



UTAH STATE SENATE

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January 30, 2007

Mr. President:

The Judiciary, Law Enforcement, and Criminal Justice Committee reports a favorable recommendation on **S.B. 136**, UNLAWFUL DETAINER AMENDMENTS, by Senator M. Waddoups, with the following amendments:

1. *Page 4, Lines 108 through 111:*

108 [The] [~~Any officer of the court~~] A judge, court clerk, or plaintiff's counsel
shall indorse on the summons the number of days within which
109 the defendant is required to appear and defend the action, which shall [not] be [less
than] three
110 [~~or more than 20~~] {calendar} days from the date of service {, unless the
court determines that the
~~11 facts of the case should allow more time~~} . The court may authorize service by publication
or

2. *Page 5, Lines 134 through 143:*

134 (b) (i) The defendant may remain in possession if he executes and files a counter bond
in
135 the form of a corporate bond, a cash bond, certified funds, or a property bond executed by
two
136 persons who own real property in the state and who are not parties to the action.
(ii) The form of

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137 the bond is at the defendant's option.

(iii) The bond shall be payable to the clerk of the court.

(iv) The

138 defendant shall file the bond prior to the later of the expiration of three business days from the
139 date he is served with notice of the filing of plaintiff's possession bond or within 24 hours after
140 the court sets the bond amount. =

(v) Notwithstanding Subsection (2)(b)(iv), the court may allow a period of up to 72 hours for the posting of the counterbond.

(vi) The court shall approve the bond in an amount that is the
141 probable amount of costs of suit, including attorney fees and actual damages that may result to
142 the plaintiff if the defendant has improperly withheld possession.

(vii) The court shall consider
143 prepaid rent to the owner as a portion of the defendant's total bond.

3. *Page 6, Lines 167 through 168:*

167 (b) the court shall begin the trial within 60 days after the day on which the complaint is
168 ~~filed~~ served , unless the parties agree otherwise.

(c) If this chapter requires a hearing to be held within a specified time, the time may be extended to the first date thereafter on which a judge is available to hear the case in a jurisdiction in which a judge is not always available.

170 court shall hold an evidentiary hearing , upon request of either party, within ten days after
the day on which the defendant
171 files the defendant's answer.

4. *Page 6, Line 178 through Page 7, Line 192:178*

(3) (a) In an action for unlawful detainer in which the claim is for nuisance and alleges
179 ~~{criminal activity}~~ an act that would be considered criminal under the
laws of this state , the court shall hold an evidentiary hearing within ten days after the
day on
180 which the complaint is filed to determine whether the alleged ~~{criminal~~

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activity} act occurred.

181 (b) The hearing required by Subsection (3)(a) shall be set at the time the complaint is

182 filed and **notice of the hearing** shall be served upon the defendant with the summons at least three calendar days

183 before the scheduled time of the hearing.

184 (c) If the court, at an evidentiary hearing held in accordance with Subsection (3)(a),

185 determines that it is more likely than not that the alleged ~~criminal~~ act occurred, the court shall

186 issue an order of restitution.

187 (d) If an order of restitution is issued in accordance with Subsection (3)(c), a constable

188 or the sheriff of the county where the property is situated shall return possession of the property

189 to the plaintiff immediately.

(e) The court may allow a period of up to 72 hours before restitution may be made under Subsection (3)(d) if the court determines the time is appropriate under the circumstances.

190 ~~{(e)}~~ **(f)** At the evidentiary hearing held in accordance with Subsection (3)(a), if the court

191 determines that all issues between the parties can be adjudicated without further proceedings,

192 the court shall adjudicate those issues and enter judgment on the merits.

(g) "An act that would be considered criminal under the laws of this state" under Subsection (3)(a) includes only the following:

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- (i) an act that would be considered a felony under the laws of this state;
- (ii) an act that would be considered criminal affecting the health or safety of a tenant, the landlord, the landlord's agent, or other person on the landlord's property;
- (iii) an act that would be considered criminal that causes damage or loss to any tenant's property or the landlord's property;
- (iv) a drug- or gang-related act that would be considered criminal;
- (v) an act or threat of violence against any tenant or other person on the premises, or against the landlord or the landlord's agent; and
- (vi) any other act that would be considered criminal that the court determines directly impacts the peaceful enjoyment of the premises by any tenant.

5. Page 7, Lines 210 through 211:

210 (d) (i) A forfeiture under Subsection (1)(c) does not release a defendant from
any

211 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.

Respectfully,

Gregory S. Bell
Committee Chair

Voting: 4-1-2

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