

**Representative Wayne A. Harper** proposes the following substitute bill:

**PROCESS SERVERS**

2003 GENERAL SESSION

STATE OF UTAH

**Sponsor: Michael G. Waddoups**

**This act modifies provisions relating to private investigators. It provides that private investigators may only serve specific forms of process and makes technical corrections.**

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

**78-12a-2**, as last amended by Chapter 314, Laws of Utah 1995

**78-36-10.5**, as last amended by Chapter 118, Laws of Utah 1998

REPEALS:

**78-27-58**, as last amended by Chapter 225, Laws of Utah 1993

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

Section 1. Section **78-12a-2** is amended to read:

**78-12a-2. Process servers.**

(1) Persons who are not peace officers, constables, sheriffs, or lawfully appointed deputies of such officers, or authorized state investigators may not serve any forms of civil or criminal process other than complaints, summonses, and subpoenas.

~~[(1)]~~ (2) The following persons may serve all process issued by the courts of this state except as otherwise limited by ~~[Section 78-27-58]~~ Subsection (1):

(a) a peace officer employed by any political subdivision of the state acting within the scope and jurisdiction of his employment;

(b) a sheriff or appointed deputy sheriff employed by any county of the state;

(c) a constable serving in compliance with applicable law;

(d) an investigator employed by the state and authorized by law to serve civil process[;



26 and].

27 [~~(e)~~ private investigators licensed in accordance with Title 53, Chapter 9, Private  
28 Investigator Regulation Act.]

29 (3) Private investigators licensed in accordance with Title 53, Chapter 9, Private  
30 Investigator Regulation Act, may only serve the following forms of process:

- 31 (a) petitions;
- 32 (b) complaints;
- 33 (c) summonses;
- 34 (d) supplemental orders;
- 35 (e) orders to show cause;
- 36 (f) notices;
- 37 (g) small claims affidavits;
- 38 (h) small claims orders;
- 39 (i) writs of garnishment;
- 40 (j) garnishee orders;
- 41 (k) restraining orders;
- 42 (l) subpoenas duces tecum; and
- 43 (m) orders of restitution.

44 [~~(2)~~] (4) Other persons may serve process as prescribed by [~~Section 78-27-58~~]  
45 Subsection (1).

46 [~~(3)~~] (5) A person serving process shall legibly document the date and time of service  
47 and his name and address on the return of service.

48 Section 2. Section **78-36-10.5** is amended to read:

49 **78-36-10.5. Order of restitution -- Service -- Enforcement -- Disposition of**  
50 **personal property -- Hearing.**

51 (1) Each order of restitution shall:

52 (a) direct the defendant to vacate the premises, remove his personal property, and  
53 restore possession of the premises to the plaintiff, or be forcibly removed by a sheriff or  
54 constable;

55 (b) advise the defendant of the time limit set by the court for the defendant to vacate  
56 the premises, which shall be three business days following service of the order, unless the court

57 determines that a longer or shorter period is appropriate under the circumstances; and

58 (c) advise the defendant of the defendant's right to a hearing to contest the manner of  
59 its enforcement.

60 (2) (a) A copy of the order of restitution and a form for the defendant to request a  
61 hearing as listed on the form shall be served in accordance with Section 78-36-6 by a person  
62 authorized to serve process pursuant to ~~[Section 78-27-58]~~ Subsection 78-12a-2(1). If personal  
63 service is impossible or impracticable, service may be made by:

64 (i) mailing a copy of the order and the form to the defendant's last-known address and  
65 posting a copy of the order and the form at a conspicuous place on the premises; or

66 (ii) mailing a copy of the order and the form to the commercial tenant defendant's  
67 last-known place of business and posting a copy of the order and the form at a conspicuous  
68 place on the business premises.

69 (b) A request for hearing by the defendant may not stay enforcement of the restitution  
70 order unless:

71 (i) the defendant furnishes a corporate bond, cash bond, certified funds, or a property  
72 bond to the clerk of the court in an amount approved by the court according to the formula set  
73 forth in Subsection 78-36-8.5(2)(b); and

74 (ii) the court orders that the restitution order be stayed.

75 (c) The date of service, the name, title, signature, and telephone number of the person  
76 serving the order and the form shall be legibly endorsed on the copy of the order and the form  
77 served on the defendant.

78 (d) Within ten days of service, the person serving the order and the form shall file  
79 proof of service in accordance with Rule 4(h), Utah Rules of Civil Procedure.

80 (3) (a) If the defendant fails to comply with the order within the time prescribed by the  
81 court, a sheriff or constable at the plaintiff's direction may enter the premises by force using the  
82 least destructive means possible to remove the defendant.

83 (b) Any personal property of the defendant may be removed from the premises by the  
84 sheriff or constable and transported to a suitable location for safe storage. The sheriff or  
85 constable may delegate responsibility for storage to the plaintiff, who shall store the personal  
86 property in a suitable place and in a reasonable manner.

87 (c) The personal property removed and stored shall be inventoried by the sheriff or

88 constable or the plaintiff who shall keep the original inventory and personally deliver or mail  
89 the defendant a copy of the inventory immediately after the personal property is removed.

90 (4) (a) After demand made by the defendant within 30 days of removal of personal  
91 property from the premises, the sheriff or constable or the plaintiff shall promptly return all of  
92 the defendant's personal property upon payment of the reasonable costs incurred for its removal  
93 and storage.

94 (b) The person storing the personal property may sell the property remaining in storage  
95 at a public sale if:

96 (i) the defendant does not request a hearing or demand return of the personal property  
97 within 30 days of its removal from the premises; or

98 (ii) the defendant fails to pay the reasonable costs incurred for the removal and storage  
99 of the personal property.

100 (c) In advance of the sale, the person storing the personal property shall mail to the  
101 defendant's last-known address a written notice of the time and place of the sale.

102 (d) If the defendant is present at the sale, he may specify the order in which the  
103 personal property shall be sold, and only so much personal property shall be sold as to satisfy  
104 the costs of removal, storage, advertising, and conducting the sale. The remainder of the  
105 personal property, if any, shall be released to the defendant. If the defendant is not present at  
106 the sale, the proceeds, after deduction of the costs of removal, storage, advertising, and  
107 conducting the sale shall be paid to the plaintiff up to the amount of any judgment the plaintiff  
108 obtained against the defendant. Any surplus shall be paid to the defendant, if the defendant's  
109 whereabouts are known. If the defendant's whereabouts are not known, any surplus shall be  
110 disposed of in accordance with Title 67, Chapter 4a, Unclaimed Property Act.

111 (e) The plaintiff may donate the property to charity if:

112 (i) the defendant does not request a hearing or demand return of the personal property  
113 within 30 days of its removal from the premises; or

114 (ii) the defendant fails to pay the reasonable costs incurred for the removal and storage  
115 of the personal property; and

116 (iii) donation is a commercially reasonable alternative.

117 (f) If the property belonging to a person who is not a defendant is removed and stored  
118 in accordance with this section, that person may claim the property by delivering a written

119 demand for its release to the sheriff or constable or the plaintiff. If the claimant provides  
120 proper identification and evidence of ownership, the sheriff or constable or the plaintiff shall  
121 promptly release the property at no cost to the claimant.

122 (5) In the event of a dispute concerning the manner of enforcement of the restitution  
123 order, the defendant or any person claiming to own stored personal property may file a request  
124 for a hearing. The court shall set the matter for hearing within ten days from the filing of the  
125 request, or as soon thereafter as practicable, and shall mail notice of the hearing to the parties.

126 (6) The Judicial Council shall draft the forms necessary to implement this section.

127 Section 3. **Repealer.**

128 This act repeals:

129 Section **78-27-58, Service of judicial process by persons other than law**  
130 **enforcement officers.**