rights under Title 38, Chapter 3, Lessors' Liens, or any other contractual liens or rights.
- (3) If abandoned property is determined to belong to a person who is the tenant or an occupant, the tenant or occupant may claim the property, upon payment of any costs, inventory, moving, and storage, by delivery of a written demand with evidence of ownership of the personal property within 15 calendar days after the notice described in Subsection (2)(b) is sent. The owner may not be liable for the loss of the abandoned personal property if the written demand is not received.
- (4) As used in this section, "personal property" does not include a motor vehicle, as defined in Section 41-1a-102.
- (5) A tenant has no recourse for damage or loss if the tenant fails to recover any abandoned property as required in this section.
- (6) An owner is not required to store the following abandoned personal property:
 - (a) chemicals, pests, potentially dangerous or other hazardous materials;
 - (b) animals, including dogs, cats, fish, reptiles, rodents, birds, or other pets;
 - (c) gas, fireworks, combustibles, or any item considered to be hazardous or explosive;
 - (d) garbage;
 - (e) perishable items; or
 - (f) items that when placed in storage might create a hazardous condition or a pest control issue.
- (7) An owner shall give an extension for up to 15 calendar days, beyond the 15 calendar day limit described in Subsection (2)(b)(ii), to recover the abandoned property, if a tenant provides:
 - (a) a copy of a police report or protection order for situations of domestic violence, as defined in Section 77-36-1;
 - (b) verification of an extended hospitalization from a verified medical provider; or
 - (c) a death certificate or obituary for a tenant's death, provided by an immediate family member.
- (8) Items listed in Subsection (6) may be properly disposed of by the owner immediately upon determination of abandonment. A tenant may not recover for disposal of abandoned items listed in Subsection (6).
- (9) Notice of any public sale shall be mailed to the last known address of the tenant at least five calendar days prior to the public sale.
- (10) If the tenant is present at the public sale:
 - (a) the tenant may specify the order in which the personal property is sold;
 - (b) the owner may sell only as much personal property necessary to satisfy the amount due under the rental agreement and statutorily allowed damages, costs, and fees associated with the abandoned items; and
 - (c) any unsold personal property shall be released to the tenant.
- (11) If the tenant is not present at the public sale:
 - (a) all items may be sold; and
 - (b) any surplus amount over the amount due to the owner shall be paid to the tenant, if the tenant's current location is known. If the tenant's location is not known, any surplus shall be disposed of in accordance with Title 67, Chapter 4a, Revised Uniform Unclaimed Property Act.

Amended by Chapter 371, 2017 General Session

78B-6-817 Limited alternative remedy to remove a trespasser from real property.

(1) An owner of real property, or the property owner's authorized agent, may request that law enforcement of the appropriate jurisdiction in which the real property is located, immediately remove a trespasser occupying the real property if the property owner, or an authorized agent of the property owner, attests that:

- (a) the trespasser has unlawfully entered and remains on the real property;
- (b) the real property was not open to members of the public at the time the trespasser entered;
- (c) the property owner has directed the trespasser to leave the real property;
- (d) the trespasser is not a current or former tenant of the real property under a written rental agreement authorized by the property owner;
- (e) the trespasser is not an immediate family member of the property owner; and
- (f) there is no pending litigation related to the real property between the property owner and the trespasser.

(2)

(a) To request the immediate removal of a trespasser on the real property, the property owner or property owner's authorized agent shall submit a complaint by presenting a completed and verified Complaint to Remove Trespassers Unlawfully Occupying Real Property to law enforcement of the appropriate jurisdiction in which the real property is located.

(b) The submitted complaint shall be in substantially the following form:

"COMPLAINT TO REMOVE TRESPASSERS UNLAWFULLY OCCUPYING REAL PROPERTY

I, the owner or authorized agent of the owner of the real property located at [physical address of the real property], declare under the penalty of perjury that (initial each box):

- 1. I am the owner of the real property or the authorized agent of the owner of the real property.
- 2. I have attached evidence that I am the record owner of the real property, or the authorized agent of the owner.
- 3. A trespasser has unlawfully entered and is remaining or residing unlawfully on the real property.
- 4. The real property was not open to members of the public at the time the trespasser entered.
- 5. I have directed the trespasser to leave the real property, but the trespasser has not done so.
- 6. The trespasser is not a current or former tenant according to any valid lease authorized by the property owner for the real property, and any lease that may be produced by an occupant is fraudulent.
- 7. The trespasser sought to be removed is not an owner or a co-owner of the property and has not been listed on the title to the property unless the trespasser has engaged in title fraud.
- 8. The trespasser is not an immediate family member of the property owner.
- 9. There is no litigation related to the real property pending between the property owner and any trespasser sought to be removed.
- 10. I understand that an individual removed from the real property with this procedure may bring a cause of action against me for any false statements made in this complaint, or for wrongfully using this procedure, and that as a result of such action I may be held liable for actual damages, penalties, costs, and reasonable attorney fees.

11. I am requesting law enforcement to immediately remove the trespasser from the real property.

12. A copy of my valid government-issued identification is attached, or I am an agent of the property owner and documents evidencing my authority to act on the property owner's behalf are attached.

I HAVE READ EVERY STATEMENT MADE IN THIS PETITION AND EACH STATEMENT IS TRUE AND CORRECT. I UNDERSTAND THAT THE STATEMENTS MADE IN THIS PETITION ARE BEING MADE UNDER PENALTY OF PERJURY, PUNISHABLE AS PROVIDED IN UTAH CODE, SECTION 76-8-502.

.....
(Signature of Property Owner or Authorized Agent of Owner)"

- (3)
 - (a) Upon receipt of the complaint and evidence of ownership, and the owner or authorized agent appears entitled to the relief described in this section, law enforcement shall, without delay, instruct the trespasser or serve a notice to immediately vacate on any trespasser and shall put the owner or authorized agent in possession of the real property.
 - (b) If verified, law enforcement shall, without delay, serve a notice to immediately vacate on any trespasser and shall put the owner in possession of the real property.
 - (c) Law enforcement may serve the trespasser by hand delivery of the notice or by posting the notice on the real property.
 - (d) Law enforcement shall attempt to verify the identity of any trespasser occupying the real property and note the identities on the return of service.
 - (e) If appropriate, law enforcement may arrest any trespasser found on the real property for trespass, outstanding warrants, or any other legal cause.
- (4)
 - (a) After law enforcement serves the notice to immediately vacate, the property owner or authorized agent may request that law enforcement stand by to keep the peace while the property owner or authorized agent of the property owner changes the locks and removes the personal property of the trespasser from the real property to or near the property line.
 - (b) Law enforcement is not liable to the trespasser or any other party for loss, destruction, or damage of property.
 - (c) The property owner and authorized agent are not liable to the trespasser or any other party for the loss, destruction, or damage to the personal property unless the removal was wrongful.
- (5)
 - (a) An individual may bring a civil cause of action for wrongful removal under this section.
 - (b)
 - (i) An individual harmed by a wrongful removal under this section may be restored to possession of the real property and may recover actual costs and damages incurred, statutory damages equal to triple the fair market rent of the dwelling, court costs, and reasonable attorney fees.
 - (ii) The court shall expedite the trial and any hearing in an action described in this Subsection (5).
- (6) This section does not limit the rights of a property owner or limit the authority of a law enforcement officer to arrest a trespasser for trespassing, vandalism, theft, or other crimes.

Enacted by Chapter 295, 2025 General Session

Part 8a Expungement of Eviction Records

78B-6-850 Definitions.

As used in this part:

- (1) "Agency" means a state, county, or local government entity that generates or maintains records relating to an unlawful detainer action.
- (2) "Eviction" means a cause of action for unlawful detainer under Part 8, Forcible Entry and Detainer.
- (3) "Expunge" means to seal or otherwise restrict access to records held by a court or an agency.
- (4) "Petitioner" means any person petitioning for expungement of an eviction under this part.
- (5)
 - (a) "Tenant screening agency" means a person that, for a fee, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating information for the purpose of furnishing a tenant screening report.
 - (b) "Tenant screening agency" does not include an owner as defined in Section 78B-6-801.
- (6) "Tenant screening report" means any written, oral, or other communication prepared by a tenant screening agency that includes information about an individual's rental history for the purpose of serving as a factor in establishing the individual's eligibility for housing.
- (7) "Unlawful detainer" means the same as that term is defined in Section 78B-6-801.

Amended by Chapter 139, 2023 General Session

78B-6-851 Stipulation to expungement by parties.

All parties to an eviction may stipulate in a settlement agreement to the expungement of an eviction.

Enacted by Chapter 372, 2022 General Session

78B-6-852 Automatic expungement of eviction.

- (1)
 - (a) Without the filing of a petition, a court shall order expungement of all records of an eviction if:
 - (i) the entire case was dismissed;
 - (ii) there is no appeal pending for the case; and
 - (iii) at least three years have passed from the day on which the eviction was filed; or
 - (b) the parties to the eviction stipulated to expungement and have filed a stipulation with the court.
- (2) The court shall issue an order of expungement when the court determines that an eviction qualifies for automatic expungement under Subsection (1).
- (3) This section applies to evictions filed on or after July 1, 2022.

Enacted by Chapter 372, 2022 General Session

78B-6-853 Expungement by petition for eviction -- Venue -- Objection.

- (1) Any party to an eviction may petition the court to expunge all records of the eviction if:
 - (a) the eviction was for:

- (i) remaining after the end of the lease as described in Subsection 78B-6-802(1)(a); or
 - (ii) the nonpayment of rent as described in Subsection 78B-6-802(1)(c); and
 - (b) any judgment for the eviction has been satisfied and a satisfaction of judgment has been filed for the judgment.
- (2)
- (a) A petitioner shall file a petition and provide notice to any other party to the eviction in accordance with the Utah Rules of Civil Procedure.
 - (b) A petitioner shall bring a petition to expunge records of an eviction in the court that issued the order of restitution.
- (3)
- (a) Any party to the eviction may file a written objection to the petition with the court.
 - (b) If the court receives a written objection to the petition, the court may not expunge the eviction.
- (4) Except as provided in Subsection (5), the court shall order expungement of all records of the eviction if the court does not receive a written objection within 60 days from the day on which the petition is filed.
- (5) A court may not expunge an eviction if the judgment for the eviction has not been satisfied.

Amended by Chapter 194, 2024 General Session

78B-6-854 Notice of expunged eviction -- Tenant screening agency -- Effect of expungement.

- (1)
- (a) The Administrative Office of the Courts shall publish a list on the Utah Courts' website that provides notice of any eviction expunged under this section.
 - (b) Within 30 days from the day on which an expunged eviction is listed on the Utah Courts' website as described in Subsection (1)(a):
 - (i) an agency shall expunge any record of the expunged eviction in the custody of the agency; and
 - (ii) a tenant screening agency shall remove the expunged eviction from any database used by the tenant screening agency.
- (2) If an eviction is expunged under this part, a tenant screening agency may not:
- (a) disclose the eviction in a tenant screening report pertaining to an individual for whom the eviction has been expunged; or
 - (b) use the eviction as a factor in determining any score or recommendation in a tenant screening report pertaining to the individual for whom the eviction has been expunged.
- (3) Upon entry of an expungement order by a court under this part:
- (a) the eviction is considered to never have occurred; and
 - (b) the individual for whom the eviction is expunged may reply to an inquiry on the matter as though there was never an eviction.
- (4)
- (a) Except as provided in Subsection (1)(b), a court, an agency, a tenant screening agency, or an employee of a court, agency, or tenant screening agency, may not disclose any eviction to, or share any information in a record of an eviction with, a person if the eviction has been expunged under this part.
 - (b) An expunged record under this part may be released to, or viewed by, a party to the eviction.

Enacted by Chapter 372, 2022 General Session

Part 9 Mortgage Foreclosure

78B-6-901 Form of action -- Judgment -- Special execution.

- (1) There is only one action for the recovery of any debt, or the enforcement of any right, secured solely by mortgage upon real estate and that action shall be in accordance with the provisions of this chapter.
- (2) A judgment shall include:
 - (a) the amount due, with costs and disbursements;
 - (b) an order for the sale of mortgaged property, or a portion of it to satisfy the amount and accruing costs;
 - (c) direction to the sheriff to proceed and sell the property according to the provisions of law relating to sales on execution; and
 - (d) a special execution or order of sale shall be issued for that purpose.

Amended by Chapter 146, 2009 General Session

78B-6-901.5 Notice to tenant on residential property to be foreclosed.

- (1) As used in this section, "residential rental property" means property on which a mortgage was given to secure an obligation the stated purpose of which is to finance residential rental property.
- (2) Within 20 days after filing an action under this part to foreclose property that includes or constitutes residential rental property, the plaintiff in the action shall:
 - (a) post a notice:
 - (i) on the primary door of each dwelling unit on the property that is the subject of the foreclosure action, if the property has fewer than nine dwelling units; or
 - (ii) in at least three conspicuous places on the property that is the subject of the foreclosure action, if the property to be sold has nine or more dwelling units; or
 - (b) mail a notice to the occupant of each dwelling unit on the property that is the subject of the foreclosure action.
- (3) The notice required under Subsection (2) shall:
 - (a) be in at least 14-point font;
 - (b) include the name and address of:
 - (i) the owner of the property;
 - (ii) the trustor or mortgagor, as the case may be, on the instrument creating a security interest in the property;
 - (iii) the trustee or mortgagee, as the case may be, on the instrument; and
 - (iv) the beneficiary, if the instrument is a trust deed;
 - (c) contain the legal description and address of the property; and
 - (d) include a statement in substantially the following form:

"Notice to Tenant

An action to foreclose the property described in this notice has been filed. If the foreclosure action is pursued to its conclusion, the described property will be sold at public auction to the highest bidder unless the default in the obligation secured by this property is cured.

If the property is sold, you may be allowed under federal law to continue to occupy your rental unit until your rental agreement expires, or until 90 days after the sale of the property at auction, whichever is later. If your rental or lease agreement expires after the 90-day period, you may need to provide a copy of your rental or lease agreement to the new owner to prove your right to remain on the property longer than 90 days after the sale of the property.

You must continue to pay your rent and comply with other requirements of your rental or lease agreement or you will be subject to eviction for violating your rental or lease agreement.

The new owner or the new owner's representative will probably contact you after the property is sold with directions about where to pay rent.

The new owner of the property may or may not want to offer to enter into a new rental or lease agreement with you at the expiration of the period described above."

- (4) The failure to provide notice as required under this section or a defect in that notice may not be the basis for challenging or defending a foreclosure action or for invalidating a sale of the property pursuant to a foreclosure action.

Amended by Chapter 280, 2020 General Session

78B-6-902 Deficiency judgment -- Execution.

If it appears that the proceeds of the sale are insufficient and a balance still remains due, the judgment shall be docketed by the clerk and execution may be issued for the balance as in other cases. A general execution may not be issued until after the sale of the mortgaged property and the application of the amount realized to the preceding judgment.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-903 Necessary parties -- Unrecorded rights barred.

A person holding a conveyance from or under the mortgagor or having a lien on the property, neither of which is properly documented or recorded in the proper office at the time of the commencement of the action, is not required to be made a party to the action. The proceedings and any judgment rendered are conclusive against the party holding the unrecorded conveyance or lien as if the person had been made a party to the action.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-904 Sales -- Disposition of surplus money.

If there is surplus money remaining after payment of the amount due on the mortgage, lien or encumbrance, with costs, the court may order the amount paid to the person entitled to it. In the meantime the court may direct it to be deposited with the court.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-905 Sales -- When debt due in installments.

If the debt for which the mortgage, lien, or encumbrance is held is not all due, then as soon as sufficient of the property has been sold to pay the amount due, with costs, the sale must cease. As often as more becomes due on principal or interest, the court may, on motion, order more to be sold. If the property cannot be sold in portions without injury to the parties, the entire parcel may

be ordered sold and the entire debt and costs paid. There shall be a rebate of interest where a rebate is proper.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-906 Right of redemption -- Sales by parcels -- Of land and water stock.

- (1) Sales of real estate under judgments of foreclosure of mortgages and liens are subject to redemption as in case of sales under executions generally.
- (2) In all cases where the judgment directs the sale of land, together with shares of corporate stock evidencing title to a water right used, intended to be used, or suitable for use, on the land, the court shall equitably apportion the water stock to the land. If the court divides the land into individual parcels for sale, the water stock may also be divided and applied to each parcel. The land and water stock in each parcel shall be sold together, and for the purpose of the sale shall be regarded as real estate and subject to redemption as previously specified.
- (3) In all sales of real estate under foreclosure the court may determine the parcels and the order in which the parcels of property shall be sold.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-907 Restraining possessor from injuring property.

The court or judge may upon a showing of good cause enjoin the party in possession of the property from doing any act to injure the property during the foreclosure of a mortgage on it, or after a sale on execution.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-908 Attorney fees.

- (1) In all cases of foreclosure when an attorney's fee is claimed by the plaintiff, the amount shall be fixed by the court. No other or greater amount shall be allowed or decreed than the sum which shall appear by the evidence to be actually charged by and to be paid to the attorney for the plaintiff.
- (2) If it shall appear that there is an agreement or understanding to divide the fees between the plaintiff and his attorney, or between the attorney and any other person except an attorney associated with him in the cause, the defendant shall only be ordered to pay the amount to be retained by the attorney or attorneys.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-909 Environmental impairment to real property security interest -- Remedies of lender.

- (1) As used in this section:
 - (a) "Borrower" means:
 - (i) the trustor under a deed of trust, or a mortgagor under a mortgage, when the deed of trust or mortgage encumbers real property security and secures the performance of the trustor or mortgagor under a loan, extension of credit, guaranty, or other obligation; and
 - (ii) includes any successor-in-interest of the trustor or mortgagor to the real property security before the deed of trust or mortgage has been discharged, reconveyed, or foreclosed upon.

- (b) "Environmentally impaired" means the estimated costs to clean up and remediate a past or present release of any hazardous matter into, onto, beneath, or from the real property security exceed 25% of the higher of the aggregate fair market value of all security for the loan or extension of credit at the time:
 - (i) of the making of the loan or extension of credit;
 - (ii) of the discovery of the release or threatened release by the secured lender; or
 - (iii) an action is brought under this section.
- (c) "Hazardous matter" means:
 - (i) any hazardous substance or hazardous material as defined in Section 19-6-302; or
 - (ii) any waste or pollutant as defined in Section 19-5-102.
- (d) "Real property security" means any real property and improvements other than real property that contains only one but not more than four dwelling units, and is solely used for either:
 - (i) residential purposes; or
 - (ii) if reasonably contemplated by the parties to the deed of trust or mortgage, residential purposes as well as limited agricultural or commercial purposes incidental to the residential purposes.
- (e) "Release" has the same meaning as in Section 19-6-302.
- (f) "Secured lender" means:
 - (i) the trustee, the beneficiary, or both under a deed of trust against the real property security;
 - (ii) the mortgagee under a mortgage against the real property security; and
 - (iii) any successor-in-interest of the trustee, beneficiary, or mortgagee under the deed of trust or mortgage.
- (2) Under this section:
 - (a) Estimated costs to clean up and remediate the contamination caused by the release include only those costs that would be incurred reasonably and in good faith.
 - (b) Fair market value is determined without giving consideration to the release, and is exclusive of the amount of all liens and encumbrances against the security that are senior in priority to the lien of the secured lender.
 - (c) Any real property security for any loan or extension of credit secured by a single parcel of real property is considered environmentally impaired if the property is:
 - (i) included in or proposed for the National Priorities List under Section 42 U.S.C. 9605;
 - (ii) any list identifying leaking underground storage tanks under 42 U.S.C. 6991 et seq.; or
 - (iii) in any list published by the Department of Environmental Quality under Section 19-6-311.
- (3) A secured lender may elect between the following when the real property security is environmentally impaired and the borrower's obligations to the secured lender are in default:
 - (a)
 - (i) waiver of its lien against:
 - (A) any parcel of real property security or any portion of that parcel that is environmentally impaired; and
 - (B) all or any portion of the fixtures and personal property attached to the parcels; and
 - (ii) exercise of:
 - (A) the rights and remedies of an unsecured creditor, including reduction of its claim against the borrower to judgment; and
 - (B) any other rights and remedies permitted by law; or
 - (b) exercise of:
 - (i) the rights and remedies of a creditor secured by a deed of trust or mortgage and, if applicable, a lien against fixtures or personal property attached to the real property security; and

- (ii) any other rights and remedies permitted by law, including the right to obtain a deficiency judgment.
- (c) The provisions of this subsection take precedence over Section 78B-6-901.
- (4)
 - (a) Subsection (3) is applicable only if in conjunction with and at the time of the making, renewal, or modification of the loan, extension of credit, guaranty, or other obligation secured by the real property security, the secured lender:
 - (i) did not know or have reason to know of a release of any hazardous matter into, onto, beneath, or from the real property security; and
 - (ii) undertook all appropriate inquiry into the previous ownership and uses of the real property security consistent with good commercial or customary practice in an effort to minimize liability.
 - (b) For the purposes of Subsection (4)(a)(ii), the court shall take into account:
 - (i) any specialized knowledge or experience of the secured lender;
 - (ii) the relationship of the purchase price to the value of the real property security if uncontaminated;
 - (iii) commonly known or reasonably ascertainable information about the real property security;
 - (iv) the obviousness of the presence or likely presence of contamination at the real property security; and
 - (v) the ability to detect the contamination by appropriate inspection.
- (5)
 - (a) Before the secured lender may waive its lien against any real property security under Subsection (3)(a) on the basis of environmental impairment the secured lender shall:
 - (i) provide written notice of the default to the borrower; and
 - (ii) bring a valuation and confirmation action against the borrower in a court of competent jurisdiction and obtain an order establishing the value of the subject real property security.
 - (b) The complaint in an action under Subsection (5)(a)(ii) may include causes of action for a money judgment for all or part of the secured obligation, in which case the waiver of the secured lender's liens under Subsection (3)(a) may result only if a final money judgment is obtained against the borrower.
- (6)
 - (a) If a secured lender elects the rights and remedies under Subsection (3)(a) and the borrower's obligations are also secured by other real property security, fixtures, or personal property, the secured lender shall first foreclose against the additional collateral to the extent required by applicable law.
 - (b) Under this subsection the amount of the judgment of the secured lender under Subsection (3) (a) is limited to the remaining balance of the borrower's obligations after the application of the proceeds of the additional collateral.
 - (c) The borrower may waive or modify the foreclosure requirements of this Subsection (6) if the waiver or modification is in writing and signed by the borrower after default.
- (7) This section does not affect any rights or obligations arising under contracts existing before July 1, 1993, and applies only to loans, extensions of credit, guaranties, or other obligations secured by real property security made, renewed, or modified on or after July 1, 1993.

Renumbered and Amended by Chapter 3, 2008 General Session

Part 10 Waste

78B-6-1001 Right of action for waste -- Damages.

If a guardian, tenant for life or years, joint tenant, or tenant in common, of real property commits waste on the property, any person aggrieved by the waste may bring an action against the person. Judgment in the action may include treble damages.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1002 Right of action for injuries to trees -- Damage.

- (1) Except as provided in Subsection (2), any person who, without authority, willfully or intentionally cuts down or carries off any wood or underwood, tree or timber, or girdles or otherwise willfully or intentionally injures any tree or timber on the land of another person, or on the street or highway in front of any person's house, town or city lot, or cultivated grounds, or on the commons or public grounds of any city or town, or on the street or highway in front, without lawful authority, is liable to the owner of such land, or to the city or town, for treble the amount of damages which may be assessed in a civil action.
- (2)
 - (a) The provisions of this section do not apply to injuries to a tree or timber on the land of another arising from a wildland fire.
 - (b) Liability for injuries to a tree or timber on the land of another arising from a wildland fire is determined in accordance with Section 65A-3-4.

Amended by Chapter 162, 2020 General Session

78B-6-1003 Limited damages in certain cases.

Nothing in Section 78B-6-1002 authorizes the recovery of more than the just value of the timber taken from uncultivated woodland for the repair of a public highway or bridge upon the land, or adjoining it.

Renumbered and Amended by Chapter 3, 2008 General Session

Part 11 Nuisance

78B-6-1101 Definitions -- Nuisance -- Agriculture operations.

- (1) As used in this part:
 - (a) "Controlled substance" means the same as that term is defined in Section 58-37-2.
 - (b) "Critical infrastructure materials operations" means the same as the term "critical infrastructure materials use" is defined in Section 10-9a-901.
 - (c) "Manufacturing facility" means a factory, plant, or other facility including its appurtenances, where the form of raw materials, processed materials, commodities, or other physical objects is converted or otherwise changed into other materials, commodities, or physical objects or where such materials, commodities, or physical objects are combined to form a new material, commodity, or physical object.

- (d) "Nuisance" means anything that is injurious to health, indecent, offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property.
- (e)
 - (i) "Possession or use" means the joint or individual ownership, control, occupancy, holding, retaining, belonging, maintaining, or the application, inhalation, swallowing, injection, or consumption, as distinguished from distribution, of a controlled substance, and includes individual, joint, or group possession or use of a controlled substance.
 - (ii) For a person to be a possessor or user of a controlled substance, it is not required that the person be shown to have individually possessed, used, or controlled the substance, but it is sufficient if it is shown that the person jointly participated with one or more persons in the use, possession, or control of a controlled substance with knowledge that the activity was occurring, or the controlled substance is found in a place or under circumstances indicating that the person had the ability and the intent to exercise dominion and control over it.
- (2) A nuisance may be the subject of an action.
- (3) A nuisance may include the following:
 - (a) drug houses and drug dealing as provided in Section 78B-6-1107;
 - (b) gambling as provided in Title 76, Chapter 9, Part 14, Gambling;
 - (c) criminal activity committed in concert with two or more individuals as provided in Section 76-3-203.1;
 - (d) criminal activity committed for the benefit of, at the direction of, or in association with any criminal street gang as defined in Section 76-9-802;
 - (e) criminal activity committed to gain recognition, acceptance, membership, or increased status with a criminal street gang as defined in Section 76-9-802;
 - (f) party houses that frequently create conditions defined in Subsection (1)(d);
 - (g) prostitution as provided in Title 76, Chapter 5d, Prostitution; or
 - (h) the unlawful discharge of a firearm as provided in state or local law.
- (4) A nuisance under this part includes:
 - (a) tobacco smoke that drifts into a residential unit a person rents, leases, or owns, from another residential or commercial unit and the smoke:
 - (i) drifts in more than once in each of two or more consecutive seven-day periods; and
 - (ii) creates any of the conditions described in Subsection (1)(d); or
 - (b) fumes resulting from the unlawful manufacturing or the unlawful possession or use of a controlled substance that drift into a residential unit a person rents, leases, or owns, from another residential or commercial unit.
- (5) Subsection (4)(a) does not apply to:
 - (a) a residential rental unit available for temporary rental, such as for a vacation, or available for only 30 or fewer days at a time; or
 - (b) a hotel or motel room.
- (6) Subsection (4)(a) does not apply to a unit that is part of a timeshare development, as defined in Section 57-19-2, or subject to a timeshare interest as defined in Section 57-19-2.
- (7) An action for nuisance against an agricultural operation is governed by Title 4, Chapter 44, Agricultural Operations Nuisances Act.

Amended by Chapter 141, 2025 General Session
Amended by Chapter 173, 2025 General Session
Amended by Chapter 174, 2025 General Session
Amended by Chapter 178, 2025 General Session

Amended by Chapter 387, 2025 General Session

78B-6-1102 Right of action -- Remedies -- Jurisdiction for enforcement.

- (1) An action for nuisance may be brought before a court with jurisdiction by any person whose property is injuriously affected, or whose personal enjoyment is lessened by the nuisance.
- (2) Upon judgment, the court may, in addition to any other relief the court considers just and proper:
 - (a) award damages;
 - (b) order the nuisance to be enjoined or abated, which may include:
 - (i) requiring a defendant to make repairs to the nuisance property or property that is injuriously affected by the nuisance;
 - (ii) requiring a defendant to:
 - (A) install and maintain secure locks on the nuisance property's doors or windows;
 - (B) provide security personnel or video surveillance monitoring of the nuisance property; or
 - (C) install and maintain lighting in and around common areas; or
 - (iii) abatement by eviction as provided in this part;
 - (c) grant declaratory relief as described in Part 4, Declaratory Judgments; or
 - (d) award costs and reasonable attorney fees to the prevailing party as described in Section 76B-6-1114.
- (3) A court that issues a judgment or order under this part retains jurisdiction to enforce the judgment or order.

Amended by Chapter 141, 2025 General Session

78B-6-1102.5 Violation of order enjoining a nuisance -- Civil penalty.

A person who knowingly violates any judgment or order abating or enjoining a nuisance, as that term is defined in Section 78B-6-1101:

- (1) is guilty of a class B misdemeanor; and
- (2) is subject to a civil penalty of \$50 per day for each day that the nuisance continues in violation of the order.

Amended by Chapter 141, 2025 General Session

78B-6-1103 Manufacturing facility in operation over three years -- Limited application of restrictions.

- (1)
 - (a) Notwithstanding Sections 76-9-1301 and 78B-6-1101, a manufacturing facility may not be considered a nuisance because of any changed circumstance in land uses near the facility if:
 - (i) the manufacturing facility has been in operation for more than three years; and
 - (ii) the manufacturing facility was not a nuisance at the time it began operation.
 - (b) The manufacturing facility may not increase the condition asserted to be a nuisance.
 - (c) The provisions of this Subsection (1) do not apply if a nuisance results from the negligent or improper operation of a manufacturing facility.
- (2) Nothing in this section affects the right of a person to recover damages for injuries or damage sustained as a result of the pollution or change in the conditions of the waters of a stream or overflow of the lands of any person.
- (3)

- (a) Any and all ordinances now or in the future adopted by any county or municipal corporation in which a manufacturing facility is located and which makes its operation a nuisance or providing for an abatement as a nuisance in the circumstances set forth in this section are null and void.
- (b) The provisions of this Subsection (3) may not apply whenever a nuisance results from the negligent or improper operation of a manufacturing facility.

Amended by Chapter 141, 2025 General Session

Amended by Chapter 173, 2025 General Session

78B-6-1106 Rental units -- Tobacco smoke -- Drug fumes.

- (1) There is no cause of action for a nuisance under Subsection 78B-6-1101(4)(a) if the rental, lease, restrictive covenant, or purchase agreement for the unit states in writing that:
 - (a) tobacco smoking is allowed in other units, either residential or commercial, and that tobacco smoke from those units may drift into the unit that is subject to the agreement; and
 - (b) by signing the agreement the renter, lessee, or buyer acknowledges he has been informed that tobacco smoke may drift into the unit he is renting, leasing, or purchasing, and he waives any right to a cause of action for a nuisance under Subsection 78B-6-1101(4).
- (2) A cause of action for a nuisance under Subsection 78B-6-1101(4)(a) may be brought against:
 - (a) the individual generating the tobacco smoke;
 - (b) the renter or lessee who permits or fails to control the generation of tobacco smoke, in violation of the terms of the rental or lease agreement, on the premises the renter or lessee rents or leases; or
 - (c) the landlord, but only if:
 - (i) the terms of the renter's or lessee's contract provide the unit will not be subject to the nuisance of drifting tobacco smoke;
 - (ii) the complaining renter or lessee has provided to the landlord a statement in writing indicating that tobacco smoke is creating a nuisance in the renter's or lessee's unit; and
 - (iii) the landlord knowingly allows the continuation of a nuisance under Subsection 78B-6-1101(4) after receipt of written notice under Subsection (2)(c)(ii), and in violation of the terms of the rental or lease agreement under Subsection (2)(c)(i).
- (3) A cause of action for nuisance under Subsection 78B-6-1101(4)(b) may be brought against:
 - (a) an individual who generates fumes by the unlawful manufacturing or the unlawful possession or use of a controlled substance;
 - (b) a renter or lessee who permits or fails to control the generation of fumes from the unlawful manufacturing or the unlawful possession or use of a controlled substance on the premises the renter or lessee rents or leases; or
 - (c) a landlord, but only if:
 - (i) the complaining renter or lessee has provided to the landlord a statement in writing indicating that fumes from the unlawful manufacturing or the unlawful possession or use of a controlled substance are creating a nuisance in the renter's or lessee's unit; and
 - (ii) the landlord knowingly allows the continuation of a nuisance under Subsection 78B-6-1101(4)(b) after receipt of written notice under Subsection (3)(c)(i).

Amended by Chapter 141, 2025 General Session

78B-6-1107 Nuisance -- Drug houses and drug dealing -- Gambling -- Group criminal activity -- Party house -- Prostitution -- Weapons -- Discharge of a firearm -- Defense.

- (1) Every building or place is a nuisance where:
 - (a) the unlawful sale, manufacture, service, storage, distribution, dispensing, acquisition, or use occurs of any controlled substance, precursor, or analog described in Title 58, Chapter 37, Utah Controlled Substances Act;
 - (b) gambling is permitted to be played, conducted, or dealt upon as prohibited in Title 76, Chapter 9, Part 14, Gambling, which creates the conditions of a nuisance as that term is defined in Subsection 78B-6-1101(1);
 - (c) criminal activity is committed in concert with two or more individuals as described in Section 76-3-203.1;
 - (d) criminal activity is committed for the benefit of, at the direction of, or in association with any criminal street gang as defined in Section 76-9-802;
 - (e) criminal activity is committed to gain recognition, acceptance, membership, or increased status with a criminal street gang as defined in Section 76-9-802;
 - (f) parties occur frequently which create the conditions of a nuisance as that term is defined in Subsection 78B-6-1101(1);
 - (g) prostitution or promotion of prostitution is regularly carried on by one or more persons as described in Title 76, Chapter 5d, Prostitution;
 - (h) a violation of an offense under Title 76, Chapter 11, Weapons, occurs on the premises;
 - (i) the unlawful discharge of a firearm, as provided in state or local law, occurs on the premises; and
 - (j) human trafficking occurs as described in Title 76, Chapter 5, Part 3, Kidnapping, Trafficking, and Smuggling.
- (2) It is a defense to nuisance under Subsection (1)(a) if the defendant can prove that the defendant is lawfully entitled to the possession or use of a controlled substance.
- (3) Evidence of a previous conviction for a crime described in Subsection (1) may not be used in an action for nuisance under this part.

Amended by Chapter 141, 2025 General Session

Amended by Chapter 173, 2025 General Session

Amended by Chapter 174, 2025 General Session

Amended by Chapter 178, 2025 General Session

Amended by Chapter 208, 2025 General Session

78B-6-1108 Nuisance -- Abatement by eviction.

- (1) Whenever there is reason to believe that a nuisance under Sections 78B-6-1107 through 78B-6-1114 is kept, maintained, or exists in any county, the county attorney of the county, the city attorney of any incorporated city, any citizen or citizens of the state residing in the county, or any person or business doing business in the county, in their own name or names, may bring an action for abatement by eviction in a court with jurisdiction.
- (2) The court may designate a spokesperson from a group of citizens who would otherwise have the right to maintain an action in their individual names against the defendant under this section.

Amended by Chapter 141, 2025 General Session

78B-6-1109 Abatement by eviction order -- Grounds.

A court shall issue an order of abatement by eviction if the applicant shows, by a preponderance of the evidence, that:

- (1) the applicant will suffer irreparable harm unless the order of abatement by eviction issues;
- (2) the threatened injury to the applicant outweighs any damage the proposed order of abatement by eviction may cause the party to be evicted;
- (3) the order of abatement by eviction would not be adverse to the public interest; and
- (4) there is a substantial likelihood that:
 - (a) the applicant will prevail on the merits of the underlying claim; or
 - (b) the case presents serious issues on the merits which should be the subject of further litigation.

Amended by Chapter 141, 2025 General Session

78B-6-1110 Prior acts or threats of violence -- Protection of applicant or witness.

At the time of application for abatement of a nuisance by eviction pursuant to Sections 78B-6-1108 and 78B-6-1109, upon a showing of good cause the court may issue an order to protect the applicant or, if proof of the existence of the nuisance depends in whole or in part upon the affidavit of a witness who is not a peace officer, the witness, which order may include nondisclosure of the name, address, or any other information which may identify the individual protected by the order.

Amended by Chapter 141, 2025 General Session

78B-6-1111 Landlord, owner, or designated agent -- Necessary party -- Automatic eviction.

- (1) A landlord, owner, or designated agent is a necessary party defendant in a nuisance action under Sections 78B-6-1107 through 78B-6-1114 for entry of an order to abate the nuisance by eviction where the acts complained of are those of a third party upon the premises of the landlord, owner, or designated agent.
- (2) At the court's hearing on the action to abate the nuisance by eviction, the court shall notify the necessary parties, including the applicant, the tenant, and the landlord, owner, or designated agent, if:
 - (a) the court finds that a nuisance exists as described in Section 78B-6-1107; and
 - (b) as a result, the court is issuing an order to evict the tenant subject to compliance with the security requirement in Section 78B-6-1112.
- (3) In all cases, including default judgments, the order of abatement by eviction may be issued and enforced immediately.

Amended by Chapter 141, 2025 General Session

78B-6-1112 Security requirement -- Amount not a limitation -- Jurisdiction over surety.

- (1)
 - (a) The court shall condition issuance of an order of abatement by eviction on the giving of security by the applicant, in such sum and form as the court determines proper, unless:
 - (i) the court determines that none of the parties will incur or suffer costs, attorney fees, or damage as the result of any wrongful order of abatement by eviction;
 - (ii) the court determines that there exists some substantial reason for dispensing with the requirement of security; or
 - (iii) the applicant has proved, by a preponderance of the evidence, the existence of a nuisance described in Section 78B-6-1107.
 - (b) Security described in Subsection (1)(a) may not be required:

- (i) of the United States, the state, or an officer, agency, or subdivision of the United States or the state; or
 - (ii) when prohibited by law.
- (2) The amount of security may not limit the award of:
- (a) reasonable attorney fees or costs incurred in connection with the order of abatement by eviction; or
 - (b) damages that may be awarded to a party who is found to have been wrongfully evicted.
- (3)
- (a) A surety upon a bond or undertaking under this section submits to the jurisdiction of the court and irrevocably appoints the clerk of the court as agent upon whom any papers affecting the surety's liability on the bond or undertaking may be served.
 - (b) The surety's liability may be enforced on motion without the necessity of an independent action.
 - (c) The motion and such notice of the motion as the court prescribes may be served on the clerk of the court who shall immediately provide a copy to the applicant or other person giving the security by the means established at the time of the application.
- (4) Upon request, the applicant shall be granted a hearing to be held no later than three days from the date the defendant is served with notice of the applicant's giving of security, as described in Subsection (1).

Amended by Chapter 141, 2025 General Session

78B-6-1113 Evidence of nuisance.

In an action for nuisance or abatement by eviction, all evidence authorized by law, including evidence of reputation in a community, is admissible to prove the existence of a nuisance or the elements required for an order of abatement by eviction by a preponderance of the evidence.

Amended by Chapter 141, 2025 General Session

78B-6-1114 Award of costs and attorney fees.

- (1) The court may award costs, including the costs of investigation and discovery, and reasonable attorney fees, which are not compensated for pursuant to some other provision of law, to the prevailing party in any case in which a party brings an action to abate a nuisance under this part.
- (2) The court may award costs, including the costs of investigation and discovery, and reasonable attorney fees against a defendant landlord, owner, or designated agent only when the court finds that the defendant landlord, owner, or designated agent had actual notice of the nuisance action and willfully failed to take reasonable action within a reasonable time to abate the nuisance.

Amended by Chapter 141, 2025 General Session

78B-6-1115 Critical infrastructure materials operations -- Nuisance liability.

- (1) Activities conducted in the normal and ordinary course of critical infrastructure materials operations or conducted in accordance with sound practices are presumed to be reasonable and not constitute a nuisance.

- (2) Critical infrastructure materials operations undertaken in conformity with federal, state, and local laws and regulations, including zoning ordinances, are presumed to be operating within sound critical infrastructure materials practices.

Enacted by Chapter 227, 2019 General Session

Part 12 Partition

78B-6-1201 Partition -- By cotenants of real property.

A person who is a joint tenant or tenant in common with another of real property may bring an action to partition the property for the benefit of each tenant. An action for partition may require the sale of the property if it appears that the partition cannot be made without prejudice to the owners.

Enacted by Chapter 3, 2008 General Session

78B-6-1202 Complaint -- To set forth interests of all parties.

- (1) The interests of all persons in the property, whether the persons are known or unknown, shall be set forth in the complaint, specifically and particularly, as far as known to the plaintiff.
- (2) If one or more of the parties, or the share or quantity of interest of any of the parties, is unknown to the plaintiff, uncertain or contingent, or the ownership of the inheritance depends upon an executory devise, or the remainder is a contingent remainder making the parties unknown, that fact must be set forth in the complaint.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1203 Parties -- Only holders of recorded rights necessary.

A person who does not have a conveyance of, or claim a lien on, the property, or some part of it, is not required to be made a party to the action, unless the conveyance or lien has been properly recorded.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1204 Lis pendens required.

- (1) The plaintiff shall file a notice of the action with the recorders of all the counties in which the property is situated. The notice shall contain:
 - (a) a copy of such complaint; or
 - (b) a notice of the pendency of the action, containing:
 - (i) the names of all known parties;
 - (ii) the object of the action; and
 - (iii) a description of the property affected.
- (2) Once the notice is filed, all persons having an interest in the property shall be considered to have notice of the pendency of the action.
- (3) This section does not apply if a plaintiff satisfies the requirements of a notice of pendency of an action required by Section 38-1a-701 or Section 38-10-106.

- (4) If a complaint described in Subsection (1)(a) is amended after the notice is recorded, the plaintiff is not required to file an amended notice unless the property description has changed.

Amended by Chapter 103, 2017 General Session

78B-6-1205 Summons -- To whom directed.

The summons shall be directed to:

- (1) all joint tenants;
- (2) tenants in common of all persons having any interest in, or recorded liens upon the property or any portion of the property; and
- (3) any other person claiming any interest in the property.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1206 Service by publication.

If a party having a share or interest is unknown, or any one of the known parties resides out of the state or cannot be found, the summons may be served upon them by publication in accordance with the Utah Rules of Civil Procedure.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1207 Answer must set forth interests claimed.

- (1) All defendants shall set forth in their answers, fully and particularly, the origin, nature, and extent of their respective interests in the property.
- (2) If a defendant claims a lien on the property by mortgage, judgment, or otherwise, the defendant shall state the original amount and date of the mortgage or judgment, and the amounts remaining unpaid. The defendant shall also state whether the mortgage or judgment has been secured in any other way, and if secured, the extent and nature of the security. If this information is not provided, the defendant shall be considered to have waived any rights to the lien.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1208 Right of all parties may be determined.

The rights of all parties may be put in issue, tried, and determined by the action. If the court determines a sale of the premises is necessary, the title shall be ascertained to the satisfaction of the court before the judgment of sale can be made. If service of the summons was made by publication, similar proof is required concerning the rights of absent or unknown parties before judgment is rendered. If there are several unknown persons having an interest in the property, their rights may be considered together in the action.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1209 Partial partition allowed -- When.

- (1) If the court determines that it is impracticable or highly inconvenient to make a complete partition among all the parties in interest, the court may first determine the shares or interests respectively held by the original cotenants as if they were the only parties to the action.

- (2) After the initial partition, the court may partition separately each portion allotted among those claiming under a specific tenant whose interest was determined in Subsection (1), unless the parties choose to remain as tenants in common.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1210 When all holders of recorded rights are not made parties -- Procedure -- Reference.

If there are outstanding liens or encumbrances of record upon the property when the action is commenced, the persons holding the liens shall be made parties to the action. If the persons are not made parties, the court shall either order the persons made parties to the action by an amendment or supplemental complaint, or appoint a referee to determine whether the liens or encumbrances have been paid. If the referee determines that amounts remain due, the referee shall determine whether the amounts are secured or unsecured and the order of precedence among all the liens or encumbrances on the property.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1211 Notice of appearance before referee -- Referee's report.

- (1) The referee appointed in Section 78B-6-1210 shall set a date to hear from each person holding a lien on the property. The plaintiff shall have a notice and summons served on each person identified in Section 78B-6-1210 who is not a party to the action.
- (2) The summons shall state the specific time and place of the hearing and instruct the person to appear with proof of all amounts due.
- (3) If the person cannot be found, the court may direct service to be made by publication in accordance with the Utah Rules of Civil Procedure.
- (4) The referee shall provide a report to the court detailing his findings. The court shall confirm, modify, or set aside the findings. If the findings are set aside, a new referee may be appointed in accordance with Section 78B-6-1210.

Enacted by Chapter 3, 2008 General Session

78B-6-1212 If partition prejudicial, sale in lieu thereof -- Partition by referees.

- (1) If the court determines that the property or any part of it cannot be partitioned without great prejudice to the owners, the court may order the property sold.
- (2) If the court determines that the property may be partitioned, it shall order a partition according to the respective rights of the parties determined by the court and appoint three referees to do the partition. The court shall also designate a portion to remain undivided for the owners whose interests remain unknown or are not ascertained.
- (3) If the action is for partition of a mining claim among the tenants in common, joint tenants, copartners, or parceners, the court, upon good cause shown by any party or parties in interest, may, instead of ordering partition to be made in the manner as provided, or a sale of the premises for cash, direct the referees to divide the claim in the manner provided in Subsections 78B-6-1213(5) through (11).

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1213 Duties and powers of referees -- Procedure.

- (1) In making the partition the referees must divide the property among the respective parties as determined by the court pursuant to the provisions of this part.
- (2) The referees may designate the portions by proper landmarks, and may employ a surveyor with the necessary assistants to aid them.
- (3) In all cases the court shall direct the referees making the partition to:
 - (a) allot the share of each of the parties owning an interest; and
 - (b) locate the share of each cotenant, including, if possible, the improvements made by the cotenant upon the property.
- (4) The value of the improvements made by tenants in common shall be excluded from the valuation in making allotments if it can be done without material injury to the rights and interests of the other tenants in common.
- (5) If the action is for partition of a mining claim, the court shall order the division of the claim by the referees not less than 20 nor more than 40 days from the date of the order, except by consent of all the parties in interest who have appeared in the action.
- (6) On the day designated in the order the referees shall go to the property to be divided and proceed to divide the property. If the division requires more than one day to complete, the referees shall continue from day to day until the division is completed.
- (7) Two or more of the tenants in common, joint tenants, copartners, or parceners may unite for the purposes of the division. The parties shall give the referees written notice of any unions before the referees begin the division. All who do not unite or give notice of separate action, shall, for the purposes of division, be considered to have united.
- (8) The referees shall recognize:
 - (a) those named in the court order, their agents and attorneys;
 - (b) a guardian of a minor; and
 - (c) a guardian entitled to the custody and the management of the estate of an incompetent or incapacitated person.
- (9) At the time and place of division one of the referees shall be selected to conduct the proceedings in the manner of public auction. The privilege of selecting first shall be offered to the party who agrees to take the smallest portion of the claim in proportion to that party's interest in the claim. Once the bids are closed, the referees shall measure and mark off, by distinct metes and bounds, the portion of the claim designated by the lowest bidder.
- (10) Once the referees have marked off and set apart the interest of the lowest bidder, they shall offer to the remaining parties the privilege of selection as provided, and shall upon closing the bids, proceed in the same manner to locate and mark off the portion of the lowest bidder.
- (11) The bidding shall continue and the interest of the lowest bidder marked off until only one party in interest remains. The party remaining shall become the owner of the remainder of the claim not marked off and set apart for the other parties.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1214 Report of referees.

The referees shall provide a written report of their proceedings, specifying the manner in which they executed their trust, describing the property divided, and the shares allotted to each party, with a particular description of each share.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1215 Confirmation, modification, or vacation by court -- Effect of death of party before judgment.

- (1) The court may confirm, change, modify, or set aside the report, and if necessary, appoint new referees. Upon the report being confirmed judgment must be rendered that the partition be effectual forever. The judgment shall be binding and conclusive on all persons:
- (a) named as parties to the action and their legal representatives, who have at the time any interest in the property, whether as:
 - (i) owners in fee;
 - (ii) tenants for life or for years; or
 - (iii) entitled to the reversion, remainder, or the inheritance of the property or of any portion after the determination of a particular estate in it;
 - (b) who by any contingency may be entitled to a beneficial interest in the property, or who have an interest in any undivided share thereof as tenants for years or for life;
 - (c) interested in the property who may be unknown, to whom notice of the action for partition has been given by publications; and
 - (d) claiming from any parties or persons in Subsection (1)(c).
- (2) A judgment is not invalid by reason of the death of any party before final judgment or decree, but the judgment or decree is as conclusive against the heirs, legal representatives, or assigns of the decedent as if it had been entered before the person's death.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1216 Tenant for years, less than 10, not affected by judgment.

The judgment does not affect tenants for years, less than 10, of the whole of the property which is the subject of the partition.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1217 Referees' expenses and fees -- Apportionment.

The expenses of the referees, including those of the surveyor and his assistants if employed, must be determined and allowed by the court, and the amount, together with the fees allowed by the court in its discretion to the referees, shall be apportioned equitably among the different parties to the action.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1218 Liens on undivided interests -- Apportionment.

A lien on an undivided interest or estate of any of the parties shall only be a charge on the share assigned to the party after the share is charged with its just proportion of the costs of the partition in preference to the lien.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1219 Setoff of estate for life or for years.

If there is an estate for life or years in an undivided share of the whole property and only a portion of the property is ordered to be sold, the estate may be set off in any part of the property not ordered to be sold.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1220 Proceeds of sale of encumbered property -- Disposition of.

The proceeds of the sale of encumbered property shall be applied under the direction of the court, as follows:

- (1) to pay its just proportion of the general costs of the action;
- (2) to pay the costs of the reference;
- (3) to satisfy and cancel all recorded liens in their order of priority, by payment of the sums due and to become due; the amount due to be verified by affidavit at the time of payment;
- (4) the residue among the owners of the property sold according to their respective shares therein.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1221 Lienholders required to exhaust other security first.

Any party to the action, who holds a lien upon the property or any portion of it and has other securities for the payment of the amount of the lien may be required by the court to exhaust the other securities before a distribution of the proceeds of sale. The court may also order a just reduction to be made from the amount of the lien on the property in the amount of the securities.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1222 Distribution of proceeds or securities.

The proceeds of sale and the securities taken by the referees shall be distributed by the referees to the persons entitled to them whenever the court directs. If no direction for distribution is given, all of the proceeds and securities must be paid into the court.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1223 Determination of adverse claims.

When the proceeds of the sale of any share or parcel belonging to persons who are parties to the action, and who are known or unknown, are paid into court, the action may continue between the parties for the determination of their respective claims. Further evidence may be taken by the court or a referee at the discretion of the court, and the court may, if necessary, require the parties to present the facts or law in controversy by pleadings as in an original action.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1224 Sales at public auction -- Notice.

All sales of real property made by referees under this part shall be made at public auction to the highest bidder, upon notice published in the manner required for the sale of real property on execution. The notice shall state the terms of sale, and if the property or any part of it is to be sold subject to a prior estate, charge, or lien, that fact shall be stated also.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1225 Sales on credit -- Order for.

The court shall, in the order of sale, direct the terms of credit which may be allowed for the purchase money of any portion of the premises. For that portion of which the purchase money is

required, the court shall also order it to be invested for the benefit of unknown owners, minors or parties out of the state.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1226 Security for payment.

The referees may take separate mortgages and other securities;

- (1) for the whole or convenient portions of the purchase money;
- (2) on any part of the property directed by the court to be sold on credit;
- (3) for the shares of any known owner of full age, in the name of the owner;
- (4) for the shares of a minor, in the name of the guardian of the minor; and
- (5) for other shares, in the name of the clerk of the court and his successors in office.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1227 Compensation for interest of tenant for life or years.

A person entitled to a tenancy for life or years whose estate has been sold, is entitled to receive a sum as reasonable compensation for the estate. The person's consent to accept the sum shall be filed in writing with the clerk of the court. Upon the filing of the consent, the clerk shall enter it in the minutes of the court.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1228 Court determines reasonable compensation for tenant.

If consent is not given, filed, and entered as provided in Section 78B-6-1227 before a judgment of sale is rendered, the court shall determine what proportion of the proceeds of the sale, after deducting expenses, will be a just and reasonable sum to be allowed on account of the estate, and order the amount paid to the party, or deposited in the court for the person, as the case may require.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1229 If tenant unknown.

If persons entitled to the estate for life or years are unknown, the court shall provide for the protection of their rights in the same manner as if they were known and had appeared.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1230 Protection of vested, contingent, or future rights.

In all cases of sales if it appears that any person has a vested, contingent, or future right or estate in any of the property sold, the court shall ascertain and settle the proportionate value of the contingent or vested right or estate, and direct the proportion of the proceeds of the sale to be invested, secured, or paid over in a manner that would protect the rights and interests of the parties.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1231 Terms of sales -- Separate sale of distinct parcels.

In all cases of sales of property the terms shall be made known at the time, and if the premises consist of distinct farms or lots, they shall be sold separately.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1232 Who may not be purchaser.

- (1) A referee or any person for the referee's benefit may not be interested in any purchase.
- (2) A guardian of a minor party may not be interested in the purchase of any real property which is the subject of an action under this part except for the benefit of the minor.
- (3) All sales contrary to the provisions of this section are void.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1233 Report of referees to the courts of sales.

- (1) Once the sale of the property or any portion ordered to be sold is complete, the referees shall file a report with the court.
- (2) The report shall include:
 - (a) a description of the different parcels of land sold to each purchaser;
 - (b) the name of the purchaser;
 - (c) the price paid or secured;
 - (d) the terms and conditions of the sale; and
 - (e) the securities, if any, taken.
- (3) The report shall be filed in the office of the clerk of the court.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1234 Referees' deed on confirmation -- Disposition of proceeds.

If the sale is confirmed by the court, an order shall be entered directing the referees to execute conveyances and authorizing them to take securities pursuant to sale. The order may also give directions directing the disposition of the proceeds of the sale.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1235 Allowance on purchase price -- When interested party is purchaser.

If a party entitled to a share of the property, or a lienholder entitled to have his lien paid out of the sale, becomes a purchaser, the referees may take his receipt for so much of the proceeds of the sale as belongs to him.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1236 Conveyance to be recorded -- Operates as a bar.

- (1) The conveyances shall be recorded in the county where the property is located.
- (2) The recording shall be a bar against:
 - (a) all persons interested in the property in any way, who have been named as parties in the action;
 - (b) all parties or persons who were unknown, if the summons was served by publication, and all persons claiming under them; and
 - (c) all persons having unrecorded deeds or liens at the commencement of the action.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1237 Investment of sale proceeds for nonresidents or unknown parties.

When there are proceeds of a sale belonging to an unknown owner or to a person outside the state who has no legal representative inside the state, the proceeds shall be invested in bonds of the United States, this state, or a political subdivision of the state for the benefit of the persons entitled the proceeds.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1238 Clerk of court to be custodian.

- (1) If the security of the proceeds of the sale is taken, or when an investment of any proceeds is made, it shall be done, except as otherwise provided, in the name of the clerk of the court.
- (2) The clerk of the court shall hold the security for the use and benefit of the parties interested, subject to an order of the court.

Amended by Chapter 158, 2024 General Session

78B-6-1239 Distribution of securities to parties entitled.

If security is taken by the referees on a sale, and the parties interested in the security, by an instrument in writing delivered to the referees, agree upon the shares and proportions to which they are respectively entitled, or when shares and proportions have been previously adjudged by the court, the securities shall be taken in the names of, and payable to, the parties respectively entitled, and shall be delivered to the parties upon their receipt. The agreement and receipt shall be filed with the clerk of the court.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1240 Investment of securities by court clerk -- Accounting.

The clerk of the court in whose name a security is taken or by whom an investment is made, and his successors in office, shall receive the interest and principal as it becomes due, and apply and invest the same as the court may direct. The clerk shall also deposit with the county treasurer all securities taken, and keep an account, in a book provided and kept for that purpose in the clerk's office, free to inspection by all persons, of investments and money received and their disposition.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1241 Equalization.

- (1) If a partition cannot be made equally among the parties according to their respective rights without prejudice to the rights and interests of some of them, and a partition is ordered, the courts may order compensation made by one party to another on account of the inequality.
- (2) Compensation may not be required to be made to others by unknown owners or a minor, unless the court determines that the minor has sufficient personal property to make the payment and the minor's and the minor's interest will not be negatively affected.
- (3) The court has the power in all cases to make compensatory adjustment among the parties according to the principles of equity.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1242 Interests of minor -- Payment to guardian.

If the share of a minor is sold, the court may order the proceeds of the sale to be paid by the referee making the sale to the minor's general guardian or to the special guardian appointed for the minor in the action.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1243 Partition -- Payment of costs -- Enforcement of judgment.

- (1) The costs of partition, including reasonable attorney fees, expended by the plaintiff or any of the defendants for the common benefit, fees of referees and other disbursements shall be paid by the parties entitled to share in the lands divided, in proportion to their respective interests, and may be included and specified in the judgment. The costs shall be a lien on the several shares, and the judgment may be enforced by execution against the shares and against other property held by the respective parties.
- (2) If litigation arises between some of the parties, the court may require the expenses of the litigation to be paid by the parties to the litigation.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1244 One referee instead of three allowed by consent.

The court, with the consent of the parties, may appoint a single referee instead of three referees in the proceedings under the provisions of this part, and the single referee has all the powers, and may perform all the duties, required of the three referees.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1245 Lien for costs and expenses advanced by one for benefit of all.

- (1) The court shall allow expenses incurred, including attorney fees, in prosecuting or defending other actions or proceedings by any one of the tenants in common for the protection, confirmation or perfecting of the title, or setting the boundaries, or making a survey or surveys of the estate partitioned to be recovered by the party incurring the expenses.
- (2) The court shall determine the amounts with interest from the date the expenditures occurred.
- (3) The costs shall be:
 - (a) pleaded and allowed by the court;
 - (b) included in the final judgment;
 - (c) a lien upon the share of each tenant, in proportion to the tenant's interest; and
 - (d) enforced in the same manner as taxable costs of partition are taxed and collected.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1246 Abstract of title -- Costs and inspection.

- (1) If the court determines that it was necessary to have an abstract of the title to the property to be partitioned created and the abstract has been procured by a party to the proceeding, the cost of the abstract, with interest from the date of its creation and availability for inspection by the respective parties to the action, shall be allowed and taxed.

- (2) If the abstract is procured by the plaintiff before the commencement of the action the plaintiff shall file a notice with the complaint that an abstract of the title has been made and is available for the inspection and use of all the parties to the action. The notice shall state where the abstract will be available for inspection.
- (3) If the plaintiff did not procure an abstract before commencing the action, and a defendant procures an abstract, the defendant shall, as soon as it has been directed it to be made, file a notice in the action with the clerk of the court, stating who is making the abstract and where it will be kept when finished.
- (4) The court may direct who may have custody of the abstract.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1247 Interest on advances to be allowed.

Any disbursement made by a party under the direction of the court during the action shall accrue interest from the date it is made.

Renumbered and Amended by Chapter 3, 2008 General Session

Part 12a
Uniform Partition of Heirs' Property Act

78B-6-1270 Definitions.

As used in this part:

- (1) "Ascendant" means an individual who precedes another individual in lineage, in the direct line of ascent from the other individual.
- (2) "Collateral" means an individual who is related to another individual under the law of intestate succession of this state but who is not the other individual's ascendant or descendant.
- (3) "Descendant" means an individual who follows another individual in lineage, in the direct line of descent from the other individual.
- (4) "Determination of value" means a court order:
 - (a) determining the fair market value of heirs' property under Section 78B-6-1274 or 78B-6-1278;
or
 - (b) adopting the valuation of the property agreed to by all the cotenants.
- (5) "Heirs' property" means real property held in tenancy in common that satisfies all of the following requirements as of the filing of a partition action:
 - (a) there is no agreement in a record binding all the cotenants that governs the partition of the property;
 - (b) one or more of the cotenants acquired title from a relative, whether living or deceased; and
 - (c) any of the following applies:
 - (i) 20% or more of the interests are held by cotenants who are relatives;
 - (ii) 20% or more of the interests are held by an individual who acquired title from a relative, whether living or deceased; or
 - (iii) 20% or more of the cotenants are relatives.
- (6) "Partition by sale" means a court-ordered sale of the entire heirs' property, whether by an auction, sealed bids, or an open-market sale conducted under Section 78B-6-1278.

- (7) "Partition in kind" means the division of heirs' property into physically distinct and separately titled parcels.
- (8) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- (9) "Relative" means an ascendant, a descendant, a collateral, or an individual otherwise related to another individual by blood, marriage, adoption, or a law of this state other than this part.

Enacted by Chapter 304, 2022 General Session

78B-6-1271 Applicability -- Relation to other law.

- (1) This part applies to partition actions filed on or after May 4, 2022.
- (2)
 - (a) In an action to partition real property under Title 78B, Chapter 6, Part 12, Partition, the court shall determine whether the property is heirs' property.
 - (b) If the court determines that the property is heirs' property, the property shall be partitioned under this part, unless all of the cotenants otherwise agree in a record.
- (3) This part supplements Title 78B, Chapter 6, Part 12, Partition, and if an action is governed by this part, replaces provisions of Title 78B, Chapter 6, Part 12, Partition, that are inconsistent with this part.

Enacted by Chapter 304, 2022 General Session

78B-6-1272 Service -- Notice by posting.

- (1) This part does not limit or affect the method by which service of a complaint in a partition action may be made.
- (2)
 - (a) If the plaintiff in a partition action files a notice by publication and the court determines that the property is heirs' property, the plaintiff, no later than 10 days after the day on which the court determines the property is heirs' property, shall post and maintain while the action is pending a conspicuous sign on the property that is the subject of the action.
 - (b) The sign shall:
 - (i) state that the action has commenced; and
 - (ii) identify the name and address of the court and the common designation by which the property is known.
 - (c) The court may require the plaintiff to publish on the sign the name of the plaintiff and the known defendants.

Enacted by Chapter 304, 2022 General Session

78B-6-1273 Referees.

If the court appoints referees, each referee, in addition to the requirements and disqualifications applicable to referees in Title 78B, Chapter 6, Part 12, Partition, shall be disinterested and impartial and not a party to or a participant in the action.

Enacted by Chapter 304, 2022 General Session

78B-6-1274 Determination of value.

- (1) Except as otherwise provided in Subsections (2) and (3), if the court determines that the property that is the subject of a partition action is heirs' property, the court shall determine the fair market value of the property by ordering an appraisal in accordance with Subsection (4).
- (2) If all cotenants have agreed to the value of the property or to another method of valuation, the court shall adopt that value or the value produced by the agreed method of valuation.
- (3) If the court determines that the evidentiary value of an appraisal is outweighed by the cost of the appraisal, the court, after an evidentiary hearing, shall determine the fair market value of the property and send notice to the parties of the value.
- (4)
 - (a) If the court orders an appraisal, the court shall appoint a disinterested real estate appraiser licensed in this state to determine the fair market value of the property assuming sole ownership of the fee simple estate.
 - (b) On completion of the appraisal, the appraiser shall file a sworn or verified appraisal with the court.
- (5) If an appraisal is conducted in accordance with Subsection (4), no later than 10 days after the day on which the appraisal is filed, the court shall send notice to each party with a known address, stating:
 - (a) the appraised fair market value of the property;
 - (b) that the appraisal is available at the court clerk's office; and
 - (c) that a party may file with the court an objection to the appraisal no later than 30 days after the day on which the notice is sent, stating the grounds for the objection.
- (6)
 - (a) If an appraisal is filed with the court in accordance with Subsection (4), the court shall conduct a hearing to determine the fair market value of the property no sooner than 31 days after the day on which a copy of the notice of the appraisal is sent to each party under Subsection (5), whether or not an objection to the appraisal is filed under Subsection (5)(c).
 - (b) In addition to the court-ordered appraisal, the court may consider any other evidence of value offered by a party.
- (7) After a hearing under Subsection (6), but before considering the merits of the partition action, the court shall determine the fair market value of the property and send notice to the parties of the value.

Enacted by Chapter 304, 2022 General Session

78B-6-1275 Cotenant buyout.

- (1) If any cotenant requests a partition by sale, after the determination of value under Section 78B-6-1274, the court shall send notice to the parties that any cotenant, except a cotenant that requested the partition by sale, may buy all the interests of the cotenants that requested partition by sale.
- (2) No later than 45 days after on the day on which the notice is sent under Subsection (1), any cotenant, except a cotenant that requested partition by sale, may give notice to the court that the cotenant elects to buy all the interests of the cotenants that requested partition by sale.
- (3) The purchase price for each of the interests of a cotenant that requested partition by sale is the value of the entire parcel determined under Section 78B-6-1274 multiplied by the cotenant's fractional ownership of the entire parcel.
- (4) After expiration of the 45-day period described in Subsection (2):

- (a) if only one cotenant elects to buy all the interests of the cotenants that requested partition by sale, the court shall notify all the parties of the fact that the one cotenant seeks to buy all the interests of the other cotenants;
 - (b) if more than one cotenant elects to buy all the interests of the cotenants that requested partition by sale, the court shall:
 - (i) allocate the right to buy all the interests of the cotenants among the electing cotenants based on each electing cotenant's existing fractional ownership of the entire parcel divided by the total existing fractional ownership of all cotenants electing to buy; and
 - (ii) send notice to all the parties of that fact and of the price to be paid by each electing cotenant; or
 - (c) if no cotenant elects to buy all the interests of the cotenants that requested partition by sale, the court shall send notice to all the parties that no cotenant elects to buy all the interests of the cotenants and resolve the partition action under Subsections 78B-6-1276(1) and (2).
- (5)
- (a) If the court sends notice to the parties under Subsection (4)(a) or (b), the court shall set a date, no sooner than 60 days after the day on which the notice was sent, by which electing cotenants shall pay each cotenant's apportioned price to the court.
 - (b) After the day described in Subsection (5)(a):
 - (i) if all electing cotenants timely pay each cotenant's apportioned price to the court, the court shall issue an order reallocating all the interests of the cotenants and disburse the amounts held by the court to the persons entitled to the amounts;
 - (ii) if no electing cotenant timely pays each cotenant's apportioned price, the court shall resolve the partition action under Subsections 78B-6-1276(1) and (2) as if the interests of the cotenants that requested partition by sale were not purchased; or
 - (iii) if one or more but not all of the electing cotenants fail to pay a cotenant's apportioned price on time, the court, upon a motion, shall give notice to the electing cotenants that paid the cotenant's apportioned price of the interest remaining and the price for all that interest.
- (6)
- (a) No later than 20 days after the day on which the court gives notice in accordance with Subsection (5)(b)(iii), any cotenant that paid may elect to purchase all of the remaining interest by paying the entire price to the court.
 - (b) After the 20-day period described in Subsection (6)(a):
 - (i) if only one cotenant pays the entire price for the remaining interest, the court shall:
 - (A) issue an order reallocating the remaining interest to that cotenant;
 - (B) issue an order promptly reallocating the interests of all of the cotenants; and
 - (C) disburse the amounts held by the court to the persons entitled to the amounts;
 - (ii) if no cotenant pays the entire price for the remaining interest, the court shall resolve the partition action under Subsections 78B-6-1276(1) and (2) as if the interests of the cotenants that requested partition by sale were not purchased; or
 - (iii) if more than one cotenant pays the entire price for the remaining interest, the court shall:
 - (A) reapportion the remaining interest among the paying cotenants, based on each paying cotenant's original fractional ownership of the entire parcel divided by the total original fractional ownership of all cotenants that paid the entire price for the remaining interest;
 - (B) issue an order promptly reallocating all of the cotenants' interests;
 - (C) disburse the amounts held by the court to the persons entitled to the amounts; and
 - (D) promptly refund any excess payment held by the court.
- (7) No later than 45 days after the day on which the court sends notice to the parties in accordance with Subsection (1), any cotenant entitled to buy an interest under this section may request the

court to authorize the sale, as part of the pending action, of the interests of cotenants named as defendants and served with the complaint but that did not appear in the action.

- (8) If the court receives a timely request under Subsection (7), the court, after a hearing, may deny the request or authorize the requested additional sale on such terms as the court determines are fair and reasonable if:
- (a) a sale authorized under this Subsection (8) occurs only after the purchase prices for all interests subject to sale under Subsections (1) through (6) have been paid to the court and those interests have been reallocated among the cotenants as provided in Subsections (1) through (6); and
 - (b) the purchase price for the interest of a nonappearing cotenant is based on the court's determination of value of the property under Section 78B-6-1274.

Enacted by Chapter 304, 2022 General Session

78B-6-1276 Partition alternatives.

- (1)
- (a) Except as provided in Subsection (1)(b), a court shall order partition in kind if:
 - (i) all the interests of all cotenants that requested partition by sale are not purchased by other cotenants in accordance with Section 78B-6-1275; or
 - (ii) after conclusion of the buyout under Section 78B-6-1275, a cotenant remains that has requested partition in kind.
 - (b) A court may not order a partition in kind if the court finds that partition in kind will result in great prejudice to the cotenants as a group after consideration of the factors listed in Section 78B-6-1277.
 - (c) In considering whether to order partition in kind under Subsection (1)(a), the court shall approve a request by two or more parties to have their individual interests aggregated.
- (2) If the court does not order partition in kind under Subsection (1), the court shall order partition by sale in accordance with Section 78B-6-1278, or the court shall dismiss the action if no cotenant requested partition by sale.
- (3) If the court orders partition in kind in accordance with Subsection (1), the court may require that one or more cotenants pay one or more other cotenants amounts so that the payments, taken together with the value of the in-kind distributions to the cotenants, will make the partition in kind just and proportionate in value to the fractional interests held.
- (4)
- (a) If the court orders partition in kind, the court shall allocate to the cotenants that are unknown, unlocatable, or the subject of a default judgment, if the cotenants' interests were not bought out in accordance with Section 78B-6-1275, a part of the property representing the combined interests of these cotenants as determined by the court.
 - (b) The part of the property allocated in accordance with Subsection (4)(a) shall remain undivided.

Enacted by Chapter 304, 2022 General Session

78B-6-1277 Considerations for partition in kind.

- (1) In determining under Subsection 78B-6-1276(1) whether partition in kind would result in great prejudice to the cotenants as a group, the court shall consider:
- (a) whether the heirs' property practicably can be divided among the cotenants;

- (b) whether partition in kind would apportion the property in such a way that the aggregate fair market value of the parcels resulting from the division would be materially less than the value of the property if it were sold as a whole, taking into account the condition under which a court-ordered sale likely would occur;
 - (c) evidence of the collective duration of ownership or possession of the property by a cotenant and one or more predecessors in title or predecessors in possession to the cotenant who are or were relatives of the cotenant or each other;
 - (d) a cotenant's sentimental attachment to the property, including any attachment arising because the property has ancestral or other unique or special value to the cotenant;
 - (e) the lawful use being made of the property by a cotenant and the degree to which the cotenant would be harmed if the cotenant could not continue the same use of the property;
 - (f) the degree to which the cotenants have contributed:
 - (i) the cotenants' pro rata share of the property taxes, insurance, and other expenses associated with maintaining ownership of the property; or
 - (ii) to the physical improvement, maintenance, or upkeep of the property; and
 - (g) any other relevant factor.
- (2) The court may not consider any one factor in Subsection (1) to be dispositive without weighing the totality of all relevant factors and circumstances.

Enacted by Chapter 304, 2022 General Session

78B-6-1278 Open-market sale, sealed bids, or auction.

- (1) If the court orders a sale of heirs' property, the sale must be an open-market sale unless the court finds that a sale by sealed bids or an auction would be more economically advantageous and in the best interest of the cotenants as a group.
- (2)
- (a) If the court orders an open-market sale and the parties agree on a real estate broker licensed in this state to offer the property for sale no later than 10 days after the day on which the court entered the order, the court shall appoint the broker and establish a reasonable commission.
 - (b) If the parties do not agree on a broker during the 10-day period described in Subsection (2) (a), the court shall appoint a disinterested real estate broker licensed in this state to offer the property for sale and shall establish a reasonable commission.
 - (c) The broker shall offer the property for sale in a commercially reasonable manner at a price no lower than the determination of value of the property and on the terms and conditions established by the court.
- (3) If the broker appointed under Subsection (2) obtains within a reasonable time an offer to purchase the property for at least the determination of value:
- (a) the broker shall comply with the reporting requirements in Section 78B-6-1279; and
 - (b) the sale may be completed in accordance with state law other than this part.
- (4) If the broker appointed under Subsection (2) does not obtain within a reasonable time an offer to purchase the property for at least the determination of value, the court, after a hearing, may:
- (a) approve the highest outstanding offer if there is an outstanding offer;
 - (b) redetermine the value of the property and order that the property continue to be offered for an additional time; or
 - (c) order that the property be sold by sealed bids or at an auction.
- (5)
- (a) If the court orders a sale by sealed bids or an auction, the court shall set terms and conditions of the sale.

- (b) If the court orders an auction, the auction shall be conducted in accordance with Section 78B-6-1224.
- (6) If a purchaser is entitled to a share of the proceeds of the sale, the purchaser is entitled to a credit against the price in an amount equal to the purchaser's share of the proceeds.

Enacted by Chapter 304, 2022 General Session

78B-6-1279 Report of open-market sale.

- (1) Unless required to do so within a shorter time by Title 78B, Chapter 6, Part 12, Partition, a broker appointed under Subsection 78B-6-1278(2) to offer heirs' property for open-market sale shall file a report with the court no later than seven days after the day on which the broker receives an offer to purchase the property for at least the determination of value under Section 78B-6-1274 or 78B-6-1278.
- (2) The report required by Subsection (1) shall contain the following information:
 - (a) a description of the property to be sold to each buyer;
 - (b) the name of each buyer;
 - (c) the proposed purchase price;
 - (d) the terms and conditions of the proposed sale, including the terms of any owner financing;
 - (e) the amounts to be paid to lienholders;
 - (f) a statement of contractual or other arrangements or conditions of the broker's commission; and
 - (g) any other material fact relevant to the sale.

Enacted by Chapter 304, 2022 General Session

78B-6-1280 Uniformity of application and construction.

In applying and construing this part, consideration shall be given to the need to promote uniformity of this uniform law with respect to the subject matter of the uniform law among states that enact this uniform law.

Enacted by Chapter 304, 2022 General Session

78B-6-1281 Relation to Electronic Signatures in Global and National Commerce Act.

This part modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Sec. 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Sec. 7003(b).

Enacted by Chapter 304, 2022 General Session

**Part 13
Quiet Title**

78B-6-1301 Quiet title -- Action to determine adverse claim to property.

A person may bring an action against another person to determine rights, interests, or claims to or in personal or real property.

Enacted by Chapter 3, 2008 General Session

78B-6-1302 Definitions.

As used in this part:

- (1) "Claimant" means a person who files a notice.
- (2) "Guarantee" means an agreement by a claimant to pay an amount of damages:
 - (a) specified by the court;
 - (b) suffered as a result of the maintenance of a notice;
 - (c) to a person with an interest in the real property that is the subject of the notice; and
 - (d) if the requirements of Subsection 78B-6-1304(5) are met.
- (3) "Notice" means a notice of the pendency of an action filed under Section 78B-6-1303.

Enacted by Chapter 3, 2008 General Session

78B-6-1303 Lis pendens -- Notice.

- (1)
 - (a) Any party to an action filed in the United States District Court for the District of Utah, the United States Bankruptcy Court for the District of Utah, a district court of this state, or the Business and Chancery Court of this state, that affects the title to, or the right of possession of, real property may file a notice of pendency of action.
 - (b) A party that chooses to file a notice of pendency of action shall:
 - (i) first, file the notice with the court that has jurisdiction of the action; and
 - (ii) second, record a copy of the notice filed with the court with the county recorder in the county where the property or any portion of the property is located.
 - (c) A person may not file a notice of pendency of action unless a case has been filed and is pending in the United States District Court for the District of Utah, the United States Bankruptcy Court for the District of Utah, a district court of this state, or the Business and Chancery Court of this state.
- (2) The notice shall contain:
 - (a) the caption of the case, with the names of the parties and the case number;
 - (b) the object of the action or defense; and
 - (c) the specific legal description of only the property affected.
- (3) From the time of filing the notice, a purchaser, an encumbrancer of the property, or any other party in interest that may be affected by the action is considered to have constructive notice of pendency of action.

Amended by Chapter 401, 2023 General Session

78B-6-1304 Motions related to a notice of pendency of an action.

- (1) Any time after a notice has been filed pursuant to Section 78B-6-1303, any of the following may make a motion to the court in which the action is pending to release the notice:
 - (a) a party to the action; or
 - (b) a person with an interest in the real property affected by the notice, including a prospective purchaser with an executed purchase contract.
- (2) A court shall order notice of pendency of action released if:
 - (a) the court receives a motion to release under Subsection (1); and

- (b) after a notice and hearing if determined to be necessary by the court, the court finds that the claimant has not established by a preponderance of the evidence the validity of the real property claim that is the subject of the notice.
- (3) In deciding a motion under Subsection (2), if the underlying action for which a notice of pendency of action is filed is an action for specific performance, a court shall order a notice released if:
 - (a) the court finds that the party filing the action has failed to satisfy the statute of frauds for the transaction under which the claim is asserted relating to the real property; or
 - (b) the court finds that the elements necessary to require specific performance have not been established by a preponderance of the evidence.
- (4) If a court releases a claimant's notice pursuant to this section, that claimant may not record another notice with respect to the same property without an order from the court in which the action is pending that authorizes the recording of a new notice of pendency.
- (5) Upon a motion by any person with an interest in the real property that is the subject of a notice of pendency, a court may, at any time after the notice has been recorded, require, as a condition of maintaining the notice, that the claimant provide security to the moving party in the amount and form directed by the court, regardless of whether the court has received an application to release under Subsection (1).
- (6) A person who receives security under Subsection (5) may recover from the surety an amount not to exceed the amount of the security upon a showing that:
 - (a) the claimant did not prevail on the real property claim; and
 - (b) the person receiving the security suffered damages as a result of the maintenance of the notice.
- (7) The amount of security required by the court under Subsection (5) does not establish or limit the amount of damages or reasonable attorney fees and costs that may be awarded to a party who is found to have been damaged by a wrongfully filed notice of pendency.
- (8) A court shall award costs and attorney fees to a prevailing party on any motion under this section unless the court finds that:
 - (a) the nonprevailing party acted with substantial justification; or
 - (b) other circumstances make the imposition of attorney fees and costs unjust.
- (9) The motion permitted by this section does not apply to a notice of pendency of an action required by Section 38-1a-701 or Section 38-10-106.

Amended by Chapter 103, 2017 General Session

78B-6-1304.5 Civil liability for recording wrongful notice of pendency -- Damages.

A person is liable to the record owner of real property, or to a person with a leasehold interest in the real property that is damaged by the maintenance of a notice of pendency, for \$10,000 or for treble actual damages, whichever is greater, and for reasonable attorney fees and costs, if the person records or causes to be recorded a notice of pendency against the real property, knowing or having reason to know that:

- (1) legal action against the property has not been filed as required by Section 78B-6-1303;
- (2) the notice is groundless;
- (3) the notice fails to comply with the notice requirements of Subsection 78B-6-1303(2); or
- (4) the notice contains an intentional material misstatement or false claim.

Enacted by Chapter 306, 2016 General Session

78B-6-1305 Disclaimer or default by defendant -- Costs.

The plaintiff may not recover costs of the action if:

- (1) the defendant disclaims in his answer any interest or estate in the property; or
- (2) allows judgment to be taken against him by refusing to answer.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1306 Termination of title pending action -- Judgment -- Damages.

If the plaintiff demonstrates a right to recover at the time the action is brought, but his right terminates during the pendency of the action, the verdict and judgment shall be according to the fact, and the plaintiff may recover damages for withholding the property.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1307 Setoff or counterclaim for improvements made.

If permanent improvements have been made by a defendant, or persons under whom the defendant claims in good faith, the value of the improvements, except improvements made upon mining property, shall be allowed as a setoff or counterclaim against the damages recovered for withholding the property.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1308 Right of entry pending action for purposes of action.

The court in which an action is pending under this part or for damages for an injury to property may, on motion and upon notice to either party, for good cause shown, issue an order allowing a party the right to enter the property and take surveys and measurements including any tunnels, shafts, or drifts, even though entry must be made through other lands belonging to parties to the action.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1309 Order for entry -- Liability for injuries.

The order shall describe the property, and a copy served on the owner or occupant. The party may enter the property with necessary surveyors and assistants, and may take surveys and measurements. The party shall be liable for any unnecessary injury done to the property.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1310 Mortgage not considered a conveyance -- Foreclosure necessary.

A mortgage of real property may not be considered a conveyance which would enable the owner of the mortgage to recover possession of the real property without a foreclosure and sale.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1311 Alienation pending action not to prejudice recovery.

An action for the recovery of real property against a person in possession cannot be prejudiced by any alienation made by the person, either before or after the commencement of the action.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1312 Actions respecting mining claims -- Proof of customs and usage admissible.

In actions respecting mining claims proof must be admitted of the customs, usages, or regulations established and in force in the district, bar, diggings, or camp in which the claim is located. The customs, usages, or regulations, if not in conflict with the laws of this state or of the United States, shall govern any decision in the action.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1313 Temporary injunction in actions involving title to mining claims.

- (1) The court may grant a postponement if:
 - (a) the court is satisfied that the delay is necessary for either or both parties to adequately prepare for trial; and
 - (b) the party requesting the postponement is not guilty of laches and is acting in good faith.
- (2) The court may provide, as part of its order, that the party obtaining the postponement may not remove from the property which is the subject of the action any valuable quartz, rock, earth, or ores. The court may vacate the postponement order or hold the party in contempt if the order is violated.

Enacted by Chapter 3, 2008 General Session

78B-6-1314 Service of summons and conclusiveness of judgment.

If service of process is made upon unknown defendants by publication, the action shall proceed against the unknown persons in the same manner as against the defendants who are named and upon whom service is made by publication. Any unknown person who has or claims to have any right, title, estate, lien, or interest in the property, which is a cloud on the title and adverse to the plaintiff, who has been served as above, and anyone claiming under him, shall be concluded by any judgment in the action even though the unknown person may be under a legal disability.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1315 Judgment on default -- Court must require evidence -- Conclusiveness of judgment.

- (1) If the summons has been served and the time for answering has expired, the court shall proceed to hear the cause as in other cases.
- (2) The court may examine and determine the legality of the plaintiff's title and the title and claims of all the defendants and all unknown persons.
- (3) The court may not enter any judgment by default against unknown defendants, but in all cases shall require evidence of plaintiff's title and possession and hear the evidence offered respecting the claims and title of any of the defendants. The court may enter judgment in accordance with the evidence and the law only after hearing all the evidence.
- (4) The judgment shall be conclusive against all the persons named in the summons and complaint who have been served and against all unknown persons as stated in the complaint and summons who have been served by publication.

Renumbered and Amended by Chapter 3, 2008 General Session

Part 15 Structured Settlement Protection Act

78B-6-1501 Title.

This part is known as the "Structured Settlement Protection Act."

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1502 Definitions.

For purposes of this part:

- (1) "Annuity issuer" means an insurer that has issued a contract to fund periodic payments under a structured settlement.
- (2) "Dependents" include:
 - (a) a payee's spouse;
 - (b) a payee's minor children; and
 - (c) all other persons for whom the payee is legally obligated to provide support, including alimony.
- (3) "Discounted present value" means the present value of future payments determined by discounting the payments to the present using the most recently published Applicable Federal Rate for determining the present value of an annuity, as issued by the United States Internal Revenue Service.
- (4) "Gross advance amount" means the sum payable to the payee or for the payee's account as consideration for a transfer of structured settlement payment rights before any reductions for transfer expenses or other deductions to be made from the consideration.
- (5) "Independent professional advice" means advice of an attorney, certified public accountant, actuary, or other licensed professional adviser.
- (6) "Interested parties" means, with respect to any structured settlement:
 - (a) the payee;
 - (b) any beneficiary irrevocably designated under the annuity contract to receive payments following the payee's death;
 - (c) the annuity issuer;
 - (d) the structured settlement obligor; and
 - (e) any other party that has continuing rights or obligations under the structured settlement.
- (7) "Net advance amount" means the gross advance amount less the aggregate amount of the actual and estimated transfer expenses required to be disclosed under Subsection 78B-6-1503(5).
- (8) "Payee" means an individual who:
 - (a) is receiving tax free payments under a structured settlement; and
 - (b) proposes to make a transfer of payment rights under the settlement.
- (9) "Periodic payments" includes both recurring payments and scheduled future lump sum payments.
- (10) "Qualified assignment agreement" means an agreement providing for a qualified assignment within the meaning of Section 130 of the United States Internal Revenue Code.
- (11) "Responsible administrative authority" means, with respect to a structured settlement, any government authority vested by law with exclusive jurisdiction over the settled claim resolved by the structured settlement.

- (12) "Settled claim" means the original tort claim resolved by a structured settlement.
- (13) "Structured settlement" means an arrangement for periodic payment of damages for personal injuries or sickness established by settlement or judgment in resolution of a tort claim.
- (14) "Structured settlement agreement" means the agreement, judgment, stipulation, or release embodying the terms of a structured settlement.
- (15) "Structured settlement obligor" means, with respect to any structured settlement, the party that has the continuing obligation to make periodic payments to the payee under a structured settlement agreement or a qualified assignment agreement.
- (16) "Structured settlement payment rights" means rights to receive periodic payments under a structured settlement, whether from the structured settlement obligor or the annuity issuer if:
 - (a)
 - (i) the payee is domiciled in this state; or
 - (ii) the domicile or principal place of business of the structured settlement obligor or the annuity issuer is located in this state;
 - (b) the structured settlement agreement is approved by a court in this state; or
 - (c) the structured settlement agreement is expressly governed by the laws of this state.
- (17) "Terms of the structured settlement" include, with respect to any structured settlement, the terms of:
 - (a) the structured settlement agreement;
 - (b) the annuity contract;
 - (c) any qualified assignment agreement; and
 - (d) any order or other approval of any court or other government authority that authorized or approved the structured settlement.
- (18)
 - (a) Subject to Subsection (18)(b), "transfer" means any sale, assignment, pledge, hypothecation, or other alienation or encumbrance of structured settlement payment rights made by a payee for consideration.
 - (b) "Transfer" does not include the creation or perfection of a security interest in structured settlement payment rights under a blanket security agreement entered into with an insured depository institution, in the absence of any action to:
 - (i) redirect the structured settlement payments to:
 - (A) the insured depository institution; or
 - (B) an agent or successor in interest to the insured depository institution; or
 - (ii) otherwise enforce a blanket security interest against the structured settlement payment rights.
- (19) "Transfer agreement" means the agreement providing for a transfer of structured settlement payment rights.
- (20)
 - (a) Subject to Subsection (20)(b), "transfer expenses" means all expenses of a transfer that are required under the transfer agreement to be paid by the payee or deducted from the gross advance amount, including:
 - (i) court filing fees;
 - (ii) attorney fees;
 - (iii) escrow fees;
 - (iv) lien recordation fees;
 - (v) judgment and lien search fees;
 - (vi) finders' fees;
 - (vii) commissions; and

- (viii) other payments to a broker or other intermediary.
- (b) "Transfer expenses" do not include preexisting obligations of the payee payable for the payee's account from the proceeds of a transfer.
- (21) "Transferee" means a party acquiring or proposing to acquire structured settlement payment rights through a transfer.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1503 Required disclosures to payee.

Not less than three days prior to the date on which a payee signs a transfer agreement, the transferee shall provide to the payee a separate disclosure statement, in bold type no smaller than 14 point, setting forth:

- (1) the amounts and due dates of the structured settlement payments to be transferred;
- (2) the aggregate amount of the payments;
- (3) the discounted present value of the payments to be transferred, which shall be identified as the "calculation of current value of the transferred structured settlement payments under federal standards for valuing annuities," and the amount of the Applicable Federal Rate used in calculating the discounted present value;
- (4) the gross advance amount;
- (5) an itemized listing of all applicable transfer expenses, other than attorney fees and related disbursements payable in connection with the transferee's application for approval of the transfer, and the transferee's best estimate of the amount of any of the fees and disbursements;
- (6) the net advance amount;
- (7) the amount of any penalties or liquidated damages payable by the payee in the event of any breach of the transfer agreement by the payee; and
- (8) a statement that the payee has the right to cancel the transfer agreement, without penalty or further obligation, not later than the third business day after the date the agreement is signed by the payee.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1504 Approval of transfers of structured settlement payment rights.

Direct or indirect transfer of structured settlement payment rights may not be effective and a structured settlement obligor or annuity issuer may not be required to make any payment directly or indirectly to any transferee of structured settlement payment rights unless the transfer has been approved in advance in a final court order based on express findings by the court that:

- (1) the transfer is in the best interest of the payee, taking into account the welfare and support of the payee's dependents;
- (2) the payee has been advised in writing by the transferee to seek independent professional advice regarding the transfer and has either received such advice or knowingly waived such advice in writing; and
- (3) the transfer does not contravene any applicable statute or the order of any court or other government authority.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1505 Effects of transfer of structured settlement payment rights.

Following a transfer of structured settlement payment rights under this chapter:

- (1) The structured settlement obligor and the annuity issuer shall, as to all parties except the transferee, be discharged and released from any and all liability for the transferred payments.
- (2) The transferee shall be liable to the structured settlement obligor and the annuity issuer:
 - (a) if the transfer contravenes the terms of the structured settlement, for any taxes incurred by the parties as a consequence of the transfer; and
 - (b) for any other liabilities or costs, including reasonable costs and attorney fees, arising from compliance by the parties with the order of the court or arising as a consequence of the transferee's failure to comply with this part.
- (3) Neither the annuity issuer nor the structured settlement obligor may be required to divide any periodic payment between the payee and any transferee or assignee or between two or more transferees or assignees.
- (4) Any further transfer of structured settlement payment rights by the payee may be made only after compliance with all of the requirements of this part.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1506 Procedure for approval of transfers.

- (1) An application under this part for approval of a transfer of structured settlement payment rights shall be made by the transferee and may be brought in the county in which the payee resides, in the county in which the structured settlement obligor or the annuity issuer maintains its principal place of business, or in any court which approved the structured settlement agreement.
- (2) Not less than 20 days prior to the scheduled hearing on any application for approval of a transfer of structured settlement payment rights under Section 78B-6-1504, the transferee shall file with the court and serve on all interested parties a notice of the proposed transfer and the application for its authorization, including with the notice:
 - (a) a copy of the transferee's application;
 - (b) a copy of the transfer agreement;
 - (c) a copy of the disclosure statement required under Section 78B-6-1503;
 - (d) a listing of each of the payee's dependents, together with each dependent's age;
 - (e) notification that any interested party is entitled to support, oppose, or otherwise respond to the transferee's application, either in person or by counsel, by submitting written comments to the court or responsible administrative authority or by participating in the hearing; and
 - (f) notification of the time and place of the hearing and notification of the manner in which and the time by which written responses to the application must be filed, which shall be not less than 15 days after service of the transferee's notice, in order to be considered by the court or responsible administrative authority.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1507 General provisions -- Construction.

- (1) The provisions of this part may not be waived by any payee.
- (2)
 - (a) Any transfer agreement entered into on or after May 6, 2002 by a payee who resides in this state shall provide that disputes under the transfer agreement, including any claim that the payee has breached the agreement, shall be determined in and under the laws of this state.

- (b) A transfer agreement may not authorize the transferee or any other party to confess judgment or consent to entry of judgment against the payee.
- (3) The transfer of structured settlement payment rights may not extend to any payments that are life-contingent unless, before the date on which the payee signs the transfer agreement, the transferee establishes and agrees to maintain procedures reasonably satisfactory to the annuity issuer and the structured settlement obligor for:
 - (a) periodically confirming the payee's survival; and
 - (b) giving the annuity issuer and the structured settlement obligor prompt written notice in the event of the payee's death.
- (4) A payee who proposes to make a transfer of structured settlement payment rights may not incur any of the following on the basis of a failure of the transfer to satisfy the requirements of this part:
 - (a) a penalty;
 - (b) a forfeiture of any application fee or other payment; or
 - (c) any liability to the proposed transferee or any assignee based on any failure of the transfer to satisfy the requirements of this part.
- (5)
 - (a) This part may not be construed to authorize any transfer of structured settlement payment rights in contravention of any law or to imply that any transfer under a transfer agreement entered into before May 6, 2002 is valid or invalid.
 - (b) This part does not apply to a transfer of payment rights under workers' compensation, as defined in Section 34A-2-422, that takes effect on or after April 30, 2007.
- (6) Compliance with Section 78B-6-1503 and fulfillment of the conditions set forth in Section 78B-6-1504 shall be solely the responsibility of the transferee in any transfer of structured settlement payment rights, and neither the structured settlement obligor nor the annuity issuer shall bear any responsibility for, or any liability arising from, noncompliance with the requirements or failure to fulfill the conditions.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1508 Effective date.

This part shall apply to any transfer of structured settlement payment rights under a transfer agreement entered into on or after May 6, 2002; provided, however, that nothing contained in this part shall imply that any transfer under a transfer agreement reached prior to that date is either effective or ineffective.

Renumbered and Amended by Chapter 3, 2008 General Session

Part 16
Social Host Liability Act

78B-6-1601 Title.

This part is known as the "Social Host Liability Act."

Enacted by Chapter 187, 2009 General Session

78B-6-1602 Definitions.

As used in this part:

- (1) "Alcoholic beverage" is as defined in Section 32B-1-102.
- (2) "Emergency response provider" means an individual providing services on behalf of:
 - (a) a law enforcement agency;
 - (b) a fire suppression agency; or
 - (c) another agency or a political subdivision of the state.
- (3) "Law enforcement officer" is as defined in Section 53-13-103.
- (4) "Local entity" means the political subdivision for which an emergency response provider provides emergency services.
- (5) "Minor" means an individual under the age of 18 years old.
- (6)
 - (a) Subject to Subsection (6)(b), "response costs" means the actual costs directly associated with an emergency response provider responding to, remaining at, or otherwise dealing with an underage drinking gathering, including:
 - (i) the costs of medical treatment to or for an emergency response provider injured because of an activity described in this Subsection (6)(a); and
 - (ii) the cost of repairing damage to equipment or property of a local entity that is attributable to an activity described in this Subsection (6)(a).
 - (b) "Response costs" does not include:
 - (i) the salary and benefits of an emergency response provider for the amount of time spent responding to, remaining at, or otherwise dealing with an underage drinking gathering; or
 - (ii) the administrative costs attributable to an activity described in Subsection (6)(b)(i).
- (7) "Underage drinking gathering" means a gathering of two or more individuals:
 - (a) at which an individual knowingly serves, aids in the service of, or allows the service of an alcoholic beverage to an underage person; and
 - (b) to which an emergency response provider is required to respond, except for a response related solely to providing medical care at the location of the gathering.
- (8) "Underage person" means an individual under the age of 21 years old.

Amended by Chapter 276, 2010 General Session

78B-6-1603 Citation -- Civil penalty.

- (1) An individual may not knowingly conduct, aid, or allow an underage drinking gathering.
- (2) A law enforcement officer may issue a written citation to an individual who violates Subsection (1).
- (3) An individual issued a citation under this section is subject to a civil penalty equal to the sum of:
 - (a)
 - (i) a fine of \$250 for a first citation; or
 - (ii) double the fine imposed for an immediately preceding citation for each subsequent citation; and
 - (b) the response costs of the underage drinking gathering, not to exceed \$1,000.
- (4) Two or more individuals who violate Subsection (1) for the same underage drinking gathering are jointly and severally liable under this section for response costs attributable to the underage drinking gathering.
- (5) An individual who violates Subsection (1) is liable under this part regardless of whether the individual is present at an underage drinking gathering.

- (6) If a minor is issued a citation under this section, the minor's parent or legal guardian may not be held liable for an amount of civil penalty imposed on the minor as a result of the minor's citation.

Enacted by Chapter 187, 2009 General Session

78B-6-1604 Collection of civil penalty.

- (1) A local entity shall mail a notice of the civil penalty amount for which an individual is liable by first-class or certified mail within 14 days of the day after which a citation is issued under Section 78B-6-1603. The notice shall contain the following information:
- (a) the name of the one or more individuals being held liable for the payment of the civil penalty;
 - (b) the address of the location where the underage drinking gathering occurs;
 - (c) the date and time of the response;
 - (d) the name of an emergency service provider who responds to the underage drinking gathering; and
 - (e) an itemized list of the response costs for which the one or more individuals are liable.
- (2)
- (a) An individual liable under Section 78B-6-1603 shall remit payment of a civil penalty to the local entity that provides the notice required by Subsection (1) within 90 days of the date on which the notice is sent.
 - (b) Notwithstanding Subsection (2)(a), a local entity may:
 - (i) reduce the amount of a civil penalty; or
 - (ii) negotiate a payment schedule for a civil penalty.
- (3)
- (a) A civil penalty imposed under this section may be appealed as provided in Section 78B-6-1606.
 - (b) Notwithstanding Subsection (4), the payment of a civil payment is stayed upon an appeal made pursuant to Section 78B-6-1606.
- (4)
- (a) The amount of a civil penalty owed under this part is considered a debt owed to the local entity by the individual held liable under this part for an underage drinking gathering.
 - (b) After the notice required by Subsection (1), an individual owing a civil penalty is liable in a civil action brought in the name of the local entity for recovery of:
 - (i) the civil penalty; and
 - (ii) reasonable attorney fees.

Enacted by Chapter 187, 2009 General Session

78B-6-1605 Reservation of legal options -- Ordinances.

- (1)
- (a) This part may not be construed as a waiver by a local entity of a right to seek reimbursement for actual costs of response services through another legal remedy or procedure.
 - (b) The procedure provided for in this part is in addition to any other civil or criminal statute.
 - (c) This part does not limit the authority of a law enforcement officer to make an arrest, or a private individual to make a lawful temporary detention under Section 77-7-3, for a criminal offense arising out of conduct regulated by this part.
- (2) A local entity may impose by ordinance a stricter provision related to the conduct of an underage drinking gathering, including the imposition of a different civil penalty amount, except that the ordinance shall provide that a civil penalty for an underage drinking gathering may only

be imposed by a local entity for which an emergency response provider provides services at the underage drinking gathering.

Amended by Chapter 199, 2025 General Session

78B-6-1606 Appeals.

An individual upon whom is imposed a civil penalty under this part may appeal the imposition of the civil penalty pursuant to the procedures used by the local entity for appealing a traffic citation or a violation of an ordinance.

Enacted by Chapter 187, 2009 General Session

Part 17
Civil Action for Identity Theft

78B-6-1701 Cause of action for identity theft.

- (1) A petitioner who has been injured by a violation of Section 76-6-1102, Identity Fraud, or Section 76-6-525, Communications Fraud, may recover from the perpetrator:
 - (a) compensatory damages in the amount of \$1,000 or up to three times the amount of actual damages, whichever is greater;
 - (b) attorney fees; and
 - (c) court costs.
- (2) Actual damages may include:
 - (a) replacement or reissuance costs for checks and any personal identification documents;
 - (b) the value of the petitioner's time spent:
 - (i) repairing their credit history or rating; and
 - (ii) attending civil or administrative hearings necessary to resolve any debt, lien, or other obligation arising from the offense;
 - (c) lost wages; and
 - (d) any other verifiable costs the court may choose to include.
- (3) The court may award punitive damages in addition to compensatory damages.
- (4) A perpetrator who is not tried or found not guilty of a violation of Section 76-6-1102, Identity Fraud, or Section 76-6-525, Communications Fraud, may be found liable under this section if the court finds by a preponderance of the evidence that the perpetrator participated in a violation and the petitioner was injured as a result.
- (5)
 - (a) A perpetrator who is found guilty of a violation of Section 76-6-1102, Identity Fraud, or Section 76-6-525, Communications Fraud, shall be found liable under this section.
 - (b) If restitution was ordered in the criminal action, the amount ordered shall be deducted from any damages awarded under this section.

Amended by Chapter 173, 2025 General Session

Part 18
Renewal of Judgment Act

78B-6-1801 Title.

This part is known as the "Renewal of Judgment Act."

Enacted by Chapter 22, 2011 General Session

78B-6-1802 Renewal by motion.

A court of record may renew a judgment issued by a court if:

- (1) a motion is filed within the original action;
- (2) the motion is filed before the statute of limitations on the judgment, or any renewal thereof, expires;
- (3) the motion includes an affidavit that contains an accounting of the judgment and all postjudgment payments, credits, and other adjustments which are provided for by law or are contained within the judgment;
- (4) the facts in the supporting affidavit are determined by the court to be accurate and the affidavit affirms that notice was sent to the most current address known for the judgment debtor;
- (5) the time for responding to the motion has expired; and
- (6) the fee required by Subsection 78A-2-301(1)(l) has been paid to the clerk of the court.

Amended by Chapter 493, 2025 General Session

78B-6-1803 Notice.

Notice of a motion for renewal of judgment is served in accordance with the Rules of Civil Procedure and opposition may be filed pursuant to the rules.

Enacted by Chapter 22, 2011 General Session

78B-6-1804 Date and duration of judgment.

Upon granting a motion for the renewal of judgment, the court shall enter an order which renews the judgment from the date of entry of the order for the amount of time set forth in Subsection 78B-5-202(1).

Amended by Chapter 493, 2025 General Session

Part 19
Distribution of Bad Faith Patent Infringement Letters Act

78B-6-1901 Title -- Purpose.

- (1) This part is known as the "Distribution of Bad Faith Patent Infringement Letters Act."
- (2) The Legislature acknowledges that it is preempted from passing any law that conflicts with federal patent law. However, this part seeks to protect Utah businesses from the use of demand letters containing abusive and bad faith assertions of patent infringement, and build Utah's economy, while at the same time respecting federal law and not interfering with legitimate patent enforcement efforts.

Enacted by Chapter 310, 2014 General Session

78B-6-1902 Definitions.

As used in this part:

- (1)
 - (a) "Demand letter" means a letter, email, or other written communication directed to a target and asserting or claiming that the target has engaged in patent infringement.
 - (b) "Demand letter" does not include a complaint filed in a United States District Court asserting patent infringement or discovery responses or other papers filed in an action.
- (2) "Target" means a person or entity residing in, incorporated in, or organized under the laws of this state that has received a demand letter and includes the customers, distributors, and agents of the person or entity.
- (3) "Sponsor" means the party or parties responsible for distribution of a demand letter.

Enacted by Chapter 310, 2014 General Session

78B-6-1903 Prohibition against distribution of demand letters containing bad faith assertions of patent infringement.

- (1) A sponsor may not distribute a demand letter to a target that includes a bad faith assertion of patent infringement.
- (2) A court may consider the following factors as evidence in determining whether a sponsor has or has not distributed a demand letter containing a bad faith assertion of patent infringement, but no one factor may be considered conclusive as to whether a demand letter contains a bad faith assertion of patent infringement:
 - (a) the demand letter does not contain all of the following information:
 - (i) the patent numbers of the patent or patents being asserted;
 - (ii) the name and address of the current patent owner or owners and any other person or entity having the right to enforce or license the patent;
 - (iii) the name and address of all persons and entities holding a controlling interest in the persons and entities identified in Subsection (2)(a)(ii) of this section;
 - (iv) the identification of at least one claim of each asserted patent that is allegedly infringed;
 - (v) for each claim identified in Subsection (2)(a)(iv), a description of one or more allegedly infringing products, including the make, model number, and other specific identifying indicia of allegedly infringing products, services, or methods made, used, offered for sale, sold, imported or performed by the target, provided in sufficient detail to allow the target to assess the merits of the assertion of patent infringement; and
 - (vi) identification of each judicial or administrative proceeding pending as of the date of the demand letter where the validity of the asserted patent or patents is under challenge; or
 - (b) the demand letter contains any of the following:
 - (i) an assertion of patent infringement based on a patent or a claim of a patent that has been previously held invalid or unenforceable in a final judicial or administrative decision from which no appeal is possible;
 - (ii) an assertion that a complaint has been filed alleging that the target has infringed the patent when no complaint has, in fact, been filed;
 - (iii) an assertion of infringement based on acts occurring after the asserted patent or claim at issue has expired or been held invalid or unenforceable;
 - (iv) an assertion of infringement of a patent that the sponsor does not own or have the right to enforce or license; or

- (v) an assertion that the amount of compensation demanded will increase if the target retains counsel to defend against the assertions in the demand letter or if the target does not pay the sponsor within a period of 60 days or less;
 - (vi) a false or misleading statement; or
 - (vii) the demand letter demands payment of a license fee or response within an unreasonably short period of time depending on the number and complexity of the claims.
- (3) A court may consider the following factors as evidence to mitigate a conclusion that a sponsor has distributed a demand letter containing a bad faith assertion of patent infringement:
- (a) the demand letter contains the information described in Subsection (2)(a);
 - (b) the demand letter lacks the information described in Subsection (2)(a) and when the target requests the information, the sponsor provides the information within a reasonable period of time;
 - (c) the sponsor engages in a good faith effort to establish that the target has infringed the patent and to negotiate an appropriate remedy;
 - (d) the sponsor has made a substantial investment in the practice of the patent or in the production or sale of a product or item covered by the patent; and
 - (e) the sponsor is:
 - (i) the inventor or joint inventor of the patent or the original assignee of the inventor or joint inventor, or an entity owned by or affiliated with the original assignee; or
 - (ii) an institution of higher education or a technology transfer organization owned by or affiliated with an institution of higher education.

Enacted by Chapter 310, 2014 General Session

78B-6-1904 Action -- Enforcement -- Remedies -- Damages.

- (1)
- (a) A target who has received a demand letter asserting patent infringement in bad faith, or a person aggrieved by a violation of this part, may bring an action in a court with jurisdiction under Title 78A, Judiciary and Judicial Administration.
 - (b) The court may award the following remedies to a target who prevails in an action brought pursuant to this part:
 - (i) equitable relief;
 - (ii) actual damages;
 - (iii) costs and fees, including reasonable attorney fees; and
 - (iv) punitive damages in an amount to be established by the court, of not more than the greater of \$50,000 or three times the total of damages, costs, and fees.
- (2)
- (a) The attorney general may conduct civil investigations and bring civil actions pursuant to this part.
 - (b) In an action brought by the attorney general under this part, the court may award or impose any relief the court considers prudent, including the following:
 - (i) equitable relief;
 - (ii) statutory damages of not less than \$750 per demand letter distributed in bad faith; and
 - (iii) costs and fees, including reasonable attorney fees, to the attorney general.
- (3) This part may not be construed to limit other rights and remedies available to the state or to any person under any other law.
- (4) A demand letter or assertion of a patent infringement that includes a claim for relief arising under 35 U.S.C. Sec. 271(e)(2) is not subject to the provisions of this part.

- (5) The attorney general shall annually provide an electronic report to the Executive Appropriations Committee regarding the number of investigations and actions brought under this part. The report shall include:
- (a) the number of investigations commenced;
 - (b) the number of actions brought under the provisions of this part;
 - (c) the current status of actions brought under Subsection (5)(b); and
 - (d) final resolution of actions brought under this part, including any recovery under Subsection (2).

Amended by Chapter 401, 2023 General Session

78B-6-1905 Bond.

- (1) Upon motion by a target and a finding by the court that a target has established a reasonable likelihood that a sponsor has made a bad faith assertion of patent infringement in a demand letter in violation of this part, the court shall require the sponsor to post a bond in an amount equal to a good faith estimate of the target's costs to litigate the claim under this part and amounts reasonably likely to be recovered under Subsections 78B-6-1904(1)(b)(ii) and (iii), conditioned upon payment of any amounts finally determined to be due to the target.
- (2) A hearing on the appropriateness and amount of a bond under this section shall be held if either party requests it.
- (3) A bond ordered pursuant to this section may not exceed \$250,000. The court may waive the bond requirement if it finds the sponsor has available assets equal to the amount of the proposed bond or for other good cause shown.

Amended by Chapter 401, 2023 General Session

Part 21
Cause of Action for Minors Injured by Pornographic Material

78B-6-2100 Title.

This part is known as "Cause of Action for Minors Injured by Pornographic Material."

Enacted by Chapter 464, 2017 General Session

78B-6-2101 Definitions.

As used in this part:

- (1) "Minor" means an individual less than 18 years of age.
- (2) "Pornographic material" means material that:
- (a) the average person, applying contemporary community standards, finds that, taken as a whole, appeals to prurient interest in sex;
 - (b) is patently offensive in the description or depiction of nudity, sexual conduct, sexual excitement, sadomasochistic abuse, or excretion; and
 - (c) taken as a whole does not have serious literary, artistic, political, or scientific value.

Enacted by Chapter 464, 2017 General Session

78B-6-2102 Exemptions.

- (1) If the conditions of Subsection (2) are met, this part does not apply to:
 - (a) the following, as defined in the Communications Act of 1934, as amended:
 - (i) an interactive computer service;
 - (ii) a telecommunications service, information service, or mobile service, including a commercial mobile service; or
 - (iii) a multichannel video programming distributor;
 - (b) an Internet service provider;
 - (c) a provider of an electronic communications service;
 - (d) a distributor of Internet-based video services;
 - (e) a hosting company as defined in Section 76-5c-401; or
 - (f) a distributor of electronic or computerized game software that users manipulate through interactive devices.
- (2) This part does not apply to an entity described in Subsection (1) if:
 - (a) the distribution of pornographic material by the entity occurs only incidentally through the entity's function of:
 - (i) transmitting or routing data from one person to another person;
 - (ii) providing a connection between one person and another person; or
 - (iii) providing data storage space or data caching to a person; and
 - (b) the entity does not intentionally aid or abet in the distribution of the pornographic material.

Amended by Chapter 173, 2025 General Session

78B-6-2103 Liability -- Safe harbor.

- (1) A person who is not exempt under Section 78B-6-2102, and who distributes or otherwise provides pornographic material to consumers is liable to a person if:
 - (a) at the time the pornographic material is viewed by the person, the person is a minor; and
 - (b) the pornographic material is the proximate cause for the person being harmed physically or psychologically, or by emotional or medical illnesses as a result of that pornographic material.
- (2) Nothing in this part affects any private right of action existing under other law, including contract.
- (3) Notwithstanding Subsection (1), a person who distributes or otherwise provides pornographic material is not liable under this section if the person who distributes or otherwise provides pornographic material:
 - (a) provides a warning that:
 - (i) is conspicuous;
 - (ii) appears before the pornographic material can be accessed; and
 - (iii) consists of a good faith effort to warn persons accessing the pornographic material that the pornographic material may be harmful to minors; and
 - (b) makes a good faith effort to verify the age of a person accessing the pornographic material.
- (4) Subsection (3) may not be interpreted as exempting a person from complying with Title 13, Chapter 39, Child Protection Registry.
- (5)
 - (a) Notwithstanding Section 78B-6-2105, a person who is not exempt under Section 78B-6-2102, and who distributes or otherwise provides obscene material to consumers without a warning label or without the metadata described in Subsection 78B-6-2105(3)(b) is not liable if the person demonstrates reasonable efforts to determine the location of recipients of obscene material within the state and the placement of warning labels on material that enters the state.

Reasonable efforts shall result in a compliance rate that exceeds 75% of the content believed to enter the state within the shorter of six months prior to any claim, or from May 12, 2020, to the time of the claim. Proof of reasonable efforts shall remove liability only for the type of compliance for which reasonable efforts have been proven.

- (b) The use of virtual private networks or similar technology by the consumer to hide the consumer's location may not be included in a compliance rate calculation.
- (6) Notwithstanding Section 78B-6-2105, a video game without a warning label is not liable if it has a rating of the Entertainment Software Rating Board or equivalent, as long as it also explicitly provides notice of the content as part of the rating.

Amended by Chapter 168, 2024 General Session

78B-6-2104 Damages -- Class action.

- (1) If a court finds that a person is violating Section 78B-6-2103, the court may award the plaintiff:
 - (a) actual damages; and
 - (b) punitive damages, if it is proven that the person targeted minors.
- (2) A class action may be brought under this part in accordance with Utah Rules of Civil Procedure, Rule 23.

Amended by Chapter 442, 2020 General Session

78B-6-2105 Civil action for enforcement -- Penalties.

- (1) A person who distributes or otherwise provides pornographic material to consumers may not distribute any obscene material or performance as defined in Section 76-5c-101 without first giving a clear and reasonable warning of the harmful impact of exposing minors to the material or performance.
- (2) The warning of the harm shall be prominently displayed in the following form:
 - STATE OF UTAH WARNING
 - Exposing minors to obscene material may damage or negatively impact minors.
- (3)
 - (a) For print publications created after May 12, 2020, the warning in Subsection (2) shall be placed in clear, readable type on the cover of each publication which includes material as defined in Section 76-5c-101.
 - (b) For digital publications:
 - (i) the warning in Subsection (2) shall be displayed in searchable text format and for at least five seconds prior to the display of any video or each image which includes material as defined in Section 76-5c-101; or
 - (ii) if the website complies with Subsection 78B-6-2103(3), it is not required to display the warning in Subsection (2) prior to each video or image contained on the website.
- (4) A person who violates this section shall be liable for a civil penalty not to exceed \$2,500 per violation, plus filing fees and attorney fees, in addition to any other penalty established by law, and enjoined from further violations.
- (5) The civil penalty may be assessed and recovered in a civil action brought in any court of competent jurisdiction.
- (6) Each of the following violations shall create a separate liability per violation:
 - (a) the sale or display of potentially harmful content without the warning required in Subsection (2), in accordance with Subsection (3); or

- (b) the absence of the following searchable text within the website's metadata -
utahobscenitywarning.
- (7) The determination by a court as to whether a person is distributing material the state considers to be obscene material or performance as defined in Section 78B-6-1203 shall be proven by clear and convincing evidence. All other elements of proof shall be proven by a preponderance of the evidence.
- (8) The court, in ordering payment, shall specify each amount for the civil penalty, filing fees, and attorney fees.
- (9) In assessing the amount of a civil penalty for a violation of this chapter, the court shall consider all of the following:
 - (a) the nature and extent of the violation;
 - (b) the number and severity of the violations;
 - (c) the economic effect of the penalty on the violator;
 - (d) whether the violator took good faith measures to comply with this chapter and when those measures were taken;
 - (e) the willfulness of the violator's misconduct;
 - (f) the deterrent effect that the imposition of the penalty would have on both the violator and the regulated community as a whole; and
 - (g) any other factor that the court determines justice requires.
- (10) Actions pursuant to this section may be brought by the attorney general's office in the name of the people of the state or by a private person in accordance with Subsection (11).
- (11) A private person may bring an action in the public interest pursuant to this section if:
 - (a) the person has served notice of an alleged violation of Section 78B-6-2103 on the alleged violator and the attorney general's office;
 - (b) the attorney general's office has not provided a letter to the noticing party within 60 days of receipt of the notice of an alleged violation indicating that:
 - (i) an action is currently being pursued or will be pursued by the attorney general's office regarding the violation; or
 - (ii) the attorney general believes that there is no merit to the action; and
 - (c) the alleged violator has not responded to the notice of alleged violation or returned the proof of compliance form provided in Subsection (17).
- (12) If a lawsuit is commenced, the plaintiff may include additional violations in the claim that are discovered through the discovery process.
- (13) Notice of the alleged violation shall be executed by the attorney for the noticing party, or by the noticing party, if the noticing party is not represented by an attorney, and include a notice of alleged violation. The notice of alleged violation shall:
 - (a) state that the person executing the notice believes that there is a violation; and
 - (b) provide factual information sufficient to establish the basis for the alleged violation.
- (14) A person who serves a notice of alleged violation identified in Subsection (13) shall complete and provide to the alleged violator at the time the notice of alleged violation is served, a notice of special compliance procedure and proof of compliance form pursuant to Subsection (17). The person may file an action against the alleged violator, or recover from the alleged violator if:
 - (a) the notice of alleged violation alleges that the alleged violator failed to provide a clear and reasonable warning as required under Subsection (1); and
 - (b) within 14 days after receipt of the notice of alleged violation, the alleged violator has not:
 - (i) corrected the alleged violation and all similar violations known to the alleged violator;
 - (ii) agreed to pay a penalty for the alleged violation in the amount of \$500 per violation; and

(iii) notified, in writing, the noticing party that the violation has been corrected.

(15) The written notice required in Subsection (14)(b)(iii) shall be the notice of special compliance procedure and proof of compliance form specified in Subsection (17). The alleged violator shall deliver the civil penalty to the noticing party within 30 days of receipt of the notice of alleged violation.

(16) The attorney general shall review the notice of alleged violation and may confer with the noticing party. If the attorney general believes there is no merit to the action, the attorney general shall, within 45 days of receipt of the notice of alleged violation, provide a letter to the noticing party and the alleged violator stating that the attorney general believes there is no merit to the action.

(17) The notice required to be provided to an alleged violator pursuant to Subsection (14) shall be presented as follows:

Date:

Name of Noticing Party or attorney for Noticing Party:

Address:

Phone number:

SPECIAL COMPLIANCE PROCEDURE

PROOF OF COMPLIANCE

You are receiving this form because the Noticing Party listed above has alleged that you are in violation of Utah Code Section 78B-6-2103.

The Noticing Party may bring legal proceedings against you for the alleged violation checked below if:

(1) you have not actually taken the corrective steps that you have certified in this form;

(2) the Noticing Party has not received this form at the address shown above, accurately completed by you, postmarked within 14 days of your receiving this notice; and

(3) the Noticing Party does not receive the required \$500 penalty payment for each violation alleged from you at the address shown above postmarked within 30 days of your receiving this notice.

PART 1: TO BE COMPLETED BY THE NOTICING PARTY OR ATTORNEY FOR THE NOTICING PARTY

This notice of alleged violation is for failure to warn against an exposure to minors of materials considered harmful to minors. (provide complete description of violation, including when and where observed)

Date:

Name of Noticing Party or attorney for Noticing Party:

Address:

Phone number:

PART 2: TO BE COMPLETED BY THE ALLEGED VIOLATOR OR AUTHORIZED REPRESENTATIVE

Certification of Compliance

Accurate completion of this form will demonstrate that you are now in compliance with Utah Code Section 78B-6-2103, for the alleged violation listed above. You must complete and submit the form below to the Noticing Party at the address shown above, postmarked within 14 days of you receiving this notice.

I hereby agree to pay, within 30 days of receipt of this notice, a penalty of \$500 for each violation alleged to the Noticing Party only and certify that I have complied with by (check only one of the following):

[] Posting a warning or warnings, and attaching a copy of that warning and a photograph accurately showing its placement on the print or digital publication.

[] Eliminating the alleged exposure, and attaching a statement accurately describing how the alleged exposure has been eliminated.

CERTIFICATION

My statements on this form, and on any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I have carefully read the instructions to complete this form. I understand that if I make a false statement on this form, I may be subject to additional penalties under Utah Code Sections 76-5c-205 and 76-5c-206.

Signature of alleged violator or authorized representative:

Date:

Name and title of signatory:

- (18) An alleged violator may satisfy the conditions set forth in Subsection (17) only one time for a specific violation.
- (19) Notwithstanding Subsection (17), the attorney general may file an action pursuant to Subsection (10) against an alleged violator. In any action, the amount of any civil penalty for a violation shall be reduced to reflect any payment made by the alleged violator to a private person in accordance with Subsection (17) for the same alleged violation.
- (20) Payments shall be made in accordance with this section.
- (a) A civil penalty ordered by the court shall be paid to the plaintiff as directed by the court.
- (b) A penalty paid in accordance with the special compliance procedure in Subsection (17) shall be made directly to the noticing party.
- (21) The Utah Office for Victims of Crime shall receive 50% of any penalty paid in accordance with this section. Funds received shall be deposited into the Crime Victim Reparations Fund created in Section 63M-7-526. The penalty amount upon which the 50% is calculated may not include attorney fees or costs awarded by the court.
- (a) If the penalty is paid to a noticing party in accordance with Subsection (17), the noticing party shall remit the required amount along with a copy of the Special Compliance Procedure document.
- (b) If a civil penalty is ordered by the court, the plaintiff shall remit the required amount along with a copy of the court order.
- (22) The attorney general's office shall provide to the Utah Office for Victims of Crime a copy of all notices of alleged violations to which the attorney general's office did not respond with a letter of no merit in accordance with Subsection (16).
- (23) The court shall provide to the Utah Office for Victims of Crime a copy of the court's order for payment.
- (24) The Utah Office for Victims of Crime shall:
- (a) maintain a record of documents and payments submitted pursuant to Subsections (21), (22), and (23);
- (b) create and provide to the Legislature in odd-numbered years beginning November 2021, a report containing the following for the previous two years:
- (i) the number of notices of alleged violations received from the attorney general's office;
- (ii) the number of court orders received; and
- (iii) the total amount received and deposited into the Crime Victim Reparations Fund.
- (25) This section does not apply to:
- (a) a person portrayed in obscene or pornographic material that is created, duplicated, or distributed without the person's knowledge or consent; or
- (b) a person who is coerced or blackmailed into distributing obscene or pornographic material.

(26) Beginning May 1, 2025, and at each five-year interval, the dollar amount of the civil penalty provided in Subsection (4) shall be adjusted by the Judicial Council based on the change in the annual Consumer Price Index for the most recent five-year period ending on December 31 of the previous year, and rounded to the nearest five dollars. The attorney general shall publish the dollar amount of the civil penalty together with the date of the next scheduled adjustment.

Amended by Chapter 173, 2025 General Session

Part 22

Cause of Action to Protect Minors from Unfiltered Devices

(Contingently Effective)

78B-6-2201 Title.

This part is known as "Cause of Action to Protect Minors from Unfiltered Devices."

Enacted by Chapter 416, 2021 General Session

Revisor instructions Chapter 416, 2021 General Session

Part 23

Firearm Preemption Enforcement Act

78B-6-2301 Definitions.

As used in this part:

- (1) "Directive" means an ordinance, regulation, measure, rule, enactment, order, or policy issued, enacted, or required by a local or state governmental entity.
- (2) "Firearm" means the same as that term is defined in Section 53-5a-102.1.
- (3) "Legislative firearm preemption" means the preemption provided for in Section 53-5a-102.
- (4) "Local or state governmental entity" means:
 - (a) a department, commission, board, council, agency, institution, officer, corporation, fund, division, office, committee, authority, laboratory, library, unit, bureau, panel, or other administrative unit of the state, including the Utah Board of Higher Education, each institution of higher education, and the boards of trustees of each higher education institution; or
 - (b) a county, city, town, special district, local education agency, public school, school district, charter school, special service district under Title 17D, Chapter 1, Special Service District Act, an entity created by interlocal cooperation agreement under Title 11, Chapter 13, Interlocal Cooperation Act, or any other governmental entity designated in statute as a political subdivision of the state.

Amended by Chapter 173, 2025 General Session

Amended by Chapter 208, 2025 General Session

78B-6-2302 Violation of legislative preemption -- Exceptions.

- (1) A local or state governmental entity may not enact or enforce a directive that violates legislative firearm preemption.
- (2) This part does not prohibit the enactment or enforcement of a directive:

- (a) by a law enforcement agency if the directive pertains to a firearm issued to or used by a peace officer in the course of the peace officer's official duties;
- (b) by a correctional facility or mental health facility under Section 76-8-311.3;
- (c) of judicial administration if the directive establishes a secure courthouse;
- (d) by the State Tax Commission if the directive establishes a secure area within a State Tax Commission facility; or
- (e) by a local or state governmental entity if the directive is developed in response to and in accordance with legislative authority.

Enacted by Chapter 428, 2022 General Session

78B-6-2303 Civil action -- Injunction -- Damages -- Immunity.

- (1) A person who is harmed by a local or state governmental entity that makes or causes to be enforced a directive in violation of legislative firearm preemption may submit a written communication to the local or state governmental entity that harmed the person asking the local or state governmental entity that harmed the person to rescind or repeal the directive.
- (2)
 - (a) If a local or state governmental entity fails to rescind or repeal a directive within 30 days after the day on which the local or state governmental entity receives a request described in Subsection (1), the person who submitted the request may file suit against the local or state governmental entity that failed to rescind or repeal the directive.
 - (b) The suit described in Subsection (2)(a) may be filed in any court of this state having jurisdiction over the local or state governmental entity that failed to rescind or repeal the directive in accordance with Title 63G, Chapter 7, Governmental Immunity Act of Utah.
- (3) If the court determines that the local or state governmental entity that failed to rescind or repeal the directive violated legislative firearm preemption, the court shall:
 - (a) order that the relevant directive is void;
 - (b) prohibit the local or state governmental entity that failed to rescind or repeal the void directive from enforcing the void directive; and
 - (c) award to the prevailing party:
 - (i) actual damages, which includes the cost of time in bringing the civil action or defending against the action;
 - (ii) reasonable attorney fees and costs in accordance with the laws of this state; and
 - (iii) interest on the sums awarded under this Subsection (3) accrued at the legal rate from the date on which the suit is filed.

Enacted by Chapter 428, 2022 General Session

Part 24
Asbestos Litigation Requirements

78B-6-2401 Definitions.

As used in this part:

- (1) "AMA guides" means the edition of the American Medical Association's Guides to the Evaluation of Permanent Impairment in effect at the time of the performance of an examination or test on an exposed individual.

- (2) "Asbestos" means chrysotile, amosite, crocidolite, tremolite asbestos, anthophyllite asbestos, actinolite asbestos, asbestiform winchite, asbestiform richterite, asbestiform amphibole minerals, and any of these minerals that have been chemically treated or altered, including all minerals defined as asbestos in 29 C.F.R. Sec. 1910 at the time the asbestos action is filed.
- (3) "Asbestosis" means bilateral diffuse interstitial fibrosis of the lungs caused by the inhalation of asbestos fibers.
- (4)
 - (a) "Asbestos action" means a claim for damages or other civil or equitable relief presented in a civil action resulting from, based on, or related to:
 - (i) the health effects of exposure to asbestos, including:
 - (A) loss of consortium;
 - (B) wrongful death;
 - (C) mental or emotional injury;
 - (D) risk or fear of disease or other injury; and
 - (E) costs of medical monitoring or surveillance; and
 - (ii) any other derivative claim made by or on behalf of an individual exposed to asbestos or a representative, spouse, parent, child, or other relative of that individual.
 - (b) "Asbestos action" does not include a claim for workers' compensation or veterans benefits.
- (5) "Asbestos trust" means a:
 - (a) government-approved or court-approved trust that is intended to provide compensation to claimants arising out of, based on, or related to the health effects of exposure to asbestos or asbestos-containing products;
 - (b) qualified settlement fund that is intended to provide compensation to claimants arising out of, based on, or related to the health effects of exposure to asbestos or asbestos-containing products;
 - (c) compensation fund or claims facility created as a result of an administrative or legal action that is intended to provide compensation to claimants arising out of, based on, or related to the health effects of exposure to asbestos or asbestos-containing products;
 - (d) court-approved bankruptcy that is intended to provide compensation to claimants arising out of, based on, or related to the health effects of exposure to asbestos or asbestos-containing products; or
 - (e) plan of reorganization or trust pursuant to 11 U.S.C. Sec. 524(g) or 11 U.S.C. Sec. 1121(a) or other applicable provision of law that is intended to provide compensation to claimants arising out of, based on, or related to the health effects of exposure to asbestos or asbestos-containing products.
- (6) "ATS testing standards" means the official technical statements from the American Thoracic Society for pulmonary function testing in effect at the time of the performance of an examination or test on an exposed individual.
- (7) "Board-certified physician in internal medicine" means a licensed physician who is certified by the American Board of Internal Medicine or the American Osteopathic Board of Internal Medicine.
- (8) "Board-certified physician in occupational medicine" means a licensed physician who is certified in the specialty of:
 - (a) occupational medicine by the American Board of Preventative Medicine; or
 - (b) occupational and environmental medicine by the American Osteopathic Board of Preventative Medicine.
- (9) "Board-certified physician in pathology" means a licensed physician:

- (a) who holds primary certification in anatomic pathology or clinical pathology from the American Board of Pathology or the American Osteopathic Board of Pathology; and
- (b) whose professional practice is principally in the field of pathology involving regular evaluation of pathology materials obtained from surgical or postmortem specimens.
- (10) "Board-certified physician in pulmonary medicine" means a licensed physician who is certified in the specialty of pulmonary medicine by the American Board of Internal Medicine or the American Osteopathic Board of Internal Medicine.
- (11) "Certified B reader" means a physician who is certified as a B reader by the National Institute for Occupational Safety and Health.
- (12) "Chest x-ray" means a chest film taken in accordance with applicable state and federal laws and taken in the posterior-anterior view.
- (13) "Exposed individual" means an individual whose exposure to asbestos is the basis for the asbestos action.
- (14) "FEV1" means the maximal volume of air expelled in the first second during performance of spirometry.
- (15) "FEV1/FVC ratio" means the ratio that is calculated from FEV1 divided by FVC.
- (16) "FVC" means the maximal volume of air expired with maximum effort from a position of full inspiration.
- (17) "ILO system" means the system for the classification of chest x-rays provided in the International Labour Office's Guidelines for the Use of ILO International Classification of Radiographs of Pneumoconioses in effect at the time of the performance of an examination or test on an exposed individual.
- (18) "Law firm" means a person that employs a lawyer.
- (19) "Lawyer" means an individual who is authorized to provide legal services in any state or territory of the United States.
- (20)
 - (a) "Nonmalignant condition" means a condition that may be caused by asbestos other than a diagnosed cancer.
 - (b) "Nonmalignant condition" does not include asbestos-related lung cancer accompanied by asbestosis.
- (21) "Pathological evidence of asbestosis" means a statement by a board-certified physician in pathology that more than one representative section of lung tissue demonstrates a pattern of peribronchiolar or parenchymal scarring in the presence of characteristic asbestos bodies and there is no other more likely explanation for the presence of the fibrosis.
- (22) "Plaintiff" means:
 - (a) the person bringing the asbestos action, including a personal representative if the asbestos action is brought by an estate; or
 - (b) a conservator or next friend if the asbestos action is brought on behalf of a minor or legally incapacitated individual.
- (23) "Plethysmography" means the test for determining lung volume in which the exposed individual is enclosed in a chamber equipped to measure pressure, flow, or volume change.
- (24) "Predicted lower limit of normal" means the fifth percentile of healthy populations based on age, height, and gender as referenced in the AMA guides.
- (25) "Pulmonary function testing" means spirometry, lung volume testing, and diffusion capacity testing, including appropriate measurements, quality control data, and graphs, that are performed in accordance with the methods of calibration and techniques provided in the AMA guides and the ATS testing standards in effect at the time of the performance of a test on an exposed individual.

- (26) "Qualified physician" means a licensed physician who:
- (a) is a board-certified physician in internal medicine, a board-certified physician in occupational medicine, a board-certified physician in pathology, or a board-certified physician in pulmonary medicine, as is appropriate to the diagnostic specialty in question;
 - (b)
 - (i) conducted a physical examination of the exposed individual and took a detailed occupational, exposure, medical, smoking, and social history from the exposed individual; or
 - (ii) if the exposed individual is deceased, reviewed the pathology material and took a detailed history from the individual most knowledgeable about the information forming the basis of the asbestos action;
 - (c)
 - (i) treated the exposed individual and had a physician-patient relationship with the exposed individual at the time of the physical examination; or
 - (ii) if the licensed physician is a board-certified physician in pathology, examined tissue samples or pathological slides of the exposed individual;
 - (d) prepared or directly supervised the preparation and final review of a medical report under this part; and
 - (e) has not relied on any examinations, tests, radiographs, reports, or opinions of a doctor, clinic, laboratory, or testing company that performed an examination, test, radiograph, or screening of the exposed individual in violation of a law, regulation, licensing requirement, or medical ethics requirement of the state in which the examination, test, radiograph, or screening of the exposed individual was conducted.
- (27) "Radiological evidence of asbestosis" means a quality 1 or 2 chest x-ray showing bilateral small, irregular opacities, classified by width as s, t, or u, that occur primarily in the lower lung zones graded by a certified B reader as at least 1/0 on the ILO system.
- (28) "Radiological evidence of diffuse bilateral pleural thickening" means a quality 1 or 2 chest x-ray showing diffuse bilateral pleural thickening of at least b2 on the ILO system and blunting of at least one costophrenic angle as classified by a certified B reader.
- (29) "Spirometry" means a test of air capacity of the lung through a spirometer that measures the volume of air inspired and expired.
- (30) "Supporting test results" means a report by a certified B reader, x-ray examinations, diagnostic imaging of the chest, pathology reports, pulmonary function testing, and other tests, which are reviewed by the diagnosing physician or qualified physician in reaching the physician's conclusions.
- (31) "Sworn declaration" means the same as that term is defined in Section 78B-18a-102.
- (32) "Timed gas dilution" means a method for measuring total lung capacity in which the individual breaths into a spirometer containing a known concentration of an inert and insoluble gas for a specific time and the concentration of that inert and insoluble gas in the lung is compared to the concentration of that type of gas in the spirometer.
- (33) "Total lung capacity" means the volume of gas contained in the lungs at the end of the maximal inspiration.
- (34) "Trust claims materials" means a final executed proof of claim and all other documents and information related to a claim against an asbestos trust, including:
- (a) claims forms and supplementary materials;
 - (b) affidavits;
 - (c) depositions and trial testimony;
 - (d) work history;
 - (e) medical and health records;

- (f) documents reflecting the status of a claim against an asbestos trust; and
 - (g) all documents relating to the settlement of the trust claim if the trust claim has settled.
- (35) "Trust governance documents" means all documents that relate to eligibility and payment levels, including:
- (a) claims payment matrices; and
 - (b) trust distribution procedures or plans for reorganization for an asbestos trust.
- (36) "Veterans benefits" means a program for benefits in connection with military service administered by the United States Department of Veterans Affairs under United States Code, Title 38, Veterans Benefits.
- (37)
- (a) "Workers' compensation" means a program administered by the United States or a state to provide benefits, funded by a responsible employer or the employer's insurance carrier, for occupational diseases or injuries or for disability or death caused by occupational diseases or injuries.
 - (b) "Workers' compensation" includes the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. Sec. 901 et seq., and Federal Employees' Compensation Act, 5 U.S.C. Sec. 8101 et seq.
 - (c) "Workers' compensation" does not include the Federal Employers' Liability Act, 45 U.S.C. Sec. 51 et seq.

Renumbered and Amended by Chapter 80, 2023 General Session

78B-6-2402 Required disclosures by plaintiff within 21 days of filing asbestos action.

- (1) Within 21 days after the day on which the first answer is filed in response to the plaintiff's complaint in an asbestos action, the plaintiff shall provide all parties with a sworn declaration stating the evidence providing the basis for each claim against each defendant, including:
- (a) the name, address, date of birth, marital status, occupation, smoking history, and current and past employers and worksites of the exposed individual;
 - (b) the name and address of each individual who is knowledgeable about each exposure to asbestos and the exposed individual's relationship to that individual;
 - (c) the manufacturer or seller and the specific name of each asbestos-containing product, including any brand or trade name of that product, to which the exposed individual was exposed to asbestos or the other individual was exposed to asbestos if the exposed individual's exposure to asbestos was through another individual;
 - (d) the specific sites and the location at the sites that establish the direct connection between the exposed individual, or the other individual if the exposed individual's exposure to asbestos was through another individual, and each defendant;
 - (e) the beginning and ending dates of each exposure and the frequency of each exposure for the exposed individual or the other individual if the exposed individual's exposure to asbestos was through another individual;
 - (f) the condition that is alleged to have been caused by exposure to asbestos; and
 - (g) any supporting documentation relating to the information required under this Subsection (1).
- (2) The sworn declaration under Subsection (1) is in addition to the disclosures required under Sections 78B-6-2403 and 78B-6-2405.
- (3) Except as provided in Subsection (4), on a motion by a defendant in an asbestos action, the court shall dismiss a plaintiff's asbestos claim without prejudice:
- (a) against a defendant if the defendant's asbestos-containing product or site is not specifically identified in the sworn declaration under Subsection (1); or

- (b) against all defendants if the plaintiff fails to comply with Subsection (1).
- (4) The court may not dismiss a plaintiff's asbestos claim under Subsection (3) upon a showing of good cause by the plaintiff.

Enacted by Chapter 80, 2023 General Session

78B-6-2403 Requirements for asbestos action alleging nonmalignant condition -- Evidence.

- (1) Within 90 days after the day on which the plaintiff files the complaint in an asbestos action alleging a nonmalignant condition, the plaintiff shall file a detailed narrative medical report and diagnosis, signed under oath by a qualified physician and accompanied by supporting test results, constituting prima facie evidence that the exposed individual has a physical impairment for which exposure to asbestos was a substantial contributing factor.
- (2) A defendant shall have a reasonable opportunity before trial to challenge the adequacy of the prima facie evidence required under this section.
- (3) A court shall dismiss an asbestos action without prejudice upon a finding that the plaintiff failed to make the prima facie showing required by this section.
- (4) To make a prima facie showing under Subsection (1), the detailed narrative medical report and diagnosis shall include:
 - (a)
 - (i) radiological evidence of asbestosis or pathological evidence of asbestosis;
 - (ii) radiological evidence of diffuse bilateral pleural thickening; or
 - (iii) a high-resolution computed tomography scan showing evidence of asbestosis or diffuse pleural thickening;
 - (b) a detailed occupational and exposure history from the exposed individual, or the individual most knowledgeable about the exposed individual's exposure to asbestos if the exposed individual is deceased, that includes:
 - (i) the exposed individual's principal places of employment;
 - (ii) the exposed individual's exposure to airborne contaminants; and
 - (iii) whether the exposed individual's principal places of employment involved any exposure to airborne contaminants, including asbestos fibers or other disease-causing dusts or fumes that may cause a physical impairment and the nature, duration, and level of that exposure;
 - (c) a detailed medical, social, and smoking history from the exposed individual, or the individual most knowledgeable about the exposed individual's exposure to asbestos if the exposed individual is deceased, that includes a thorough review of the past and present medical problems of the exposed individual and the likely cause of the medical problems;
 - (d) evidence verifying that at least 15 years have passed between the exposed individual's date of first exposure to asbestos and the date of diagnosis;
 - (e) evidence that the exposed individual has a permanent respiratory impairment rating of at least class 2 as defined by and evaluated in accordance with the AMA guides;
 - (f) evidence that asbestosis or diffuse bilateral pleural thickening, rather than chronic obstructive pulmonary disease, is a substantial factor to the exposed individual's physical impairment based on a determination that the exposed individual has:
 - (i) FVC below the predicted lower limit of normal and a FEV1/FVC ratio, using actual values, equal to or above the predicted lower limit of normal;
 - (ii) total lung capacity, by plethysmography or timed gas dilution, below the predicted lower limit of normal; or
 - (iii) a chest x-ray showing bilateral small, irregular opacities, classified by width as s, t, or u, and graded by a certified B reader as at least 2/1 on the ILO system; and

- (g) a statement from the qualified physician that exposure to asbestos was a substantial contributing factor to the exposed individual's physical impairment and was likely not the result of any other cause.
- (5) A statement by the qualified physician that the exposed individual's physical impairment is consistent with, or compatible with, an exposure to asbestos, or words to that effect, does not satisfy the requirements under Subsection (4)(g).
- (6) Evidence relating to the prima facie showing under this section:
 - (a) shall comply with the quality controls, equipment requirements, methods of calibration, and techniques provided in the AMA guides and ATS testing standards;
 - (b) may not be based on testing or examination that violates a law, regulation, licensing requirement, or medical ethics requirement of the state in which the test or examination was conducted;
 - (c) may not be obtained under the condition that the plaintiff retains the services of the lawyer or law firm sponsoring the examination, test, or screening;
 - (d) does not create a presumption that the exposed individual has an asbestos-related injury or impairment; and
 - (e) is not conclusive as to the liability of any defendant.
- (7) A party in an asbestos action may not offer evidence at trial regarding, and the jury may not be informed of:
 - (a) the grant or denial of a motion to dismiss an asbestos action under this section; or
 - (b) the requirements of a prima facie showing under this section.
- (8)
 - (a) Except as provided in Subsection (8)(b), a plaintiff may not commence discovery against any defendant in an asbestos action until a court enters an order determining that the plaintiff has established a prima facie showing under this section.
 - (b) The parties to an asbestos action may conduct discovery in regard to establishing or challenging a prima facie showing under this section.

Enacted by Chapter 80, 2023 General Session

78B-6-2404 Accrual of action alleging nonmalignant condition.

Notwithstanding the requirements of Section 78B-2-117, the statute of limitations for an asbestos action alleging a nonmalignant condition that is not time barred on or before May 3, 2023, may not begin to run until the earlier of the day on which:

- (1) the exposed individual is diagnosed with a physical impairment that meets the prima facie evidence requirements of Section 78B-6-2403;
- (2) the exposed individual discovered facts that would have led a reasonable individual to obtain a diagnosis with respect to the existence of a physical impairment from exposure to asbestos that would have met the prima facie evidence requirements of Section 78B-6-2403; or
- (3) the exposed individual dies.

Enacted by Chapter 80, 2023 General Session

78B-6-2405 Required disclosures by plaintiff in asbestos action within 120 days of trial.

- (1) For each asbestos action filed in this state, the plaintiff shall provide all parties with a sworn declaration identifying all asbestos trust claims that have been filed by the plaintiff or by anyone on the plaintiff's behalf, including claims with respect to asbestos-related conditions other than

- those that are the basis for the asbestos action or that potentially could be filed by the plaintiff against an asbestos trust.
- (2) The sworn declaration shall be provided no later than 120 days prior to the date set for trial for the asbestos action.
 - (3) For each asbestos trust claim or potential asbestos trust claim identified in the sworn declaration, the sworn declaration shall include:
 - (a) the name, address and contact information for the asbestos trust;
 - (b) the amount claimed or to be claimed by the plaintiff;
 - (c) the date the plaintiff filed the claim;
 - (d) the disposition of the claim; and
 - (e) whether there has been a request to defer, delay, suspend, or toll the claim.
 - (4) The sworn declaration shall include an attestation from the plaintiff, under penalties of perjury, that the sworn declaration is complete and based on a good faith investigation of all potential claims against asbestos trusts.
 - (5) The plaintiff shall make available to all parties all trust claims materials for each asbestos trust claim that has been filed by the plaintiff or by anyone on the plaintiff's behalf against an asbestos trust, including any asbestos-related disease.
 - (6) The plaintiff shall supplement the information and materials provided pursuant to this section within 90 days after the day on which the plaintiff files an additional asbestos trust claim, supplements an existing asbestos trust claim, or receives additional information or materials related to any claim or potential claim against an asbestos trust.
 - (7) Failure by the plaintiff to make available to all parties all trust claims materials as required by this part shall constitute grounds for the court to extend the trial date in an asbestos action.
 - (8)
 - (a) A court shall stay an asbestos action if the court finds that the plaintiff has failed to make the disclosures required by this section within the time period described in Subsection (2).
 - (b) If a plaintiff identifies a potential asbestos trust claim in the disclosures required by this section, the court may stay the asbestos action until the plaintiff files the asbestos trust claim and provides all parties with all trust claims materials for the asbestos trust claim.

Renumbered and Amended by Chapter 80, 2023 General Session

78B-6-2406 Identification of additional or alternative asbestos trusts by defendant before trial.

- (1) Not less than 90 days before trial, if a defendant identifies an asbestos trust claim not previously identified by the plaintiff that the defendant reasonably believes the plaintiff can file, the defendant shall meet and confer with the plaintiff to discuss why the defendant believes the plaintiff has an additional asbestos trust claim.
- (2) The defendant may move the court for an order to require the plaintiff to file the asbestos trust claim after the meeting under Subsection (1).
- (3) The defendant shall produce or describe the documentation that the defendant possesses or is aware of in support of the motion under Subsection (2).
- (4) Within 10 days after the day on which the plaintiff receives the defendant's motion under Subsection (2), the plaintiff shall for each asbestos trust claim identified by the defendant:
 - (a) file the asbestos trust claim;
 - (b) file a written response with the court setting forth the reasons why there is insufficient evidence for the plaintiff to file the asbestos trust claim; or

- (c) file a written response with the court requesting a determination that the plaintiff's expenses or the plaintiff's attorney fees and expenses to prepare and file the asbestos trust claim identified in the defendant's motion exceed the plaintiff's reasonably anticipated recovery from the trust.
- (5)
- (a) If the court determines that there is a sufficient basis for the plaintiff to file the asbestos trust claim identified by the defendant, the court shall:
 - (i) order the plaintiff to file the asbestos trust claim; and
 - (ii) stay the asbestos action until the plaintiff files the asbestos trust claim and provides all parties with all trust claims materials no later than 30 days before trial.
 - (b) If the court determines that the plaintiff's expenses or the plaintiff's attorney fees and expenses to prepare and file the asbestos trust claim identified in the defendant's motion exceed the plaintiff's reasonably anticipated recovery from the asbestos trust, the court shall stay the asbestos action until the plaintiff files with the court and provides all parties with a verified statement of the plaintiff's history of exposure, usage, or other connection to asbestos covered by the asbestos trust.

Renumbered and Amended by Chapter 80, 2023 General Session

78B-6-2407 Discovery of materials and documents for asbestos trust claim -- Use of asbestos trust materials.

- (1) Trust claims materials and trust governance documents are presumed to be relevant and authentic and are admissible in evidence.
- (2) Claims of privilege may not apply to any trust claims materials or trust governance documents.
- (3) A defendant in an asbestos action may seek discovery from an asbestos trust.
- (4) The plaintiff may not claim privilege or confidentiality to bar discovery and shall provide consent or other expression of permission that may be required by the asbestos trust to release information and materials sought by a defendant.
- (5) If a plaintiff proceeds to trial in an asbestos action before an asbestos trust claim is resolved, the filing of the asbestos trust claim may be considered as relevant and admissible evidence.

Renumbered and Amended by Chapter 80, 2023 General Session

78B-6-2408 Failure to provide information -- Sanctions.

A plaintiff who fails to provide all of the information required under Section 78B-6-2405, 78B-6-2406, or 78B-6-2407, is subject to sanctions as provided in the Utah Rules of Civil Procedure and any other relief for the defendants that the court considers just and proper.

Renumbered and Amended by Chapter 80, 2023 General Session

Part 25
Claims to Which Immunity Applies

78B-6-2501 Definitions.

As used in this part:

- (1) "Contamination claim" means a claim for which a government owner and the government owner's officers and employees have immunity under Subsection 63G-7-201(3)(b).

(2) "Government owner" means the same as that term is defined in Subsection 63G-7-201(3).

Enacted by Chapter 259, 2023 General Session

78B-6-2502 Award of double attorney fees and costs.

If a person asserts a contamination claim against a government owner or an officer or employee of the government owner for which the government owner or officer or employee are found to be immune under Subsection 63G-7-201(3)(b), the court shall award the government owner or officer or employee double the attorney fees and costs incurred by the government owner or officer or employee in defending the claim.

Enacted by Chapter 259, 2023 General Session

Part 26
Children's Device Protection Act

78B-6-2601 Definitions.

As used in this part:

- (1) "Activate" means the process of powering on a device and associating the device with a user account.
- (2) "Device" means a tablet or a smart phone manufactured on or after January 1, 2025.
- (3) "Filter" means generally accepted and commercially reasonable software used on a device that is capable of preventing the device from accessing or displaying obscene material through Internet browsers or search engines owned or controlled by the manufacturer in accordance with prevailing industry standards including blocking known websites linked to obscene content via mobile data networks, wired Internet networks, and wireless Internet networks.
- (4) "Internet" means the same as that term is defined in Section 13-40-102.
- (5) "Manufacturer" means a person that:
 - (a)
 - (i) is engaged in the business of manufacturing a device;
 - (ii) holds the patents for the device the person manufactures; or
 - (iii) holds the patents for the operating system on a device; and
 - (b) has a commercial registered agent as that term is defined in Section 16-17-102.
- (6) "Minor" means an individual under the age of 18 who is not emancipated, married, or a member of the armed forces of the United States.
- (7) "Obscenity" means the same as that term is defined in Section 32B-1-504.
- (8) "Operating system" means software that manages all of the other application programs on a device.
- (9) "Password" means a string of characters or other secure method used to enable, deactivate, modify, or uninstall a filter on a device.
- (10)
 - (a) "Retailer" means a person, that is not a manufacturer, that sells a device directly to consumers.
 - (b) "Retailer" includes an employee of a retailer acting in the course and scope of the employee's employment.
- (11) "Smart phone" means the same as that term is defined in Section 63A-2-101.5.

(12) "Tablet" means a mobile device that:

- (a) is equipped with a mobile operating system, touchscreen display, and rechargeable battery; and
- (b) has the ability to support access to a cellular network.

(13) "Video game console" means a discrete computing system, including the system's components and peripherals, primarily used for playing video games, but does not include a smartphone or tablet.

Enacted by Chapter 166, 2024 General Session

78B-6-2602 Filter required.

All devices activated in the state shall:

- (1) contain a filter;
- (2) ask the user to provide the user's age during activation and account set-up;
- (3) automatically enable the filter when the user is a minor based on the age provided by the user as described in Subsection (2);
- (4) allow a password to be established for the filter;
- (5) notify the user of the device when the filter blocks the device from accessing a website; and
- (6) allow a non-minor user who has a password the option to deactivate and re-activate the filter.

Enacted by Chapter 166, 2024 General Session

78B-6-2603 Manufacturer liability.

(1) A manufacturer of a device is subject to civil liability if:

- (a) a device is activated in the state;
- (b) the device does not, upon activation in the state, enable a filter that complies with the requirements described in Section 78B-6-2602; and
- (c) the minor accesses material that is obscene on the device.

(2) Notwithstanding Subsection (1), this section does not apply to a manufacturer that makes a good faith effort to provide a device that, upon activation of the device in the state, automatically enables a filter in accordance with Section 78B-6-2602.

(3) Nothing in this part:

- (a) applies to a device manufactured before January 1, 2025;
- (b) applies to a video game console; or
- (c) creates a cause of action against a retailer of a device.

Enacted by Chapter 166, 2024 General Session

78B-6-2604 Individual liability.

With the exception of a minor's parent or legal guardian, a person may be liable in a civil and criminal action for intentionally enabling the password to remove the filter on a device in the possession of a minor if the minor accesses content that is obscene on the device.

Enacted by Chapter 166, 2024 General Session

78B-6-2605 Proceedings by the attorney general.

(1) The attorney general may bring an action in court against a person for a violation of this chapter:

- (a) to enjoin any action that constitutes a violation of this chapter by the issuance of a temporary restraining order or preliminary or permanent injunction;
 - (b) to recover from a violator a civil penalty not to exceed \$5,000 per violation, and not to exceed a total of \$50,000 in aggregate, as determined by the court;
 - (c) to recover from a violator the attorney general's reasonable expenses, investigative costs, and attorney fees; and
 - (d) to obtain other appropriate relief as provided for under this chapter.
- (2) The attorney general may seek revocation of any license or certificate authorizing a manufacturer to engage in business in this state if, after the manufacturer is found to have violated provisions of this part, the manufacturer demonstrates a repeated pattern of violations of the provisions of this part.
- (3) For purposes of assessing a penalty under this section, a manufacturer is considered to have committed a separate violation for each device manufactured on or after January 1, 2025, that violates the provisions of Section 78B-6-2602.

Enacted by Chapter 166, 2024 General Session

78B-6-2606 Civil action by parent or legal guardian.

- (1) A parent or legal guardian of a minor that accesses obscene content on a device as a result of a manufacturer's failure to comply with of Section 78B-6-2602 may bring a private cause of action in court against the manufacturer.
- (2) A person bringing an action under Subsection (1) may recover:
- (a)
 - (i) actual damages; or
 - (ii) where actual damages are difficult to ascertain due to the nature of the injury, \$50,000 for each violation;
 - (b) if a violation is found to be knowing and willful, punitive damages in an amount determined by the court;
 - (c) nominal damages;
 - (d) attorney fees; and
 - (e) such other relief as the court deems appropriate, including court costs and expenses.
- (3) Nothing herein shall preclude the bringing of a class action lawsuit against a manufacturer where the manufacturer's conduct in violation of Section 78B-6-2602 is knowing and willful.
- (4) A parent or legal guardian of a minor may bring an action against any person who is not the parent or legal guardian of the child and who disables the filter from a device in the possession of the child which results in the minor's exposure to obscene content.
- (5) A person bringing an action under Subsection (4) may recover:
- (a)
 - (i) actual damages; or
 - (ii) where actual damages are difficult to ascertain due to the nature of the injury, \$1,000 for each violation; and
 - (b) such other relief as the court deems appropriate.

Enacted by Chapter 166, 2024 General Session