

SB0159S01 compared with SB0159

~~{deleted text}~~ shows text that was in SB0159 but was deleted in SB0159S01.

Inserted text shows text that was not in SB0159 but was inserted into SB0159S01.

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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 ~~{allegations permitted in}~~ a complaint~~};~~
→ addresses} and summons~~{related to a complaint}~~;
- ▶ amends provisions related to court procedures;
- ▶ addresses attorney fees;
- ▶ modifies enforcement provisions;
- ▶ addresses abandonment; and
- ▶ makes technical and conforming amendments.

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Money Appropriated in this Bill:

None

Other Special Clauses:

~~{ None }~~ 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

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

78B-6-810, as last amended by Laws of Utah 2017, Chapter 414

78B-6-811, as last amended by Laws of Utah 2017, Chapter 203

78B-6-812, as last amended by Laws of Utah 2017, Chapter 414

78B-6-815, as renumbered and amended by Laws of Utah 2008, Chapter 3

Utah Code Sections Affected by Coordination Clause:

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) ~~{subject to Subsection (3),}~~ 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,

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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 Subsection (1).

~~{ (3) Service by mail under Subsection (1)(b) is complete three calendar days after mailing.~~

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

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

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

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

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

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

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

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

~~{(b) A summons requiring a response within three business days under this section may be used with a complaint, counterclaim, third-party claim, or similar claim.~~

~~—— (c) The time frames provided in this section may not be expanded by including multiple causes of action in a complaint beyond unlawful detainer.~~

~~—— }[(4) { (a)} The court may authorize service by publication {[]} or {[]} mail {, or email} for cause shown.]~~

~~[(5) {[]} (b)} Service by publication is complete one week after publication.]~~

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~~[(6) ~~(c)~~ Service by mail is complete three ~~{calendar}~~ days after mailing.]~~

~~[(d) Service by email is complete upon sending.]~~

~~[(7) ~~(5)~~ The summons shall be changed in form to conform to the time of service as ordered, and shall be served as in other cases.]~~

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

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

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

78B-6-810. Court procedures.

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

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

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

(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~~[-]~~; and

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

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

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

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

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

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merits.

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

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

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

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

(f) At the evidentiary hearing held in accordance with Subsection (3)(a), if the court determines that all issues between the parties can be adjudicated without further proceedings, 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:

- (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 safety or peaceful enjoyment of the premises by any tenant.

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

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

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

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

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

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

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

(c) If the proceeding is for unlawful detainer after neglect or failure to perform any condition or covenant of the lease or agreement under which the property is held, or after default in the payment of rent, the judgment shall also declare the forfeiture of the lease or agreement.

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

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

(a) forcible entry;

(b) forcible or unlawful detainer;

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

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

(e) the abatement of the nuisance by eviction as provided in Sections 78B-6-1107

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through 78B-6-1114.

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

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

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

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

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

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

(1) An order of restitution shall:

(a) direct the defendant to vacate the premises, remove 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 after a finding of extenuating 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 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.]~~

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(b) A request for hearing or other pleading filed 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) Personal property [~~of the defendant~~] remaining in the leased property 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 may 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[;] or employment status;

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

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

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

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(4) In the event of a dispute concerning the manner of enforcement of the restitution order, the defendant 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.

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

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

78B-6-815. Abandonment.

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

~~[(1)]~~ (a) The tenant has not notified the owner that ~~[he or she]~~ the tenant will be absent from the premises, and the tenant fails to pay rent within 15 days after the due date, and there is no reasonable evidence other than the presence of the tenant's personal property that the tenant is occupying the premises.

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

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

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

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state courts are closed.

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

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

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

†

Legislative Review Note

† Section 7. Coordinating S.B. 159 with S.B. 79 -- Substantive and technical amendments.

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

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