

Representative Gage Froerer proposes the following substitute bill:

UNLAWFUL DETAINER AMENDMENTS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gage Froerer

Senate Sponsor: Gregory S. Bell

LONG TITLE

General Description:

This bill requires the court to hold an evidentiary hearing within ten days for an action involving unlawful detainer.

Highlighted Provisions:

This bill:

- ▶ requires the court, upon the request of either party, to hold an evidentiary hearing for an action involving unlawful detainer; and
- ▶ adds occupying property after a forced sale to list of what constitutes unlawful detainer.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78B-6-802, as renumbered and amended by Laws of Utah 2008, Chapter 3

78B-6-810, as renumbered and amended by Laws of Utah 2008, Chapter 3



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

27 Section 1. Section **78B-6-802** is amended to read:

28 **78B-6-802. Unlawful detainer by tenant.**

29 (1) A tenant holding real property for a term less than life, is guilty of an unlawful
30 detainer if the tenant:

31 (a) continues in possession, in person or by subtenant, of the property or any part of it,
32 after the expiration of the specified term or period for which it is let to him, which specified
33 term or period, whether established by express or implied contract, or whether written or parol,
34 shall be terminated without notice at the expiration of the specified term or period;

35 (b) having leased real property for an indefinite time with monthly or other periodic
36 rent reserved:

37 (i) continues in possession of it in person or by subtenant after the end of any month or
38 period, in cases where the owner, the owner's designated agent, or any successor in estate of the
39 owner, 15 calendar days or more prior to the end of that month or period, has served notice
40 requiring the tenant to quit the premises at the expiration of that month or period; or

41 (ii) in cases of tenancies at will, remains in possession of the premises after the
42 expiration of a notice of not less than five calendar days;

43 (c) continues in possession, in person or by subtenant, after default in the payment of
44 any rent or other amounts due and after a notice in writing requiring in the alternative the
45 payment of the rent and other amounts due or the surrender of the detained premises, has
46 remained uncomplished with for a period of three calendar days after service, which notice may
47 be served at any time after the rent becomes due;

48 (d) assigns or sublets the leased premises contrary to the covenants of the lease, or
49 commits or permits waste on the premises;

50 (e) sets up or carries on any unlawful business on or in the premises;

51 (f) suffers, permits, or maintains on or about the premises any nuisance, including
52 nuisance as defined in Section 78B-6-1107;

53 (g) commits a criminal act on the premises and remains in possession after service of a
54 three calendar days' notice to quit; [or]

55 (h) continues in possession, in person or by subtenant, after a neglect or failure to
56 perform any condition or covenant of the lease or agreement under which the property is held,

57 other than those previously mentioned, and after notice in writing requiring in the alternative
58 the performance of the conditions or covenant or the surrender of the property, served upon the
59 tenant and upon any subtenant in actual occupation of the premises remains uncomplished with
60 for three calendar days after service[-]; or

61 (i) continues to occupy the property after a forced sale of a trust deed or mortgage
62 where the trustor or mortgagor has defaulted on his or her obligations resulting in disposition
63 of the property by a trustee's sale or sheriff's sale.

64 (2) Within three calendar days after the service of the notice, the tenant, any subtenant
65 in actual occupation of the premises, any mortgagee of the term, or other person interested in
66 its continuance may perform the condition or covenant and thereby save the lease from
67 forfeiture, except that if the covenants and conditions of the lease violated by the lessee cannot
68 afterwards be performed, or the violation cannot be brought into compliance, the notice
69 provided for in Subsections (1)(d) through (g) may be given.

70 (3) Unlawful detainer by an owner resident of a mobile home is determined under Title
71 57, Chapter 16, Mobile Home Park Residency Act.

72 (4) The notice provisions for nuisance in Subsections (1)(d) through (g) do not apply to
73 nuisance actions provided in Sections 78B-6-1107 through 78B-6-1114.

74 Section 2. Section **78B-6-810** is amended to read:

75 **78B-6-810. Court procedures.**

76 (1) In an action under this chapter in which the tenant remains in possession of the
77 property:

78 (a) the court shall expedite the proceedings, including the resolution of motions and
79 trial;

80 (b) the court shall begin the trial within 60 days after the day on which the complaint is
81 served, unless the parties agree otherwise; and

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

85 (2) (a) In an action for unlawful detainer [~~where the claim is for nonpayment of rent~~],
86 the court shall hold an evidentiary hearing, upon request of either party, within ten days after
87 the day on which the defendant files the defendant's answer.

88 (b) At the evidentiary hearing held in accordance with Subsection (2)(a):

89 (i) the court shall determine who has the right of occupancy during the litigation's
90 pendency; and

91 (ii) if the court determines that all issues between the parties can be adjudicated
92 without further proceedings, the court shall adjudicate those issues and enter judgment on the
93 merits.

94 (3) (a) In an action for unlawful detainer in which the claim is for nuisance and alleges
95 an act that would be considered criminal under the laws of this state, the court shall hold an
96 evidentiary hearing within ten days after the day on which the complaint is filed to determine
97 whether the alleged act occurred.

98 (b) The hearing required by Subsection (3)(a) shall be set at the time the complaint is
99 filed and notice of the hearing shall be served upon the defendant with the summons at least
100 three calendar days before the scheduled time of the hearing.

101 (c) If the court, at an evidentiary hearing held in accordance with Subsection (3)(a),
102 determines that it is more likely than not that the alleged act occurred, the court shall issue an
103 order of restitution.

104 (d) If an order of restitution is issued in accordance with Subsection (3)(c), a constable
105 or the sheriff of the county where the property is situated shall return possession of the property
106 to the plaintiff immediately.

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

109 (f) At the evidentiary hearing held in accordance with Subsection (3)(a), if the court
110 determines that all issues between the parties can be adjudicated without further proceedings,
111 the court shall adjudicate those issues and enter judgment on the merits.

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

114 (i) an act that would be considered a felony under the laws of this state;

115 (ii) an act that would be considered criminal affecting the health or safety of a tenant,
116 the landlord, the landlord's agent, or other person on the landlord's property;

117 (iii) an act that would be considered criminal that causes damage or loss to any tenant's
118 property or the landlord's property;

- 119 (iv) a drug- or gang-related act that would be considered criminal;
- 120 (v) an act or threat of violence against any tenant or other person on the premises, or
121 against the landlord or the landlord's agent; and
- 122 (vi) any other act that would be considered criminal that the court determines directly
123 impacts the peaceful enjoyment of the premises by any tenant.
- 124 (4) (a) At any hearing held in accordance with this chapter in which the tenant after
125 receiving notice fails to appear, the court shall issue an order of restitution.
- 126 (b) If an order of restitution is issued in accordance with Subsection (4)(a), a constable
127 or the sheriff of the county where the property is situated shall return possession of the property
128 to the plaintiff immediately.
- 129 (5) A court adjudicating matters under this chapter may make other orders as are
130 appropriate and proper.

H.B. 299 1st Sub. (Buff) - Unlawful Detainer Amendments

Fiscal Note

2009 General Session

State of Utah

State Impact

Enactment of this will increase the rate at which the Courts manage certain caseloads. It is estimated that the Courts will require \$26,400 in ongoing General Funds.

	<u>2009</u> <u>Approp.</u>	<u>2010</u> <u>Approp.</u>	<u>2011</u> <u>Approp.</u>	<u>2009</u> <u>Revenue</u>	<u>2010</u> <u>Revenue</u>	<u>2011</u> <u>Revenue</u>
General Fund	\$0	\$26,400	\$26,400	\$0	\$0	\$0
Total	\$0	\$26,400	\$26,400	\$0	\$0	\$0

Individual, Business and/or Local Impact

Enactment of this bill may impact certain individuals in eviction cases.