

UNLAWFUL DETAINER AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: James A. Dunnigan

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to unlawful detainer of property.

Highlighted Provisions:

This bill:

- ▶ amends a requirement for unlawful detainer by a tenant if the tenant fails to make payments, continues to possess the property, and receives notice;
- ▶ provides that if a court denies a submitted order when a tenant continues to possess the property, the court shall give notice to the parties and hold a hearing;
- ▶ provides that if the tenant fails to appeal the court shall issue an order of restitution and enter a default judgment, unless the court finds otherwise;
- ▶ allows for a court to issue an order of restitution without a judgment;
- ▶ allows for the court to modify a judgment for additional amounts owed;
- ▶ requires a tenant to provide an address to the court and plaintiff within a certain time period; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



28 AMENDS:

29 **78B-6-802**, as last amended by Laws of Utah 2016, Chapter 325

30 **78B-6-810**, as last amended by Laws of Utah 2018, Chapter 291

31 **78B-6-811**, as last amended by Laws of Utah 2018, Chapter 291



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

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

35 **78B-6-802. Unlawful detainer by tenant for a term less than life.**

36 (1) A tenant holding real property for a term less than life[;] is guilty of an unlawful
37 detainer if the tenant:

38 (a) [~~except as provided in Subsection (1)(i);~~] continues in possession, in person or by
39 subtenant, of the property or any part of [it] the property, after the expiration of the specified
40 term or period for which it is let to [him] the tenant, which specified term or period, whether
41 established by express or implied contract, or whether written or parol, shall be terminated
42 without notice at the expiration of the specified term or period;

43 (b) having leased real property for an indefinite time with monthly or other periodic
44 rent reserved [~~and except as provided in Subsection (1)(i):~~]

45 (i) continues in possession of [it] the property in person or by subtenant after the end of
46 any month or period, in cases where the owner, the owner's designated agent, or any successor
47 in estate of the owner, 15 calendar days or more [~~prior to~~] before the end of that month or
48 period, has served notice requiring the tenant to quit the premises at the expiration of that
49 month or period; or

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

52 (c) continues in possession, in person or by subtenant, after default in the payment of
53 any rent or other amounts due and after a notice in writing requiring in the alternative the
54 payment of the rent and other amounts due or the surrender of the detained premises, has
55 remained uncomplied with for a period of three [~~calendar~~] business days after service, which
56 notice may be served at any time after the rent becomes due;

57 (d) assigns or sublets the leased premises contrary to the covenants of the lease, or
58 commits or permits waste on the premises after service of a three calendar days' notice to quit;

59 (e) sets up or carries on any unlawful business on or in the premises after service of a
60 three calendar days' notice to quit;

61 (f) suffers, permits, or maintains on or about the premises any nuisance, including
62 nuisance as defined in Section 78B-6-1107 after service of a three calendar days' notice to quit;

63 (g) commits a criminal act on the premises and remains in possession after service of a
64 three calendar days' notice to quit;

65 (h) continues in possession, in person or by subtenant, after a neglect or failure to
66 perform any condition or covenant of the lease or agreement under which the property is held,
67 other than those previously mentioned, and after notice in writing requiring in the alternative
68 the performance of the conditions or covenant or the surrender of the property, served upon the
69 tenant and upon any subtenant in actual occupation of the premises remains uncomplished with
70 for three calendar days after service; or

71 (i) (i) is a bona fide tenant of a foreclosed rental property[, as defined in Section
72 57-1-25.5 or Section 78B-6-802.7]; and

73 (ii) continues in possession after the effective date of a notice to vacate [~~given in~~
74 ~~accordance with Subsection 57-1-25.5(3) or Subsection 78B-6-802.7(3)~~].

75 (2) [~~Within three calendar days after the~~] After service of the notice, the tenant, any
76 subtenant in actual occupation of the premises, any mortgagee of the term, or other person
77 interested in [its] the lease's continuance may perform the condition or covenant and [~~thereby~~]
78 save the lease from forfeiture, except that if the covenants and conditions of the lease violated
79 by the lessee cannot afterwards be performed, or the violation cannot be brought into
80 compliance, [~~the~~] a notice provided for in Subsections (1)(d) through (g) may be given.

81 (3) Unlawful detainer by an owner resident of a mobile home is determined under Title
82 57, Chapter 16, Mobile Home Park Residency Act.

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

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

86 **78B-6-810. Court procedures.**

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

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

90 trial;

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

93 (c) if this chapter requires a hearing to be held within a specified time and a judge is
94 not available, the time may be extended to the first date [~~thereafter~~] after expiration of the
95 specified time on which a judge is available to hear the case [~~in a jurisdiction in which a judge~~
96 ~~is not always available; and~~];

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

100 (e) if a court denies an order submitted by a party, the court shall give notice to the
101 parties of the reason for denial and set a hearing within 10 days of the day on which the order
102 was submitted to the court.

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

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

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

109 (ii) if the court determines that all issues between the parties can be adjudicated
110 without further proceedings, the court shall adjudicate [~~those~~] all issues and enter judgment on
111 the merits.

112 (3) (a) (i) As used in this Subsection (3)(a), "an act that would be considered criminal
113 under the laws of this state" means:

114 (A) an act that would constitute a felony under the laws of this state;

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

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

119 (D) a drug- or gang-related act that would be considered criminal;

120 (E) an act or threat of violence against any tenant or other individual on the premises,

121 or against the landlord or the landlord's agent; and

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

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

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

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

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

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

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

142 ~~[(g) "An act that would be considered criminal under the laws of this state" under~~
143 ~~Subsection (3)(a) includes only the following:]~~

144 ~~[(i) an act that would be considered a felony under the laws of this state;]~~

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

147 ~~[(iii) an act that would be considered criminal that causes damage or loss to any~~
148 ~~tenant's property or the landlord's property;]~~

149 ~~[(iv) a drug- or gang-related act that would be considered criminal;]~~

150 ~~[(v) an act or threat of violence against any tenant or other person on the premises, or~~
151 ~~against the landlord or the landlord's agent; and]~~

152 ~~[(vi) any other act that would be considered criminal that the court determines directly~~
153 ~~impacts the safety or peaceful enjoyment of the premises by any tenant.]~~

154 (4) (a) At any hearing held in accordance with this chapter in which the ~~[tenant]~~
155 defendant after receiving notice fails to appear, the court shall issue an order of restitution and
156 enter a judgment of default against the defendant, unless the court makes a finding for why the
157 order of restitution or judgment of default should not be issued.

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

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

163 Section 3. Section **78B-6-811** is amended to read:

164 **78B-6-811. Judgment for restitution, damages, and rent -- Immediate**
165 **enforcement -- Remedies.**

166 (1) (a) A ~~[judgment may be entered]~~ court may:

167 (i) enter a judgment upon the merits or upon default[-]; and

168 (ii) issue an order of restitution without entering a judgment.

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

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

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

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

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

182 (a) forcible entry;

- 183 (b) forcible or unlawful detainer;
- 184 (c) waste of the premises during the defendant's tenancy, if waste is alleged in the
185 complaint and proved at trial;
- 186 (d) the amounts due under the contract, if the alleged unlawful detainer is after default
187 in the payment of amounts due under the contract; and
- 188 (e) the abatement of the nuisance by eviction as provided in Sections 78B-6-1107
189 through 78B-6-1114.
- 190 (3) The judgment shall be entered against the defendant for the rent, for three times the
191 amount of the damages assessed under Subsections (2)(a) through (2)(e).
- 192 (4) (a) If the proceeding is for unlawful detainer, execution upon the judgment shall be
193 issued immediately after the entry of the judgment.
- 194 (b) In all cases, the judgment may be issued and enforced immediately.
- 195 (5) In an action under this chapter, the court:
196 (a) shall award costs and reasonable attorney fees to the prevailing party[-];
197 (b) may modify a judgment for additional amounts owed if a motion is submitted
198 within 180 days on the earlier of the day on which:
199 (i) the order of restitution is enforced; or
200 (ii) the defendant vacates the premises; and
201 (c) may grant additional time for a motion under Subsection (5)(b) if good cause is
202 shown by the party submitting the motion.
- 203 (6) If the court issues an order of restitution, the defendant shall provide a current
204 address to the court and the plaintiff within 30 days of the day on which the court issues the
205 order of restitution.