

JUSTICE COURT AMENDMENTS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lyle W. Hillyard

House Sponsor: Kay L. McIff

LONG TITLE

General Description:

This bill modifies the selection and retention of justice court judges, and makes other changes.

Highlighted Provisions:

This bill:

- ▶ provides for a performance evaluation and retention process for all justice court judges;
- ▶ amends the jurisdiction of the district court;
- ▶ specifies compensation for justice court judges; and
- ▶ creates a county-wide judicial nominating commission to fill vacancies in justice courts.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on January 1, 2009, except that the amendments to Section 78A-7-206 take effect on July 1, 2009.

Utah Code Sections Affected:

AMENDS:

- 20A-12-201**, as last amended by Laws of Utah 2001, Chapter 308
- 78A-5-102**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 78A-7-201**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 78A-7-203**, as renumbered and amended by Laws of Utah 2008, Chapter 3

30 78A-7-206, as renumbered and amended by Laws of Utah 2008, Chapter 3

31 78A-7-213, as renumbered and amended by Laws of Utah 2008, Chapter 3

32 REPEALS AND REENACTS:

33 78A-7-202, as renumbered and amended by Laws of Utah 2008, Chapter 3



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

36 Section 1. Section 20A-12-201 is amended to read:

37 **20A-12-201. Judicial appointees -- Retention elections.**

38 (1) (a) Each judicial appointee to a court [~~of record~~] is subject to an unopposed
39 retention election at the first general election held more than three years after the judge or
40 justice was appointed.

41 (b) After the first retention election:

42 (i) each Supreme Court justice shall be on the regular general election ballot for an
43 unopposed retention election every tenth year; and

44 (ii) each judge of other courts [~~of record~~] shall be on the regular general election ballot
45 for an unopposed retention election every sixth year.

46 (2) (a) Each justice or judge of a court of record who wishes to retain office shall, in the
47 year the justice or judge is subject to a retention election:

48 (i) file a declaration of candidacy as if a candidate for multi-county office in accordance
49 with Section 20A-9-202; and

50 (ii) pay a filing fee of \$50.

51 (b) Each [~~county~~] justice court judge who wishes to retain office shall, in the year the
52 justice [~~or~~] court judge is subject to a retention election:

53 (i) file a declaration of candidacy as if a candidate for county office in accordance with
54 Section 20A-9-202; and

55 (ii) pay a filing fee of \$25.

56 (3) (a) The lieutenant governor shall, by September 1 of each regular general election
57 year:

58 (i) transmit a certified list containing the names of the justices of the Supreme Court and
59 judges of the Court of Appeals declaring their candidacy to the county clerk of each county; and

60 (ii) transmit a certified list containing the names of judges of other courts declaring their
61 candidacy to the county clerk of each county in the geographic division in which the judge filing
62 the declaration holds office.

63 (b) Each county clerk shall place the names of justices and judges standing for retention
64 election in the nonpartisan section of the ballot.

65 (4) At the general election, the ballots shall contain, as to each justice or judge of any
66 court to be voted on in the county, the following question:

67 "Shall _____(name of justice or judge) be retained in the
68 office of _____?" (name of office, such as "Justice of the Supreme
69 Court of Utah"; "Judge of the Court of Appeals of Utah"; "Judge of the District Court of the
70 Third Judicial District;" "Judge of the Juvenile Court of the Fourth Juvenile Court District";
71 "[County] Justice Court Judge of (name of county) County or (name of municipality)")

72 Yes ()

73 No ()."

74 (5) (a) If the justice or judge receives more yes votes than no votes, the justice or judge
75 is retained for the term of office provided by law.

76 (b) If the justice or judge does not receive more yes votes than no votes, the justice or
77 judge is not retained, and a vacancy exists in the office on the first Monday in January after the
78 regular general election.

79 (6) A justice or judge not retained is ineligible for appointment to the office for which
80 the justice or judge was defeated until after the expiration of that term of office.

81 Section 2. Section **78A-5-102** is amended to read:

82 **78A-5-102. Jurisdiction -- Appeals.**

83 (1) The district court has original jurisdiction in all matters civil and criminal, not
84 excepted in the Utah Constitution and not prohibited by law.

85 (2) The district court judges may issue all extraordinary writs and other writs necessary

86 to carry into effect their orders, judgments, and decrees.

87 (3) The district court has jurisdiction over matters of lawyer discipline consistent with
88 the rules of the Supreme Court.

89 (4) The district court has jurisdiction over all matters properly filed in the circuit court
90 prior to July 1, 1996.

91 (5) The district court has appellate jurisdiction to adjudicate trials de novo of the
92 judgments of the justice court and of the small claims department of the district court.

93 (6) Appeals from the final orders, judgments, and decrees of the district court are under
94 Sections 78A-3-102 and 78A-4-103.

95 (7) The district court has jurisdiction to review:

96 (a) agency adjudicative proceedings as set forth in Title 63, Chapter 46b, Administrative
97 Procedures Act, and shall comply with the requirements of that chapter, in its review of agency
98 adjudicative proceedings; and

99 (b) municipal administrative proceedings in accordance with Section 10-3-703.7.

100 (8) Notwithstanding Subsection (1), the district court has subject matter jurisdiction in
101 class B misdemeanors, class C misdemeanors, infractions, and violations of ordinances only if:

102 (a) there is no justice court with territorial jurisdiction;

103 (b) the offense occurred within the boundaries of the municipality in which the district
104 courthouse is located and that municipality has not formed, or formed and then dissolved, a
105 justice court; or

106 (c) they are included in an indictment or information covering a single criminal episode
107 alleging the commission of a felony or a class A misdemeanor.

108 (9) The district court has jurisdiction of actions under Title 78B, Chapter 7, Part 2,
109 Child Protective Orders, if the juvenile court transfers the case to the district court.

110 Section 3. Section **78A-7-201** is amended to read:

111 **78A-7-201. Justice court judge eligibility -- Mandatory retirement -- Service after**
112 **retirement.**

113 (1) A [county] justice court judge shall be:

- 114 (a) a citizen of the United States;
- 115 (b) 25 years of age or older;
- 116 (c) a resident of Utah for at least three years immediately preceding his appointment;
- 117 (d) a resident of the [~~precinct for~~] county in which [chosen] the court is located or an
- 118 adjacent county for at least six months immediately preceding appointment; and
- 119 (e) a qualified voter of the [~~precinct for~~] county in which [chosen] the judge resides.

120 [~~(2) A municipal justice court judge shall be:~~]

121 [~~(a) a citizen of the United States;~~]

122 [~~(b) 25 years of age or older;~~]

123 [~~(c) a resident of Utah for at least three years immediately preceding appointment;~~]

124 [~~(d) a resident of the county in which the municipality is located or an adjacent county~~
125 ~~for at least six months immediately preceding appointment; and]~~

126 [~~(e) a qualified voter of the county of residence.~~]

127 [~~(3) (2) Justice court judges are not required to be admitted to practice law in the state~~
128 ~~as a qualification to hold office but shall have at the minimum a diploma of graduation from high~~
129 ~~school or its equivalent. [This requirement does not apply to justice court judges holding office~~
130 ~~on July 1, 1989, who successfully complete continuing education requirements under Section~~
131 ~~78A-7-205.]~~

132 [~~(4) (3) A justice court judge shall be a person who has demonstrated maturity of~~
133 ~~judgment, integrity, and the ability to understand and apply appropriate law with impartiality.~~

134 [~~(5) (a) Except as provided in Subsections (b) and (c), a county or municipal justice]~~

135 (4) Justice court [judge] judges shall retire upon attaining the age of 75 years.

136 [~~(b) A county justice court judge serving on July 1, 1996, who is 75 years of age or~~
137 ~~older on July 1, 1996, or who attains 75 years of age on or before the first Monday in February~~
138 ~~1999, may not be a candidate in the 1998 judicial retention elections and shall retire on or~~
139 ~~before the first Monday in February 1999.]~~

140 [~~(c) A municipal justice court judge serving on July 1, 1996, who is 75 years of age or~~
141 ~~older on July 1, 1996, or who attains 75 years of age on or before the first Monday in February~~

142 2000, may not be reappointed and shall retire on or before the first Monday in February 2000.]

143 [(6)] (5) (a) A justice court judge whose tenure in office has terminated due to
144 retirement and who is physically and mentally able to perform the duties of the office may hear a
145 case as prescribed by rule of the Supreme Court.

146 (b) The retired justice court judge shall take and subscribe an oath of office only upon
147 the first appointment. The retired justice court judge shall receive reasonable compensation for
148 services as set by local ordinance of the municipality or county.

149 Section 4. Section 78A-7-202 is repealed and reenacted to read:

150 **78A-7-202. Justice court judges to be appointed -- Procedure -- Retention.**

151 (1) As used in this section:

152 (a) "Local government executive" means:

153 (i) the chair of the county commission in counties having the county commission form
154 of county government;

155 (ii) the county executive in counties having the county executive-council form of
156 government;

157 (iii) the chair of the city council or town council in municipalities having the traditional
158 management arrangement established by Title 10, Chapter 3, Part 1, Governing Body;

159 (iv) the city manager, in the council-manager optional form of government defined in
160 Section 10-3-101; and

161 (v) the mayor, in the council-mayor optional form of government defined in Section
162 10-3-101.

163 (b) "Local legislative body" means:

164 (i) the county commission or county council; and

165 (ii) the city council or town council.

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

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

171 (i) one member appointed by:

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

173 or

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

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

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

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

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

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

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

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

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

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

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

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

198 (5) Once selected, the Judicial Council shall certify the judge as qualified to hold office
 199 upon successful completion of the orientation program.

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

203 (7) Upon the expiration of a justice court judge's term of office, the judge shall be
 204 subject to an unopposed retention election in the county or counties in which the court to which
 205 the judge is appointed is located, in accordance with the procedures set forth in Section
 206 20A-12-201.

207 (8) Before each retention election, each justice court judge shall be evaluated in
 208 accordance with the performance evaluation program established in Subsection 78A-2-104(5).

209 Section 5. Section **78A-7-203** is amended to read:

210 **78A-7-203. Term of office for justice court judge.**

211 (1) ~~(a)~~ The term of a [county] justice court judge is ~~four~~ six years beginning the first
 212 Monday in ~~February 1991.~~ January 2010.

213 ~~(b)~~ (2) Judges holding office ~~[when this act takes effect]~~ or appointed to fill any
 214 vacancy before January 1, 2009 hold office until ~~[reappointed or a successor is appointed and~~
 215 ~~certified by the Judicial Council]~~ the next general election.

216 ~~[(2) (a) The term of office of a municipal justice court judge is four years, beginning the~~
 217 ~~first Monday in February 1992.]~~

218 ~~[(b) Judges holding office when this section takes effect or appointed to fill any vacancy~~
 219 ~~hold office until reappointed or a successor is appointed and certified by the Judicial Council.]~~

220 (3) (a) Notwithstanding Section 20A-12-201, any municipal justice court judge holding
 221 office on January 1, 2009 may serve out their current term if the judge:

222 (i) stands for retention election in 2010, and is not retained in that election; or

223 (ii) chooses not to stand for election in 2010.

224 (b) A vacancy shall then exist in the office on the first Monday in February 2012.

225 Section 6. Section **78A-7-206** is amended to read:

226 **78A-7-206. Determination of compensation and limits -- Salary survey -- Limits**
227 **on secondary employment.**

228 (1) ~~[(a)]~~ Every justice court judge shall be paid a fixed compensation determined by the
229 governing body of the respective municipality or county ~~[taking into consideration~~
230 ~~recommendations of the office of the state court administrator as provided in Subsection (2)].~~

231 (a) The governing body of the municipality or county may not set a full-time justice
232 court judge's salary at less than 50% nor more than 90% of a district court judge's salary.

233 (b) The governing body of the municipality or county shall set a part-time justice court
234 judge's salary as follows:

235 (i) The governing body shall first determine the full-time salary range outlined in
236 Subsection (1)(a).

237 (ii) The caseload of a part-time judge shall be determined by the office of the state court
238 administrator and expressed as a percentage of the caseload of a full-time judge.

239 (iii) The judge's salary shall then be determined by applying the percentage determined
240 in Subsection (1)(b)(ii) against the salary range determined in Subsection (1)(a).

241 (c) A justice court judge shall receive an annual salary adjustment at least equal to the
242 average salary adjustment for all county or municipal employees for the jurisdiction served by
243 the judge.

244 ~~[(i) A]~~ (d) Notwithstanding Subsection (1)(c), a justice court judge [employed by one
245 entity] may not receive a salary greater than [85%] 90% of the salary of a district court judge.

246 ~~[(ii)]~~ (e) A justice court judge employed by more than one entity as a justice court
247 judge, may not receive a total salary for service as a justice court judge greater than the salary
248 of a district court judge.

249 ~~[(b) The compensation shall be comprised of a monthly salary and shall be computed~~
250 ~~upon the number of hours, days, or other periods of time that the justice court judge is to be~~
251 ~~available to perform all judicial functions.]~~

252 ~~[(2) (a) The state court administrator with the approval of the Judicial Council shall~~
253 ~~survey areas of the state relating to the functions and activities of the justice courts, taking into~~

254 consideration the diverse economic factors of the various localities of the justice courts, and
255 develop recommended monthly salaries. These recommendations shall be furnished to the
256 governing bodies of the municipalities and the counties to assist them in determining salaries.]

257 [~~(b)~~] The state court administrator may make studies concerned with the economic as
258 well as administrative feasibility to encourage the various political subdivisions to utilize the
259 same person or persons to act as justice court judges for their several jurisdictions and to assist
260 political subdivisions desiring to enter into agreements for that purpose.]

261 [~~(3)~~] (2) A justice court judge may not appear as an attorney in any criminal matter in a
262 federal, state, or justice court or appear as an attorney in any justice court or in any juvenile
263 court case involving conduct which would be criminal if committed by an adult.

264 [~~(4)~~] (3) A justice court judge may not hold any office or employment including
265 contracting for services in any justice agency of state government or any political subdivision of
266 the state including law enforcement, prosecution, criminal defense, corrections, or court
267 employment.

268 [~~(5)~~] (4) A justice court judge may not hold any office in any political party or
269 organization engaged in any political activity or serve as an elected official in state government
270 or any political subdivision of the state.

271 [~~(6)~~] (5) A justice court judge may not own or be employed by any business entity
272 which regularly litigates in small claims court.

273 [~~(7)~~] (6) Any judge who violates this section is subject to removal by the Judicial
274 Conduct Commission under Title 78A, Chapter 11, Judicial Conduct Commission.

275 Section 7. Section **78A-7-213** is amended to read:

276 **78A-7-213. Trial facilities -- Hours of business.**

277 (1) A justice court judge shall conduct all official court business in a courtroom or
278 office located in a public facility which is conducive and appropriate to the administration of
279 justice.

280 (2) Each county, city, or town shall provide adequate courtroom and auxiliary space for
281 the justice court. The facility need not be specifically constructed for or allocated solely for the

282 justice court if existing facilities adequately serve the purposes of the justice court.

283 (3) [~~County and municipal justice~~] Justice courts shall be open and judicial business
284 shall be transacted:

285 (a) five days per week; or

286 (b) no less than four days per week for at least 11 hours per day.

287 (4) The legislative body of the county, city, or town shall establish operating hours for
288 the justice courts within the requirements of Subsection (3) and the code of judicial
289 administration.

290 (5) The hours the courts are open shall be posted conspicuously at the courts and in
291 local public buildings.

292 (6) The clerk of the court and judges of [~~county and municipal~~] justice courts shall
293 attend the court at regularly scheduled times.

294 (7) By July 1, 2011, all justice courts shall use a common case management system and
295 disposition reporting system as specified by the Judicial Council.

296 Section 8. **Effective date.**

297 This bill takes effect on January 1, 2009, except that the amendments to Section
298 78A-7-206 in this bill take effect on July 1, 2009.