

## **HB0286S02 compared with HB0286**

**{deleted text}** shows text that was in HB0286 but was deleted in HB0286S02.

**inserted text** shows text that was not in HB0286 but was inserted into HB0286S02.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

**Representative Gage Froerer proposes the following substitute bill:**

### **DISPOSITION OF PERSONAL PROPERTY ON VACATED PROPERTY**

2013 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Gage Froerer**

Senate Sponsor: \_\_\_\_\_

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#### **LONG TITLE**

#### **General Description:**

This bill amends the rights of a property owner in disposing of abandoned personal property left by a former tenant or occupant.

#### **Highlighted Provisions:**

This bill:

- ▶ requires a property owner to give notice to a former tenant of abandoned personal property before it is sold or donated;
- ▶ allows a tenant to recover abandoned personal property under certain **{requirements} conditions**;
- ▶ provides that a property owner is not required to store certain hazardous or

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- dangerous abandoned personal property;
- exempts motor vehicles; and
- makes technical changes.

### **Money Appropriated in this Bill:**

None

### **Other Special Clauses:**

None

### **Utah Code Sections Affected:**

AMENDS:

**78B-6-812**, as renumbered and amended by Laws of Utah 2008, Chapter 3

**78B-6-816**, as renumbered and amended by Laws of Utah 2008, Chapter 3

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

Section 1. Section **78B-6-812** is amended to read:

- 78B-6-812. Order of restitution -- Service -- Enforcement -- Disposition of personal property -- Hearing.**
- (1) Each order of restitution shall:
    - (a) direct the defendant to vacate the premises, remove [his] 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 of the time limit set by the court for the defendant to vacate the premises, which shall be three calendar days following service of the order, unless the court determines that a longer or shorter period is appropriate under the circumstances; and
    - (c) advise the defendant of the defendant's right to a hearing to contest the manner of its enforcement.

(2) (a) A copy of the order of restitution and a form for the defendant to request a hearing as listed on the form shall be served in accordance with Section 78B-6-805 by a person authorized to serve process pursuant to Subsection 78B-8-302(1). If personal service is impossible or impracticable, service may be made by:

- (i) mailing a copy of the order and the form by first class mail to the defendant's last-known address and posting a copy of the order and the form at a conspicuous place on the

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premises; or

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

(b) A request for hearing by the defendant 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 the formula set forth in Subsection 78B-6-808(4)(b); and

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

(c) The date of service, the name, title, signature, and telephone number of the person serving the order and the form shall be legibly endorsed 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.

(3) (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) [Any personal] Personal property of the defendant may be removed from the premises by the sheriff or constable and transported to a suitable location for safe storage. The sheriff or constable may delegate responsibility for inventory, moving, and storage to the plaintiff, who shall store the personal property in a suitable place and in a reasonable manner.

(c) A tenant my not access the property until the removal and storage costs have been paid in full, except that the tenant shall be provided reasonable access within five business days to retrieve:

(i) clothing;

(ii) identification;

(iii) financial documents, including all those related to the tenant's immigration status, employment status;

(iv) receipt of public services; and

(v) medical information, prescription medications, and any medical equipment required

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for maintenance of medical needs.

[~~(c)~~(d) The personal property removed and stored shall ~~be~~ be inventoried by the sheriff or constable or the plaintiff who shall keep the original inventory and personally deliver or mail the defendant a copy of the inventory immediately after the personal property is removed.] ~~Within 15 calendar days, be~~ considered abandoned property and subject to Section 78B-6-816.

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

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

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

[~~(ii)~~ the defendant fails to pay the reasonable costs incurred for the removal and storage of the personal property.]

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

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

[~~(e)~~ The plaintiff may donate the property to charity if:]

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

[~~(ii)~~ the defendant fails to pay the reasonable costs incurred for the removal and storage

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of the personal property; and]

[~~(iii) the donation is a commercially reasonable alternative.~~]

[~~(f) If the property belonging to a person who is not a defendant is removed and stored in accordance with this section, that person may claim the property by delivering a written demand for its release to the sheriff or constable or the plaintiff. If the claimant provides proper identification and evidence of ownership, the sheriff or constable or the plaintiff shall promptly release the property at no cost to the claimant.~~]

[~~(5)~~] (4) In the event of a dispute concerning the manner of enforcement of the restitution order, the defendant [~~or any person claiming to own stored personal property~~] may file a request for a hearing. The court shall set the matter for hearing within 10 calendar days from the filing of the request, or as soon thereafter as practicable, and shall mail notice of the hearing to the parties.

[~~(6)~~] (5) The Judicial Council shall draft the forms necessary to implement this section.

Section 2. Section **78B-6-816** is amended to read:

**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 [~~make reasonable efforts to notify the tenant of the location of the personal property.~~] 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.

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(ii) The tenant ~~shall recover~~may retrieve the property within 15 calendar days from the date of the notice ~~was sent, including~~if the tenant tenders payment of ~~any~~all costs of inventory, moving, and storage to the owner.

[If] (iii) Except as provided in Subsection (5), if the property has been in storage for [over 30] at least 15 calendar days and the tenant has made no reasonable effort to recover ~~it~~ ~~from~~ the ~~date~~ property after notice was sent ~~and the tenant fails to recover the property~~, pay ~~the~~ 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, Standards for Determining When Property is Abandoned or Unclaimed.

(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;

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- (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 abandon property, if a tenant provides:

- (a) a copy of a police report or protection order for situations of domestic violence, as defined in Section 76-36-1;
- (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.

(~~6~~8) Items listed in Subsection (5) 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 (5).

(~~7~~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.

(~~8~~10) If the tenant is present at the public sale:

- (a) the tenant may specify the order in which the personal property ~~{shall be}~~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.

(~~9~~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, Unclaimed Property Act.

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**Legislative Review Note**

— as of 1-21-13 4:02 PM

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**Office of Legislative Research and General Counsel,**