

Senator Margaret Dayton proposes the following substitute bill:

FORCIBLE ENTRY AND DETAINER

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Margaret Dayton

House Sponsor: Keith Grover

LONG TITLE

General Description:

This bill modifies provisions related to forcible entry and detainer.

Highlighted Provisions:

This bill:

- ▶ modifies provisions related to how notice is served;
- ▶ addresses a complaint and summons;
- ▶ amends provisions related to court procedures;
- ▶ addresses attorney fees;
- ▶ modifies enforcement provisions;
- ▶ addresses abandonment; and
- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a coordination clause.

Utah Code Sections Affected:

AMENDS:

78B-6-805, as renumbered and amended by Laws of Utah 2008, Chapter 3



- 26 **78B-6-807**, as last amended by Laws of Utah 2016, Chapter 33
- 27 **78B-6-810**, as last amended by Laws of Utah 2017, Chapter 414
- 28 **78B-6-811**, as last amended by Laws of Utah 2017, Chapter 203
- 29 **78B-6-812**, as last amended by Laws of Utah 2017, Chapter 414
- 30 **78B-6-815**, as renumbered and amended by Laws of Utah 2008, Chapter 3

Utah Code Sections Affected by Coordination Clause:

- 31 **78B-6-807**, as last amended by Laws of Utah 2016, Chapter 33

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

Section 1. Section **78B-6-805** is amended to read:

78B-6-805. Notice -- How served.

(1) ~~[The notices]~~ A notice required by this part may be served:

(a) by delivering a copy to the tenant personally or, if the tenant is a commercial tenant, by delivering a copy to the commercial tenant's usual place of business by leaving a copy of the notice with a person of suitable age and discretion;

(b) by sending a copy through registered ~~[or]~~ mail, certified mail, or an equivalent means, addressed to the tenant at the tenant's residence~~[or, if the tenant is a commercial tenant, by sending a copy through registered or certified mail addressed to the commercial tenant's]~~, leased property, or usual place of business;

(c) if the tenant is absent from the residence, leased property, or usual place of business, by leaving a copy with a person of suitable age and discretion ~~[at either place and mailing a copy to the tenant at the tenant's residence or place of business]~~ at the tenant's residence, leased property, or usual place of business;

(d) if a person of suitable age or discretion cannot be found at the place of residence, leased property, or usual place of business, then by affixing a copy in a conspicuous place on the leased property; or

(e) if an order of abatement by eviction of the nuisance is issued by the court as provided in Section **78B-6-1109**, when issued, the parties present shall be on notice that the abatement by eviction order is issued and immediately effective or as to any absent party, notice shall be given as provided in Subsections (1)(a) through (e).

(2) Service upon a subtenant may be made in the same manner as provided in

57 Subsection (1).

58 Section 2. Section **78B-6-807** is amended to read:

59 **78B-6-807. Allegations permitted in complaint -- Time for appearance -- Service**
60 **of summons.**

61 (1) The plaintiff, in [his] the plaintiff's complaint:

62 (a) shall set forth the facts on which [he] the plaintiff seeks to recover;

63 (b) may set forth any circumstances of fraud, force, or violence [~~which~~] that may have
64 accompanied the alleged forcible entry, or forcible or unlawful detainer; and

65 (c) may claim damages or compensation for the occupation of the premises, or both.

66 (2) If the unlawful detainer charged is after default in the payment of rent or other
67 amounts due, the complaint shall state the amount of rent due or other amounts due.

68 (3) (a) The summons shall include the number of days within which the defendant is
69 required to appear and defend the action, which shall be three business days from the date of
70 service, unless the defendant objects to the number of days, and the court determines that the
71 facts of the case should allow more time.

72 [~~(4) The court may authorize service by publication or mail for cause shown.]~~

73 [~~(5) Service by publication is complete one week after publication.]~~

74 [~~(6) Service by mail is complete three days after mailing.]~~

75 [~~(7) The summons shall be changed in form to conform to the time of service as~~
76 ~~ordered, and shall be served as in other cases.]~~

77 (b) A claim for unlawful detainer brought by counterclaim shall be served to any
78 opposing party in accordance with Utah Rules of Civil Procedure, and any response required
79 shall be due within the timelines stated under Subsection (3)(a).

80 (4) The court may authorize alternative service pursuant to the Utah Rules of Civil
81 Procedure.

82 Section 3. Section **78B-6-810** is amended to read:

83 **78B-6-810. Court procedures.**

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

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

88 (b) the court shall begin the trial within 60 days after the day on which the complaint is
89 served, unless the parties agree otherwise; [~~and~~]

90 (c) if this chapter requires a hearing to be held within a specified time, the time may be
91 extended to the first date thereafter on which a judge is available to hear the case in a
92 jurisdiction in which a judge is not always available[-]; and

93 (d) if this chapter requires a hearing to be held within a specified time, this section does
94 not require a hearing to be held before the assigned judge, and the court may, out of
95 convenience, schedule a hearing before another judge within the jurisdiction.

96 (2) (a) In an action for unlawful detainer, the court shall hold an evidentiary hearing,
97 upon request of either party, within 10 business days after the day on which the defendant files
98 an answer or response.

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

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

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

105 (3) (a) In an action for unlawful detainer in which the claim is for nuisance and alleges
106 an act that would be considered criminal under the laws of this state, the court shall hold an
107 evidentiary hearing upon request within 10 days after the day on which the complaint is filed to
108 determine whether the alleged act occurred.

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

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

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

118 (e) The court may allow a period of up to 72 hours before restitution may be made

119 under Subsection (3)(d) if the court determines the time is appropriate under the circumstances.

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

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

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

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

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

130 (iv) a drug- or gang-related act that would be considered criminal;

131 (v) an act or threat of violence against any tenant or other person on the premises, or
132 against the landlord or the landlord's agent; and

133 (vi) any other act that would be considered criminal that the court determines directly
134 impacts the safety or peaceful enjoyment of the premises by any tenant.

135 (4) (a) At any hearing held in accordance with this chapter in which the tenant after
136 receiving notice fails to appear, the court shall issue an order of restitution.

137 (b) If an order of restitution is issued in accordance with Subsection (4)(a), a constable
138 or the sheriff of the county where the property is situated shall return possession of the property
139 to the plaintiff immediately.

140 (5) A court adjudicating matters under this chapter may make other orders as are
141 appropriate and proper.

142 Section 4. Section **78B-6-811** is amended to read:

143 **78B-6-811. Judgment for restitution, damages, and rent -- Immediate**
144 **enforcement -- Remedies.**

145 (1) (a) A judgment may be entered upon the merits or upon default.

146 (b) A judgment entered in favor of the plaintiff shall include an order for the restitution
147 of the premises as provided in Section **78B-6-812**.

148 (c) If the proceeding is for unlawful detainer after neglect or failure to perform any
149 condition or covenant of the lease or agreement under which the property is held, or after

150 default in the payment of rent, the judgment shall also declare the forfeiture of the lease or
151 agreement.

152 (d) (i) A forfeiture under Subsection (1)(c) does not release a defendant from any
153 obligation for payments on a lease for the remainder of the lease's term.

154 (ii) Subsection (1)(d)(i) does not change any obligation on either party to mitigate
155 damages.

156 (2) The jury or the court, if the proceeding is tried without a jury or upon the
157 defendant's default, shall also assess the damages resulting to the plaintiff from any of the
158 following:

159 (a) forcible entry;

160 (b) forcible or unlawful detainer;

161 (c) waste of the premises during the defendant's tenancy, if waste is alleged in the
162 complaint and proved at trial;

163 (d) the amounts due under the contract, if the alleged unlawful detainer is after default
164 in the payment of amounts due under the contract; and

165 (e) the abatement of the nuisance by eviction as provided in Sections [78B-6-1107](#)
166 through [78B-6-1114](#).

167 (3) The judgment shall be entered against the defendant for the rent, for three times the
168 amount of the damages assessed under Subsections (2)(a) through (2)(e).

169 (4) (a) If the proceeding is for unlawful detainer, execution upon the judgment shall be
170 issued immediately after the entry of the judgment.

171 (b) In all cases, the judgment may be issued and enforced immediately.

172 (5) In an action under this chapter, the court [~~may~~] shall award costs and reasonable
173 attorney fees to the prevailing party.

174 Section 5. Section **78B-6-812** is amended to read:

175 **78B-6-812. Order of restitution -- Service -- Enforcement -- Disposition of**
176 **personal property -- Hearing.**

177 (1) An order of restitution shall:

178 (a) direct the defendant to vacate the premises, remove the defendant's personal
179 property, and restore possession of the premises to the plaintiff, or be forcibly removed by a
180 sheriff or constable;

181 (b) advise the defendant of the time limit set by the court for the defendant to vacate
182 the premises, which shall be three calendar days following service of the order, unless the court
183 determines that a longer or shorter period is appropriate after a finding of extenuating
184 circumstances; and

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

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

191 [~~(i) mailing a copy of the order and the form by first class mail to the defendant's~~
192 ~~last-known address and posting a copy of the order and the form at a conspicuous place on the~~
193 ~~premises; or]~~

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

197 (b) A request for hearing or other pleading filed by the defendant may not stay
198 enforcement of the restitution order unless:

199 (i) the defendant furnishes a corporate bond, cash bond, certified funds, or a property
200 bond to the clerk of the court in an amount approved by the court according to [~~the formula set~~
201 ~~forth in]~~ Subsection 78B-6-808(4)(b); and

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

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

206 (d) The person serving the order and the form shall file proof of service in accordance
207 with Rule 4(e), Utah Rules of Civil Procedure.

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

211 (b) Personal property [~~of the defendant]~~ remaining in the leased property may be

212 removed from the premises by the sheriff or constable and transported to a suitable location for
213 safe storage. The sheriff or constable may delegate responsibility for inventory, moving, and
214 storage to the plaintiff, who shall store the personal property in a suitable place and in a
215 reasonable manner.

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

219 (i) clothing;

220 (ii) identification;

221 (iii) financial documents, including all those related to the tenant's immigration
222 status[;] or employment status;

223 (iv) documents pertaining to receipt of public services; and

224 (v) medical information, prescription medications, and any medical equipment required
225 for maintenance of medical needs.

226 (d) The personal property removed and stored [~~shall, after 15 calendar days, be~~] is
227 considered abandoned property and subject to Section 78B-6-816.

228 (4) In the event of a dispute concerning the manner of enforcement of the restitution
229 order, the defendant may file a request for a hearing. The court shall set the matter for hearing
230 within 10 calendar days from the filing of the request, or as soon thereafter as practicable, and
231 shall mail notice of the hearing to the parties.

232 (5) The Judicial Council shall draft the forms necessary to implement this section.

233 Section 6. Section 78B-6-815 is amended to read:

234 **78B-6-815. Abandonment.**

235 (1) ["]Abandonment["] is presumed in either of the following situations:

236 [(+)] (a) The tenant has not notified the owner that [~~he or she~~] the tenant will be absent
237 from the premises, and the tenant fails to pay rent within 15 days after the due date, and there is
238 no reasonable evidence other than the presence of the tenant's personal property that the tenant
239 is occupying the premises.

240 [(2)] (b) The tenant has not notified the owner that [~~he or she~~] the tenant will be absent
241 from the premises, and the tenant fails to pay rent when due and the tenant's personal property
242 has been removed from the dwelling unit and there is no reasonable evidence that the tenant is

243 occupying the premises.

244 (2) Abandonment is established as a matter of law if the owner has reason to believe
245 that the presumption of abandonment under Subsection (1) has been met, the owner serves the
246 tenant with a declaration of abandonment, and the tenant fails to dispute or rebut the
247 declaration of abandonment in accordance with this Subsection (2).

248 (a) The tenant may be served with a declaration of abandonment that includes at least a
249 contact address for the owner, contains a brief factual basis supporting the owner's reasonable
250 belief that the presumption of abandonment under Subsection (1) has been met, and states the
251 date and time of service and includes the following language, or language that is substantially
252 similar: "It is believed that these premises are abandoned and the owner is seeking to regain
253 possession of the premises. If a tenant in legal possession of the premises has not abandoned
254 the premises, the tenant must dispute abandonment in writing within 24 hours of service of this
255 declaration of abandonment by providing a copy to the owner at the contact address included
256 with this declaration of abandonment. If written notice is not served on the owner within 24
257 hours, the owner may retake possession of the premises." The 24-hour period stated in this
258 Subsection (2)(a) does not include a Saturday, a Sunday, or a holiday during which the Utah
259 state courts are closed.

260 (b) Service of the declaration of abandonment by the owner and any dispute or rebuttal
261 by the tenant shall be made pursuant to Section [78B-6-805](#).

262 (c) If the tenant fails to dispute the declaration of abandonment in writing by serving
263 notice to the owner within 24 hours of being served a declaration of abandonment, excluding a
264 Saturday, a Sunday, or a holiday during which the Utah state courts are closed, the declaration
265 of abandonment serves as prima facie evidence that the tenant has vacated and abandoned the
266 premises.

267 (d) The tenant bears the burden to rebut an abandonment that is established by a
268 declaration of abandonment by clear and convincing evidence.

269 **Section 7. Coordinating S.B. 159 with S.B. 79 -- Substantive and technical**
270 **amendments.**

271 If this S.B. 159 and S.B. 79, Judiciary Amendments, both pass and become law, it is the
272 intent of the Legislature that the Office of Legislative Research and General Counsel shall
273 prepare the Utah Code database for publication by amending Subsection [78B-6-807](#)(4) to read:

274 "(4) The court may authorize alternative service pursuant to the Utah Rules of Civil
275 Procedure."